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**Subject: State Aid SA.50199 (2019/N) – Lithuania
Support to power plants producing electricity from renewable
energy sources**

Sir,

The European Commission wishes to inform you that, having examined the information supplied by your authorities on the matter referred above, it has decided to raise no objections to the notified aid measure.

1. PROCEDURE

- (1) Following pre-notification contacts pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), Lithuania notified a measure concerning support to power plants producing electricity from renewable energy sources to the Commission on 26 February 2019. On 3 and 12 March 2019, Lithuanian authorities submitted additional information.
- (2) Lithuania waived its right under Article 342 TFEU in conjunction with Article 3 of the 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. National legal basis, background and objective of the scheme

- (3) Lithuania introduced amendments to the Law on Renewable Energy Sources No XI-1375 of 12 May 2011 (“2019 RES law”) that will come into force on 1 May 2019. Based on the 2019 RES law, Lithuania will adopt a new support scheme to installations producing electricity from renewable sources (“RES”).²
- (4) The scheme aims at promoting deployment of renewable energy sources. Based on the 2019 RES law, the share of renewable energy in the gross final consumption of energy in Lithuania should increase to 38 % or 5 TWh by 2025.
- (5) The Lithuanian authorities explained that the new RES scheme will be applicable until 1 July 2025 or until the above-mentioned target is reached.

2.2. Beneficiaries

- (6) The beneficiaries of the scheme are electricity producers using renewable energy sources. The aid measure is technologically neutral, therefore all the RES electricity producers are eligible for the support.
- (7) Articles 20 and 63 of the 2019 RES law state that it is possible to conclude a cooperation agreement between Lithuania and other Member States on support sharing mechanisms. The Lithuanian authorities confirmed that interested generators from neighbouring Member States with whom Lithuania will sign a cooperation agreement could participate in the Lithuanian RES auctions under the same rules as national RES producers and in a non-discriminatory way.
- (8) The support quota will be different for each Member State and calculated accordingly to 1) the imported amount of electricity, 2) RES share in total final electricity consumption in each Member State, 3) the total final electricity consumption in Lithuania and a total volume planned to distribute in the auction that year. The following formula will be used to calculate the quota:

$$\text{Amount to be opened} = \text{planned quota} \times \frac{\text{Imported electricity (KWh)} \times \text{Renewable electricity share (\%)}}{\text{Total final energy consumption in Lithuania}}$$

Source: Lithuanian authorities

- (9) For example, the total final electricity consumption in Lithuania was 11 176 GWh in 2018. According to the calculations and the current data, the amount to be opened for the different neighbouring Member States if the first auction were launched for 300 GWh, is shown below:

² The previous RES scheme was approved under Commission Decision (SA.45765). The scheme expired in 2015, once all the RES target was reached.

Country	Electricity import balance in 2018 (GWh)	RES-E shares in 2017	Amount to be opened (GWh)
<i>Estonia</i>	167	17,03%	0,8
<i>Latvia</i>	2813	54,36%	41,0
<i>Poland</i>	752	13,09%	2,6
<i>Sweden</i>	3039	65,89%	53,8

Source: Lithuanian authorities

2.3. Description of the scheme

- (10) According to the 2019 RES Law, premium-based support shall be established through a competitive bidding procedure for all types of installations without differentiation based on size and technology. The support period per installation is 12 years. The first volume to be allocated will be 0,3 TWh. Further volumes will be fixed in a triennial timetable and will depend on the progress of reaching the RES target.
- (11) The Regulator – the National Commission for Energy Control and Prices (NCECP) – will be responsible for preparing and publishing the calls for tenders, elaborating the documents and evaluating the bids. The NCECP will also set the maximum and reference prices, necessary to calculate the premium, prior to the first auction and according to a methodology to be approved by the 1st of May 2019.
- (12) The NCECP will establish a maximum premium, which will be calculated as a difference between a maximum price (cost of the most cost-efficient RES electricity technology available in Lithuania – onshore wind) and a reference price³. Both the maximum price and the reference price are calculated by the NCECP. Bidders will not be able to offer higher premium at an auction than the maximum premium.
- (13) The full amount of the premium will be actually paid only if the sum of the spot price⁴ and the winning premium is lower or equal to the maximum price. A partial amount of the premium will be paid at the times when the sum of the winning premium and the spot price would be higher than the set maximum price. The support would be reduced respectively to the amount which is needed to equalise it to the maximum price.
- (14) In any event, the final support cannot be higher than the difference between the spot price and the maximum price.
- (15) The premium will not be paid if the spot price is higher than the maximum price.

