



EUROPEAN COMMISSION

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**Subject: State aid - Lithuania
SA.44844 (2016/N)
Partial refinancing of compensation indemnities paid by insurance
companies to agricultural producers as a result of drought
(reinsurance)**

Your Excellency,

The European Commission ("the Commission") wishes to inform Lithuania that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to the relevant scheme as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By letter of 10 March 2016, registered by the Commission on the same day, Lithuania notified, according to Article 108(3) TFEU, the above mentioned aid scheme. Supplementary information was provided by Lithuania by letter of 3 May 2016.
- (2) The notified aid scheme relates to the aid scheme SA.24527 (N 682/2007) – Partial compensation for costs of insurance undertakings resulting from the payment of insurance payments for losses caused by drought – which was initially approved by Commission decision K (2008) 2519 of 3 June 2008, and later has further been prolonged until 30 June 2014 by Commission decision C(2013) 9390 of 16 December 2013.
- (3) The current notification aims at continuing the State reinsurance mechanism, with some modifications. Since the scheme expired on 30 June 2014 and since new European Union Guidelines for State aid in the agricultural and forestry sectors

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() Ce timbre porte sur l'ensemble des documents qui composent le dossier.*

and in rural areas 2014 to 2020¹ (hereinafter: "the Guidelines") started to apply on 1 July 2014, the currently notified aid scheme has to be assessed as a new aid scheme in line with the first sentence of point 732 of the Guidelines.

2. DESCRIPTION

2.1. Title

- (4) Partial refinancing of compensation indemnities paid by insurance companies to agricultural producers as a result of drought (reinsurance).

2.2. Objective

- (5) The general objective of the notified scheme is to encourage agricultural producers to insure the basic crops in Lithuania. In order to achieve this aim, Lithuania also needs to encourage insurance undertakings to offer such drought insurance to agricultural producers in the first place.
- (6) The envisaged State reinsurance mechanism is necessary for commercial insurance companies to be able to offer insurance against damages caused to crops by drought without having to expose themselves to the risk of bankruptcy.
- (7) The aid concerns subsidies for crop insurance and, thus, according to the Lithuanian authorities, it will not have any impact on environment.
- (8) State reinsurance does not fall within the scope of rural development support under the EAFRD.

2.3. Legal basis

- (9) The legal basis is:
- 2007 m. lapkričio 13 d. Lietuvos Respublikos Vyriausybės nutarimas Nr. 1218 „Dėl augalų, už kuriuos mokamos tiesioginės išmokos, draudimo įmokų žemės ūkio veiklos subjektams ir draudimo įmonių išlaidų dalinio kompensavimo“; and
 - Lietuvos Respublikos žemės ūkio ministro įsakymo „Dėl žemės ūkio ministro 2008 m. birželio 13 d. įsakymo Nr. 3D-333 „Dėl dalies draudimo įmonių išlaidų, susidariusių išmokant draudimo išmokas už nuostolius, patirtus dėl stichinės sausros, kompensavimo taisyklių“ pakeitimo projektas.

2.4. Budget

- (10) The proposed total budget is EUR 500 million financed by the State budget. The annual amounts earmarked for the scheme are EUR 100 million per year. The Lithuanian authorities confirmed that, since the proposed budget is only reinsurance, the funds may not be disbursed unless the insurance cannot cover the losses.

¹ OJ C 204, 1.7.2014, p.1 as amended by OJ C 390, 24.11.2015, p.4.

2.5. Beneficiaries

- (11) The ultimate beneficiaries of the aid scheme are small and medium sized undertakings active in the primary agricultural production in Lithuania, who have concluded insurance contracts with insurance companies after the date of the approval of this scheme. The Lithuanian authorities undertook to ensure that all insurance companies could access to the reinsurance scheme. The reinsurance scheme is only available for insurances provided to these beneficiaries for losses caused by drought.
- (12) The number of beneficiaries is estimated to be more than 1000.

2.6. Duration

- (13) From the date of the approval by the Commission to 31 December 2020.

