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**SENSITIVE\*** : *COMP Operations*

Subject:       **State aid / Lithuania**  
                  **SA.57508 (2020/N)**  
                  **Aid to undertakings engaged in the processing of agricultural**  
                  **products in the poultry and eggs sectors and which have incurred**  
                  **losses due to the pandemic of COVID-19.**

Excellency,

#### 1. PROCEDURE

- (1) By electronic notification of 28 May 2020, registered by the Commission on the same day, Lithuania notified the above-mentioned aid scheme in compliance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU). By emails of 4, 9 and 16 June 2020, Lithuania submitted supplementary information on the measure.
  
- (2) 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<sup>1</sup> and to have this Decision adopted and notified in English.

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\* Handling instructions for SENSITIVE information are given at <https://europa.eu/db43PX>

<sup>1</sup> Regulation No 1/1958 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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## **2. DESCRIPTION**

### **2.1. Objective**

- (3) A number of agricultural sectors are severely affected by the COVID-19 outbreak and the containment measures taken by the government. Those agricultural sectors are characterized by: (i) a production which, because of its characteristics, has had to continue even though demand from companies in the downstream markets directly affected by governmental containment measures has dropped significantly during March, April and May 2020, (ii) the poor or unsustainable quality of the production due to its perishability and the limited alternative to immediate consumption. Because of the combined effect of those two factors, the agricultural sectors concerned suffered damage until 16 June 2020.
- (4) The above combination occurs in the poultry and eggs sector.
- (5) The objective of the measure is to compensate damage incurred by undertakings active in the processing of agricultural products in the poultry and eggs sectors, resulting from the diversion of unsold fresh poultry products to freezing facilities and unsold eggs for processing, due to the COVID-19 outbreak and the governmental containment measures in the interest of public health that Lithuania has taken thereafter.

### **2.2. The nature and form of aid**

- (6) The measure provides aid in the form of direct grants.

### **2.3. Legal basis**

- (7) The legal basis is the draft Order of the Minister of Agriculture of the Republic of Lithuania “*Rules for Granting Aid to Undertakings Engaged in the Processing of Agricultural Products in the Poultry and Eggs Sectors and Which Have Incurred Losses due to the Epidemic of COVID-19 Disease (Coronavirus Infection)*”.

### **2.4. Duration**

- (8) Aid may be granted under the measure as from its approval until no later than 31 March 2021.

### **2.5. Budget**

- (9) The overall estimated budget for the aid scheme is EUR 20 million, which is financed from the general State budget of Lithuania from funds borrowed on behalf of the Republic of Lithuania.

### **2.6. Beneficiaries**

- (10) The aid will be granted to producers fulfilling the eligibility criteria and engaged in one of the following activities:
  - slaughtering the poultry reared and / or purchased by them, and selling poultry carcasses and/or their parts (chilled, frozen or quick-frozen);

- processing of eggs and sale of eggs (liquid egg mixtures or masses (chilled or froze), egg powder);
  - sorting and packing of eggs (own produced and / or purchased) and sale of fresh packed eggs and eggs to the industry.
- (11) The number of beneficiaries is estimated at about 25 producers active in the poultry and eggs sector, including small and medium enterprises ('SMEs') as well as large undertakings.
- (12) Aid under the scheme will not be granted to undertakings that have benefited from earlier unlawful aid declared incompatible by a Commission Decision (either as an individual aid or an aid under an aid scheme being declared incompatible), until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest. Aid may be granted under the scheme to undertakings that are in difficulty as defined in point (35)15 of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (hereinafter: the Guidelines)<sup>2</sup>.

