



EUROPEAN COMMISSION

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<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...]</p>	<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.102002 (2022/N) – Lithuania**  
**The Incentive Financial Instrument: Direct loans to business entities affected by third party actions**

Excellency,

**1. PROCEDURE:**

- (1) By electronic submission dated 18 March 2022, the Lithuanian authorities notified to the Commission, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”) the present aid scheme. The Commission requested additional information on 23 March 2022. The Lithuanian authorities replied on 1 April 2022.

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- (2) By letter dated 1 April 2022, Lithuania agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958<sup>1</sup> and to have the present decision adopted and notified in English.

## **2. DETAILED DESCRIPTION OF THE AID**

### **2.1. Title**

- (3) The notified aid scheme is entitled “The Incentive Financial Instrument: Direct loans to business entities affected by third party actions”.

### **2.2. Justification of the scheme**

- (4) Since August 2021, Lithuanian undertakings have been exposed to trade restrictions, targeted at trade between Lithuania and China (and vice-versa). In particular, the initial measures included: disruptions of logistic networks (discriminatory freight pricing policy, prolonged freight delivery (from 60 to 80 days) to Lithuania as compared to Lithuania’s neighbouring countries and halt of direct freight trains to Lithuania) and disruption of supply chains incorporating Chinese components. Lithuanian companies have been cut off from obtaining trade credit insurance for imports from China, which has caused great difficulties for Lithuanian companies, required to pay the entire price in advance for the goods and raw materials bought and imported from China.
- (5) Since December 2021 (coinciding with the timing of the official opening of the Taiwan Representation in Vilnius), the measures have increased. They now not only target trade between Lithuania and China (and vice-versa) but also other types of Lithuanian participation in supply chains (global or within the Union). Those measures are ongoing, affect all possible trade operations which are directly/indirectly linked to China and include, amongst others, the following:
- (a) declarations with any mention or reference to Lithuania are being rejected by the Chinese custom authorities (for example, that practice affects shipments of goods with Lithuania as a country of origin, shipments whereby Lithuanian origin goods are co-shipped as part of consignments originating in the Union, and shipments from other Member States where Lithuanian components have been used in the manufacturing of the final product as well as shipments from Lithuania which include goods from other countries);
  - (b) trade disruptions in the purchase of components by Lithuanian undertakings (Chinese suppliers refuse to sell to Lithuanian undertakings and Chinese customs refuse to release goods destined to Lithuanian undertakings or any other Member State if the final user of the product is Lithuanian); and

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

- (c) Lithuanian undertakings encounter the unwillingness of Chinese partners to cooperate, through the cancelling of orders ready for immediate loading, the refusal to prolong or enter into new contracts and the loss of sales channels in China.
- (6) In addition to the trade restrictions mentioned in recitals (4) and (5), China seems to have also recently introduced several official import bans on goods making reference to Lithuania. As of 9 February 2022, an import ban on beef, dairy products, and alcohol has been introduced. It has been followed by an import ban on peat, introduced on 4 March 2022. In the following, these restrictions described in recitals (4) to (6) shall collectively be referred to as “restrictions imposed by China”.
- (7) As a result of those trade disruptions, the percentage of Lithuanian goods exported to China decreased approximately by 27% in 2021. Lithuanian exports to China amounted to EUR 315.7 million in 2020 and decreased to EUR 227.9 million in 2021. Moreover, according to the Lithuanian authorities’ estimates, in the most likely scenario and for the period 2022-2025 Lithuania could lose up to:
  - (a) 5 836 jobs (0.42% of total jobs);
  - (b) EUR 1.055 billion of investments (4.2% of total foreign direct investments);
  - (c) 2.3% of the Gross Domestic Product (“GDP”); and
  - (d) EUR 45 million income from social taxes.

### **2.3. Objective**

- (8) With the present notification, the Lithuanian authorities wish to introduce an aid scheme to provide temporary financing to undertakings in the form of loans, in response to the above-mentioned restrictions imposed by China (recitals (4) to (6)). The scheme would facilitate access to finance to undertakings facing liquidity shortages and allow them adapt their business activities to the new market situation, help them mitigate the negative effects and maintain the continuity of their business operations. Through the loans, undertakings facing such liquidity shortages will have an additional option to secure a continuous cash flow, thereby helping undertakings overcome the period of declined income due to the restrictions imposed by China.
- (9) In particular, undertakings focusing on the Chinese market have made investments for specific market needs (for example, packaging and labelling) and requirements (including legal documentation and certification). Adapting the respective business activities to the new market situation will require funds (i.e., the loans provided under the scheme) for adapting production.

## **2.4. Legal basis**

- (10) Draft Order (No.4 of 2022) of the Minister of Economy and Innovation of the Republic of Lithuania on the approval of the scheme for the Incentive Financial Instrument: Direct loans to undertakings affected by third party actions.

## **2.5. Budget**

- (11) The aid will be financed from the State budget and the total aid amount under the present notified scheme is estimated at approximately EUR 130 million.

