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PUBLIC VERSION

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**Subject: State Aid SA.60977 (2021/N) – Lithuania
Amendment to SA.60308 – “COVID-19: Subsidies for Enterprises”**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 6 January 2021, Lithuania notified amendments to the State aid scheme SA.60308 “*COVID-19: Subsidies for enterprises*” (“the existing scheme”), which was approved by the Commission by its Decision of 22 December 2020¹ (“the initial decision”), in the context of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).²
- (2) The existing scheme provides aid in the form of direct grants in limited amounts to eligible enterprises severely affected by the COVID-19 outbreak in the territory of Lithuania. The notified modification (“the Measure”) amends some of the requirements to be met by the beneficiaries of the existing aid scheme.

¹ Commission Decision C(2020) 9618 final.

² 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 last 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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- (3) Lithuania exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958³ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

- (4) Lithuania considers that the COVID-19 outbreak has affected the real economy, limited liquidity and availability of funds, and put at risk the jobs of workers and employees of undertakings that have suspended partially or entirely their activities due to the state of emergency and containment measures enforced by the national authorities. In particular, the Lithuanian authorities have imposed a lockdown regime as of 7 November 2020, which has already been extended until at least 31 January 2021. In this context, Lithuania intends to modify the initial scheme in order to ensure that it remains suitable and appropriate to achieve its objective to support the national economy throughout the current economic and health crisis.

2.1. Legal basis

- (5) The legal basis of the notified amendments is the Draft Resolution of Government of the Republic of Lithuania “On the Approval of the Description of the Procedure for Allocating and Using Funds of the Measure “Subsidies for Enterprises affected by COVID-19”, which will enter into force following the notification of the present decision to Lithuania.

2.2. Notified amendments

- (6) The amendments concern certain eligibility conditions of the beneficiaries of the existing scheme. The modifications are explained in the recitals (7) to (12). All other eligibility conditions not explicitly mentioned in those recitals remain unchanged.
- (7) Recital (12)(b) of the initial decision is replaced by the following: Their annual income for 2019 did not exceed EUR 50 000 000 or the book value of its assets (as reflected in the balance sheet of 31 December 2019) did not exceed EUR 43 000 000. For these thresholds, the financial figures of the linked enterprises operating in Lithuania⁴ will be taken into account.
- (8) Recital (12)(c) of the initial decision is replaced by the following: on 1 January 2021 and on the first day of the month in which the application is submitted, the beneficiaries must have at least one employee⁵, or be the owner of the sole proprietorship (or the manager of the sole proprietorship appointed by the owner

³ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁴ The notion of “linked enterprises” is defined in the national legal basis.

⁵ For the purposes of the measure, an employee is defined as a natural person working under an employment contract for remuneration. The number of employees shall not include: women who have been granted maternity leave and persons granted parental leave until the child reaches the age of three.

of the sole proprietorship in the case of a civil contract), or manager of the small partnership (or a representative of the small partnership), or general member of the general partnerships and limited partnerships (natural person).

- (9) Recital (12)(d) of the initial decision is replaced by the following: on the date when the application for aid is filled and on the date when the lists of eligible applicants are drawn up, the beneficiaries must meet the minimum criteria of a reliable taxpayer set out in Article 40¹ of the Law on Tax Administration of the Republic of Lithuania⁶.
- (10) Recital (12)(e) of the initial decision is replaced by the following: on the date when the application for aid is filed and on the date when the lists of eligible applicants are drawn up, the beneficiaries must not be the addressees of a reorganization, participating in reorganization or reorganizing; they must not be participating in separation; they must not be bankrupt; they must not be liquidated or liquidated due to bankruptcy; they must not participate in cross-border merger.
- (11) The following eligibility requirement of the beneficiaries is added to the existing aid scheme: the beneficiaries must have submitted their yearly financial statement of 2019 to the Register of Legal Entities, in accordance with national legislation. If the beneficiary has linked Lithuanian enterprises, the latter must also have submitted their yearly financial statement of 2019 to the Register of Legal Entities. If the beneficiaries' (or its linked enterprise's) fiscal year differs from the calendar year, then the last available annual financial statement must be submitted to the Register of Legal Entities.
- (12) In addition to recitals (7)(8) to (11), the notified amendments also cover the eligibility conditions laid down in recital (15) of the initial decision according to which the beneficiaries are divided in two categories, as follows:
 - (a) Enterprises must have experienced a turnover decline of more than 30%⁷ on a year-on-year basis during a COVID-19-related quarantine period announced by the Lithuanian government ("Category 1"). In addition, those enterprises must have paid or credited at least a part of the amount of the withholding personal income tax liability⁸ for the tax period of 2019.

