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In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]		PUBLIC VERSION This document is made available for information purposes only.

Subject: State Aid SA.57008 (2020/N) – Lithuania
COVID-19: Aid Fund for Business

Excellency,

1. PROCEDURE

(1) By electronic notification of 10 April 2020, Lithuania notified an aid scheme, the Aid Fund for Business ("Measures") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended ("Temporary Framework").[1] The Measures will be provided in the form of loans and purchase of debt securities ("Measure A") and equity instruments and debt instruments that have or may have an equity component ("hybrid instruments") ("Measure B").

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1–9, and Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3–15.

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(2) Further exchanges in the form of emails and teleconferences took place between the Commission and the Lithuanian authorities between 15 April and 16 May 2020. Subsequently, Lithuania amended and supplemented the notification on 19 May 2020.

(3) Lithuania exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction with Article 3 of Regulation 1/1958,[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURES

(4) Lithuania considers that the COVID-19 outbreak has affected the real economy. The Measures form part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the COVID-19 outbreak, to ensure that the disruptions caused by that outbreak do not undermine the viability and solvency of the undertakings, which were not considered to be in difficulty before the outbreak, and thereby to preserve the continuity of economic activity during and after the outbreak.

(5) According to the Lithuanian authorities, the objective of the Measures is to invest in medium-sized and large enterprises, if termination of their activities is likely to cause a chain reaction and affect related entities and/or have significant socio-economic consequences. It is also to preserve the key economic sectors, so as to be better prepared for the recovery period. The design of the Measures seeks to stimulate the capital market by prioritising capital market instruments and attracting private investor. The Measures also seek to implement specific objectives (e.g. sustainable and green investment) set out in the Investor Agreement in certain economic sectors.

(6) Lithuania considers the Measures to be compatible with the internal market on the basis of Article 107(3)(b) TFEU, as interpreted by Section 2, Section 3.3 (for Measure A) and Section 3.11 (for Measure B) of the Temporary Framework. Any possible aid to undertakings that are not the final beneficiaries (see section 2.4) should be assessed on the basis of Article 107(3)(b) TFEU.

2.1. The nature and form of aid

(7) Under the Measures, aid to final beneficiaries will be provided in the form of loans as well as the purchase of debt securities, equity instruments and hybrid instruments.

2.2. Legal basis

(8) The legal bases for the Measures are the *Resolution of the Government of the Republic of Lithuania Regarding the Establishment of the Joint-stock Companies "Valstybinis investicinis kapitalas" and "Valstybinių investicijų valdymo agentūra"* and the Investment of the Assets of the State and *Order of the Minister*

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

of Finance of the Republic of Lithuania and of the Minister of Economy and Innovation of the Republic of Lithuania on the approval of the State aid Scheme of the "Aid Fund for Business".

2.3. Administration of the Measures

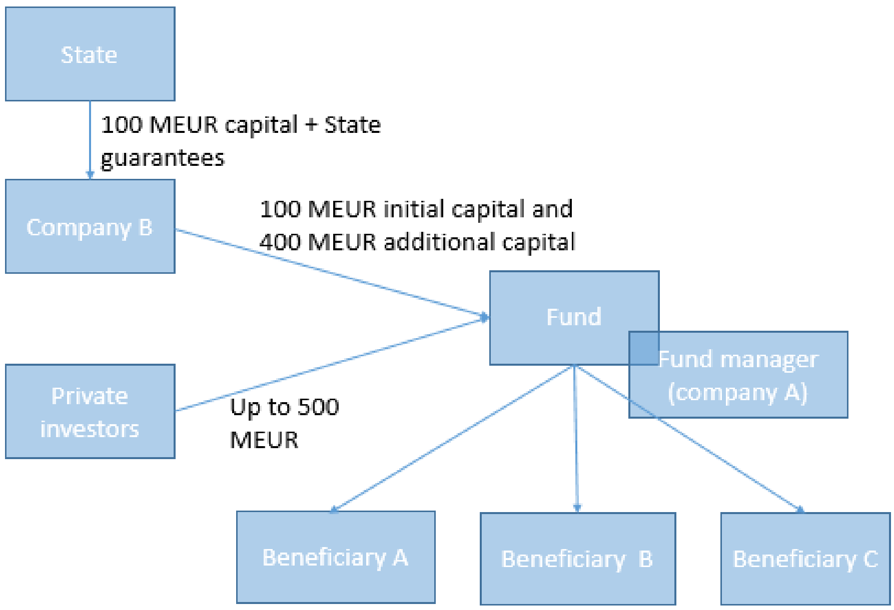
(9) The Ministry of Finance of the Republic of Lithuania and the Ministry of Economy and Innovation of the Republic of Lithuania are responsible for administering the Measures.

2.4. Basic elements of the Measures

2.4.1. Fund structure

(10) Measures A and B will be implemented by a fund ("Fund"), structured as a limited partnership, that is established by the Lithuanian State (see Figure 1 below). The State participates as a founding limited partner through a private limited liability company named Valstybinis investicinis kapitalas ("Company B" in Figure 1) established by the State through the Ministry of Economy and Innovation of the Republic of Lithuania. Company B will receive capital of EUR 100 million, which will use it to provide the EUR 100 million initial capital to the Fund. Company B would provide an additional capital of up to EUR 400 million to the Fund by issuing bonds guaranteed by the State.

Figure 1: Simplified overview of the structure of the Fund



(11) The Fund manager[3] ("Company A" in Figure 1), responsible for managing the Fund, will be initially a subsidiary of the Ministry of Finance of the Republic of Lithuania (named Valstybinių investicijų valdymo agentūra). However, at a later stage private investors may decide to replace the Fund manager by another

3 The Fund manager is the general partner of the Fund, whereas the private and other investors are limited partners of the Fund.

undertaking. The Fund manager will be remunerated through the management fee (recitals (15)(d) and (16)).

(12) The final financing and investment decision will be taken by the Fund's investment committee, which will be composed of independent investment experts.

(13) The maximum size of the Fund will be EUR 1 billion. The State will aim to attract private investors to the Fund. The State will announce an open, transparent, non-discriminatory call to select private investors, which will also determine the risk sharing arrangements between the State and the private investors (recital (14)). All institutional investors of good repute may apply during a pre-defined period as announced in the call. The selected private investors will be subject to national security screening by the Lithuanian Commission for Coordination of Protection of Objects of Importance to Ensuring National Security.

(14) There is a different risk sharing between the State's initial investment of EUR 100 million (through Company B) and the other investments. The State will offer a first-loss protection, which will be determined via an open, transparent, non-discriminatory call for expression of interest. The open call will start with an initial offer at a low level of loss protection ([…]*% first loss). In case there would be no investors attracted during a reasonable time, the offer will be incrementally improved until reaching either the target size of the Fund or the cap of loss sharing (max. […] % of private investment to be covered by the first-loss sharing). In addition to this, the maximum loss of the State when sharing risk with private investors (and the State's additional investments) is capped by the size of the initial investment of the State of EUR 100 million. In case no private investors are attracted, the different loss sharing between limited partners do not apply.

(15) The difference in risk sharing (loss protection) and the returns are illustrated by the below distribution waterfall: cash flows from the Fund are paid in the following sequential order (for the example of […]% of loss protection):

(a) The management fee of the Fund manager is paid.

