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**Subject: State Aid SA.50484 (2018/N) – Lithuania
Support scheme to energy intensive users**

Sir,

The Commission wishes to inform Lithuania that, having examined the information supplied by your authorities on the measure referred to above, it has decided not to raise objections to the notified scheme.

1. PROCEDURE

- (1) On 19 November 2018, following pre-notification contacts, the Lithuanian authorities notified the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), of the above-mentioned measure, consisting of a support scheme reducing, for energy intensive users (“EIUs”), charges paid on electricity to contribute to the financing of electricity production from renewable energy sources (“RES”).
- (2) On the same day, Lithuania waived its right under Article 342 of the TFEU in conjunction with Article 3 of EC Regulation No 1/1958¹ to have the decision adopted and notified in Lithuanian and agreed that the decision be adopted and notified in English.

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p.385

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2. DETAILED DESCRIPTION OF THE MEASURE

2.1. The financing of the support system for promotion of the production of electricity from renewable energy sources

- (3) The notified measure concerns a reduction of the charge paid by EIUs for the financing of a mechanism supporting the electricity production from RES (“RES scheme”)².
- (4) The RES scheme is financed by a so-called “RES levy” paid by final consumers on their electricity consumption. The RES levy is established on the basis of a methodology developed by the National Commission for Energy Control and Prices (“NCECP”). Based on the information submitted by the Lithuanian authorities, the RES levy was set at 1.059 EUR ct/kWh by the NCECP in 2017 and at 1.006 EUR ct/kWh in 2018. The levy collected is transferred to a Fund, from which support for RES installation is paid.
- (5) As of 1 January 2013, UAB Baltpool³, a State owned entity⁴, was appointed by the Lithuanian authorities as the administrator of the levy Fund and collects the levy from the Lithuanian consumers. It acts under the instructions and based on the legal acts issued by the Lithuanian government.⁵

2.2. Reduction in the financing of the support system for energy intensive users

- (6) The Lithuanian authorities have decided to introduce a scheme providing for the possibility of an 85% reduction of the RES levy paid by EIUs whose electricity consumption exceeds 1 GWh per year. All consumers will pay the full levy up to 1 GWh of electricity consumption per year.
- (7) The objective of the notified measure is to ease the burden of the RES levy in Lithuania for those undertakings which are most affected by it because of their heavy reliance on electricity for the conduct of their business. According to the Lithuanian authorities, the RES levy results in higher costs for EIUs that negatively affect their competitiveness with regard to producers in countries outside the European Union, which face less stringent environmental protection obligations.
- (8) In 2017, the consumption of electricity consumers whose electricity consumption volumes exceeded 1 GWh per year accounted for approximately half of the total electricity consumption in Lithuania. Hence, payments from these consumers amounted to around half of the funds dedicated to the financing for electricity production from RES.

² SA.45765 (2018/NN) – Lithuania – Support to power plants producing electricity from renewable energy sources.

³ By Government Resolution No 1338 of 7 November 2012, the Lithuanian authorities appointed Baltpool as the administrator of the Fund as of 1 January 2013.

⁴ Baltpool is owned by UAB EPSO-G (67%) and AB Klaipėdos Nafta (33%). EPSO-G is fully owned by the Lithuanian State and Klaipėdos Nafta’s controlling shareholder is the Lithuanian State.

⁵ Government Resolution No 1157 of 19 September 2012 and Government Resolution No 1338 of 7 November 2012.

- (9) By reducing the RES levy paid by EIUs, the Lithuanian authorities expect to maintain the competitiveness of the beneficiaries and ensure public acceptance of the RES scheme.
- (10) The notified scheme also aims at incentivising the beneficiaries to invest in energy efficiency measures. Indeed, when applying to receive the aid, the undertakings must submit an energy efficiency audit to Baltpool and renew it every four years.