³ The 'reference price' will be calculated on a basis of the average weighted hourly electricity spot prices (normally in the 3 previous years) and the predicted average annual electricity market prices in the "Nord Pool" electricity spot in the year ahead.

⁴ The 'Spot price' is hourly day-ahead electricity prices at the „Nord Pool”.

- (16) No support will be given for electricity produced in the period of 6 or more consecutive hours where electricity prices are negative.

- (17) For the calculations of the maximum price, the NCECP will use the following formula:

$$LCOE = \frac{\sum_t^n \frac{C_t + OM_t}{(1+r)^t}}{\sum_t^n \frac{EI_t}{(1+r)^t}}$$

C_t – CAPEX (including connection to the grid costs)

OM – OPEX (including electricity balancing costs)

EI – electricity generation (MWh/year)

r – discount rate (WACC)

n – useful lifetime of the system

t – total support period

WACC – 3,2 %

Return on equity (ROE) – 5.55%

- (18) As for investment return rate calculations, the NCECP evaluated different investment projects and calculated possible cash flows for the period of 20 years, which is estimated to be the lifetime of an onshore wind project, using weighted average cost of capital (WACC) as a discount rate while calculating the reasonable investment return rate. According to the calculations, the net present value (NPV) equals 0 when the discount rate (weighted average cost of capital) is approximately 3.2%. According to the NCECP, the investment is safe when discount rate (weighted average cost of capital) $\geq 3.2\%$ and $NPV \geq 0$. Lithuania explained that the WACC corresponds to the internal rate of return (IRR) of capital as it is calculated in a similar way using a discount rate. For the time being the IRR is in the same range as the WACC, however Lithuania explained that it might deviate to a higher percentage but not at significant rate.
- (19) Only new projects will be eligible to receive the support. Projects for which works⁵ have already started prior to the aid application will not be allowed to participate in auctions.
- (20) Auction-winning projects will be subject to balancing responsibilities, except the ones up to 500 kW of installed capacity.
- (21) Failing to deliver the full contracted electricity volume will result in a financial penalty. However, a 20% deviation from the contracted electricity volume is still allowed.

2.4. Compliance with other EU legislation

- (22) As regards hydro-power plants, Lithuania indicated that installations benefitting from support under the notified scheme are subject to compliance with environmental requirements, in line with Directive 2000/60/EC⁶ (“Water Framework Directive”).

⁵ It is considered that works have started when connection agreements with grid operators have been signed; grid capacities have been reserved; or when the permit to develop the capacities of electricity generation has been issued.

⁶ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

- (23) With regard to support provided under the notified scheme to plants using renewable fuels originating from waste, Lithuania has confirmed that the waste hierarchy, as set out in the Directive 2008/98/EC of the European Parliament and of the Council⁷ (the Waste Framework Directive), will be respected.

2.5. Budget and financing

- (24) The total budget of the scheme amounts to EUR 385 million.
- (25) The duration of the scheme will be 6 years (2019-2025), whereas, as explained in recital (10) above, the duration of payments for an individual RES installation operator will be limited to 12 years.
- (26) The scheme will be financed through the levy imposed on final electricity consumers based on their electricity consumption (the “RES levy”) and established by the Government Resolution No 916 of 18 July 2012. The RES levy is collected into a Fund dedicated to the financing of various energy policies including the public support to RES producers and the compensation of additional costs incurred by companies mandated to purchase electricity from RES producers. By Government Resolution No 1338 of 7 November 2012, the Lithuanian authorities appointed UAB Baltpool, a state-controlled entity, as the administrator of the Fund. UAB Baltpool acts under the instructions and based on the legal acts issued by the Lithuanian government.⁸
- (27) The Lithuanian authorities confirmed that no exemptions from the RES levy fee payment will be granted to RES electricity generators that will be receiving aid under the 2019 RES scheme. The necessary amendments will be made also in the legislation, namely, Government Resolution No 916 of 18 July 2012.
- (28) The Commission has approved under decision SA.50484 (2018/N) a support scheme for energy intensive users, whereby Lithuanian energy intensive users are relieved from contributing to up to 85% of the RES levy.