2.7. Description of the aid

- (14) The application of a State reinsurance mechanism reduces the demand for funds from the State budget (i.e. it would reduce the need for state compensation granted to farmers for losses caused by adverse weather conditions) and promotes competition among insurance undertakings.
- (15) The Lithuanian authorities inform that insurance companies are not willing to offer cover against the risk event drought due to the hard-to predict scope of damage resulting from this risk. In this context, the Lithuanian authorities explain that the present State aid scheme is set up because, due to the high risks related to drought insurance provision (the drought is occurring more and more often due to rising global temperatures), the insurance and foreign re-insurance companies have agreed to provide crop insurance only if a part of the risk related to drought (natural disaster) losses would be taken over by the State. In addition, the Lithuanian authorities inform that the State is interested in encouraging the farmers to insure their crops against drought (when it can be categorized as natural disaster) as this would allow for a targeted management of risks resulting from weather conditions.
- (16) In order to ensure the availability of drought insurance on the market, the State shall share the risk with insurance companies in relation to the insurance payments, paid by the insurance companies to farmers to cover the losses incurred due to drought, provided that the following conditions are fulfilled:
- a weather event corresponding to the criteria of drought has been recorded at the municipal level in accordance with the procedure established by the Ministry of Agriculture;
 - the amount of insurance payments for losses caused by drought per hectare of the insured crop area does not exceed 15% of insurance amount per hectare (in case of insurance against all insurance events), and the ratio of insurance payments for losses caused by drought to drought insurance premium per hectare does not exceed the ratio of 10:1;
 - the overall amount of insurance payments for losses caused by drought paid by insurance companies to farmers that have insured their crops exceeds the overall amount of drought insurance payments collected by the insurance company in

Lithuania during the insurance period by following coefficients: year 2016: 3,5; year 2017: 4; year 2018: 4,5; year 2019: 5; and year 2020: 5.5. If at least one municipality records the drought in the current year, the coefficient of the preceding year applies to the following year. In the next year, the coefficients shall be applied in sequential order, following the coefficient applied during the drought year.

- (17) First, the Ministry of Agriculture concludes agreements on re-insurance subsidies with insurance companies for insurances covering losses incurred due to drought. Second, insurance contracts are concluded between agricultural producers and insurance companies who have concluded agreements on re-insurance subsidies with the Ministry of Agriculture. The Lithuanian authorities confirmed that the re-insurance payments will compensate for no more than the cost of making good the damage caused by the drought and only if strict conditions are respected (listed in recital 16), and that the insurance payments cover only current production and will not require or specify the type or quantity of future production. The Lithuanian authorities confirmed that agricultural producers will be free to choose the insurance company to sign the contract with.
- (18) The maximum co-financing costs that the State compensates to insurance companies are calculated in accordance with the following formula: $KID = BI - D_i \times K$ (KID – share of costs compensated by the state to the insurance company; BI – overall amount of insurance payments paid by the insurance company to agricultural entities for losses caused by drought; D_i – total amount of drought insurance premiums collected by the insurance company from the agricultural entities during the insurance period; K – coefficient applied during the insurance period).
- (19) The Lithuanian authorities undertook to ensure that the aid intensity for an individual SME active in primary agricultural production, ultimately benefitting from the re-insurance scheme, will not go beyond 50% of the cost of the insurance premium and that the maximum co-financing costs that the State will compensate to insurance companies will not exceed 70%, and will decrease over time, on the basis of the formula for the calculation of the compensation as provided above (recital 18).
- (20) The Lithuanian authorities have given assurances that the granting of the aid shall not be linked to any particular insurance company or group of companies with which beneficiaries of aid shall be insured. Nor is the granting of the aid conditional on the insurance contract being concluded with a company established in Lithuania.

2.8. Cumulation

- (21) The aid cannot be cumulated with aid received from other local, regional, national or Union schemes to cover the same eligible costs.

2.9. Incentive effect

- (22) The Lithuanian authorities explained that Lithuania has in place a block exempted State aid scheme SA.43851 (2015/XA) for the payment of insurance premiums up to 50% for losses incurred on non-perennial crops because of adverse weather conditions, including drought. Only farmers can benefit from the exempted

scheme and, pursuant to the national law, they are entitled to 50% of the costs of the insurance premium. However, despite this scheme, insurances for losses caused by drought are not being concluded with the farmers. Therefore, Lithuania envisages establishing a reinsurance scheme to cover insurance companies that are part of the above insurance scheme and that conclude insurance contracts with farmers in this respect. The Lithuanian authorities argue that the State reinsurance mechanism does not affect the price of insurance premiums, which remains the same with or without the risk against drought, hence there is no additional State aid element at the level of intermediary (insurance company).

- (23) Within the framework of SA.43851 (2015/XA), farmers will submit an application for subsidised insurance to insurance companies who concluded agreements on re-insurance subsidies with the Ministry of Agriculture and will conclude, on this basis, the insurance contracts mentioned in recital (17).
- (24) The Lithuanian authorities confirmed that the content of the application of the farmers for subsidised insurance to insurance companies will conform to point 71 of the Guidelines.

2.10. Other commitments

- (25) The Lithuanian authorities confirmed that the aid will not apply to undertakings in difficulty within the meaning of point 35(15) of the Guidelines.
- (26) The Lithuanian authorities committed to suspend the payment of the notified aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid including the corresponding recovery interest.
- (27) The Lithuanian authorities committed to respect the transparency requirements set out in points 128 - 132 of the Guidelines latest by 30 June 2016.