2.3. Beneficiaries

- (11) The beneficiaries of the notified scheme eligible to a 85% reduction of the RES levy are undertakings that satisfy the following cumulative requirements:
 - (a) The undertaking either belongs to a sector listed in Annex 3 of the Guidelines on State aid for environmental protection and energy 2014-2020⁶ (“EEAG”), or have an electro-intensity of at least 20 % and belong to a sector listed in Annex 5 of the EEAG⁷. The calculation of the electro-intensity will be done according to the methodology provided in Annex 4 of the EEAG.
 - (b) The annual electricity consumption of the undertaking exceeds 1 GWh per year. This threshold is set to ensure that the administrative costs incurred by the undertaking in applying for the aid would not exceed the potential benefits of the aid. The Lithuanian authorities indicated that the administrative costs for undertakings which consume up to 1 GWh per year would approximately amount to EUR 10,000 and would thus be equal or higher than the potential benefits of the aid. Lithuania indicated that this estimation of the administrative costs includes ISO 50001 certification costs (including maintenance and recertification costs), annual audit costs, energy efficiency audit costs and internal administration costs.
 - (c) The undertaking submits an energy efficiency audit when applying for receiving the reduction. If it results from the energy efficiency audit that the undertaking does not use the best available techniques for environmental protection and energy efficiency, the undertaking is required to sign a contract with Baltpool, whereby the undertaking agrees to invest 75% of the RES levy reduction of four years in energy efficiency measures. Thus, only where the undertaking uses the best available techniques for environmental protection and energy efficiency, may it use the reduction of the RES levy at its own discretion.

⁶ Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p.1.

⁷ The economic activity of the undertaking shall cover one of the NACE codes listed in Annexes 3 or 5 of the EEAG at least for 30% of its overall turnover.

- (d) The undertaking does not have outstanding payments with Baltpool. Undertakings having the status of firm in difficulty as defined by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁸ are not be eligible to receive support under the notified scheme.
 - (e) The undertaking does not benefit from an earlier unlawful aid declared incompatible with the common market by Commission decision.
- (12) If a beneficiary ceases to fulfil at least one of the above-mentioned requirements, it will no longer benefit from the 85% reduction of the RES levy. Baltpool will be in charge of conducting *ex ante* and *ex post* verifications that the beneficiaries actually meet to required conditions.
- (13) The Lithuanian authorities estimated that approximately 200-300 undertakings active in sectors listed in Annex 3 of the EEAG, and less than 10 undertakings with an electro-intensity of at least 20% and active in sectors listed in Annex 5 of the EEAG would be eligible to the reduction of the RES levy. However, given the administrative burden and the costs incurred by the measure, the Lithuanian authorities estimate that the number of undertakings applying for the compensation of the RES levy will be in the range of 100-150.

2.4. Legal basis

- (14) The national legal basis of the notified scheme is the Law No XIII-1456 of 30 June 2018 amending the Law of the Republic of Lithuania on Electrical Energy No VIII-1881 of 20 July 2000.
- (15) Moreover, the Lithuanian authorities indicated a list of regulatory acts supplementing the Law:
- the Resolution of the Government of the Republic of Lithuania No 916 on approving the description of the procedure for the provision of services of public interest in the electricity sector of 18 July 2012 (“Government Resolution No 916”);
 - the Resolution of the Government of the Republic of Lithuania No 1157 on approving the description of the procedure for administering funds for services of public interest in the electricity sector of 19 September 2012 (“Government Resolution No 1157”);

⁸ Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p.1.

2.5. Functioning of the scheme and aid granting authority

- (16) Baltpool, the administrator of the fund, is the granting authority. It acts under the supervision of the NCECP.
- (17) When applying to receive aid under the notified scheme, undertakings have to provide a declaration to the aid granting authority that they have not received any aid to cover the same eligible costs, or, in the case they have received such aid, that the aid intensity does not exceed the allowed thresholds for such aid. Beneficiaries apply for the exemption *ex post* and, if deemed eligible for the aid, will receive it in respect of the previous calendar year.
- (18) Before taking the decision to grant aid, the aid granting authority verifies whether the eligibility conditions set out in recital (11) above are met. The aid is granted as a compensation for the costs occurred in the previous year. The beneficiaries will therefore have to first pay the full RES levy before receiving compensation the year after.