2.6. Compliance with cumulation, transparency and other state aid requirements

- (29) The 2019 RES law provides that RES electricity generators could only participate in the auction procedures if they had not received any support for the acquisition of the equipment of the plant. Participants also have to provide evidence to the NCECP that they do not receive any other support from another RES support programme.
- (30) Article 20.4 of the RES law provides that firms in difficulty, as defined by the *Guidelines on State aid for rescuing and restructuring firms in difficulty*⁹, and those which are subject to an outstanding recovery order following a previous

⁷ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

⁸ Government Resolution No 1157 of 19 September 2012 and Government Resolution No 1338 of 7 November 2012.

⁹ 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).

Commission decision declaring an aid measure illegal and incompatible with the internal market will not be eligible to receive support under the notified measure.

- (31) The Lithuanian authorities confirmed that the granting decision and a list of beneficiaries will be published on the NCECP website (www.regula.lt). In addition, the levy administrator, UAB Baltpool, will provide information about the support payment on its website (www.baltpool.lt).

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (32) Under Article 107(1) TFEU, any aid granted by a Member State through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is incompatible with the internal market.
- (33) Under the notified scheme, RES electricity generators receive support from the Lithuanian authorities for the electricity generated. The support is provided from a fund constituted with the revenues obtained from the levy paid by electricity consumers, and administered by State controlled entity, Baltpool, according to State instructions [see recital (26)]. The notified scheme favours the generation of electricity from RES by the selected beneficiaries. Electricity is widely traded between Member States, for which reason the notified scheme is likely to distort the competition on the electricity market and affect trade between Member States. Therefore, the notified measures constitute State aid in the meaning of Article 107 TFEU.

3.2. Legality

- (34) The scheme will enter into force on 1 May 2019. Lithuania has respected the standstill obligation set out in Article 108(3) TFEU.

3.3. Compatibility of the aid measure

- (35) The Commission notes that the notified scheme aims at promoting the generation of electricity from RES. Consequently, the notified scheme falls within the scope of the Guidelines on State aid for environmental protection and energy 2014-2020 (EEAG).¹⁰
- (36) The Commission has assessed the support scheme based on the EEAG, in particular its general compatibility provisions (Section 3.2) and the specific compatibility criteria for operating aid to energy from renewable sources (Section 3.3.2 of the EEAG).

3.3.1. Objective of common interest

- (37) According to point 31 of the EEAG, Member States need to define precisely the objective of common interest pursued and explain the expected contribution of the scheme to that objective.

¹⁰ Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020 OJ C 200, 28.6.2014, p. 1–55.

- (38) The RES support scheme aims at providing operating aid for the production of electricity from renewable energy sources within the meaning of points 19(5) and 19(11) EEAG.
- (39) As explained in recital (4) above, the 2019 RES scheme aims at increasing the total national share of the produced RES electricity from the 25.8% in 2017¹¹ to 38% by 2025. The 2019 RES scheme is therefore directed at the objective of promoting the deployment of renewable energy.
- (40) Point 108 of the EEAG recalls that the Guidelines should prepare the ground for achieving Union environmental objectives beyond 2030. Directive (EU) 2018/2001 establishes a binding renewable energy target for the EU for 2030 of 32%¹². The Commission therefore interprets EEAG points 107 and 116 as applying not only to the achievement of the EU's 2020 targets for renewable energy but also to the new 2030 target.
- (41) The purpose of the 2019 RES scheme as described in recital (4) above is therefore considered an objective of common interest, in line with point 108 EEAG.
- (42) Point 121 EEAG requires that aid scheme duration can be of maximum 10 years. The Commission notes that the scheme will be applicable until July 2025, therefore is in line with point 121 EEAG.
- (43) The Commission considers that the notified scheme is clearly aimed at an objective of common interest in accordance with Article 107(3)(c) TFEU.