## **2.7. Description of the measures**

### *2.7.1. Background*

- (13) By Resolution No. 152 of 26 February 2020, the Government of the Republic of Lithuania declared a nation-wide emergency throughout the country due to the threat of the spread of COVID-19. By its Resolution No. 207 of 14 March 2020, "On the Announcement of Quarantine in the Territory of the Republic of Lithuania", taking into account the unfavourable epidemic situation of COVID-19, the Government declared quarantine throughout the territory of the Republic of Lithuania entering into force on 16 March 2020. The activities of the restaurant and catering sector in open spaces were again partially allowed from 27 April 2020, and in closed spaces (including hotels) from 18 May 2020 for those undertakings who could assure sufficient social distancing and other precautionary measures. These general national health measures continued to apply until 16 June 2020, with schools closed, tourism forbidden, no organization of events (public or private), and most of the population being recommended to stay at home.
- (14) The closure of businesses caused a disruption of the supply chains and a loss of the value of the products concerned (poultry meat and eggs) because companies were forced to store unsold poultry meat in cold stores and to sell processed eggs to the industry rather than as fresh packed eggs.
- (15) Fresh poultry is a perishable good. Therefore, the surplus had to be frozen in order to avoid an irreversible damage to the product. In the months following the announcement of the national health measures product stocks of poultry meat in warehouses increased by more than 600 tonnes according to the data provided by Lithuanian companies.

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<sup>2</sup> European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, OJ C 204, 1.7.2014, p. 1.

- (16) However, sales prices of frozen products are significantly lower than of fresh poultry products, e.g. the price of frozen chicken breast compared to fresh chicken meat was about 38% lower. Sales of chicken broiler carcasses decreased by 22.6% during the period of quarantine. The immediate loss of market value when fresh poultry has to be frozen, together with extra storage and transportation costs, represents a loss for the producer.
- (17) In April 2020, the sector concerned lost up to 1000 tonnes of sales of poultry meat. In May and June the forecasted volumes slightly increased but remain approximately 600 t/month less compared to the period before the national health measures were triggered. Fillet prices decreased by more than 1 EUR/kg. It is forecasted that prices will remain at that level until April 2021.
- (18) As regards eggs, from the beginning of the government measures to contain the spread of COVID-19, the wholesale (producer) prices of fresh packaged eggs, laid by hens kept in cages, decreased by 5%. The price of eggs sold for processing fell by about 29%.
- (19) The scheme notified by Lithuania therefore aims at compensating the damage suffered by the poultry and eggs sector due to the containment measures applicable from 16 March 2020 until the end of the quarantine period on 16 June 2020. The Lithuanian authorities explained that, due to the specificities of the sector concerned, beneficiaries could not stop producing and were thus left with stock for which there was hardly any demand in the market.

#### *2.7.2. Eligibility, calculation of losses and compensation*

- (20) A precondition for compensating the losses incurred is a 10% or larger decrease of the income of the producer for the period of 16 March to 16 June 2020 for which the aid is requested, compared to the average income for the same period during the years 2017-2019. If a given undertaking started a new business and does not have all the historical data for the period 2017 to 2019 available, it will provide the data from the launch of the operation.
- (21) The producers wishing to apply for aid have to fulfil the following requirements:
  - a) to maintain the former average purchase prices of raw materials paid by the producer before the COVID-19 outbreak during the period of aid, i.e. at the level of the average prices of the first to eleventh week of 2020 (from the week of 1 January until the week of 9 March);
  - b) to have a veterinary approval as an animal-based food business operator, or to be registered for the performance of such activities in the food business operator registers of the State Food and Veterinary Service;

c) to be registered in accordance with the procedure established by law and carry out the activities in the Republic of Lithuania.

- (22) The scheme applies to losses suffered in the period from 16 March to 16 June 2020. The payment of the aid will be completed in the 1<sup>st</sup> quarter of 2021.
- (23) The compensation of damages is available in respect of stocks of poultry and eggs produced and accumulated in the period between 16 March and 16 June 2020. The Lithuanian authorities explain that due to the specificities of the poultry and eggs sector, the production of those products could not be adjusted quickly to the reduced demand for fresh products resulting from the containment measures which ended on 16 June 2020. The average life cycle of a laying hen is 481 days during which they obviously continue laying eggs. Whilst the life cycle of a broiler for fattening is relatively short (around 5-6 weeks), the period during which they were hatched (3 weeks) has to be added so that the actual planning cycle for broilers cannot be adjusted from one month to the next which means that a period of at least three months needs to be taken into account. Trying to adjust the volume of production in a short period of time could actually cause more damage to the sector.
- (24) The damage for undertakings referred to in the first and second point of recital (10), active in the slaughtering of poultry and processing of eggs, is calculated as the product of:
- the increase in the quantity of stored products in the period of compensation compared to the same period of 2017-2019
  - and the difference between the average sales prices of the fresh and frozen product between March and June in 2017-2019.

