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**Subject: State Aid SA.100014 (2021/NN) – Lithuania  
COVID-19: Deferral of import excise duties and VAT**

Excellency,

## **1. PROCEDURE**

- (1) By electronic notification of 17 September 2021, Lithuania notified aid in the form of a simplified procedure for an interest-free deferral of tax arrears on import VAT and excise duties charged upon release for consumption in case of import of excise goods (“import excise duties”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).<sup>1</sup> On 7 October 2021, Lithuania submitted its reply to a request for information by the Commission services. In addition, during a conference call held on 22 October 2021, the Lithuanian authorities provided 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

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<sup>1</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 Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 of 18 November 2021.

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Article 3 of Regulation 1/1958<sup>2</sup> and to have this Decision adopted and notified in English.

## 2. DESCRIPTION OF THE MEASURE

- (3) Lithuania considers that the COVID-19 pandemic affects 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 pandemic, to ensure that the disruptions caused by the pandemic do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the pandemic.
- (4) As a background, according to Article 88 of the Law on Tax Administration of the Republic of Lithuania and its implementing acts,<sup>3</sup> the time limit for the payment of tax arrears may be deferred or staggered by a decision of the relevant tax authority. On the basis of that decision, the taxpayer and the tax administration shall conclude a tax loan agreement (“TLA”). The tax authority may take such decision only where it is established that an immediate discharge would result in a critical financial position of the taxpayer or that the taxpayer would face major financial difficulties in discharging other financial obligations, while the deferral or staggering of the tax arrears would allow the taxpayer to stabilise its financial position and discharge the tax arrears later on. For this purpose, the taxpayer must submit documents describing its financial situation and substantiating the data and circumstances specified in its request for concluding a TLA (the “Supporting Documents”). In addition, according to Article 88 of the Law on Tax Administration of the Republic of Lithuania, interests shall be paid on the amounts deferred or staggered under a TLA. These general rules also apply to the deferral or staggering of arrears for the payment of import excise duties and import VAT, for which the competent tax authority is the Customs Department under the Ministry of Finance of the Republic of Lithuania.
- (5) On 16 March 2020, by Protocol Decision No. 14, the Government of the Republic of Lithuania adopted the plan of measures to stimulate the economy and reduce the consequences of the spread of coronavirus (COVID-19). Under this plan, the Government of the Republic of Lithuania delegated, among others, the following tasks to the State Tax Inspectorate, to the State Social Insurance Fund Board and to the Customs Department:
  - (a) to grant tax loans as soon as possible by deferring or staggering taxes to be paid in instalments according to the agreed schedule and by applying no interest;

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

<sup>3</sup> Order No 268 of the Minister of Finance of the Republic of Lithuania of 17 November 1998 “On the Approval of the Rules for the Deferral of Payment or Staggering of Payments of Tax Arrears” and Order No. 1B-230 of the Director General of Customs Department under the Ministry of Finance of the Republic of Lithuania of 31 March 2005 “On the Approval of a Form of Taxpayer’s Tax Loan Agreement and a Form of a Questionnaire for Individual (Personal) Company’s Owner / Partnership Member / Natural Person”

- (b) to suspend the actions of recovery of tax arrears; and
- (c) to exempt taxpayers from fines and interest on late payment for the failure to fulfil tax obligations in a timely manner.

The implementation of these tasks:

- by the State Social Insurance Fund Board was notified to and approved by the Commission in case SA.58885<sup>4</sup>;
  - by the State Tax Inspectorate was notified to and approved by the Commission in case SA.60632<sup>5</sup>; and
  - by the Customs Department is notified to the Commission under the present case.
- (6) Lithuania confirms 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.
- (7) 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**

- (8) The measure provides aid in the form of deferrals of the payment of import excise duties and import VAT under a simplified procedure, exemptions from interest for late payment on the amounts deferred and suspension of recovery procedures for arrears on import excise duties and import VAT (the “measure”).

### **2.2. Legal basis**

- (9) The legal basis for the measure is Protocol Decision No. 14 of 16 March 2020 of the Government of the Republic of Lithuania and Order No. 1B-116 of the Director General of the Customs Department under the Ministry of Finance of the Republic of Lithuania of 25 February 2021 “On the application of aid measures to taxpayers facing adverse effects due to the spread of coronavirus (COVID-19)”.

### **2.3. Administration of the measure**

- (10) The Customs Department under the Ministry of Finance of the Republic of Lithuania is responsible for administering the measure.

### **2.4. Budget and duration of the measure**

- (11) The estimated budget of the measure is EUR 125 480.

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<sup>4</sup> Commission Decision C(2020) 8165 final, of 18 November 2020.

<sup>5</sup> Commission Decision C(2021) 361 final, of 18 January 2021.

- (12) Aid may be granted under the measure in the period from 16 March 2020 until no later than 31 October 2021, as specified in more detail in recital 19. The payments of tax arrears on import excise duties and import VAT may be deferred and exempted from interest under the measure until 31 December 2022 at the latest.

## **2.5. Beneficiaries**

- (13) The final beneficiaries of the measure are SMEs and large enterprises.<sup>6</sup> However, undertakings in bankruptcy or restructuring proceedings are excluded as eligible beneficiaries. Credit and financial institutions will not benefit from the measure.