2.6. Duration and budget

- (19) It is envisaged that the State aid scheme will be applied from 1 January 2019 until 31 December 2028. Lithuania confirmed nevertheless that the scheme will not be applied before a positive Commission decision has been adopted.
- (20) The budget allocated to the notified scheme is estimated to amount to a total of EUR 300 million, while the annual budget is estimated at EUR 30 million.

2.7. Cumulation

- (21) The reduction of the RES levy can be cumulated with State aid energy efficiency measures. In particular, the Lithuanian authorities explained that undertakings may receive financing for such measures through the Operational Programme for EU Structural Funds Investments for 2014-2020.
- (22) Beneficiaries of the notified scheme will have to declare that they have not received aid to cover the same eligible costs, or, in the case they have received other aid, that the aid intensity does not exceed the allowed thresholds for such aid.

2.8. Transparency

- (23) The Lithuanian authorities confirmed that all transparency requirements set out in section 3.7.2 of the EEAG will be complied with. The information concerned by these requirements will be published on the State aid transparency public search website of the Commission (<https://webgate.ec.europa.eu/competition/transparency/public/search/LT?resetSearch=true>).

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid

- (24) Article 107(1) of the TFEU provides that “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market*”.

3.1.1. Selective advantage

- (25) In the present case, EIUs are advantaged because they are being compensated for part of the cost of the mandatory RES levy. The measure is selective as only EIUs within certain sectors, namely those belonging to a sector listed in Annex 3 of the EEAG or those having an electro-intensity of at least 20% and belonging to a sector listed in Annex 5 of the EEAG may benefit from support under the scheme.

3.1.2. State resources and imputability

- (26) Article 107(1) of the TFEU requires that State aid is granted by a Member State or through State resources.
- (27) Since the notified scheme consists of a reduction of a surcharge which would otherwise be due, Lithuania is foregoing State resources by granting such aid.
- (28) In its *Vent de Colère* judgment, the Court of Justice recalled that “[t]he concept of ‘intervention through State resources’ is intended to cover, in addition to advantages granted directly by the State, those granted through a public or private body appointed or established by that State to administer the aid”⁹.
- (29) The notified scheme is financed through a fund, which has been established by law and is under the direct control of an administrator (Baltpool) appointed by the Lithuanian Government on the basis of a proposal from the Lithuanian Ministry of Energy. The aid measure conferring an advantage to EIUs is thus imputable to the Lithuanian State.
- (30) In the light of those considerations, the Commission observes that the aid is therefore financed from State resources and imputable to the State.

3.1.3. Effect on trade and impact on competition

- (31) The potential beneficiaries are all EIUs active in sectors listed in Annex 3 and Annex 5 of the EEAG, in which trade between Member States takes place. The measure is therefore liable to distort competition and affect trade between Member States.

3.1.4. Conclusion with regard to the existence of State aid

- (32) For the reasons set out above, the Commission considers that the notified scheme for EIUs constitutes State aid within the meaning of Article 107(1) of the TFEU.

⁹ Case C-262/12, *Association Vent de Colère !*, EU:C:2013:851, paragraph 20

3.1.5. Lawfulness of the aid

- (33) The Lithuanian authorities have confirmed that the notified scheme will not be applied before the Commission has adopted a final decision. Lithuania therefore complies with the stand-still obligation set out in Article 108(3) TFEU.