Additional losses are added resulting from an increase in the quantity of eggs processed into egg powder, which are calculated as the difference between:

- the loss of income due to the increase in the quantity of eggs directed to the production of egg powder during the period of compensation compared to the same period in 2017-2019, estimated with an average selling price for fresh packaged eggs for that period, and
  - the income received from the sale of egg powder produced from that quantity, estimated with an average selling price of egg powder during the period of compensation for losses.
- (25) The damage as outlined in the previous recital is calculated according to the following formula:

$$N_B = \sum N_j + N_M,$$

where:

$N_B$  – losses incurred by the applicant (EUR);

$N_j$  – losses incurred by the applicant under a type of product in storage as identified below<sup>3</sup> (EUR) which are calculated by the following formula:

$$N_j = (SK_{2020} - SK_{2017-2019}) \times (K1_{vid} - K2_{vid}),$$

where:

$SK_{2020}$  – the quantity of stored product during the loss compensation period (t);

$SK_{2017-2019}$  – average quantity of product in storage for the period from 16 March to 16 June 2017-2019 (t);

$K1_{vid}$  – average sales price of chilled product for the period of March-June 2017-2019 (EUR/t);

$K2_{vid}$  – average sales price of frozen or deep-frozen product for the period of March-June 2017-2019 (EUR/t);

$j$  – type of product in storage: poultry carcass, poultry meat part, egg product (liquid egg mixture, liquid egg mass)

$N_M$  – losses incurred by the applicant as a result of the increase in the quantity of eggs directed to the production of egg powder (EUR), calculated by the following formula:

$$N_M = ((KK_{2020} - KK_{2017-2019}) \times K3_{vid}) - (KM \times K4_{vid}),$$

where:

$KK_{2020}$  – the quantity of eggs during the compensation period from which the egg powder was produced (t);

$KK_{2017-2019}$  – average quantity of eggs, from which the egg powder was produced, for the period 16 March to 16 June 2017-2019 (t);

$K3_{vid}$  – average price of fresh packaged eggs sold in the period of 2017-2019 in March-June (EUR/t);

$KM$  – the quantity of egg powder produced from an increased quantity of eggs (increased quantity of eggs taken as the difference between  $KK_{2020}$  and  $KK_{2017-2019}$ ) (t);

$K4_{vid}$  – average price of egg powder sold in the period of compensation for losses (EUR/t).

(26) The damage of undertakings referred to in the third point of recital (10), engaged in sorting and packing of eggs, is calculated as:

- the product of an increase in the quantity of eggs sold to the industry during the period of compensation compared to the same period in 2017-2019, and

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<sup>3</sup> i.e., poultry carcass, poultry meat part, egg product (liquid egg mixture, liquid egg mass).

- the difference between the average selling prices for fresh packaged eggs and eggs intended for the industry, for the period from March to June of 2017-2019.

(27) The damage as outlined in the previous recital is calculated according to the following formula:

$$N_B = (PK_{2020} - PK_{2017-2019}) \times (K5_{vid} - K6_{vid}),$$

where:

$N_B$  – losses incurred by the applicant (EUR);

$PK_{2020}$  – the quantity of eggs sold to the industry during the period of compensation (t);

$PK_{2017-2019}$  – average quantity of eggs sold to the industry during the period from 16 March to 16 June 2017-2019 (t);

$K5_{vid}$  – average price of fresh packaged eggs sold in the period of 2017-2019 in March - June (EUR/t);

$K6_{vid}$  – average price of eggs sold to the industry in the period of 2017-2019 in March - June (EUR/t).

(28) If after reception of all applications the overall amount resulting from the application of the above formulas exceeds the funds allocated to this scheme, the amount of support per beneficiary will be reduced proportionately.

(29) The Lithuanian authorities have explained that over-compensation is excluded due to the fact that the actual market price of the stocked products in the case of poultry and of the quantities actually sold in the case of eggs are taken into account in the formulas set out in recitals (25) and (27). The actual quantity of accumulated stock of poultry is multiplied by the price difference between the prices for chilled and frozen products. The loss is calculated by subtracting income that would have been gained from frozen production from the income that would have been gained if the same quantity had been sold as chilled product. In the calculation of the losses incurred by the undertakings as a result of the decrease in sales revenues, it is accepted that there are no avoided costs, as the undertakings that had to change the structure of the products - in order to continue production - incurred more storage costs. The quantification will be done directly on the basis of actual data. The Lithuanian authorities have concluded that, therefore, there is no need for a claw-back mechanism.

