



EUROPEAN COMMISSION

Brussels 26.2.2021  
C(2021) 1459 final

PUBLIC VERSION

This document is made available for  
information purposes only.

**Subject: State Aid SA.61815 (2021/N) – Lithuania  
COVID-19: Prolongation of and amendments to the scheme  
SA.57008 (2020/N) – COVID-19: Aid Fund for Business**

Excellency,

## **1. PROCEDURE**

- (1) By electronic notification of 19 January 2021, Lithuania notified a set of amendments (“the measure”) to the scheme implementing an aid fund for business (“the existing scheme”) approved by Commission Decision of 26 May 2020<sup>1</sup> (“the initial decision”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).<sup>2</sup> The existing scheme was already amended once

---

<sup>1</sup> Commission Decision of 26 May 2020 in SA.57008 (2020/N), OJ C 228, 10.7.2020, p. 1.

<sup>2</sup> 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, 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, by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the

Mr. Gabrielius Landsbergis  
Užsienio Reikalų Ministerija  
J. Tumo-Vaižganto g. 2  
LT-01511 Vilnius  
Lietuvos Respublika

by Commission Decision of 17 December 2020 under case SA.60096<sup>3</sup> (“the first amendment decision”).

- (2) Lithuania exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958<sup>4</sup> and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURE**

- (3) Lithuania intends to modify the existing scheme approved by the Commission on 26 May 2020 as described in Section 2.2 of this Decision.
- (4) As was the case also for the existing scheme, the measure 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) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Section 2, Section 3.3 and Section 3.11 of the Temporary Framework.

### **2.1. The existing scheme**

- (6) The existing scheme consists of two measures providing for State aid in the form of loans and purchase of debt securities (Measure A), and hybrid and equity instruments (Measure B) (recital (7) of the initial decision).
- (7) The initial decision authorised the granting of aid under the existing scheme until 31 December 2020. This time period was extended to 30 June 2021 for Measure A and 30 September 2021 for Measure B by the first amendment decision.
- (8) Both measures are implemented by a fund established by the Lithuanian State. This fund received/will receive capital from a private limited liability company established by the State through the Ministry of Economy and Innovation of the Republic of Lithuania, and from private investors participating in the scheme. The principles governing the functioning of the fund, including the remuneration of the fund managers and the risk-sharing arrangements between the State and the private investors are described in recitals (10) to (20) of the initial decision.

---

Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p.1, and Communication from the Commission C(2021) 564 final of 28 January 2021 on the Fifth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 34, 1.2.2021, p. 6.

<sup>3</sup> Commission Decision C(2020) 9046 final of 17 December 2020 in SA.60096 (2020/N).

<sup>4</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

- (9) The existing scheme provides for a specific remuneration of the fund manager<sup>5</sup>, in particular by way of a management fee equal to 2% of the invested capital per annum during the investment period (i.e. in the period the fund is making investments) if the invested capital is up to EUR 100 million, and 1% of the invested capital per annum if the invested capital exceeds EUR 100 million (recital (16) of the initial decision).
- (10) The final beneficiaries of both measures are medium-sized<sup>6</sup> and large undertakings active in Lithuania that fulfil certain conditions (recital (23) of the initial decision).
- (11) Under the existing scheme and for both measures, aid shall only be granted:
- (a) 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 (recital (26) of the initial decision);
  - (b) 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 (recital (25) of the initial decision).
- (12) Under Measure A, the fund provides loans and purchase debt securities that meet certain conditions, in particular, 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 certain types of beneficiaries only, an amount corresponding to the undertakings' liquidity needs for the 12 or 18 months for large companies and small and medium-sized enterprises ("SMEs") respectively (recital (21)(d) of the initial decision).
- (13) Under Measure B, the fund provides aid in the form of equity instruments and hybrid instruments that met certain conditions, in particular:
- (a) Hybrid instruments 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, have a conversion option for the State at maturity in case of non-repayment or at predetermined events and have a minimum remuneration in line with the levels set out in point 66 of the Temporary Framework (recital (22)(h) of the initial decision);

---

<sup>5</sup> The Fund manager responsible for managing the fund is 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 undertaking (recital (11) of the initial decision).

<sup>6</sup> 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.

- (b) A mandatory requirement to carry out an independent valuation as a prerequisite in case of investment in debt instruments that have or may have an equity component (recital (22)(g) of the initial decision).

## **2.2. The proposed amendments**

### *Extension of the duration of the scheme*

- (14) On 28 January 2021, the Commission adopted a Communication<sup>7</sup> prolonging until 31 December 2021 the validity of the Temporary Framework, which would otherwise expire on 30 June 2021, except for recapitalisation measures that could be granted until 30 September 2021. The validity of the Temporary Framework, including recapitalisation measures, has been prolonged to 31 December 2021.
- (15) Under the existing scheme, as amended by the first amendment decision, aid could only be granted until 30 June 2021 for Measure A and 30 September 2021 for Measure B.
- (16) The proposed amendment aims at extending both these periods until 31 December 2021, in line with the prolongation of the Temporary Framework. The Lithuanian authorities indicate that this prolongation is required as the impact of the COVID-19 outbreak continues to affect the economy adversely.