3.3.2. Need for State intervention

- (44) According to subsection 3.2.2 of the EEAG, Member States need to demonstrate that there is a need for State intervention and in particular that the aid is necessary to remedy a market failure that otherwise would remain unaddressed. In the case of the production of renewable electricity, the Commission presumes that a residual market failure remains, which can be addressed through aid for renewable energy, for the reasons set out in point 115 EEAG.
- (45) Lithuanian authorities confirmed that the electricity market price in Lithuania remains below the production costs of renewable electricity, which confirms that a residual market failure remains. Therefore, the Commission concludes that, due to the negative externalities persistent beyond 2020, larger scale deployment of RES installations would not be financially viable without State aid.

3.3.3. Appropriateness and incentive effect of the aid

- (46) According to point 40 of the EEAG, the support measure must be an appropriate instrument to address the policy objective concerned.

¹¹ Eurostat data. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nrg_ind_ren&lang=en

¹² OJ L 328, 21.12.2018, p. 82–209.

- (47) According to point 49 EEAG, Member States must demonstrate that the aid has an effect of incentivising the beneficiaries to change their behaviour in line with the objective of common interest pursued.
- (48) The Commission notes that in absence of aid, new RES installations will not be deployed at the required scale and pace, as without the aid such projects would not be financially viable. The scheme under assessment is eligible only to new RES-installations. In accordance with point 50 EEAG that aid has no incentive effect for the beneficiary if works on the project has already started prior to the aid application by the beneficiary to the national authorities. Lithuania applies a competitive bidding process for all aid granted to new renewable energy installations. The design of such bidding process ensures that the beneficiary applies for the market premium before works on the project (new RES installation) have started (before the connection agreement with the grid operator is signed). As stated in recital (19), projects for which works started before the submission of an application are not eligible for aid. The aid has therefore an incentive effect, since it incentivises the beneficiaries to change their behaviour and invest in renewable energy projects.

3.3.4. Proportionality of the aid

- (49) According to the points 124 and 125 EEAG, aid must comply with the following requirements. Aid is granted as a premium in addition to the market price, beneficiaries are subject to the standard balancing responsibilities, and measures are put in place to ensure that generators have no incentive to generate electricity under negative prices. The above conditions do not apply to installations with an installed electricity capacity of less than 500 kW. According to point 126 EEAG, aid should be granted in a competitive bidding process on a basis of clear, transparent and non-discriminatory criteria.
- (50) According to point 69 EEAG, aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection objective aimed for. Point 109 EEAG indicates that market instruments, such as auctioning or competitive bidding processes to select beneficiaries of aid to renewable sources should normally ensure that subsidies are reduced to a minimum.
- (51) According to the 2019 RES law, the aid is taking the form of a premium and auction procedures will be organised to select the RES electricity generators that intend to receive aid. All RES electricity generators are able to compete in the same auctions, irrespective of their size or technology. All the generators will be subject to balancing responsibilities except the ones with installations of less than 500 kW and no aid will be provided to electricity production under negative prices. The Commission considers that the auctions established by Lithuania are competitive and established on the basis of clear, transparent and non-discriminatory criteria and therefore in line with points 124, 125 and 126 EEAG.
- (52) As seen in recital (18), Lithuania has set out a capping mechanism to the premium by introducing a maximum price that reflects the average production costs of the most cost-efficient technology – onshore wind power –, including a normal rate of return on capital of 3.2 %. This rate of return does not exceed internal rates of

return that the Commission has considered appropriate in previous decisions on RES support.¹³

- (53) Moreover, as stated in recital (14), the support is equal or less than the difference between the spot price and the maximum price, therefore avoiding any overcompensation.
- (54) As explained in recitals (10) and (25) the duration of payments for an individual RES installation operator will be limited to 12 years (therefore not exceeding the lifetime of the projects according to normal accounting rules in Lithuania, which is calculated to be 20 years). Also, as mentioned in recital (29), the aid granted by means of the notified support scheme cannot be cumulated with any other aid (including any investment aid). Therefore, the notified scheme is in line with point 129 EEAG.