### 2.7.3. Administration of the measure

(30) The granting authority is the National Paying Agency under the Ministry of Agriculture of the Republic of Lithuania ((hereinafter, “the Agency”).

- (31) The time period in which beneficiaries can submit their applications for aid is from the approval of this scheme by the Commission until 4 December 2020. No aid is granted or paid out before the notification of the approval decision by Commission.
- (32) The amount of aid shall be calculated by the Agency on the basis of data submitted by the applicants.
- (33) Upon receipt of an application and verification that the applicant complies with the requirements set out in recitals (20) and (21), it will receive an advance payment of 50% on the amount of losses calculated in the application. After detailed verification of all conditions, the applicant will be paid the outstanding difference. A detailed control system will be operated by the Agency, comprising administrative checks of all applications and on-site inspections if the assessment raises doubts as to whether the documents are accurate, complete or whether the information submitted is correct. Undue amounts will be recovered.
- (34) Along with the application, the applicant will submit:
- a) Undertakings referred to in the first and second point of recital (10), a completed table containing data on quantities and prices of stored products;
  - b) Undertakings referred to in the third point of recital (10), a completed table of data on quantities and prices of eggs sold to the industry;
  - c) accounting documents substantiating the accuracy of the data provided in the application and forms ;
  - d) supporting documents (contracts, contract amendments, contract terminations, etc.) demonstrating that the reduced income is due to the COVID-19 pandemic;
  - e) other documents required for the administration and/or payment of aid.

## **2.8. Aid and aid intensity**

- (35) The aid intensity under the scheme in question is 100% of the damage as calculated in accordance with the formulas set out in recitals (25) and (27) respectively. The aid granted under the present scheme and any other payments to compensate for the losses as defined above must not exceed 100% of the amount of the losses incurred.

## **2.9. Cumulation**

- (36) Aid under the scheme cannot be cumulated with other aid for the same damage.
- (37) The compensation will be reduced by any other aid or benefits (including insurance benefits) received in respect of COVID-19 that relates to the same damage. In addition, other national aid related to COVID-19 will be deducted.



- (38) In Lithuania, there is no other aid scheme that pays for this type of damage. The Lithuanian authorities have confirmed that the scheme is not co-financed by any of the European Funds.

## **2.10. Other provisions**

- (39) Lithuania has informed the Commission that in order to comply with the transparency requirement the publication of the aid scheme and the individual aid awards above EUR 60 000 will be done through the following web page: <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>

## **3. ASSESSMENT**

### **3.1. Lawfulness of the aid**

- (40) The aid scheme was notified to the Commission on 28 May 2020. It has not been implemented yet. Therefore, Lithuania has complied with its obligation under Article 108(3) TFEU.

### **3.2. Existence of aid**

- (41) 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.
- (42) The measure is imputable to the State, since it is administered by the National Paying Agency under the Ministry of Agriculture of the Republic of Lithuania (recital (30)) and it is based on the national legal basis mentioned in recital (7). It is financed through State resources since it is financed by the State budget of Lithuania from funds borrowed on behalf of the Republic of Lithuania (recital (9)).
- (43) The measure confers an advantage on its beneficiaries in the form of a direct grant (recital (6)). The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.
- (44) The advantage granted under the measure is selective since it is awarded only to certain producers, in particular to producers active in the poultry and eggs sector (recital (11)).
- (45) The measure is liable to distort competition since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States since those beneficiaries are active in sectors in which intra-Union trade exists.
- (46) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU. The Lithuanian authorities do not contest that conclusion.

### 3.3. Compatibility of the aid

- (47) Since the measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. The Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU. This assessment has led to the following observations.
- (48) Under Article 107(2)(b) TFEU, aid shall be considered compatible with the internal market if it is found to make good the damage caused by natural disasters or exceptional occurrences.