### *Extension of the scope of the final beneficiaries*

- (17) Under the existing scheme, the final beneficiaries of both measures are medium-sized and large undertakings (recital (10)).
- (18) The proposed amendment aims at extending the scope of final beneficiaries to small companies<sup>8</sup> that, at the time of granting the aid, have more than 50 employees. The Lithuanian authorities explain that the delineation between small and medium companies does not allow the fund to address liquidity needs of companies that would, at the time of granting the aid, comply with the thresholds to qualify as medium-sized company, but are not yet formally recognised as such as per application of the related definition<sup>9</sup>.

### *Change of conditions to receive aid under Measure A*

- (19) Under the existing scheme, the final beneficiaries for both measures are subject to additional conditions related to the impact of a failure of the final beneficiary on the economy or the risk for the final beneficiaries to go out of business or face serious difficulties to maintain their operations without the support (recital (11)).

---

<sup>7</sup> Communication from the Commission C(2021) 564 final of 28 January 2021 on the Fifth Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 34, 1.2.2021, p. 6.

<sup>8</sup> 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.

<sup>9</sup> To qualify as medium-sized enterprises, a company must comply with the thresholds set out in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises for the last two years, i.e. with a time lag compared to the current shape of the company.

- (20) The proposed amendment aims at clarifying that these conditions will no longer be required in the context of Measure A, and should therefore only apply for aid granted under Measure B. The Lithuanian authorities indicate that these conditions, while being adequate and necessary for recapitalisation measures under Measure B (as also foreseen in the Temporary Framework), are not appropriate in case of loans and ordinary debt securities as they reduce disproportionately the ability of final beneficiaries to access Measure A.

*Adjustment of the maximum loan amount under Measure A*

- (21) Under the existing scheme, the maximum loan amount is defined in reference to the beneficiaries' annual turnover or liquidity needs, in certain cases (recital (12)).
- (22) The proposed amendment aims at complementing the indicators used to define the maximum loan amount for aid in the form of senior loans and debt securities (i.e. not in the case of subordinated instruments) by also referring to, in line with point 27(d)(i) of the Temporary Framework, the double annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2019 or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation.

*Removal of requirement to conduct independent valuation for certain hybrid instruments under Measure B*

- (23) Under the existing scheme, aid in the form of hybrid instruments must be granted on the basis of an independent valuation (recital (13)).
- (24) The proposed amendment aims at removing the requirement to always conduct an independent valuation for all hybrid instruments provided under the measure as a prerequisite for granting the aid. The Lithuanian authorities indicate that the varying nature of hybrid instruments make it sometimes irrelevant to perform such independent valuation and create additional administrative delays and costs that hamper the deployment of the measure. In this context, where the construction of the hybrid instrument requires it, the fund would remain able to request independent valuations to proceed with the granting of aid.

*Adjustment of the remuneration of the fund manager*

- (25) Under the existing scheme, the remuneration of the fund manager is set based in particular on a fixed management fee equal to 2% or 1% per annum of the invested capital during the investment period (recital (9)).
- (26) The proposed amendment aims at adjusting the remuneration of the fund manager by making it closer to market practices<sup>10</sup> for funds operating in the Lithuanian market, using as a reference the capital committed by the investors, being public

---

<sup>10</sup> For example: "[The 2017 Preqin Private Capital Fund Terms Advisor is the ultimate guide to private capital fund terms and conditions](#)". Management fees during the investment period are predominantly calculated as a percentage fee applied to the commitments made to the investment vehicle. The reasoning behind this is that the principal aspect of the workload of a fund manager is the search for investments, and this is driven by the size of total commitments to the fund rather than the amount invested at this stage of the fund's lifetime (page 7).

or private, and not the capital actually invested by the fund. The levels of the remuneration of 2% per annum if the committed capital is up to EUR 100 million and 1% per annum if the committed capital exceeds EUR 100 million remain unchanged. The Lithuanian authorities indicate that this amendment also aims at ensuring that the remuneration of the fund manager reflects the costs incurred from its establishment and related to the analysis of the funding requests by applicants during the investment period.

### **2.3. Legal basis and other elements of the existing scheme**

- (27) The legal basis for the measure is the Order amending Order no. 4-837 / 1k-319 on the approval of the description of the activity on the measure “Aid Fund for Business” of 30 September 2020 by the Minister of Economy and Innovation of the Republic of Lithuania and the Minister of Finance of the Republic of Lithuania. This Order will be approved following the notification of the Commission’s approval.
- (28) All the other elements of the existing scheme (administration of the existing scheme, budget, sectorial and regional scope, cumulation, monitoring and reporting) remain unchanged.
- (29) The Lithuanian authorities also confirm that the aid under the scheme is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the European Economic Area (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.