⁶ The Lithuanian authorities submit that the criteria for a reliable taxpayer relate to violations of tax, criminal and administrative law (e.g., one of the criteria is that the taxpayer has not been punished for non-recorded income and the tax authority did not calculate taxes amounting to more than EUR 15 000 for this infringement). Taxpayers who fulfil those criteria are considered reliable taxpayers, while those who do not suffer the consequences of not qualifying as such (e.g. non-reliable taxpayers are not allowed to participate in public procurement proceedings).

⁷ The 30% turnover decline will be established on the basis of information submitted by the beneficiaries, as stipulated in detail in national legislation.

⁸ The "withholding personal income tax" (in Lithuanian: "*gyventojų pajamų mokestis*") is laid down in Article 23 of the Law of the Republic of Lithuania on Income Tax for Individuals. The Lithuanian authorities submit that it is a withholding tax, calculated on the basis of wage costs and paid by the employer on behalf of the employees. The amount paid or credited will be established in the basis of the relevant tax declarations, as stipulated in detail in national legislation.

- (b) Enterprises must be established in the previous year, and in particular during a period to be defined by the Lithuanian government; additionally they must have generated no income during the quarantine period on a year-on-year basis and their main economic activities must be included in the List of Economic Activities that are Directly and Indirectly Restricted Due the Quarantine⁹ (“Category 2”).
- (13) All other definitions, conditions and commitments of the existing aid scheme, as set out in the initial decision, will continue to apply without any further modification. This includes, but is not limited to, the maximum amounts and form of the aid, the sectoral, regional and temporal scope, the basic elements of the scheme, as well as the cumulation, monitoring and reporting obligations.

3. ASSESSMENT

3.1. Lawfulness

- (14) By notifying the amendments to the existing aid scheme before putting them into effect (recital (5)), the Lithuanian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (15) 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.
- (16) The existing aid scheme constitute State aid within the meaning of Article 107(1) TFEU for the reasons set out in the initial decision. The proposed modifications do not affect that conclusion. The Commission therefore refers to the assessment of the initial decision (see recitals (27) to (32) of that decision) and concludes that the scheme as modified constitutes State aid in the meaning of Article 107(1) of the TFEU. The Lithuanian authorities do not contest that conclusion.

3.3. Compatibility

- (17) In the initial decision, the Commission declared the existing aid scheme compatible under Article 107(3)(b) of the TFEU, since it met all relevant conditions of the Temporary Framework.
- (18) The Commission refers to its analysis of compatibility as set out in the initial decision (see recitals (33) to (38) of that decision). After examining the modifications, the Commission notes that the notified amendments do not alter the Commission’s conclusion on the compatibility of the respective scheme set out in the initial decision.

⁹ The List of Restricted Economic Activities has been approved by the Order No. 4-1171/A1-1301 of 30 December 2020 of the Minister of the Economy and Innovation of the Republic of Lithuania and the Minister of Social Security and Labour of the Republic of Lithuania. The Lithuanian version is available there: <https://www.e-tar.lt/portal/lt/legalAct/67d781c04a8311eb8d9fe110e148c770>.

- (19) The Commission therefore considers that the notified amendments are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since they meet all the relevant conditions of the Temporary Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified amendments to the existing aid scheme on the grounds that they are 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