(b) Investors/limited partners are repaid in proportion to their investment until the cumulative distributions equal the original capital invested plus an interest ('hurdle rate')[4], except for the State for the equivalent of […]% of the other investments ([…] of the investments of all limited partners). In case the investment is only provided by the State (i.e. in case no private investors), the State is repaid for its investment including an interest (hurdle) rate.

(c) Then the State is paid for the equivalent of […] of initial investments of all limited partners including the same hurdle rate.

4 This hurdle rate would be based on the euro high yield bond index (ICE BofA BB Euro High Yield Index (HE10)) at the time of entry to the Fund.

* Confidential information

(d) Any excess returns above the hurdle rate are split between the Fund manager[5] and the investors (both the private investors and the State). The investors share the excess returns in proportion to the capital invested.

(16) The Fund manager will receive a fixed management fee, next to sharing some of the excess returns as described in footnote 5. During the investment period (in the period the Fund is making investments), the fixed management fee will amount to 2% per annum if the invested capital is up to EUR 100 million and 1% per annum if the invested capital exceeds EUR 100 million. After the investment period, the investment fee will amount to 1.0% per annum of invested capital if the invested capital is up to EUR 100 million, 0.75% per annum if the invested capital is between EUR 100 million and EUR 200 million, and 0.5% per annum if the invested capital exceeds EUR 200 million. Based on market testing, the Lithuanian authorities would also incentivise the participation of private investors by providing a discounted management fee to the first three investors. This will be reflected in the distribution waterfall by a reduced management fee paid to the Fund manager and an increased interest paid to these first three private investors.

(17) The Lithuanian authorities consider that the distribution waterfall helps to ensure that any potential State aid at the level of private investors investing in the Fund is limited. Firstly, the open call for expression of interest will help to determine the appropriate risk-sharing arrangements by varying the level of loss protection. Secondly, the maximum loss protection provided by the State is capped at a maximum of EUR 100 million.

(18) According to the Lithuanian authorities, the initial offer of […]% first-loss protection is justified for the following reasons:

(a) The Lithuanian authorities argue that the Temporary Framework enables a substantially higher proportion of risk to be attributed to the State: point 27(f) of the Temporary Framework allows public guarantees of the loan principal, where losses are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee), to be as high as 35%. Member States may choose this level of first-loss guarantee without additional justifications.

(b) The Lithuanian authorities also submit that the capital market in Lithuania is not sufficiently developed to accommodate the needs of the real economy during the economic downturn without participation of the State. Even in the sustainable economic growth stage, the private equity and venture capital markets in Lithuania had to be continuously supported by the State with specific measures to share the risk and/or profits asymmetrically. Currently, the total value of assets of the private equity funds supervised by the Bank of Lithuania stands at only EUR 58 million. In view of the less developed capital markets, substantial incentives would

[5] The Fund manager receives a carried interest of 10% in case the annualised Fund performance is higher than 0% (e.g. if the Fund is able to obtain a return above 4% when the hurdle rate is 4%) and 20% in case the annualised Fund performance is higher than 25% (e.g. if the Fund is able to obtain a return above 5% when the hurdle rate is 4%).

be needed to attract private investors and reach the target size of the Fund (EUR 1 billion).

(c) Based on preliminary consultations with potential private investors, the Lithuanian authorities identified that asymmetric first-loss sharing between public and private investors is very important in order to have a chance of attracting private investors to invest in the Fund.

(19) In addition to this, the Lithuanian authorities submit that the […]% of first-loss protection has been chosen as a starting point for the open call, as this number would allow to multiply the initial investment of the State so that the Fund's target size (EUR 1 billion) could be achieved. Without investments of private investors, the size of the Fund is limited and the amount of the State investment is not sufficient to cover the liquidity and/or capital needs of the companies adversely affected by the COVID-19 outbreak, which is the objective of the Fund.

(20) Regarding the remuneration for the Fund manager, the Lithuanian authorities consider that the remuneration is market conform. They refer to a KPMG survey[6] that shows that management fees for loan funds are typically between 1% and 1.5%, with a small proportion at up to 1% (figure 17 of the KPMG survey). The Lithuanian authorities consider that the fees should also take into account the limited investment period (while other funds are typically actively managed for a longer period). This means that the Fund will need to make most investments in the second half of 2020 and incur higher costs in this period. While the Fund mainly invests in debt securities (at least 60%), the Lithuanian authorities also mentioned that Lithuanian private equity funds usually charge up to 2.5% until the end of the investment period and up to 1.5 % after expiration of the investment period.

2.4.2. Measure A

(21) Under Measure A, the Fund will provide loans and purchase debt securities in line with the following conditions:

(a) both new investment loans and working capital loans are eligible[7];

(b) the loans will be granted for a period of up to six years. In case debt securities are purchased, the maturity of these debt securities will be maximum six years;

(c) the principal of a single loan will be between EUR 300 000 and EUR 2 million. The principal of a single acquisition of corporate bonds will be at least EUR 1 million;

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6 See, among others, figure 17 as included in the KPMG survey which is available at https://assets.kpmg/content/dam/kpmg/lu/pdf/lu-en-Loan-Funds-Survey-2018.pdf.

7 The same financing objectives apply in the case of purchase of debt securities (i.e. purchase of newly-issued debt securities to provide working capital and investment financing).

(d) for senior loans or senior debt securities with a maturity beyond 31 December 2020, the overall amount of loans or debt securities per final beneficiary will not exceed:

– 25% of the beneficiary's total turnover in 2019; or

– for beneficiaries operating in the sectors which have been the most affected by the COVID-19 outbreak (i.e. accommodation, tourism, catering, transport, non-grocery retail) and based on self-certification by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises. In this regard, Lithuania submits that in certain economic sectors (i.e. accommodation, tourism, catering, transport, non-grocery retail), the adverse impact from the COVID-19 outbreak on the undertakings' financial situation may be particularly high due to the quarantine measures[8] so that an amount equivalent to 25% of the total turnover 2019 may not be sufficient to cover the liquidity needs of beneficiaries in these sectors. Therefore, Lithuania considers that it is justified that the Fund may provide senior loans or debt securities up to beneficiaries' liquidity needs for 18 months in case of SMEs and for 12 months in case of large enterprises from the moment of the granting, provided that the beneficiary justifies its liquidity needs by self-certification;

(e) for loans or debt securities subordinated to ordinary senior unsecured creditors in case of insolvency proceedings with a maturity beyond 31 December 2020, the overall amount of loans or debt securities per final beneficiary will not exceed[9]:

– two-thirds of the annual wage bill of the beneficiary for large enterprise and the annual wage bill for SMEs as defined in point 27(d)(i) of the Temporary Framework, or

– 8.4% of the beneficiary's total turnover for large enterprise and 12.5% for SMEs in 2019;

(f) the debt securities will not be purchased later than 31 December 2020 and the loan contracts will be signed no later than 31 December 2020;

[8] The Lithuanian government announced a nationwide quarantine which came into effect on 16 March 2020. The measures include closing client-servicing businesses, bars, restaurants and shops, excluding groceries and pharmacies.

[9] Subordinated debt exceeding the thresholds are included in Measure B.

