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**Subject: State Aid SA.58645 (2020/N) – Lithuania
COVID-19 related research, development and production support
scheme**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 16 September 2020, Lithuania notified an aid scheme supporting COVID-19 related research and development (“R&D”) and investments into production capacities for relevant products (“the measure”) under Sections 3.6 and 3.8 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)¹. By email of 30 September 2020 and 1 October 2020, Lithuania submitted additional information.
- (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

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, 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, by 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 and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

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Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) The measure is composed of two sub-measures and aims at supporting COVID-19 relevant R&D activities (sub-measure 1), as well as investments to create capacities for the production of products needed to respond to the COVID-19 outbreak (sub-measure 2). According to Lithuania, given the public health crisis and the shortage of certain related products, it is crucial that the State can provide incentives to companies to direct their activities to research on and production of certain products, which are crucial to address that crisis. Lithuania considers that the measure contributes to address the public health crisis.
- (4) Lithuania confirmed that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (5) The compatibility assessment of the measure is based on Article 107(3)(c) TFEU, in light of Section 3.6 and Section 3.8 of the Temporary Framework.

2.1. Legal basis

- (6) The legal basis for the measure is the Draft Order³ of the Minister of Economy and Innovation of the Republic of Lithuania “Description of the Financing Conditions of the Projects under the Measure No. 01.2.1-LVPA-T-858 “COVID-19 R&D” of Priority 1 “Promotion of Research, Experimental development and Innovation” of the Operational Programme for EU Structural Funds Investments for 2014-2020”⁴ (sub-measure 1) and the Draft Order⁵ of the Minister of Economy and Innovation of the Republic of Lithuania “Description of the Financing Conditions of the Projects under the Measure No. 03.3.1-LVPA-T-859 “COVID-19 products” of Priority 3 “Promotion of Competitiveness of Small and Medium-sized Enterprises” of the Operational Programme for EU Structural Funds Investments for 2014-2020”⁶ (sub-measure 2).

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

³ Date of entry into force after approval by the European Commission.

⁴ “*Isakymas dėl 2014–2020 metų Europos Sąjungos fondų investicijų veiksmų programos 1 prioriteto „Mokslinių tyrimų, eksperimentinės plėtros ir inovacijų skatinimas“ priemonės Nr. 01.2.1-LVPA-T-858 „COVID-19 MTEP“ projektų finansavimo sąlygų aprašo projekto patvirtinimo*”.

⁵ Date of entry into force after approval by the European Commission.

⁶ “*Isakymas dėl 2014–2020 metų Europos Sąjungos fondų investicijų veiksmų programos 3 prioriteto „Smulkią ir vidutinio verslo konkurencingumo skatinimas“ priemonės Nr. 03.3.1-LVPAT-859 „COVID-19 produktai“ projektų finansavimo sąlygų aprašas*”.

2.2. Administration of the measure

- (7) The Ministry of the Economy and Innovation of the Republic of Lithuania is responsible for administering the measure. The measure will be implemented by the Ministry, together with the Lithuanian Business Support Agency⁷ (“LVPA”).

2.3. Budget and duration of the measure

- (8) The estimated budget of the measure is EUR 61 million.
- (9) Aid will be granted within regional operational programmes and national operational programmes under the 2014-2020 programming period of the European Structural and Investment Funds (“ESIF”), and will be co-financed by the European Regional Development Fund (“ERDF”). The Lithuanian authorities confirm that the rules applicable to these funds will be respected.
- (10) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

2.4. Beneficiaries

- (11) The beneficiaries of the sub-measure 1 are SMEs and large enterprises⁸. The beneficiaries of the sub-measure 2 are only SMEs.
- (12) The measure is not open to undertakings that are active in the primary agriculture, fishery or aquaculture sectors or credit and financial institutions.
- (13) Aid may not be granted under the measure to medium⁹ and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)¹⁰ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER¹¹ on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid¹² or restructuring aid¹³.

⁷ “Lietuvos verslo paramos agentūra”.

⁸ As defined in Annex I to 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, OJL 187, 26.6.2014, p. 1.

⁹ Idem.

¹⁰ 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, OJL 187, 26.6.2014, p. 1.

¹¹ Idem.