## **3. ASSESSMENT**

### **3.1. Lawfulness of the measure**

- (30) 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**

- (31) 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.
- (32) The qualification of the existing scheme as State aid was established in the initial decision. The Commission refers, for this analysis, to the initial decision with regard to the existence of aid to the final beneficiaries (recitals (41) to (44)), to the private investors (recitals (45) to (48)) and to the fund (recitals (49) to (52)).
- (33) In addition, the Commission notes that the amendment of the calculation basis of the management fees (recital (26)) does not affect the conclusion of the Commission with respect to the possible existence of aid at the level of fund

manager. In particular, the Commission notes that the use of a calculation basis for the management fee during the investment period based on the committed capital is a usual practice in traditional private equity funds operating in the Lithuanian market, as already highlighted in recital (56) of the initial decision. The Commission takes note of the additional references provided by Lithuania (recital (26)) and of the objective of the Lithuanian authorities to align the remuneration of the fund manager to market practices, considering the possible discrepancy during the investment period between committed and actually invested capital despite the materialisation of costs linked to the establishment of the fund and the analysis of investment prospects. As a result, the Commission's assessment with regard to the possible aid to the fund manager as set out in recitals (53) to (58) of the initial decision remains unchanged.

- (34) The Commission concludes that the measure does not affect the assessment that the existing scheme, as amended under the measure, constitutes State aid within the meaning of Article 107(1) TFEU as set out in the initial decision. The Lithuanian authorities do not contest that conclusion.

### **3.3. Compatibility**

- (35) The Commission has examined the existing scheme on the basis of Art. 107(3)(b) TFEU and, where appropriate, pursuant to the requirements of specific categories of aid ("Aid in the form of subsidised interest rates for loans", "Aid in the form of recapitalisation measures") described in Sections 3.3 and 3.11 of the Temporary Framework.
- (36) The Commission refers to its compatibility analysis as set out in:
- (a) recitals (69) to (82) of the initial decision I to the compatibility of aid to the private investors;
  - (b) recitals (83) to (95) of the initial decision linked to the compatibility of aid to the fund, and
  - (c) recitals (96) to (102) of the initial decision linked to the compatibility of the possible aid to the fund manager.
- (37) As regards the amendments to the existing scheme notified under the measure, that relate to the compatibility of aid to the final beneficiaries:
- (a) The extension of the duration of the scheme to 31 December 2021 is in line with the prolongation of the Temporary Framework adopted by the Commission in its Communication of 28 January 2021 (recital (14)).
  - (b) The extension of the scheme to final beneficiaries that qualify as SME and that have more than 50 employees at the time of granting the aid does not affect the compatibility of the decision. The Commission notes that this amendment is required in order to enhance the functioning of the scheme.
  - (c) The change of conditions to received aid under Measure A, by removing additional conditions related to the impact of a failure of the final beneficiary on the economy or the failure of the final beneficiary to the extent of going out of business or facing serious difficulties to maintain

their operations, does not affect the compatibility of the decision. The Commission notes that these conditions are not mandatory for measures assessed under Section 3.3 of the Temporary Framework, such as Measure A. The Commission also notes that this amendment does not apply to aid granted under Measure B, assessed under Section 3.11 of the Temporary Framework.

- (d) The adjustment of the criteria used to define the maximum loan amount under Measure A, by adding a reference to the wage bill of the beneficiaries, complies with the point 27(d)(i) of the Temporary Framework. The Commission also notes that this adjustment is not applicable to aid granted in the form of subordinated instruments.
  - (e) The adjustment of the requirement to carry out an independent valuation for certain hybrid instruments under Measure B does not affect the compatibility of the decision. The Commission notes that the conditions of the hybrid instruments notified by Lithuania have not changed compared to the initial decision, and refers to its assessment 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 (recital (66)(b) twelfth indent of the initial decision). The Commission also notes that such requirement to carry out independent valuation in this context is not a precondition set by Section 3.11 of the Temporary Framework (points (65) to (70)) for aid granted in the form of hybrid instruments, and that the fund remains able to request an independent valuation as a precondition if it is deemed necessary.
- (38) The Commission notes that there are no other alterations to the existing scheme apart from the proposed amendments described in recitals (14) to (26).
- (39) The Commission considers that these limited modifications to the existing aid scheme meet the conditions of the Temporary Framework and do not alter the Commission's conclusions on the compatibility of the existing scheme in the initial decision and in the first amendment decision.



#### 4. CONCLUSION

The Commission has accordingly decided not to raise objections to the measure 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.

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