(g) the level of the interest rate will be at least equal to the base rate (1-year IBOR or equivalent as published by the Commission[10]) applicable on 1 January 2020 plus the credit risk margins as follows:

– for the first year of the loan: 25 basis points ("bps") in case of SMEs and 50 bps in case of large undertakings;

– for the second and the third year of the loan: 50 bps in case of SMEs and 100 bps in case of large undertakings;

– for the fourth to sixth years of the loan: 100 bps in case of SMEs and 200 bps in case of large undertakings.

The level of interest rate for debt instruments which are subordinated to ordinary senior unsecured creditors in case of insolvency proceedings will be at least equal to the credit risk margins above plus 200 bps for large enterprises or 150 bps for SMEs.

2.4.3. Measure B

(22) Under Measure B, the Fund will provide aid in the form of equity instruments and hybrid instruments (together referred to as "recapitalisation") in line with the following conditions:

(a) the amount of aid shall not exceed the minimum needed to ensure viability. The cap for recapitalisation will be set at the differential of the capital structure[11] of the beneficiary at 31 December 2019 and at the time of the transaction. In determining the amount of aid, State aid received or planned in the context of the COVID-19 outbreak shall be taken into account;

(b) the maximum amount per beneficiary is EUR 250 million. Individual aid above the threshold of EUR 250 million will be separately notified to the Commission;

(c) in case of investment in equity securities, the value of exchange-traded equity securities shall be based on the average share price of the beneficiary over the 15 days preceding the request for the capital injection. The value of non-exchange traded equity securities shall be determined by an independent valuation[12];

(d) if the Fund has not sold at least 40% of its equity participation four years after the equity injection (or five years if the entity is not publicly listed),

[10] Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p.6.) and published on the website of DG Competition at https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

[11] The maximum recapitalisation will be calculated based on the debt/equity ratio or equity/total assets ratio.

[12] The independent valuators will be selected and based on an open call.

the Fund will receive an additional share of ownership in the beneficiary in addition to its remaining participation at no additional cost. This additional share of ownership will be at least 10% of the remaining participation resulting from the Fund's equity injection and will result in a corresponding dilution of the stakes of other shareholders. In addition, if the Fund has not sold in full its equity participation six years after the equity injection (or seven years if the entity is not publicly listed), the Fund will receive at no additional cost a second additional share of ownership of the beneficiary of 10% of the remaining participation resulting from the Fund's equity injection;

(e) the beneficiary shall have at any time the possibility to buy back the Fund's equity stake. To ensure that the Fund receives appropriate remuneration for the investment, the buy-back price should be the higher amount of the following options:

– the nominal investment by the Fund increased by an annual interest rate which consists of the variable rate defined in point (h), plus 200 bps (the 200 bps extra remuneration does not apply for year 8 and onwards); and);

– the market price at the moment of the buy-back;

(f) the Fund may sell at any time its equity participation at market price to purchasers other than the beneficiary of the recapitalisation. This in principle requires an open and non-discriminatory consultation of potential purchasers or a sale on the stock exchange;

(g) in case of investment in debt instruments that have or may have an equity component, an independent valuation shall be carried out. This valuation will take into account the characteristics of the instrument used, the equity interest related to the instrument, the risks, the comparable interest rates, the level of subordination, all modalities of payment as well as built-in incentives for exit (such as step-up and redemption clauses);

(h) the hybrid and the subordinated debt instruments which exceed both ceilings under recital 27bis (i) and (ii) of Section 3.3 of the Temporary Framework will fall under Measure B, with the following characteristics:

– have a maximum maturity of six years;

– rank senior to ordinary shares (before conversion);

– have coupon payments that are mandatory except for some instruments in case where there is no accounting profit[13] ;

[13] This would be the case for convertible debt and subordinated (mezzanine) convertible debt and if this is decided by the Investment Committee of the Fund.

– have a conversion option for the State at maturity in case of non-repayment or at predetermined events[14]; and

– have a minimum remuneration of no less than the base rate (1-year IBOR or equivalent as published by the Commission) applicable on 1 January 2020 plus:

	Credit risk margin above 1-year IBOR				
Company size	Year 1	Years 2 – 3	Years 4 - 5	Years 6 - 7	Years 8 and after
Medium-sized enterprises	225 bps	325 bps	450 bps	600 bps	800 bps
Large enterprises	250 bps	350 bps	500 bps	700 bps	950 bps

– the conversion of hybrid instruments into equity shall be conducted at 5% or more below the Theoretical Ex-Rights Price ("TERP") at the time of the conversion;

(i) if the hybrid instrument is converted to equity, a step-up mechanism is activated. Two years after the conversion into equity, if the equity resulting from the Fund`s intervention is still owned by the Fund, the Fund at no additional cost (by a corresponding dilution of the stakes of other shareholders) shall receive an additional share of ownership of the beneficiary in addition to its remaining participation resulting from the abovementioned conversion. This additional share of ownership shall be at a minimum 10% of the remaining participation resulting from the Fund's conversion of the instruments;

(j) in order to prevent undue distortions of competition, beneficiaries must not engage in aggressive commercial expansion financed by the received investment. Beneficiaries must also refrain from taking excessive risks;

(k) beneficiaries of the recapitalisation are prohibited from advertising the received recapitalisation for commercial purposes;

(l) beneficiaries of the recapitalisation other than SMEs shall be prevented from acquiring a more than 10% stake in competitors or other operators in the same line of business, including upstream and downstream operations until repayment of at least 75% of the investment by the Fund is made. In exceptional circumstances, and without prejudice to merger control, such beneficiaries may acquire a more than 10% stake in operators upstream or downstream in their area of operation or even competitors, if the acquisition is necessary to maintain the beneficiary's viability. This will be subject to the Commission's approval;

(m) beneficiaries are prohibited from using the received recapitalisation to cross-subsidise other economic activities of integrated undertakings that were already in economic difficulties on 31 December 2019. Clear

[14] I.e. negative accounting equity or other liquidity event, breach of covenants or other material terms.

accounting separation shall be put in place in integrated companies to demonstrate that the recapitalisation measure does not benefit those activities;

(n) as long as the recapitalisation by the Fund has not been fully redeemed, beneficiaries of the recapitalisation cannot make dividend payments, nor non-mandatory coupon payments, nor buy back shares, other than in relation to the Fund and the State. The Fund's investments shall not be used for bonuses or other shareholder or employee promotion payments;

(o) as long as at least 75% of the recapitalisation by the Fund has not been redeemed, the remuneration of each member of the management of the beneficiaries must not go beyond the fixed part of his/her remuneration on 31 December 2019. For persons becoming members of the management on or after the recapitalisation, the applicable limit is the lowest fixed remuneration of any of the members of the management on 31 December 2019. Under no circumstances can bonuses, or other variable or comparable remuneration elements be paid;

(p) large enterprises that have received a recapitalisation of more than 25% of equity at the moment of intervention have to demonstrate a credible exit strategy for the participation of the Fund, unless the Fund's intervention is reduced below the level of 25% of equity within 12 months from the date of the investment. The exit strategy shall lay out:

– the plan of the beneficiary on the continuation of its activity and the use of the funds invested by the Fund, including a payment schedule of the remuneration and redemption of the Fund's investment (together 'the repayment schedule'); and

– the measures that the beneficiary and the Fund will take to abide by that schedule;