¹² Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

¹³ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

2.5. Sectoral and regional scope of the measure

- (14) The measure is open to all sectors, except those identified in recital (12). It applies to the whole territory of Lithuania.

2.6. Basic elements of the measure

2.6.1. Sub-measure 1 “Aid for COVID-19 relevant research and development”

- (15) This aid is granted for COVID-19 relevant research, which includes but is not limited to research into vaccines, medicinal products and treatments, medical devices and hospital and medical equipment, disinfectants, and protective clothing and equipment, and into relevant process innovations for an efficient production of the required products. R&D projects having received a COVID-19-specific “Seal of Excellence” quality label under the Horizon 2020 SME instrument are also eligible for the aid.
- (16) The aid is granted in the form of direct grants by 31 December 2020.
- (17) For R&D projects started as of 1 February 2020 or for projects having received a COVID-19-specific Seal of Excellence, the aid is deemed to have an incentive effect.
- (18) Only costs directly related to and necessary for the R&D project during its duration and the subsequent intellectual property protection, clinical trial and regulatory procedures are eligible for aid.
- (19) The categories of research eligible for aid are industrial research and experimental development. The aid intensity for each beneficiary shall not exceed 80% of eligible costs for industrial research and experimental development. The aid intensity may be increased by 15 percentage points, if the research project is funded by more than one Member State or is carried out in cross-border collaboration with research organizations or other enterprises.
- (20) The maximum aid which may be granted for one project and one undertaking will be 1 million EUR.
- (21) The aid cannot be granted to undertakings carrying out contract research on behalf of other undertakings, for the work packages covered by the research contract.
- (22) The following costs are eligible¹⁴:
- a) personnel costs;
 - b) costs of instruments and equipment, including costs for digital and computer equipment, diagnostic tools, data collection and processing tools;
 - c) costs of buildings or premises for the duration of the R&D project;

¹⁴ The costs specified in recitals (22)b) and (22)e) together with depreciation costs of the assets, costs of R&D services purchased from outside sources at arm's length conditions and costs related to the acquisition of consultancy and equivalent services may not exceed 50% of the eligible costs.

- d) cost of contractual research and other relevant research services, including costs for digital and computing services;
 - e) costs of knowledge and patents bought or licensed from outside sources at arm's length conditions;
 - f) other operating expenses, e.g. the costs of materials;
 - g) additional overheads incurred directly as a result of the implementation of the R&D project¹⁵;
 - h) costs of obtaining or maintaining of the legal protection of inventions and other intangible assets related to the project;
 - i) costs of obtaining the conformity assessments or authorisations necessary for the marketing of inter alia new or improved medicinal products, vaccines, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment;
 - j) costs of pre-clinical and clinical trials (trial phases I-IV).
- (23) The costs related to Phase IV trials are eligible provided that they allow for scientific and technological advance.
- (24) The assets (instruments, equipment, etc.) which are not used for the entire duration of the R&D project and/or are used for purposes other than the R&D projects covered by the measure are only taken into account on a *pro rata* basis (depreciation over period of duration of R&D project or *pro rata* of the capacity used for the R&D project).
- (25) Beneficiaries of the aid undertake to grant non-exclusive licenses, under non-discriminatory market conditions, to third parties in the European Economic Area ("EEA").

2.6.2. Sub-measure 2 "Investment aid for the production of COVID-19 relevant products"

- (26) The purpose of the sub-measure is to promote investments in the production of COVID-19 relevant products. The supported activities are production of medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; production of medical devices, hospital and medical equipment (including ventilators, protective clothing and equipment as well as diagnostic tools) and necessary raw materials; production of disinfectants and their intermediary products and raw chemical materials necessary for their production; data collection / processing tools.
- (27) The aid is granted in the form of direct grants by 31 December 2020.
- (28) For projects started as of 1 February 2020, the aid is deemed to have an incentive effect.

¹⁵ Such costs when concerning rental costs of buildings or premises necessary for the implementation of the project together with indirect costs may not exceed 10% of the eligible costs allocated for the measure.