3.2. Compatibility of the aid

- (34) As the notified scheme compensates EIUs for part of the RES levy used to finance electricity production from RES, the Commission has assessed the compatibility of the notified scheme on the basis of the EEAG and, in particular, section 3.7.2 thereof (*Aid in the form of reductions in the funding of support for energy from renewable sources*).
- (35) Points 185 and 186 of the EEAG provide that the aid should be limited to sectors that are exposed to a risk to their competitive position due to the costs resulting from the funding of support to RES as a function of their electro-intensity and their exposure to international trade. Accordingly, the aid can, as a general rule, only be granted if the undertaking belongs to the sectors listed in Annex 3 of the EEAG or for undertakings belonging to sectors listed in Annex 5 of the EEAG in so far as an undertaking has an electro-intensity of at least 20%.
- (36) It follows from information provided by the Lithuanian authorities, set out in recital (11) above, that the aid will be granted to EIUs fulfilling the above-mentioned eligibility requirements. In particular, the Lithuanian authorities confirmed that the electro-intensity of the beneficiaries would be calculated according to the requirements of Annex 4 of the EEAG.
- (37) The Lithuanian authorities also require that the beneficiary is not a firm in difficulty, as defined in the Guidelines on State aid for rescuing and restructuring firms in difficulty and that it has not any unrecovered or outstanding debts within the meaning of a Commission decision declaring aid as unlawful or incompatible with the internal market. These requirements directly reflect the requirements of points 16 and 17 of the EEAG.
- (38) In addition, where Member States impose additional eligibility criteria, point 187 of the EEAG provides that Member States need to ensure that within the eligible sectors, the choice of beneficiaries is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation.
- (39) First of all, eligibility under the notified scheme is limited to undertakings with an annual electricity consumption of at least 1 GWh per year.
- (40) The Lithuanian authorities have explained that below this threshold, the costs of applying to the aid would be equal to or higher than the likely amount of aid which undertakings would receive, thus nullifying the benefits of the aid. The Commission observes that this threshold has been introduced for reasons of administrative simplification. It considers these explanations satisfactory and finds that this additional criterion is objective and transparent and do not discriminate between undertakings in a similar factual situation.

- (41) Second, the beneficiary may not have outstanding payments to Baltpool. The Commission considers this criterion is objective, transparent and non-discriminatory.
- (42) Third, beneficiaries will have to submit an energy efficiency audit showing that they use the best available techniques for environmental protection and energy efficiency, or if the audit submitted shows that they do not use the best available techniques for environmental protection and energy efficiency, invest 75% of the RES levy reduction of four years into energy efficiency measures. The Commission finds this eligibility criterion justified as it aims at decreasing the electricity consumed in the future and therefore reduces the level of compensation to be granted in the coming years.
- (43) Based on the above, the Commission finds that these additional requirements are objective and transparent, and apply equally to all beneficiaries in the same factual situation, in line with point 187 of the EEAG.
- (44) As undertakings eligible for the aid would pay 15% of the full RES levy in line with point 188 of the EEAG, the measure is found to be proportionate.

3.2.1. Transparency

- (45) In relation to aid falling under section 3.2.7 of the EEAG, point 27(g) of the EEAG requires that the aid measure is transparent. The Commission takes note of the Lithuanian authorities' commitment to publish all information required by point 104 of the EEAG, in line with the requirements of point 106 of the EEAG.

3.2.2. Conclusion with regard to the compatibility of the measure

- (46) In light of the above assessment, the Commission considers that the notified scheme pursues an objective of common interest in a necessary and proportionate way and that the aid is therefore compatible with the internal market on the basis of the EEAG, and in particular section 3.7.2 of the EEAG.

4. AUTHENTIC LANGUAGE

- (47) As mentioned under Section 1 of this decision, Lithuania has waived its right to have the decision adopted and notified in Lithuanian and agreed to have the decision adopted and notified in English. The authentic language of this decision will therefore be English.

5. CONCLUSION

The Commission has decided, on the basis of the foregoing assessment, not to raise any objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission