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**Subject: State Aid SA.60632 (2020/N) – Lithuania
COVID-19: Deferral of tax payments**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 22 December 2020, Lithuania notified aid in the form of deferral of tax payments (the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).¹

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, 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 and 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 Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

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- (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 1/1958² and to have this Decision adopted and notified in English. Lithuania further confirmed that the notification does not contain any confidential information.

2. DESCRIPTION OF THE MEASURE

- (3) Lithuania considers that the COVID-19 outbreak has started to affect the real economy. The measure forms 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 outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (4) On 14 March 2020, the Lithuanian government adopted Resolution No. 207 to announce containment measures including prohibition or restriction of certain economic activities. Pursuant to this Resolution the State Tax Inspectorate compiled a list of 243 economic activities, affected by the COVID-19 outbreak (the “*List of Affected Activities*”) and adopted the current measure.
- (5) 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.
- (6) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.9 of the Temporary Framework.

2.1. The nature and form of aid

- (7) The measure provides aid in the form of deferrals or staggering of the payment of tax obligations, exemptions from payment of interest on the deferred or staggered amounts and suspension of recovery procedures for tax arrears.

2.2. Legal basis

- (8) The legal basis for the measure is Order No VA-27 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 26 March 2020 “On the Aid Measures for Taxpayers Affected by Negative Effects of Coronavirus (COVID-19)” (as amended).

2.3. Administration of the measure

- (9) The State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania is responsible for administering the measure.

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

2.4. Budget and duration of the measure

- (10) The Lithuanian authorities estimate that about EUR 156 million will be granted as an advantage under the measure.
- (11) Aid may be granted under the measure until no later than 30 June 2021. The tax payments may be deferred or staggered until 31 December 2022 at the latest.

2.5. Beneficiaries

- (12) The final beneficiaries of the measure are SMEs and large enterprises³. However, undertakings in bankruptcy or restructuring proceedings are excluded as eligible beneficiaries. Credit and financial institutions will not be beneficiaries of the measure.

2.6. Sectoral and regional scope of the measure

- (13) The measure applies to the whole territory of Lithuania. It is in principle open to undertakings in all sectors affected by the COVID-19 outbreak except credit and financial institutions.

2.7. Basic elements of the measure.

- (14) In practice, the State Tax Inspectorate maintains a *List of Affected Activities*⁴ and taxpayers carrying out at least one such economic activity are automatically added to the list of "Legal entities subject to tax aid measures for COVID-19 without a need to file a request" (the "*List of affected entities without request*"). Such taxpayers are subject to assessment of whether they have actually suffered adverse effects due to COVID-19 (risk assessment).⁵
- (15) Taxpayers who have been adversely affected by the COVID-19 pandemic, but are not included in the *List of affected entities without a request*, may submit an individual application for aid measures to the State Tax Inspectorate in order to be included in the list of "Legal entities that upon request are subject to tax aid measures for COVID-19" (the "*List of affected entities by request*"). They are subject to a risk assessment and are attributed a risk assessment score.
- (16) If the risk assessment score is high, the taxpayer needs to provide data and documents illustrating the experienced adverse effects due to COVID-19. On this basis, the financial condition of the taxpayer and the impact of COVID-19 are assessed (assessment of affectation by COVID-19).⁶

³ 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, OJ L 187, 26.6.2014, p. 1 ("GBER").

⁴ The list of sectors particularly affected by the COVID-19 outbreak is published on the website of the State Tax Inspectorate: <https://www.vmi.lt/evmi/en/informacija-verslui>.

⁵ Annex 2 (List of criteria for assessment of the riskiness of a legal entity) to the Minutes of the meeting of the risk and quality management committee of 9 June 2020.

⁶ Annex 1 (Assessment of the potential impact of COVID-19 on the financial situation of taxpayers) to the Minutes of the meeting of the risk and quality management committee of 9 June 2020.

- (17) Taxpayers who are listed in the *List of affected entities without request* and the *List of affected entities by request* (and have successfully passed the assessment of affectation by COVID-19, where applicable) are eligible for aid under the measure (“eligible taxpayers”).
- (18) Eligible taxpayers can benefit from the aid measures listed below:
- (a) Conclusion or amendment of tax loan agreements under a Simplified procedure
Subject to a tax loan agreement (TLA) between the tax administration and a taxpayer, the payment of tax arrears can be deferred or staggered into instalments. Under the measure, eligible taxpayers can apply for the conclusion or the amendment of a TLA without submitting the additional documents that are otherwise required⁷ and are presumed to meet the condition for the conclusion of a TLA.
 - (b) Exemption from interest
No interest accrues for late payment of tax obligations over the period between 16 March 2020 and 30 June 2021. In addition, deferred or staggered tax obligations under TLAs concluded or amended after 16 March 2020 shall not be subject to interest for late payment for their entire term of validity, or until 31 December 2022 whichever is the earliest.
 - (c) Suspension of recovery procedures
No recovery proceedings will take place between 16 March 2020 and 30 June 2021 for unpaid tax obligations.
- (19) The benefit of those aid measures can be granted from 16 March 2020 until 30 June 2021, at the latest (according to the notified planned extension of the term of application of the measure⁸).