The exit strategy should be prepared and submitted to the Fund within 12 months after the granting of the aid. The plan needs to be endorsed by the Fund;

(q) beneficiaries of the recapitalisation will have to report to the Fund on the progress in the implementation of the repayment schedule as well as the compliance with the obligations described in recital (22)(j) to (o) within 12 months of the repayment schedule's presentation, and thereafter periodically every 12 months. The Fund will collect information about the progress in the implementation of the repayment schedules of beneficiaries as well as their actions taken to prevent undue distortions of competition;

(r) as long as the recapitalisation by the Fund has not been fully redeemed, beneficiaries of the recapitalisation, other than SMEs, shall, within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, this should include information on how their use of the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050;

(s) Lithuania will provide annual reporting to the European Commission regarding the Fund's activities, the implementation of the repayment schedules and compliance with the obligations described in recital (22)(j) to (o). Where a beneficiary received a recapitalisation above EUR 250 million[15], the report will include information on compliance with the conditions set in point 54 of the Temporary Framework;

(t) in case of investments in equity securities and/or debt instruments that have or may have an equity component, if six years after the recapitalisation the Fund's intervention has not been reduced below 15% of equity, a restructuring plan in accordance with the Rescue and Restructuring Guidelines[16] shall be notified to the Commission for approval. If the beneficiary is not a publicly listed company, Member States may decide to notify a restructuring plan only if the Fund's intervention has not been reduced below the level of 15% of equity seven years after the recapitalisation.

2.5. Beneficiaries

(23) The Measures are targeted at companies that are economically viable save for difficulties they might be facing because of disruptions due to the COVID-19 outbreak.

(24) The final beneficiaries of Measures A and B, granted through the Fund, are medium-sized[17] and large undertakings active in Lithuania that fulfil the following conditions:

(a) the beneficiary's financial statements are submitted to the State Enterprise Centre of Registers and audited, if required by law;

(b) the beneficiary is not included in the list of companies that do not meet the criteria of a reliable taxpayer published by the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania; and

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15 Investments exceeding EUR 250 million are not covered by the current decision and would be subject to a separate notification.

16 Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p. 1–28.

17 Within the meaning of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; OJ L 124, 20.5.2003, p. 36.

(c) the beneficiary was not considered to be already in difficulty[18] as of 31 December 2019.

(25) Aid shall only be granted to undertakings which, without the investments, would go out of business or would face serious difficulties to maintain their operations. Such difficulties must be shown by the deterioration of, in particular, the beneficiary's debt-to-equity ratio or similar indicators. Furthermore, the Fund will use an indicative ranking system to assess the applications. The following information shall be included in the analysis[19]:

– a company's ability to continue its operation;

– a company's financial situation and liabilities (using ratios such as EBITDA/Debt, EBITDA-to-interest coverage ratio, etc.);

– any restrictions or limitations imposed on the company's assets; and

– any other criteria which could have a significant impact on the decision on a company's financing.

(26) Aid shall only be granted to beneficiaries whose failure would likely involve social hardship or market failure due to significant loss of employment, the exit of an innovative company, the exit of a systemically important company or the risk of disruption to an important service. In order to assess the social hardship or the market failure, the Fund manager will investigate the significance of the company both at national and sectoral level (including potential loss of employment, number of suppliers and related companies, taxes paid), and will use the criteria outlined in the Rescue and Restructuring Guidelines (Section 3.1.1.).

(27) Aid shall only be granted following a written request and having received the confirmation that the beneficiary does not have access to financing on the market at affordable terms, and that other instruments offered by the Fund or other measures existing in Lithuania that cover liquidity needs are insufficient to ensure its viability. During the application process, the potential beneficiary will have to prove this with written evidence.

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18 As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1; Article 2(14) of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1; and Article 3(5) of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

19 The company's level of indebtedness will be assessed according to the company's financial indicators: those companies whose level of indebtedness will be unacceptable (higher than the generally accepted rate in the sector in which the company operates) will be offered assistance through hybrid instruments (convertible bonds, preference shares, etc.). The analysis will also consider whether the company has the possibility to be profitable in the long term: based on the forecasts provided by the company, an assessmentwill be done of these forecasts and how realistic that forecast is.

(28) Beneficiaries that fulfil one or more of the following criteria are not eligible for the Measures:

(a) State or municipal enterprises or undertakings where the State and/or municipality directly or indirectly (according to the voting agreement, agreement on the transfer of voting rights, authorisation, etc.) individually or jointly holds 25% or more of the equity instruments, shares or other capital holdings, or 25% or more of the voting rights;

(b) undertakings in excluded sectors as listed in recital (30).

(c) beneficiaries which have received aid declared illegal and incompatible with the internal market by a decision of the European Commission (individual aid or aid scheme) and which have not returned the full amount of unlawful and incompatible State aid, including interest.

(d) undertakings if at least one of the company's managers or shareholders:

– has been convicted of a serious or grave crime provided for in the Criminal Code of the Republic of Lithuania or of a crime against property, property rights and property interests, economy and business practice, the financial system, public security, civil service and public interests or of corresponding criminal acts under criminal laws of foreign states, irrespective of whether or not the conviction has expired; or

– has been convicted of any other crime included in the Criminal Code of the Republic of Lithuania or laws of foreign states, and less than three years have passed since the sentence was served, suspended or waived.

2.6. Sectoral and regional scope of the Measures

(29) The Measures apply to the whole territory of Lithuania.

(30) They are open to all sectors except the manufacture of weapons and ammunition, manufacture of tobacco and tobacco products, manufacture, processing and retail sale in specialised stores of distilled alcoholic beverages and related products (excluding manufacture of non-distilled alcoholic beverages), gambling and betting activities, provision of financial services and insurance activities.

2.7. Budget and duration of the Measures

(31) The maximum size of the Fund is EUR 1 billion. The State will provide financing to the Fund for EUR 500 million (see section 2.4): the initial capital of EUR 100 million will be provided from the budget of Member State, while the additional EUR 400 million may be provided by issuing debt securities (under a State guarantee). The remaining EUR 500 million are aimed to be contributed by private investors as explained in recital (13).

(32) The Fund may grant aid as from the adoption of the present decision until no later than 31 December 2020 under Measure A and 30 June 2021 under Measure B.

2.8. Cumulation

(33) The Lithuanian authorities confirm that aid granted under the Measures may be cumulated with aid under de minimis Regulations[20] or the Block Exemption Regulations[21] provided the provisions and cumulation rules of those Regulations are respected.

(34) The Lithuanian authorities confirm that aid granted under the Measures may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

(35) The Lithuanian authorities confirm that a beneficiary may benefit in parallel from multiple schemes, provided that aid granted under Section 3.2 of the Temporary Framework is not cumulated with aid granted for the same underlying loan principal under Section 3.3 of that Framework and vice versa. Aid granted under Section 3.2 and Section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the thresholds set out in point 25(d) or in points 27(d) and 27bis of the Temporary Framework.

(36) The Lithuanian authorities confirm that a beneficiary may benefit in parallel from multiple schemes under Section 3.3 provided the overall amount of loans and debt securities per beneficiary does not exceed the threshold set out in point 27(d) of the Temporary Framework and provided the overall amount of subordinated loans does not exceed the thresholds of 27bis of the Temporary Framework[22].