#### 3.3.1. *The COVID-19 outbreak is an exceptional occurrence*

- (49) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Wuhan municipality in China at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but has also spread to the majority of countries worldwide, including all Member States. Outbreaks of novel virus infections among people are always a public health concern and can have a significant economic impact. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (50) The World Health Organization (“WHO”) has declared the risk that COVID-19 will spread and have a global impact to be very high. According to WHO reports and observations of the current situation, the spread of COVID-19 can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures need to be adopted.
- (51) On 11 March 2020, the WHO characterised the COVID-19 disease as a pandemic. The public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 virus determine the exceptionality of the circumstances. The rapidity of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption.<sup>4</sup> The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement.
- (52) In the course of March and April 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travels, closure of borders, closure of non-essential shops, obligation for companies to organise working from home for every position where this is possible and various social distancing measures. The Government of the Republic of Lithuania announced by resolution of 14 March 2020 (see recital (13)) a quarantine effective throughout its whole territory.

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<sup>4</sup> ECDC’s Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

- (53) In view of the above, this event qualifies as an exceptional occurrence, as it was not foreseeable and is clearly distinguishable from ordinary events, by its character and its effects on the affected producers and the economy in general, and therefore falls outside the normal functioning of the market.
- (54) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.<sup>5</sup>

3.3.2. *Causal link between the damage to be compensated for by the notified scheme and the COVID-19 outbreak*

- (55) The Court has held that only damages caused by natural disasters or exceptional occurrences may be compensated for under Article 107(2)(b) TFEU. It follows that there must be a direct link between the damage and the exceptional occurrence for which the State aid measure provides compensation and that an assessment as precise as possible must be made of the damage suffered by the beneficiary concerned.<sup>6</sup> The COVID-19 outbreak qualifies as an exceptional occurrence (see recitals (49) to (54)).
- (56) In that regard, the assessment has led to the following observations:
- (57) As a result of the COVID-19 outbreak, Lithuania imposed a quarantine throughout the territory of the Republic of Lithuania (recital (13)) to combat its further spread. That step led to the closure of the traditional, collective outlets for poultry and eggs producers, such as schools, crèches, sport clubs, hotels, cafes and restaurants, as well as public events where such goods are otherwise consumed in large quantities. Those measures were announced on 14 March 2020. They applied as from 16 March 2020. The quarantine as such applied until 16 June 2020 whilst some of the related containment measures were gradually and partly lifted, as regards the activities of restaurants, hotels and catering that were allowed to start again partially from 27 April 2020 for open spaces and from 18 May 2020 for enclosed spaces in respect of undertakings that could assure sufficient social distancing and other precautionary measures. However, schools remained closed, tourism continued to be forbidden, as well as the organization of any public or private events.
- (58) As put forward by the Lithuanian authorities, the sharp fall in demand resulting from the containment measures and the recommendation to work remotely caused a fall in prices. That fall was due to on-going production of poultry and eggs well above the level for which there was demand for them, which was unavoidable as their production could not be halted and had to continue even though hardly any turnover could be made. The producers concerned therefore accumulated large stocks of unsold products. Due to the perishability of poultry meat, the only alternative was to freeze that meat which has a much

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<sup>5</sup> See Commission Decision of 12 March 2020 in State aid case SA.56685 (2020/N) – Denmark – Compensation scheme for cancellation of events related to COVID-19, Commission Decision of 31 March 2020 in State aid case SA.56765 (2020/N) – France – CODIV-19 Moratoire sur le paiement de taxes et redevances aéronautiques en faveur des entreprises de transport public aérien sous licences d'exploitation délivrées par la France and Commission Decision of 24 April 2020 in State aid case SA.57061 (2020/N) – Sweden – Compensation for the damage caused by the COVID-19 outbreak to Scandinavian Airlines.

<sup>6</sup> See Joined Cases C-346/03 and C-529/03 *Atzeni and others* [2006] ECR I-1875, paragraph 79 and the case-law cited; Case C-73/03 *Spain v Commission*, judgment of 11 November 2004, paragraph 37.

lower value than fresh poultry meat. As concerns eggs, a large quantity had to be diverted for processing, which decreased its value by 29% (see recital (18)). The reduced value of the frozen poultry meat and the non-sale of the eggs, as well as the need to bear storage and transportation costs led to loss of income for the producers concerned.