3.3.5. Distortion of competition and balancing test

- (55) According to point 90 EEAG, the Commission considers that aid for environmental purposes will by its very nature tend to favour environmentally friendly products and technologies at the expense of other more polluting ones. Moreover, the aid will in principle not be viewed as an undue distortion of competition since it is inherently linked to its very objective.
- (56) The notified scheme aims at supporting producers of electricity from renewable energy sources. By its very nature, the notified scheme is therefore favouring environmentally friendly technologies for producing electricity at the expense of producers of electricity from conventional fuels.
- (57) In the present case, the Commission considers that aid to RES installations under the 2019 RES law does not have undue distortive effects on competition and trade because the applicable conditions laid out in Section 3.3.2.1 of the EEAG are fulfilled, as discussed above in recitals (51) - (54).
- (58) Moreover, as set out in recital (30), the 2019 RES law contains provisions by which no aid will be granted to firms in difficulty or to those which are subject to an outstanding recovery order following a previous Commission decision declaring an aid measure illegal and incompatible with the internal market, in compliance with points 16 and 17 EEAG.
- (59) Consequently, the Commission concludes that the distortion of competition caused is limited and outbalanced by the positive impact of the support scheme for the environment.

3.3.6. Transparency

- (60) Point 104 EEAG requires Member States to ensure the transparency of the aid granted, by publishing certain information on a comprehensive State aid website.

¹³ SA.47354 Estonian RES and CHP support scheme IRR was 7.1 %; SA.44076 Hungarian RES scheme IRR was 6.94 %; SA.49918 Danish scheme IRR was 7.5 %.

- (61) As described above in recital (31), both the granting decision and a list of beneficiaries will be published on Regulators website (www.regula.lt). In addition, the levy administrator, UAB Baltpool makes available the information about the support payments on its website (www.baltpool.lt).

3.3.7. Conclusion on compatibility

- (62) The Commission therefore finds that the notified RES support scheme is in line with the requirements of the EEAG and, hence, it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

3.4. Compatibility with other Treaty provisions

3.4.1. Articles 30 and 110 TFEU

- (63) In accordance with point 29 EEAG, as the scheme has the aim of supporting generation of electricity from renewable sources and is financed through a levy on domestic electricity consumption, the Commission has examined its compliance with Articles 30 and 110 TFEU.
- (64) According to the case law, a charge which is imposed on domestic and imported products according to the same criteria may nevertheless be prohibited by the Treaty if the revenue from such a charge is intended to support activities which specifically benefit the taxed domestic products. If the advantages which those products enjoy wholly offset the burden imposed on them, the effects of that charge are apparent only with regard to imported products and that charge constitutes a charge having equivalent effect, contrary to Article 30 TFEU. If, on the other hand, those advantages only partly offset the burden borne by domestic products, the charge in question constitutes discriminatory taxation for the purposes of Article 110 TFEU and will be contrary to this provision as regards the proportion used to offset the burden borne by the domestic products¹⁴.
- (65) The notified aid scheme is financed through a levy (the RES levy) paid by electricity consumers. The tariff is levied on electricity consumption, which may therefore also cover electricity imported from other EEA States. The Commission has therefore examined whether the financing mechanism could entail discrimination against imports within the meaning of Articles 30 and 110 TFEU.
- (66) Lithuania has committed to open up its RES competitive bidding process for producers established in other EEA countries or in other countries with which the European Union has concluded trade agreements to the extent and under the conditions set out in recitals (7) – (9) above.
- (67) The Commission thus concludes that the potential breach of Articles 30 and 110 TFEU by the financing method of the aid scheme could be effectively remedied.

¹⁴ Joined Cases C-128/03 and C-129/03 *AEM*, EU:C:2005:224, paragraphs 44 to 47; Case C-206/06 *Essent*, EU:C:2008:413, paragraph 42.

3.4.2. Environmental legislation

- (68) Point 117 EEAG requires that aid to hydropower has to comply with the Water Framework Directive and in particular Article 4(7) thereof. The Commission notes that, as set out in recital (22), aid to hydropower installations under the notified scheme is subject to compliance with environmental requirements (in particular in terms of water body preservation and species protection).
- (69) Point 118 EEAG requires that aid for energy from renewable sources using waste has to comply with the waste hierarchy principle, as set out in the Waste Framework Directive. The Commission notes that, as confirmed in recital (23), aid under the notified scheme is subject to the compliance with the Waste Framework Directive.

3.5. Authentic language

- (70) As set out in recital (2) above, 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.

4. CONCLUSION

The Commission has decided, on the basis of the foregoing assessment, not to raise objections to the aid measure 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