2.9. Monitoring and reporting

(37) The Lithuanian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid

[20] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

[21] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1, Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1 and Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union OJ L 369, 24.12.2014, p. 37.

[22] Undertakings for which the overall nominal of subordinated debt exceeds the thresholds can still be included as a measure under section 3.11 of the Temporary Framework.

granted under the Measures on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting[23]).

3. ASSESSMENT

3.1. Lawfulness of the Measures

(38) By notifying the Measures before putting them into effect, the Lithuanian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(39) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(40) The Measures notified by the Lithuanian authorities consist in the set-up of the Fund, which provides financing to final beneficiaries. In the case of a fund, State aid may be present at several levels. The Commission will therefore need to assess whether State aid is present (i) at the level of the final beneficiaries, (ii) at the level of the private investors in the Fund, (iii) at the level of the Fund manager, and (iv) to the Fund.

3.2.1. Existence of State aid at the level of the final beneficiaries

(41) The Measures are imputable to the State, since the Fund is established by the Lithuanian State, is administered by the Ministry of Finance of the Republic of Lithuania and the Ministry of Economy and Innovation of the Republic of Lithuania and is based on a government resolution and a ministerial order (recitals (8) to (10)). It is financed through State resources, since it is financed by public funds (recital (10)).

(42) The Measures confer an advantage on its beneficiaries in the form of loans, debt securities, equity instruments and hybrid instruments at preferential terms compared to market terms, so at terms that they would not have otherwise been able to secure on the market. The Measures thus confer an advantage on those beneficiaries that they would not have obtained under normal market conditions (recitals (21) and (22)).

(43) The advantage granted by the Measures is selective since it is awarded only to certain undertakings, and excludes small enterprises and certain sectors (recitals (24), (28) and (30)).

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23 Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable advances, guarantees, loans, equity and other forms of aid, the nominal value of the underlying instrument shall be inserted per beneficiary.

(44) The Measures are liable to distort competition since they strengthen the competitive position of its beneficiaries. The Measures also affect trade between Member States, since those beneficiaries may be active in sectors in which intra-Union trade exists.

3.2.2. *Existence of State aid at the level of the private investors*

(45) The Measures are imputable to the State, since the Fund is established by the Lithuanian State, is administered by the Ministry of Finance of the Republic of Lithuania and the Ministry of Economy and Innovation of the Republic of Lithuania and is based on a government resolution and a ministerial order. It is financed through State resources, since it is financed by public funds (recitals (8) to (10).

(46) The Measures confer an advantage on the private investors in the Fund, as the Measures allow private investors to carry out investments on terms more favourable than public investors investing in the same Fund, and which would not be offered by a privately organised fund (recitals (13) to (15) and (17) to (19)). Any proceeds from the Fund are first distributed to the private investors of the Fund (recitals (14) and (15)), before the State's initial investment is repaid. There is also no competitive tender procedure organised that would eliminate the potential aid to private investors. The open call that will be organised (recital (13)) helps to minimise the aid by aiming to also determine the appropriate risk-sharing arrangements in the call. However, such call does not exclude that aid is provided to the private investors (recital (17)). The Measures therefore provide an advantage to those private investors (to attract them to invest in the Fund) that would not exist under normal market conditions.

(47) The advantage granted by the Measures is selective, since it is awarded only to those undertakings participating in the Fund. Participation in the Fund is limited to certain classes of investors, i.e. institutional investors that decide to invest in the Fund (recital (13)).

(48) The Measures are liable to distort competition, since they strengthen the competitive position of the investors. It also affects trade between Member States, since intra-Union trade exists in the investment sector.

3.2.3. *Existence of State aid at the level of the Fund*

(49) The Measures are imputable to the State, since the Fund is established by the Lithuanian State, is administered by the Ministry of Finance of the Republic of Lithuania and the Ministry of Economy and Innovation of the Republic of Lithuania and is based on a government resolution and a ministerial order. The Fund is financed through State resources, since it is financed by public funds (recitals (8) to (10)).

(50) The Measures confer an advantage on the Fund, as the State provides financing to the Fund on preferential terms. The State provides a first loss piece, where private investors have indicated that they would not step into the fund without the first loss piece of the State (recitals (13) to (15) and (17) to (19)). The Measures therefore provide an advantage to the Fund that would not exist under normal market conditions.

(51) The advantage granted by the Measures is selective, since it is awarded only to the Fund (recital (10)).

(52) The Measures are liable to distort competition, since they strengthen the competitive position of the Fund as compared to other investment funds. It also affects trade between Member States, since intra-Union trade exists in the investment sector.

3.2.4. Existence of State aid at the level of the Fund manager

(53) The Fund manager, at least in the first phase, will be a State-owned subsidiary (recital (11)). The remuneration of the Fund manager will consist in a fixed management fee (ranging from 1% to 2% in a short investment period and 0.5%-1% in the remaining period) and a carried interest in case of excess returns of the fund (ranging from 10% to 20% interest on the excess returns) (recital (16)).

(54) The remuneration of the Fund manager is set by the Lithuanian authorities (recitals (15)(d) and (16)) and are an inherent element of the Measures that are imputable to the State (recitals (8) to (10)). The remuneration of the Fund manager will be partially financed through State resources (recitals (15) and (16)).

(55) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit that an undertaking could not have obtained under normal market conditions.

(56) First, the Commission notes that the remuneration for debt security funds in the KPMG survey (recital (20)) shows a median fee of 1-1.5%. The Commission also notes from several sources[24] that the most common remuneration for the Fund manager in traditional private equity funds is 2% on committed capital during the investment period. In particular, a survey by MJ Hudson from 2019[25] shows that, on a sample of 100 private equity funds, 41 were charging management fees between 1.8% and 2% during the investment period. The study also mentions that a post-investment period step-down in the management fees is an established provision in the terms of private equity firms. The Commission finally notes that carried interest is a common practice in the remuneration of a Fund manager to incentivise it. The repartition 80/20 is the most common among private equity funds structure (80% of excess return for limited partners and 20% for the Fund manager).

(57) In addition, the Commission notes that the Fund will be composed of at least 60% of debt securities, but also of equity investments and hybrid investments that are more complex and therefore take more time to manage[26], which in principle could

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[24] https://www.privatefundscfo.com/proportion-gps-charging-2-management-fee-doubles/ ; https://mjhudson-allenbridge.com/the-mj-hudson-allenbridge-alternative-risk-premia-fund-review-2019/; https://www.icapitalnetwork.com/insights/education/an-explanation-of-private-equity-fees/

[25] https://mjhudson-allenbridge.com/the-mj-hudson-allenbridge-alternative-risk-premia-fund-review-2019/

[26] This is also confirmed by the examples of management fees for private equity funds that were mentioned by Lithuania (2.5 % until the end of investment period and up to 1.5 % after expiration of the investment period).

justify an even higher remuneration according to market practice. The Commission therefore observes that the remuneration for the Fund manager is (i) in line with market practice for a debt securities fund and (ii) is linked to the performance of the fund. Therefore, since the Fund is more complex than a simple debt securities fund, the Commission concludes that the remuneration does not lead to the overcompensation of the Fund manager.