## **2.6. Sectoral and regional scope of the measure**

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

## **2.7. Basic elements of the measure**

- (15) 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 pandemic (the “List of affected activities”).<sup>7</sup>
- (16) Taxpayers carrying out at least one of the economic activities in the List of affected activities 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 an *ex-post* assessment by the tax authorities of whether they have actually suffered adverse effects due to COVID-19 (risk assessment).<sup>8</sup>
- (17) Taxpayers who have been adversely affected by the COVID-19 pandemic, but are not included in the List of affected entities without request, may submit an 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 an *ex-ante* risk assessment and are attributed a risk assessment score.
- (18) If the risk assessment score is above a given threshold, the taxpayer must provide data and documents illustrating the experienced adverse effects due to COVID-

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<sup>6</sup> 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.

<sup>7</sup> The list of sectors particularly affected by the COVID-19 outbreak is published on the website of the Lithuanian Tax Inspectorate: <https://www.vmi.lt/evmi/en/informacija-verslui>.

<sup>8</sup> 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.

19. On this basis, the financial condition of the taxpayer and the impact of COVID-19 are assessed (assessment of adverse effects due to COVID-19).<sup>9</sup>

(19) When taxpayers are listed in the List of affected entities without request and the List of affected entities by request (together the “Lists of affected entities”), and, where applicable, it is confirmed that they have been adversely affected by COVID-19, taxpayers are eligible for aid under the measure and can benefit from support under the following conditions:

**a) Conclusion or amendment of tax loan agreements under a simplified procedure**

Under the measure, from 16 March 2020 to 31 August 2021, requests by adversely affected taxpayers for the conclusion or amendment of a TLA in respect of tax arrears incurred between 16 March 2020 and 31 August 2021 were accepted by the Customs Department under a simplified procedure. Those requests were accepted without submission by the taxpayer of Supporting Documents that are otherwise required, provided that the requested period of the deferral or staggering ended no later than on 31 December 2022.

**b) Exemption from interest**

Under the measure, the deferred amounts under a TLA concluded or amended based on requests submitted by adversely affected taxpayers, in respect of tax arrears normally due between 16 March 2020 and 31 August 2021 will not be subject to interest for late payment for the period of the deferral or staggering. That period cannot go beyond 31 December 2022.

In addition, adversely affected taxpayers that did not conclude or amend a TLA under the measure, were exempted until 31 October 2021 from interests for late payment on arrears due between 16 March 2020 and 31 August 2021.

**c) Suspension of recovery procedures**

Actions for the recovery of the tax arrears on import excise duties and import VAT, incurred by adversely affected taxpayers between 16 March 2020 and 31 August 2021, were suspended until 31 October 2021.

Aid under the measure can be granted to a taxpayer only if the taxpayer is included in the *Lists of affected entities* at the time of the granting of the aid.

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<sup>9</sup> 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.

## **2.8. Cumulation**

- (20) The Lithuanian authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations<sup>10</sup> or the GBER, the Agricultural Block Exemption Regulation (“ABER”)<sup>11</sup> and the Fisheries Block Exemption Regulation (“FIBER”)<sup>12</sup> 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.

## **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.

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<sup>10</sup> 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).

<sup>11</sup> 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.

<sup>12</sup> 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.

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 based on Protocol Decision No. 14 of 16 March 2020 of the Government of the Republic of Lithuania and Order No. 1B-116 of the Director General of the Customs Department of 25 February 2021, and it is administered by the Customs Department under the Ministry of Finance of the Republic of Lithuania. It is financed through State resources, since it involves mainly foregoing revenues in the form of interests on payments due to the State. It is therefore financed by public funds.
- (27) The measure confers an advantage on its beneficiaries in the form of interest-free deferrals of the payment of import excise duties and import VAT under a simplified procedure, exemptions from payment of interest on the deferred amounts and suspension of recovery procedures for arrears on import excise duties and import VAT. The measure thus relieves those beneficiaries of costs, 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 carrying out an economic activity listed in the List of affected activities (subject to a risk assessment) or taxpayers who can demonstrate that they have been adversely affected by the COVID-19 pandemic (recitals 15-19). Under the measure, these taxpayers are allowed to conclude a TLA under a simplified procedure without submitting the Supporting Documents that are otherwise required and without paying interest on the amounts deferred or staggered under such concluded or amended TLA. 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. Thus, the measure derogates from the general rules<sup>13</sup> for the conclusion of a TLA and payment of interests in relation to import excise duties and import VAT. It therefore discriminates in favour of its beneficiaries as compared to undertakings in a comparable factual and legal situation, which are subject to the Lithuanian tax and custom system. The Lithuanian authorities have not provided any justification for that discrimination. 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.

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<sup>13</sup> Article 88 of the Law on Tax Administration of the Republic of Lithuania and its implementing acts.

- (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 COVID-19 pandemic and keeping these undertakings viable at a time when the normal functioning of markets is severely disturbed by that pandemic, which is also 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 of taxes (import excise duties and import VAT), easier access to tax loan agreements and 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 pandemic, *e.g.*, undertakings that are active in sectors particularly affected by restrictive measures introduced by the Lithuanian government and are included in the List of affected activities (recitals 15 and 16). By deferring the payment of import excise duties and import VAT, allowing easier access to tax loan agreements and granting interest-free deferral, the measure eases the liquidity constraints faced by those undertakings due to the COVID-19 pandemic and contributes to preserving the continuity of their economic activities.
  - Aid under the measure will be granted no later than 31 December 2021, and the end date of the deferrals will be no later than 31 December 2022 (recital 19). The measure therefore complies with point 41 of the Temporary Framework.
- (37) The Lithuanian authorities confirm 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 (recital 6).

- (38) 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 and the cumulation rules of the relevant Regulations are respected (recitals 20-22).
- (39) 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/ejojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President