3. ASSESSMENT

3.1. Existence of aid - Application of Article 107(1) TFEU

- (28) For Article 107(1) TFEU to apply, the scheme must provide an economic benefit to an undertaking which it would not have received in its normal course of business, the aid must be granted to certain undertakings, the benefit must be granted by a Member State or through State resources and the scheme must be capable of affecting trade between Member States.
- (29) The scheme in question confers an advantage on its recipients. This advantage is granted through State resources in the form of direct grants and it favours the undertakings active in the agricultural sector by strengthening their competitive position. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not

otherwise have received in the normal course of its business, points to a possible distortion of competition.²

- (30) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade (i.e. the agricultural sector).³ The beneficiaries of aid operate on a market where intra- trade takes place⁴. The sector concerned is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.
- (31) In light of the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

- (32) The aid scheme was notified to the Commission on 10 March 2016. It has not been implemented. Therefore, Lithuania has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Application of Article 107(3)(c) TFEU

- (33) Under Article 107(3)(c), an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (34) For this derogation to be applicable, the aid must fulfil the requirements of the relevant Union State aid legislation.

3.3.2. Application of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020

- (35) As regards the notified aid scheme, Section 1.2.1.6 of Part II "Aid for the payment of insurance premiums" of the Guidelines is applicable.

² Judgment of the Court of 17 September 1980 in Case 730/79 Philip Morris Holland BV v Commission of the European Communities, ECLI:EU:C:1980:209.

³ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 French Republic v Commission of the European Communities, ECLI:EU:C:1988:391.

⁴ In 2014, Lithuania exported agricultural products to EU countries for EUR 2 175.0 million, and imported for EUR 3 013.4 million. Source: European Commission, Agricultural Policy Perspectives, Member States factsheet – January 2015, Lithuania. Available at: http://ec.europa.eu/agriculture/statistics/factsheets/pdf/lt_en.pdf

3.3.2.1. Conditions set out in Section 1.2.1.6 of Part II of the Guidelines

- (36) Pursuant to point 406 of the Guidelines, the Commission will authorise aid for the payment of insurance premiums in favour of undertakings active in the primary agricultural production only. It follows from recital (11) above that this requirement is met.
- (37) Pursuant to point 407 of the Guidelines, the aid must not constitute a barrier to the operation of the internal market for insurance services. In particular, the aid must not be limited to insurance provided by a single insurance company or group of companies, or be made subject to the condition that the insurance contract be taken out with a company established in the Member State concerned. The Lithuanian authorities gave assurances that the aid is not limited to insurance provided by a single insurance company or group of companies and that the aid is not conditional on the insurance contract being concluded with a company established in Lithuania (recital (20)). On the basis of the above, the Commission considers that the requirement of point 407 is met.
- (38) The present aid scheme concerns a reinsurance scheme. Pursuant to point 408 of the Guidelines, reinsurance schemes have to be examined on a case-by-case basis.
- (39) The Lithuanian authorities have demonstrated the necessity for the State reinsurance scheme against drought to create a possibility for the farmers to insure their crops against drought (recital (15)). The authorities have explained that the existence of the State reinsurance would be necessary for commercial insurance companies to enable them to offer drought insurance to farmers without having to expose themselves to the risk of bankruptcy due to the lack or reinsurance possibilities for this risk event on the market. In case of a drought resulting in insurance payments for drought exceeding the sum of insurance premiums the formula for the calculation of the compensation, the related coefficients and the confirmations given by the Lithuanian authorities (recitals (16, 18-19)) in addition to the temporary and degressive nature of aid, appear to ensure that the compensation the insurance companies receive from the State in case of damages caused by drought is proportional and that in the event of drought the insurance companies would still have to bear a certain business risk related to the provision of insurances. Therefore on the basis of the information provided by the Lithuanian authorities the Commission considers that the proposed re-insurance scheme is necessary and proportionate.
- (40) The Lithuanian authorities demonstrated that the aid is targeted at farmers active in the primary agricultural production. It is provided through insurance companies, but beyond this indirect effect there is no additional aid component at the level of the insurer and the final benefit of the aid is passed on to the farmer.
- (41) Pursuant to point 409 of the Guidelines, the eligible costs are the costs of insurance premiums for insurance to cover the damage caused by natural disasters or exceptional occurrences, adverse climatic events which can be assimilated to a natural disaster, animal diseases and plant pests, the removal and destruction of fallen stock and damage caused by protected animals, as specified in Sections 1.2.1.1, 1.2.1.2, 1.2.1.3, 1.2.1.4 and 1.2.1.5, as well as by other adverse climatic events and/or damage caused by environmental incidents. As described in recital

(15) above, the insurance covers damage caused by drought. It can therefore be considered that the requirement of point 409 is met.