(58) These elements allow the Commission to *prima facie* observe that the Measures appear not to confer an economic advantage for the Fund manager. However, in absence of directly comparable funds (of the same size), it cannot be excluded with absolute certainty that there is a potential (limited) advantage. Such advantage would distort competition by strengthening the competitive position of the Fund manager in the market for the management of funds. It would also affect trade between Member States in those liberalised markets.

3.2.5. Conclusion on the existence of State aid

(59) In view of the above, the Commission concludes that the Measures constitute aid to the final beneficiaries, the private investors and the Fund within the meaning of Article 107(1) TFEU. With respect to the Fund manager, the Commission cannot exclude with absolute certainty the presence of aid, but it is in any event compatible aid for the reasons analysed in the following section of this decision.

3.3. Compatibility

(60) Since the Measures involve State aid to the final beneficiaries, the private investors and the Fund within the meaning of Article 107(1) TFEU, it is necessary to consider whether these Measures are compatible with the internal market. Moreover, given the absence of certainty as to the presence of aid to the Fund manager, the Commission also assesses the compatibility of that aid with the internal market.

(61) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "to remedy a serious disturbance in the economy of a Member State".

(62) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in Section 2) that "the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings". The Commission concluded that "State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs".

(63) The Measures aim at facilitating the access of undertakings to external finance and restoring their capital at a time when the normal functioning of credit and capital markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

3.3.1. Compatibility of aid at level of the final beneficiaries

(64) The Measures are one of a series of measures conceived at national level by the Lithuanian authorities to remedy a serious disturbance in their economy. The Commission notes Lithuania's submission that the importance of the Measures to preserve employment and economic continuity is widely accepted by economic commentators and the Measures are of a scale which can be reasonably anticipated to produce effects across the entire Lithuanian economy. Furthermore, the Measures have been designed to meet the requirements of a specific category of aid ("Aid in the form of subsidised interest rates for loans" and "Recapitalisation measures for non-financial undertakings") described in Section 3.3 and Section 3.11 of the Temporary Framework.

(65) The Commission accordingly considers that the Measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meet all the conditions of the Temporary Framework.

(a) Notably, for Measure A:

– The applicable interest rates for senior loans and senior debt securities granted under Measure A are equal to the base rate (1-year IBOR or equivalent as published by the Commission)[27] applicable on 1 January 2020 plus a minimum credit margin that is in line with the table included in point 27(a) of the Temporary Framework (recital (21)(g)) Measure A therefore complies with point 27(a) of the Temporary Framework.

– The loan contracts are signed or the debt securities are issued by 31 December 2020 at the latest and are limited to a maximum of six years (recitals (21)(b), (21)(f) and (32)). Measure A therefore complies with point 27(c) of the Temporary Framework.

– For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary is limited in line with point 27(d)(ii) of the Temporary Framework (recital (21)(d)). Lithuania will also allow for beneficiaries operating in the sectors which have been the most affected by the COVID-19 outbreak (i.e. accommodation, tourism, catering, transport, non-grocery retail), based on self-certification, to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises. The Commission considers that the justification submitted by Lithuania, notably that in these sectors the liquidity needs arising from the COVID-19 outbreak may be particularly high due to the quarantine measures (recital (21)(d)) is appropriate, in line with point 27(d)(iii) of the Temporary Framework. Measure A therefore complies with point 27(d)(ii) and (iii) of the Temporary Framework.

[27] Base rates calculated in accordance with Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

- Loans or debt securities granted under Measure A relate to investment and working capital needs (recital (21)(a)). Measure A therefore complies with point 27(f) of the Temporary Framework.

- Undertakings in difficulty already on 31 December 2019 are excluded from benefitting from the Measure (recital (24)(c)). Measure A therefore complies with point 27(g) of the Temporary Framework.

- For subordinated loans and debt securities, the maximum amount per beneficiary is limited in line with point 27bis (i) and (ii) of the Temporary Framework (recital (21)(e)), and a credit margin of 150 bps is added for SMEs and 200 bps for large enterprises (recital (21)(g)). Since the conditions laid down in recitals (21)(a), (21)(b), (21)(f) and (24)(c) also apply to subordinated loans and debt securities, Measure A therefore complies with point 27bis of the Temporary Framework.

(b) Notably, for Measure B:

- Equity and hybrid instruments are granted at the latest by 30 June 2021 (recital (32)). Measure B therefore complies with point 48 of the Temporary Framework.

- Equity and hybrid instruments are only provided to companies that would otherwise go out of business or would face serious difficulties to maintain their operations. The Fund will include an assessment/scoring system to assess whether this condition is met (recital (25)). Measure B therefore complies with point 49(a) of the Temporary Framework.

- Equity and hybrid instruments will only be provided where it is in the common interest to intervene, as investments are only provided to companies whose failure would likely involve social hardship or market failure due to significant loss of employment, the exit of an innovative company, the exit of a systemically important company or the risk of disruption to an important service. In order to assess the social hardship or the market failure, the Fund manager will investigate the significance of the company both at national and sectoral level (including potential loss of employment, number of suppliers and related companies, taxes paid) and will use the criteria which are outlined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (Section 3.1.1.) (recital (26)). Measure B therefore complies with point 49(b) of the Temporary Framework.

- Equity and hybrid instruments are provided to companies which are not able to find financing on the markets at affordable terms; financing is only provided after a confirmation that the beneficiary does not have access to financing on the market at affordable terms and that other instruments offered by the Fund and other horizontal measures in Lithuania are insufficient to ensure its operational continuity (recital (27)). Measure B therefore complies with point 49(c) of the Temporary Framework.

– Undertakings already in difficulty on 31 December 2019 are excluded from benefitting from the Measures (recital (24)(c)). Measure B therefore complies with point 49(d) of the Temporary Framework.

– Equity and hybrid instruments are provided only following a written request for such instruments by the beneficiary (recital (27)). Measure B therefore complies with point 50 of the Temporary Framework.

– A separate notification will be made for individual aid above the threshold of EUR 250 million (footnote 15). Measure B therefore complies with point 51 of the Temporary Framework.

– Measure B will not exceed the minimum needed to ensure the viability of the beneficiary, and not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak. The cap for recapitalisation will be set at the differential between the capital structure of the beneficiary on 31 December 2019 and at the time of the transaction (recital (22)(a)). Measure B therefore complies with point 54 of the Temporary Framework.

– A capital injection by the Fund will be conducted at a price that does not exceed the average share price of the beneficiary over the 15 days preceding the request for the capital injection, or an estimation of its market value by an independent expert if the beneficiary is not publicly listed (recital (22)(c)). Measure B therefore complies with point 60 of the Temporary Framework.

– Measure B includes a step-up in the form of additional shares, corresponding to an increase of 10% in remuneration if the State has not sold a minimum percentage of its shareholding (recital (22)(d)). Measure B therefore complies with point 61 of the Temporary Framework.

– The capital injection can be bought back by the beneficiary at any time, while taking into account an appropriate remuneration (recital (22)(e)). Furthermore, the State may sell at any time its equity participation at market prices to purchasers other than the beneficiary, following an open and non-discriminatory consultation (recital (22)(f)). Measure B therefore complies with points 63 and 64 of the Temporary Framework.