2.8. Cumulation

- (20) The Lithuanian authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations⁹ or the GBER, the Agricultural

⁷ E.g. documents showing that the taxpayer may face difficulties if he pays tax arrears immediately.

⁸ Project for an Order of the Head of the State Tax Inspectorate under the Ministry of Finance (attachment 8 to the notification).

⁹ 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, 26.4.2012, p. 8).

Block Exemption Regulation (“ABER”)¹⁰ and the Fisheries Block Exemption Regulation (“FIBER”)¹¹ provided the provisions and cumulation rules of those Regulations are respected.

- (21) The Lithuanian authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (22) 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 the provisions in those specific sections are respected.

2.9. Monitoring and reporting

- (23) The Lithuanian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (*e.g.*, by 30 June 2021, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (24) The Commission observes that Lithuania has started to grant aid under the measure before the Commission’s approval. The Commission regrets that Lithuania introduced the measure before the Commission has adopted its decision, in breach of Article 108(3) of the TFEU.

3.2. Existence of State aid

- (25) 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.
- (26) The measure is imputable to the State, since it is granted pursuant to Order No VA-27 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 26 March 2020 “On the Aid Measures for Taxpayers Affected by Negative Effects of Coronavirus (COVID-19)” (as amended) and it is

¹⁰ 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, 1.7.2014, p. 1.

¹¹ 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, 24.12.2014, p. 37.

administered by the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania. It is financed through State resources, since it is financed by public funds.

- (27) The measure confers an advantage on its beneficiaries in the form of deferral or staggering of tax payments, with exemption from interest for late payment and suspension of recovery proceedings. The measure thus relieves those beneficiaries of costs (interest), which they would have had to bear under normal market conditions.
- (28) The advantage granted by the measure is selective since it is granted only to certain undertakings, notably the taxpayers listed in the *List of affected entities without request* and the *List of affected entities by request* (subject to a risk assessment by the Lithuanian authorities and demonstration of the adverse effects due to COVID-19) (recital 17). In addition, credit and financial institutions as well as undertakings in a bankruptcy or restructuring proceeding are excluded from the benefit of the notified measure. The measure derogates from the general rules for payment of tax obligations, accrual of interest on delayed payments and recovery proceedings for unpaid obligations. It therefore discriminates in favour of its beneficiaries as compared to undertakings in a comparable factual and legal situation, which are subject to the same tax system. The Lithuanian authorities have not provided any justification for that discrimination based on the nature or the general scheme of the tax system. Accordingly, the tax advantage is selective.
- (29) 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.
- (30) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (31) 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.
- (32) 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*”.
- (33) 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*”.
- (34) The measure aims at preserving the liquidity of undertakings affected by the outbreak of COVID-19 and keeping these undertakings viable at a time when the normal functioning of 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.

- (35) The measure is one of a series of measures conceived at national level by the Lithuanian authorities to remedy a serious disturbance in their economy. The importance of the measure to preserve economic continuity is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the entire Lithuanian economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Aid in the form of deferral of tax payments*”) described in section 3.9 of the Temporary Framework.
- (36) The Commission accordingly considers that the measure meets all the conditions of the Temporary Framework. In particular:
- The measure provides for a form of aid explicitly covered by section 3.9 of the Temporary Framework, i.e. deferral of payments due in instalments, easier access to tax debt payment plans and of the granting of interest free periods, as well as suspension of tax debt recovery.
 - The measure assists undertakings that are particularly affected by the COVID-19 outbreak, e.g. undertakings active in sectors particularly affected by the measures ordered by the Lithuanian government and mentioned in the list compiled by the State Tax Inspectorate (see recitals 4, 14 and 15 above). By deferring the payment of taxes, allowing easier access to tax debt payment plans and granting interest free deferral, the measure eases the liquidity constraints faced by those undertakings due to the COVID-19 outbreak and contributes to preserving the continuity of their economic activities.
 - Aid granted under the measure will be granted before 30 June 2021, and the end date of the deferrals will be 31 December 2022 at the latest (see recital 11). The measure therefore complies with point 41 of the Temporary Framework.
- (37) The Lithuanian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital 23). 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 (recitals 20-22).
- (38) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

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)(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