- (29) The investment project shall be completed within six months after the date of granting the aid. An investment project is considered completed when it is accepted by the national authorities as completed. Where the six-month deadline is not met, per month of delay, 25% of the amount of aid awarded in form of direct grants shall be reimbursed, unless the delay is due to factors outside the control of the aid beneficiary. The project may have started no earlier than on 1 February 2020.
- (30) Eligible cost for the production of COVID-related products will be investment costs necessary for the production of the COVID-19 relevant products and the costs of trial runs of the new production facilities.
- (31) The aid intensity will not exceed 80% of the eligible costs.
- (32) The aid intensity may be increased by 15 percentage points, if the investment is completed within two months after the date of granting the aid.
- (33) The maximum aid that may be granted for one project and one undertaking will be 1 million EUR. Large-scale projects co-financed from the EU Structural Funds are not eligible for funding.

2.7. Cumulation

- (34) The aid ceilings and cumulation maxima fixed under the measure will apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the ESIF.
- (35) The Lithuanian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations or the GBER provided that the provisions and cumulation rules of those Regulations are respected.
- (36) The Lithuanian authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other Sections of the Temporary Framework provided that the provisions in those specific sections are respected.
- (37) For aid for COVID-19 relevant R&D (sub-measure 1), the Lithuanian authorities confirm that aid granted under the measure may be combined with support from other sources for the same eligible costs, provided that the total amount of combined aid does not exceed the aid ceilings approved in the present decision. However, aid granted under this sub-measure cannot be cumulated with other aid granted to the same beneficiaries under Section 3.7 and Section 3.8 of the Temporary Framework, if the aid concerns the same eligible costs.
- (38) For aid for COVID-19 related products (sub-measure 2), the Lithuanian authorities confirm that aid granted under the measure will not be combined with other investment aid for the same eligible costs.

2.8. Monitoring and reporting

- (39) 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

above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁶).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (40) By notifying the measure before putting it into effect, the Lithuanian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State 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 Ministry of the Economy and Innovation of the Republic of Lithuania and it is based on the acts mentioned in recital (6). The measure is financed through State resources, since it is financed by public funds, including co-financing by Union funds (see recital (9)).
- (43) The measure confers an advantage on its beneficiaries in the form of direct grants (see recitals (16) and (27)). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (44) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, that are able to engage in COVID-19 relevant research and development or in the production of COVID-19 relevant products, irrespective of their sector of activity, excluding the primary agriculture, fishery and aquaculture sectors, and the financial sector (see recital (12)). Moreover, sub-measure 2 is also selective, since it is awarded only to SMEs.
- (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 aid within the meaning of Article 107(1) TFEU. The Lithuanian authorities do not contest that conclusion.

¹⁶ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014.

3.3. Compatibility

- (47) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (48) Pursuant to Article 107(3)(c) TFEU, the Commission may declare compatible with the internal market “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.
- (49) By amending the Temporary Framework on 3 April 2020, the Commission acknowledged the need to take specific temporary measures enabling Member States to address the health crisis caused by the COVID-19 outbreak. The measure aims at enhancing and accelerating COVID-19 relevant research and at facilitating the production of COVID-19 relevant products to address the current emergency health crisis. The measure has been designed to meet the requirements of the specific categories of aid (“Aid for COVID-19 relevant research and development”, and “Investment aid for the production of COVID-19 relevant products”) described in Sections 3.6 and 3.8 of the Temporary Framework.
- (50) The Commission accordingly considers that the measure contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to address the health crisis. In particular:
- (51) The sub-measure 1 meets all the conditions provided for by Section 3.6 of the Temporary Framework for COVID-19 relevant R&D:
- Aid granted under the sub-measure is limited to the eligible research areas listed in point 35 of the Temporary Framework (see recital (15)).
 - Aid is granted under the sub-measure in the form of direct grants and will not be granted after 31 December 2020, as shown in recital (16). The measure therefore complies with point 35(a) of the Temporary Framework.
 - For R&D projects started as of 1 February 2020 or for projects having received a COVID-19-specific Seal of Excellence, aid granted under the sub-measure is deemed to have an incentive effect. The sub-measure therefore complies with point 35(b) of the Temporary Framework.
 - Eligible costs are defined under the sub-measure in accordance with point 35(c) of the Temporary Framework (see recitals (22)-(25)). All costs necessary for the duration of the R&D aided project are eligible for aid under the measure.
 - The aid intensity for each beneficiary will not exceed 80% of eligible costs for industrial research¹⁷ and experimental development¹⁸. The sub-measure therefore complies with point 35(d) of the Temporary Framework (see recital (19)). The cooperation/collaboration bonus shall not exceed 15 percentage

¹⁷ As defined in paragraph (85) of Article 2 of the GBER.