- (42) Pursuant to point 410 of the Guidelines, the insurance may compensate only the cost of making good the damage referred to in point 409 of the Guidelines and may not require or specify the type or quantity of future production. It follows from recital (17) above that this requirement is met.
- (43) Pursuant to point 412 of the Guidelines, the gross aid intensity must not exceed 65% of the cost of the insurance premium, with the exception of aid for the removal and destruction of fallen stock. In the case at hand, the maximum aid intensity that the farmers will obtain from the exempted insurance scheme for drought is 50% (recital (19)). Therefore, the aid intensity for the reinsurance (which covers up to 70% of the insurance premium) will never exceed, at the level of the beneficiary, 65%. Therefore, requirement of point 412 of the Guidelines is met.
- (44) It can thus be concluded that the requirements of Section 1.2.1.6 of Part II of the Guidelines are met.

3.3.2.2. *Common assessment principles*

- (45) According to points 38, 42 and 405 of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3)(c) TFEU.
- (46) The notified aid scheme contributes to a common objective in line with points 43 and 44 of the Guidelines. As described in recitals (5) and (6) above, the objective of the present notified scheme is risk management. As indicated in recital 8, State reinsurance falls outside the scope of rural development support and the notified aid scheme's contribution to rural development objectives is therefore considered to be fulfilled in accordance with the conditions set out in point 48 of the Guidelines.
- (47) As demonstrated by the Lithuanian authorities (recital 7), no negative impact on the environment within the meaning of point 52 of the Guidelines can be identified.
- (48) Since the present scheme fulfils the specific conditions laid down in Section 1.2.1.6 of Part II of the Guidelines (recital 44), the Commission considers, in line with points 55, 57 and 60 of the Guidelines, respectively, that the aid is necessary and that it is granted by means of an appropriate instrument to address the objective of common interest.
- (49) For the aid to be proportionate the aid amount should not exceed the eligible costs, the eligible costs must be correctly calculated, the maximum aid intensity respected and the maximum aid intensity and aid amount must be calculated by the granting authority when granting the aid (points 82-85 of the Guidelines). The eligible costs under the present scheme are the partial refinancing of compensation indemnities paid by insurance companies to agricultural producers as a result of drought (recital 18). The State covers a certain part of it by way of a subsidy. The formula for the calculation of the compensation to be applied in a given year is prescribed in national legal basis mentioned in recital (9) and it is of degressive nature. The Lithuanian authorities demonstrated that without State

reinsurance mechanism agricultural entities will not be able to insure their crop from drought (recital 15). The Commission also notes that the aid will not be cumulated with any other aid (recital 21) and the intensity of the aid for an individual beneficiary will not go beyond 50% (recital 19). It can, therefore, be concluded that the requirement of proportionality according to point 84 of the Guidelines is met.

- (50) Since the present scheme fulfils the specific conditions laid down in Section 1.2.1.6 of Part II of the Guidelines (recital 44), the Commission considers, in line with point 113 of the Guidelines, that any negative effect on competition and trade is limited to the minimum.
- (51) Points 128 to 132 of the Guidelines set out the transparency requirements. Lithuania made a commitment to comply with these requirements (recital 27) latest by 30 June 2016.
- (52) As Lithuania confirmed, the conclusion of the contract with the insurance company will precede the submission of an aid application by the beneficiary to the insurance company which will include all required elements (recitals 23-24). Since the present aid scheme concerns an instrument of risk management, it must also be in line with point 69 of the Guidelines according to which State aid should not have as an effect to entice undertakings into taking unnecessary risk. In the present case, the aid aims at encouraging agricultural producers to take out insurance (recital (5)) and thus to minimise the potential need for the State to pay compensation for losses caused by unfavourable weather conditions. The aid scheme is therefore deemed to have an incentive effect in line with points 69 to 73 of the Guidelines.

3.3.2.3. Undertakings in difficulty

- (53) Undertakings in difficulty are excluded from the support (recital 25) in line with point 26 of the Guidelines.

3.3.2.4. Outstanding recovery order

- (54) The Lithuanian authorities committed to suspend any payment of aid under the notified scheme if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest (recital 26).

3.3.2.5. Duration of the scheme

- (55) As to the duration of the scheme, pursuant to point 719 of the Guidelines the Commission only authorizes schemes of limited duration. Aid schemes other than those benefiting from co-financing under Regulation (EU) No 1305/2013 and its implementing regulation should not apply for more than seven years. It follows from recital (13) above that this condition is met.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline Lithuania will be deemed to agree to the publication of the full text of this letter. If Lithuania wishes certain information to be covered by the obligation of professional secrecy please indicate the parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004⁵, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

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Member of the Commission

⁵ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).