## **2.6. Duration**

- (12) Aid may be granted as of the date of notification of the present Commission Decision until 31 December 2027 or until the restrictions imposed by China are lifted, whatever happens first.

## **2.7. Aid instrument and underlying requirements**

- (13) Aid will be granted in form of working capital loans and the loan agreements will be concluded between INVEGA (a Lithuanian National Promotional Institution)<sup>2</sup> and the beneficiaries. The following requirements will apply:
- (a) loans must be used for sourcing (new) inputs from different sources, looking for entering into new business markets or using the time to undertake such efforts (when applying for a loan, beneficiaries will be required to sign a declaration that the loans exclusively be used for these purposes);
  - (b) loans will be granted for a maximum period of 24 months as from the date of signing the loan agreement, including a maximum deferral repayment period of 6 months;
  - (c) at the request of the beneficiary and subject to the consent of INVEGA, the deferral repayment period may be prolonged only once provided it does not exceed the total maximum loan term of 24 months (the beneficiary will agree to pay the loan agreement modification fee set by INVEGA)<sup>3</sup>;
  - (d) the number of loans per beneficiary is unlimited but the total amount of issued loans per beneficiary under this scheme may not exceed EUR 5 million; if the beneficiary belongs to a group of undertakings, the total

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<sup>2</sup> INVEGA is a financial entity incorporated by the Lithuanian State. On 17 October 2018, the Government of the Republic of Lithuania granted the status of a National Promotional Institution to INVEGA. By decision of the Supervision Service of the Bank of Lithuania, INVEGA was included on the List of National Promotional Institutions starting from 3 December 2018.

<sup>3</sup> The repayment deferral period may be extended if the beneficiary applies no later than one month before the end of the repayment deferral period.

amount of issued loans to the group of undertakings may not exceed EUR 10 million;

- (e) loans will be granted at a fixed annual interest rate set at 30% of the reference rate and margin set out in the Communication from the Commission on the revision of the method for setting the reference and discount rates<sup>4</sup> (the “Reference rate Communication”);
  - (f) depending on the level of risk of each loan, a loan collateral may be applied to the loan (after INVEGA has performed a risk assessment<sup>5</sup> of (i) the beneficiary and (ii) of non-repayment of the loan under the current scheme, in accordance with the methodology approved by INVEGA)<sup>6</sup>;
  - (g) throughout the loan period and without the prior written consent of INVEGA, the beneficiary may not, through the use of its own funds, (i) provide loans or otherwise provide financing to other entities (except for the sale of goods, provision of services with deferred payment or payment by instalments); and (ii) pay dividends, reduce share capital for the purpose of payment of funds to the beneficiary’s participants<sup>7</sup>, purchase the beneficiary’s capital shares and/or pay out profit share to the beneficiary’s participant(s) in other ways as well as invest funds in other economic entities;
  - (h) the beneficiary will be responsible for the use of the loan in accordance with the purpose specified in the loan agreement; and
  - (i) a detailed procedure for the implementation of the aid instrument will be established in the description of the conditions for the implementation of “The Incentive Financial Instrument: Direct loans to business entities affected by third party actions”, approved by the Order of the Director General of INVEGA.
- (14) Beneficiaries may not use the loan funds for the following purposes:
- (a) to provide loans, pay dividends, repay loans of the beneficiary’s participants or grant them loans, reduce the beneficiary’s authorized

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<sup>4</sup> OJ C 14, 19.1.2008, p. 6.

<sup>5</sup> INVEGA will only grant new loans to beneficiaries assigned to risk group’s I-IV (according to INVEGA’s decision matrix). After a detailed analysis of the current financial standing of the beneficiary its forecasted cash flows, INVEGA will make an individual decision on whether to collateralize the loan or not. If the beneficiary is lacking the possible collateral, but the financial standing of the beneficiary is strong, INVEGA may grant an uncollateralized loan. The framework of INVEGA’s risk analysis methodology is based on the assessment and sustainability of the future cash flows of the beneficiary.

<sup>6</sup> The beneficiary will pay all costs related to the execution of the loan collateral.

<sup>7</sup> The beneficiary’s participants include a person (shareholder or member of the beneficiary) who has the right of ownership over the beneficiary’s property, or a person who, although it does not retain that right of ownership, acquires rights and/or obligations related to the beneficiary.

capital, repurchase own shares, or to make other payments to the beneficiary's participants;

- (b) to finance or refinance the beneficiary's financial liabilities to financial institutions;
- (c) to invest in fixed assets (including reconstruction); and
- (d) to pay bills to companies of China, the Russian Federation and/or the Republic of Belarus.

## **2.8. Administration of the scheme**

- (15) Loans will be provided directly by INVEGA without any funds being channelled through financial intermediaries.