¹⁸ As defined in paragraph (86) of Article 2 of the GBER.

points and its grant is limited in accordance with the conditions laid down by point 35(e) of the Temporary Framework (see recital (19)).

- Aid granted under the sub-measure may be combined with support from other sources for the same eligible costs, provided the total combined amount of aid does not exceed the aid ceilings laid down in points 35(d) and (e) of the Temporary Framework (see recital (37)).
- Beneficiaries of aid under the sub-measure will commit to grant non-exclusive licences under market conditions to third parties in other EEA states (see recital (25)). The measure therefore complies with point 35(g) of the Temporary Framework.
- Aid may not be granted under the measure to medium¹⁹ and large enterprises that were already in difficulty on 31 December 2019 (see recital ((13)). The measure therefore complies with point 35(h) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid²⁰ or restructuring aid²¹ (see recital ((13)). The measure therefore complies with point 35(h)bis of the Temporary Framework.

(52) The sub-measure 2 meets all the conditions provided for by Section 3.8 of the Temporary Framework for COVID-19 relevant products:

- Aid granted under the sub-measure is limited to the production of the COVID-19 relevant products listed in point 39(a) of the Temporary Framework (see recital (26)).
- Aid is granted under the sub-measure in the form of a direct grant by 31 December 2020 (see recital (27)). The measure complies with point 39(b).
- For investment projects started as of 1 February 2020, the aid granted under the sub-measure is deemed to have an incentive effect. The sub-measure therefore complies with point 39(c) of the Temporary Framework.
- Eligible investment projects must be completed within six months after the grant of the investment aid. If that deadline is not respected, the beneficiary will reimburse, 25% of the amount of the aid awarded per month of delay, unless the delay is due to factors outside the control of the beneficiary (see recital (29)). The sub-measure therefore compliance with point 39(d) of the Temporary Framework.
- Costs eligible for aid under the sub-measure consist of all investment costs necessary for the production of the products listed in point 39(a) of the Temporary Framework as well as the costs of trial runs of the new production facilities (see recital (30)). The aid intensity shall not exceed 80% of the eligible costs (see recital (31)). The sub-measure therefore complies with point 39(e) of the Temporary Framework.

- A bonus of up to 15 percentage points may be granted under the conditions laid down in point 39(f) of the Temporary Framework (*i.e.* if the investment is finalised within two months) (see recital (32)).
 - The cumulation of the aid granted under the sub-measure with other investment aid for the same costs shall not be permitted (see recital (38)). The measure therefore complies with point 39(g) of the Temporary Framework.
 - Aid may not be granted under the measure to medium²² and large enterprises that were already in difficulty on 31 December 2019 (see recital (13)). The measure therefore complies with point 39(i) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid²³ or restructuring aid²⁴ (see recital (13)). The measure therefore complies with point 39(i)bis of the Temporary Framework.
- (53) The Commission notes that also the following requirements of the Temporary Framework are met. In particular:
- (54) In line with point 16ter of the Temporary Framework, as mentioned in recital (4), aid under the measure will not be conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (55) The Lithuanian authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (see recital (39)). The Lithuanian authorities further confirm that the aid under the measure 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 (see recitals (36)).
- (56) The Lithuanian authorities also confirm that the rules under the by the European Regional Development Fund (“ERDF”) will be respected (see recital (9)).
- (57) In the light of the elements above, the Commission considers that the measure complies with the compatibility conditions laid down by the Temporary Framework. The Commission has taken due consideration of the common objective pursued by the measure and its positive effects on tackling the health crisis provoked by the COVID-19 outbreak when balancing those effects against the potential negative effects of the measure on the internal market. The Commission concludes that those positive effects of the measure outweigh its potential negative effects on competition and trade.

²² As defined in Annex I to the GBER.

4. CONCLUSION

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

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