- (59) In this regard, the Commission considers that, as put forward by the Lithuanian authorities and described in recital (23), given the specific production cycles in the poultry and eggs sector and the fact that the loss in value was exacerbated by the increase in storage and transportation costs, there was damage suffered by the beneficiaries in respect of the production during the quarantine period from 16 March to 16 June 2020 when poultry producers had to freeze the unsold poultry meat and process the unsold eggs due to perishability of the goods, causing a drop in price directly linked to the exceptional occurrence.
- (60) The direct link between the damage caused by the exceptional occurrence and the aid is therefore ensured.

### 3.3.3. *Proportionality of the aid measure*

- (61) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (62) As described in recital (24) above, the actual damage for the producers active in the slaughtering of poultry and processing of eggs is the increase in poultry stocks in the quarantine period between 16 March and 16 June 2020 and the loss of income due to the sale of frozen poultry instead of fresh poultry, as well as, as the case may be, by adding the losses suffered resulting from an increase in the quantity of eggs that had to be processed into egg powder.
- (63) As concerns undertakings engaged in sorting and packing eggs, the actual damage consists of the lower value of the increased quantity of eggs sold to the industry rather than for sale as fresh packed eggs (recital (26)). The Commission can accept the calculation of the amount of the damage to be compensated based on the formulas set out in recitals (25) and (27) respectively.
- (64) Bearing in mind that the compensation is limited by a maximum aid intensity (100%), the scheme ensures that there is no overcompensation for any of the sectors covered.
- (65) Furthermore, the Lithuanian authorities have put in place the following safeguards so that the compensation under the notified measure does not exceed what is necessary to make good the damage and thus meets the above-mentioned criteria.
- (66) First, the amount of compensation only covers the decrease in value of the products that could not be sold under normal circumstances as they would have been had the lockdown measures not been imposed.

- (67) Second, as described in recital (37), payments made to beneficiaries are net of any amount recovered through insurance or other sources for the same damage.
- (68) Third, as described in recital (34), the aid application must include supporting documents, such as contracts and contract amendments, of the real eligible costs for which the company applies for compensation. All applications accompanied by the relevant documentation are subject to administrative checks by the Agency. Moreover, on-site inspections will be carried out in case of doubts as to the correctness of the data submitted by the applicants.
- (69) Fourth, as described in recital (28), the scheme provides that the actual market price of the stocked products in the case of poultry and of the quantities actually sold in the case of eggs are taken into account in the calculation formulas set out in recitals (25) and (27).
- (70) Therefore, the Commission concludes that the scheme includes during its entire duration sufficient safeguards that the aid covers only damage caused by the governmental measures to stop the spread of COVID-19 and that the aid is proportional.

3.3.4. *Application of the specific provisions defined in the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020<sup>7</sup> (hereinafter "the Guidelines")*

- (71) As regards the notified aid scheme, the Guidelines specify, in particular in Part II, Chapter 1, Section 1.2.1.1: "*Aid to make good the damage caused by natural disasters or exceptional occurrences*", in which context and under what conditions aid with regard to natural disasters or exceptional occurrences is compatible with the internal market pursuant to Article 107(2)(b) TFEU. Point (327) of the Guidelines provides that such aid is considered compatible with the internal market if it fulfils the conditions laid down in that Section.
- (72) This scheme relates to aid in the agricultural sector, as mentioned by recital (10). Therefore, it is consistent with point 328 of the Guidelines.
- (73) As laid down in point 329 of the Guidelines, the notion of 'exceptional occurrence' referred to in Article 107(2)(b) of the Treaty must be interpreted restrictively.
- (74) Pursuant to point 330 of the Guidelines the Commission will continue assessing the proposals for the granting of State aid under Article 107(2)(b) TFEU on a case-by-case basis, taking into account its past practice in this field. The COVID-19 outbreak and the measures adopted by the Lithuanian authorities can be considered as an exceptional occurrence under Article 107(2)(b) TFEU as concluded in recital (54). The notified aid scheme has as an objective to compensate producers in the agricultural sector for the damage caused by the collapse in demand for their products, as a consequence of the measures taken in Lithuania to combat the COVID-19 pandemic. The notified scheme is assessed in accordance with the provisions laid down in point 330 of the Guidelines.

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<sup>7</sup> OJ C 204 of 1.7.2014, p. 1. Amended by the Notices published in OJ C 390, 24.11.2015, p. 4. OJ C 139, 20.4.2018, p. 3 and OJ C 403, 9.11.2018, p. 10.