– The Commission notes that the conditions of the hybrid instruments notified by Lithuania embed limited risk characteristics (e.g. the maturity is limited to six years, the coupon payments are mandatory with limited exceptions, the State has a conversion option in case of certain predetermined events). The Commission considers that it is therefore appropriate to not require additional extra margins above the minimum rates reflected in the table included in point 66 of the Temporary Framework. The margins notified by Lithuania comply with the minimum remuneration of this table (recital (22)(h)). Measure B therefore complies with the remuneration provisions included in points 65 and 66 of the Temporary Framework.

– The conversion options for hybrid instruments are conducted at 5% or more below the TERP at the time of the conversion (recital (22)(h)). Measure B therefore complies with point 67 of the Temporary Framework.

– After conversion of the hybrid instrument into equity, a step-up mechanism increases the shareholding of the State to incentivise the beneficiaries to buy back the equity (recital (22)(i)). Measure B therefore complies with point 68 of the Temporary Framework.

– Beneficiaries are not allowed to advertise the investment by the Fund for commercial purposes (recital (22)(k)). Measure B therefore complies with point 73 of the Temporary Framework.

– As long as 75% of the investment of the Fund is not repaid, the beneficiaries other than SMEs are not allowed to acquire a more than 10% stake in competitors or operators in the same line of business (recital (22)(l)), except with the Commission's approval under exceptional circumstances. Measure B therefore complies with points 74 and 75 of the Temporary Framework.

– Beneficiaries are prohibited from using the received recapitalisation to cross-subsidise other economic activities of integrated undertakings that were already in economic difficulties on 31 December 2019 (recital (22)(m)). Measure B therefore complies with points 76 of the Temporary Framework

– As long as the Fund's equity resulting from the recapitalisation has not been fully redeemed, beneficiaries cannot make dividend payments, nor non-mandatory coupon payments, nor buy back shares, other than in relation to the Fund (recital (22)(n)). Measure B therefore complies with point 77 of the Temporary Framework.

– As long as at least 75% of the investment of the Fund has not been repaid, a cap on the remuneration of management is applied as included in point 78 of the Temporary Framework (recital (22)(o)). Measure B therefore complies with point 78 of the Temporary Framework.

– Large enterprises that have received recapitalisation from the Fund of more than 25% of their equity under Measure B have to demonstrate a credible exit strategy for the participation of Fund within 12 months after receiving the investment (recital (22)(p)). Measure B therefore complies with points 79 to 81 of the Temporary Framework.

– Beneficiaries of the recapitalisation will have to report to the Fund on the progress in the implementation of the repayment schedule as well as the compliance with the obligations described in recitals (22)(j) to (22)(o) within 12 months of the repayment schedule's presentation, and thereafter periodically every 12 months (recital (22)(q)). Measure B therefore complies with point 82 of the Temporary Framework.

– As long as the recapitalisation by the Fund has not been fully redeemed, beneficiaries of the recapitalisation, other than SMEs, shall, within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, this should include information on how their use of the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050 (recital (22)(r)). Measure B therefore complies with point 83 of the Temporary Framework.

– Lithuania will provide annual reporting to the European Commission regarding the Fund's activities, the implementation of the repayment schedules and compliance with the obligations described in recitals (22)(22)(j) to (22)(o). Where a beneficiary received a recapitalisation above EUR 250 million, the report shall include information on compliance with the conditions set in point 54 of the Temporary Framework (recital (22)(s)). Measure B therefore complies with point 84 of the Temporary Framework.

– A restructuring plan will be notified if six years after recapitalisation under Measure B the Fund's intervention has not been reduced below 15% of the beneficiary's equity (recital (22)(t)). Measure B therefore complies with point 85 of the Temporary Framework.

(66) The Lithuanian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (37)). The Measures therefore comply with section 4 of the Temporary Framework.

(67) The Lithuanian authorities confirm that the aid under the Measures may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (33) to (36)). The Measures therefore comply with points 20 and 26bis of the Temporary Framework.

(68) The Commission therefore considers that at level of the final beneficiaries, the Measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and are, thus, compatible with the internal market under Article 107(3)(b) TFEU since they meet all the relevant conditions of the Temporary Framework.

3.3.2. *Compatibility of aid to the private investors*

(69) The Commission finds that the Temporary Framework is not applicable to the aid granted to the investors. The Commission will therefore assess it based on the general criteria for compatibility under Article 107(3)(b) TFEU. However, the objectives of the Temporary Framework can provide guidance as far as relevant.

(70) As for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member State concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other.

(71) The Commission concluded in the Temporary Framework that *"State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs"*. The Commission notes that the objective of the aid to private investors is to increase the size of the Fund whereby the Fund can implement a higher volume of the Measures, which, in line with the Temporary Framework, the Commissions considers as necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State (see reasoning in section 3.3.1 above). The aid granted to private investors is therefore necessary to attain the objective pursued by the Temporary Framework and is thus also justified to remedy a serious disturbance in the economy of a Member State.

(72) In order to be appropriate, the aid has to be well targeted to its objective, i.e. in this case to remedy a serious disturbance in the economy. This would not be the case if the disturbance also disappeared in the absence of the Measures or if the Measures were not appropriate to remedy the disturbance.

(73) The Commission observes that the Measures aim at attracting private investors to restore the liquidity and capital position of companies at a time when the normal functioning of credit and capital markets is severely disturbed by the COVID-19 outbreak. The Commission also notes that this outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States. The market testing of the Lithuanian authorities has identified that asymmetric first-loss sharing between public and private investors and offering a discounted management fee for the first investors (recital (16)) would be important in order to attract private investors to invest in the Fund.

(74) Therefore, the Commission considers that the aid to the private investors through asymmetric loss sharing under the Measures is appropriate.

(75) In order to meet the compatibility criterion of necessity, the aid measure must in its amount and form, be necessary to achieve the objective. That implies that it must be limited the minimum amount necessary to reach this objective.

(76) The key elements of the risk sharing arrangement ([…]) are determined through an open, transparent and non-discriminatory selection process in the context of

which investors are called to present bids which aim to identify the minimum amount of loss protection needed to attract the targeted amount of private investments (recital (14)). The Commission considers that through such a process, the aid to the private investors is to be regarded as proportionate and to reflect the minimum necessary to incentivise the investment.

(77) The Commission also notes that, besides the loss protection, the State and the private investors will share the returns of the Fund in proportion to their investments (recitals (14) and (15)).

(78) Based on the above, the Commission concludes that the aid to the private investors under the Measures is limited to the amount and form necessary to achieve the objective pursued to ensure continued lending to fundamentally sound enterprises and restoring the capital position of companies, which should help to mitigate the serious disturbance of the Lithuanian economy. Therefore, the Commission concludes that the Measures are necessary to the objective of mitigating a serious disturbance of the Lithuanian economy.

(79) For the assessment of the proportionality of the aid, the Commission notes that the Measures are limited in duration. The Fund will make most investments by end 2020, and the maturity of instruments will be limited to six years (recitals (32) and (21)(b)).

(80) The Commission notes that the loss/difference in risk for the State only covers a percentage of losses ([…]) and is capped to a maximum amount of EUR 100 million (recital (14)). The Commission considers that this first loss is limited and does not exceed the risk coverage that is currently included in the Temporary Framework[28]. Also, the Commission considers a […]% loss protection is limited in view the high economic uncertainty and the substantial amount of private investors that the Lithuanian authorities aiming to attract. The Commission notes also that this minimum loss protection has been set after doing a first market testing with private investors.