- (75) Point 331(a) of the Guidelines lays down that the competent authority of the Member State must have formally recognised the character of the event as an exceptional occurrence. As concluded in recital (54), the Commission considers that the coronavirus outbreak qualifies as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU. As a result, the interventions by Lithuania to compensate for the damage linked to the outbreak are justified.
- (76) Point 331(b) of the Guidelines provides that there must be a direct causal link between the exceptional occurrence and the damage suffered by the producer. It follows from recital (60) that point 331(b) of the Guidelines is complied with.
- (77) Point 332 of the Guidelines is not relevant for the present case because the criteria on the basis of which the formal recognition referred to in point 331(a) is deemed to be granted, are not being established in advance.
- (78) As indicated in recital (6), according to the notified aid scheme, support will be directly paid to the beneficiaries in the form of direct grants, in compliance with point 333 of the Guidelines.
- (79) In line with point 334 of the Guidelines, it follows from recital (8) that the scheme will be established, and aid be granted, within the maximum delays set out in that point.
- (80) Since the notified aid scheme is not an ex-ante scheme, points 335 and 336 of the Guidelines are not applicable.
- (81) In accordance with point 337 of the Guidelines, it follows from recital (70) that the eligible costs are the costs of the damage which results from the exceptional occurrence, which will be assessed by a public authority.
- (82) The type of damage covered by this scheme, i.e. the loss of income in the poultry and eggs sector, is described in recital (5) and is consistent with point 338(b) of the Guidelines. Recitals (24) to (25), describing the calculation method for losses, demonstrate that the damage will be calculated at individual beneficiary level, as required under point 339 of the Guidelines.
- (83) Point 340 of the Guidelines is not applicable in the present case because the type of damage does not include material damage to assets.
- (84) Under the scheme, the damage is calculated on the basis of the loss of value of the products, by way of comparison with the average production during a reference period. As this is the result of prices and quantities of the products concerned this calculation is consistent with point 341 of the Guidelines.
- (85) Recitals (20) to (25) confirm that the scheme at hand only covers the damage that is related to the COVID-19 health measures. In addition, recital (34) provides for the submission of supporting documents, such as contracts and contract amendments, by the beneficiary for purposes of demonstrating that the loss in value of the products is due to the COVID-19 pandemic.

- (86) Point 342 of the Guidelines lays down that the aid amount may be increased by other costs incurred by the beneficiary due to the exceptional occurrence and it must be reduced by any costs not incurred because of the natural disaster or the exceptional occurrence which would otherwise have been incurred by the beneficiary. The notified scheme does not include other costs than the loss in value pursuant to point 338(b) of the Guidelines. Furthermore, the notified formulas set out in recitals (25) and (27) take account of the value of the increased quantity of products in storage. Therefore, the provisions of point 342 of the Guidelines are complied with.
- (87) The calculation of the loss of value in the poultry and eggs sectors (recitals (25) and (27)) is in line with point 341 of the Guidelines.
- (88) Points 343 and 344 of the Guidelines are not applicable in the present case.
- (89) The maximum aid intensity under the scheme is 100% (recital (35)) of the eligible costs. Any other compensation (including insurance payments), that is received for the same damage will be deducted from the compensation under the present scheme (recital (37)). Therefore the aid is proportionate, as already concluded above in section 3.3.3. Since compensation under the scheme respects the maximum percentage of 100% of the eligible costs, the condition of point 345 of the Guidelines is fulfilled.
- (90) The Commission also notes that the aid will not be granted to undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market (recital (12)).
- (91) By way of derogation from the general principle and in accordance with point (26) of the Guidelines, aid may be granted to undertakings in difficulty as defined in point (35)<sup>15</sup> of these Guidelines.
- (92) On the basis of the above-mentioned considerations, the notified aid scheme fulfils the applicable conditions of the Guidelines and is eligible for the derogation provided for in Article 107(2)(b) TFEU.

#### **4. CONCLUSION**

The Commission has accordingly decided not to raise objections to the amended aid scheme on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President

**CERTIFIED COPY**  
For the Secretary-General,

**Jordi AYET PUIGARNAU**  
Director of the Registry  
EUROPEAN COMMISSION