(81) Based on the above, the Commission concludes that the features described above ensure that the aid to the private investors under the Measures is proportionate to the objective pursued.

Conclusion

(82) The Commission, therefore, considers that the aid at the level of the private investors is compatible with the internal market under Article 107(3)(b) TFEU.

3.3.3. Compatibility of aid to the Fund

(83) The Commission finds that the Temporary Framework is not applicable to the aid granted to the Fund. The Commission will therefore assess it based on the general criteria for compatibility under Article 107(3)(b) TFEU. However, the objectives of the Temporary Framework can provide guidance as far as relevant.

[28] In section 3.2 for guarantees, first losses on an individual loans basis of up to 35% can be sustained by the State, see point 25f(ii) of the Temporary Framework.

(84) As for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member State concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other.

(85) The Commission concluded in the Temporary Framework that *"State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs"*. The Commission notes that the objective of the aid to the Fund is to implement a structure by which the State can attract private investors to increase the size of the Fund. Through the Fund, the Lithuanian authorities aim to implement a higher volume of Measures, which, in line with the Temporary Framework, the Commissions considers as necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State (see reasoning in section 3.3.1 above). The aid granted to the Fund is therefore necessary to attain the objective pursued by the Temporary Framework and is thus justified to remedy a serious disturbance in the economy of a Member State.

(86) In order to be appropriate, the aid has to be well targeted to its objective, i.e. in this case to remedy a serious disturbance in the economy. This would not be the case if the disturbance also disappeared in the absence of the Measures or if the Measures were not appropriate to remedy the disturbance.

(87) The Measures aim at attracting private investors to restore the liquidity and capital position of companies at a time when the normal functioning of credit and capital markets is severely disturbed by the COVID-19 outbreak. The Commission also notes that this outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States. The selective advantage to the Fund stems from the preferential financing conditions of the asymmetric risk sharing (where the aim is to attract private investors). The market testing of the Lithuanian authorities has identified that asymmetric first-loss sharing between public and private investors and offering a discounted management fee for the first investors (recital (16)) would be important in order to attract private investors to invest in the Fund).

(88) On this basis, the Commission considers that the aid to the Fund through asymmetric loss sharing under the Measures is appropriate.

(89) In order to meet the compatibility criterion of necessity, the aid measure must in its amount and form, be necessary to achieve the objective. That implies that it must be limited the minimum amount necessary to reach this objective.

(90) The selective advantage to the Fund stems from the preferential financing conditions consisting in the asymmetric risk sharing. The key elements of the risk sharing arrangement (the percentage of loss protection […]) are determined through an open, transparent and non-discriminatory selection process in the context of which investors are called to present bids, which aim to identify the minimum amount of loss protection needed to attract the targeted amount of

private investments (recital (14)). The Commission considers that through such a process, the aid to the Fund is to also be regarded as proportionate and to reflect the minimum necessary to incentivise the investment (similar to the aid to the private investors itself).

(91) Based on the above, the Commission concludes that the aid to the Fund under the Measures is limited to the amount and form necessary to achieve the objective pursued to ensure continued lending to fundamentally sound enterprises and restoring the capital position of companies, which should help to mitigate the serious disturbance of the Lithuanian economy. Therefore, the Commission concludes that the Measures are necessary to the objective of mitigating a serious disturbance of the Lithuanian economy.

(92) For the assessment of the proportionality of the aid, the Commission notes that the Measures are limited in duration. The Fund will make most investments by end 2020, and the maturity of instruments will be limited to six years (recitals (32) and (21)(b)).

(93) The selective advantage to the Fund stems from the preferential financing conditions from the asymmetric risk sharing. The Commission notes that the loss/difference in risk for the State only covers a percentage of losses ([…], as will be determined in the call for expression of interest) and is capped to a maximum amount of EUR 100 million (recital (14)). The Commission considers that this first loss is limited and does not exceed the risk coverage that is currently included in the Temporary Framework[29]. Also, the Commission considers a […]% loss protection is limited in view the high economic uncertainty and the substantial amount of private investors that the Lithuanian authorities aiming to attract. The Commission notes also that this minimum loss protection has been set after doing a first market testing with private investors.

(94) Based on the above, the Commission concludes that the features described above ensure that the aid to the Fund under the Measures is proportionate to the objective pursued.

Conclusion

(95) The Commission, therefore, considers that the aid at the level of the Fund is compatible with the internal market under Article 107(3)(b) TFEU.

3.3.4. Compatibility of possible aid to the Fund manager

(96) The Commission noted above that it cannot fully exclude the possibility that there is aid to the Fund manager (recital (58)). Therefore, the Commission needs to assess the compatibility of such potential aid in order to exclude doubts as to its compatibility. The Commission finds that the Temporary Framework is not applicable to the possible aid granted to the Fund manager. However, the objectives of the Temporary Framework can provide guidance as far as relevant

[29] In section 3.2 for guarantees, first losses on an individual loans basis of up to 35% can be sustained by the State, see point 25f(ii) of the Temporary Framework.

in examining the possible aid to the Fund manager directly under Article 107(3)(b) TFEU.

(97) As for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member State concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other.

(98) The Commission concluded in the Temporary Framework *that "State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs"*. The Commission notes that the possible aid to Fund manager aims to set up a fund structure and attract private investors to the Fund. Therefore, it helps to increase the size of the Fund whereby the Fund can implement a higher volume of Measures, which, in line with the Temporary Framework, the Commission considers as necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State (see reasoning in section 3.3.1 above). The aid granted to the Fund manager is therefore necessary to attain the objective pursued by the Temporary Framework and is thus also justified to remedy a serious disturbance in the economy of a Member State.

(99) As regards appropriateness, the Commission observes that the establishment of the Fund aims at restoring the liquidity and capital position of companies at a time when the normal functioning of credit and capital markets is severely disturbed by the COVID-19 outbreak. The Commission also notes that this outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States. The wide-range of instruments provided under Measures A and B and the aim to attract private investors require the set-up of a complex fund structure and dedicated management. The Commission therefore concludes that any potential aid benefitting the Fund manager is appropriate in view of the objective of the Measures.

(100) As regards necessity, the Commission notes that the remuneration of the Fund manager is in line with market practice and is linked to performance, i.e. it does not lead to the overcompensation of the Fund manager (recital (57)). The Commission therefore concludes that any potential advantage for the Fund manager is necessary in view of the objective of the Measures, i.e. channelling funds to the real economy in order to restore the liquidity and capital position of companies in view of the disruption of the normal functioning of credit and capital markets caused by the COVID-19 outbreak.

(101) As regards proportionality, the Commission observes that the main economic effect for the Fund manager stems from the remuneration. The Commission recalls its conclusion that the remuneration of the Fund manager does not exceed the level observable under normal market conditions (recital (57)). The Commission therefore concludes that any potential economic advantage for the Fund manager is limited to the minimum necessary. On this basis, the

Commission concludes that any potential aid to the Fund manager is proportionate in view of the objective of the Measures.

Conclusion

(102) The Commission therefore concludes that any possible aid within the meaning of Article 107(1) TFEU that may benefit the Fund manager as a result of the Measures is compatible with the internal market.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid provided to the final beneficiaries, the Fund, the Fund manager and private investors on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

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Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
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