## **2.9. Beneficiaries**

- (16) The number of beneficiaries is currently estimated to be around 130 undertakings. However, that number is expected to increase as the restrictions imposed by China continue to persist (recitals (4) to (6)). Therefore, the estimated number of beneficiaries is up to 500 undertakings.
- (17) The beneficiaries are micro, small and medium-sized enterprises (SMEs) (as defined in the Commission's Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises<sup>8</sup>), as well as large enterprises of all sectors (except the following sectors: finance,<sup>9</sup> agriculture and forestry<sup>10</sup> and fisheries and aquaculture<sup>11</sup>), which suffer trade disruptions as a result of the restrictions imposed by China (recitals (4) to (6)).
- (18) In order to be eligible, a beneficiary must meet the following requirements:
  - (a) it must operate in the Republic of Lithuania<sup>12</sup>;

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<sup>8</sup> OJ L 124, 20.5.2003, p. 36.

<sup>9</sup> As understood in accordance with Article 1 of the Law on Financial Sustainability of the Republic of Lithuania.

<sup>10</sup> As defined by Article 2(3) of the 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>11</sup> As defined by Article 2(1)(a) of the 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 *recital* aid in the fisheries and aquaculture sector, OJ L 90, 28.6.2014, p. 45.

<sup>12</sup> The beneficiary will be deemed to be operating in the Republic of Lithuania if it creates workplaces (creates the material and legal conditions for the (i) creation of a new workplace and (ii) employment of a person regarding the newly created workplace) in the Republic of Lithuania and/or pays taxes to the budget of the Republic of Lithuania or contributions to the State Social Insurance Fund Board under the Ministry of Social Security and Labour.

- (b) at the time of application, it must not be considered to be an undertaking in difficulty<sup>13</sup>;
- (c) at the time of application, it must meet the minimum criteria of reliable taxpayers established in Article 40 of the Law on Tax Administration of the Republic of Lithuania<sup>14</sup>;
- (d) at the time of application, no bankruptcy and/or restructuring proceedings have been instituted against it<sup>15</sup>;
- (e) at the time of application, has submitted to the State Enterprise Centre of Registers the set of financial statements for the last two financial years or, if the beneficiary has been operating for less than two years, in which the composition of equity is disclosed in detail<sup>16</sup>;
- (f) it has not received State aid which has been declared illegal and incompatible with the internal market by decision of the Commission (on individual aid or on an aid scheme) or by decision by the State aid managing institution or has reimbursed the full amount thereof, including interest<sup>17</sup>;
- (g) is not a State-owned and/or municipality-owned undertaking<sup>18</sup>;

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<sup>13</sup> 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, OJ L 187, 26.6.2014, p. 1. When a businessperson within the meaning of the SME Law makes an application, he/she is considered to not be in difficulty within the meaning of the Article 2(18) of Regulation (EU) No. 651/2014 if no bankruptcy proceedings have been initiated against that individual.

<sup>14</sup> Compliance with this requirement will be assessed in accordance with the information of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania published on the website: <https://www.vmi.lt/evmi/mokesciu-moketoju-informacija>.

<sup>15</sup> Under the Law on Insolvency of Legal Persons of the Republic of Lithuania or the Law on Bankruptcy of Enterprises of the Republic of Lithuania and the Law on Restructuring of Enterprises of the Republic of Lithuania prior to its entry into force; or in the case of a businessperson, no bankruptcy case of a natural person has been instituted against him/her in accordance with the Law on Bankruptcy of Natural Persons of the Republic of Lithuania.

<sup>16</sup> If the beneficiary belongs to a group of companies as defined in the Law on Consolidated Financial Reporting by Groups of Companies of the Republic of Lithuania, the set of consolidated financial statements must be submitted to the State Enterprise Centre of Registers for the last two financial years or less (if the beneficiary has been operating for less than two years), in which the composition of equity would be disclosed in detail (balance sheet whereby the equity is divided into equity and share capital). If the loan is applied for by a businessperson, he/she must submit to the lender (INVEGA), financial documents for the last two financial years or a shorter period (if the beneficiary has been operating for less than two years).

<sup>17</sup> As determined in Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.

<sup>18</sup> Or an undertaking in which 25% or more of the undertaking's shares, stocks or other shares representing participation in the undertaking's capital, or 25% or more of the undertaking members'

- (h) has provided INVEGA with evidence that it does not have access to financing on the market<sup>19</sup>;
- (i) its business plan justifies the need for a working capital loan in a way that the amount of the loan granted under the scheme does not exceed the needs as envisaged under the business plan assessed by INVEGA;
- (j) its proportion of either imports from or exports to China represents at least 25% of the beneficiary's total imports or exports in 2021 (from 1 January until 31 December 2021)<sup>20</sup>; and
- (k) the risk of the beneficiary and/or of non-repayment of the loan is considered at an acceptable level of risk according to the methodology approved by INVEGA<sup>21</sup> (\*).

## 2.10. Further details

- (19) The Lithuanian authorities explained that, with the above conditions and in light of the exceptional restrictions imposed by China, the scheme is proportional and limited to what is strictly necessary to overcome the temporary liquidity shortage, since the measure only seeks to ensure the operational continuity of beneficiaries until they adapt their businesses.
- (20) The Lithuanian authorities confirm that the aid scheme does not constitute export aid<sup>22</sup> or aid favouring domestic over imported goods, that the aid amount is not fixed on the basis of the price or quantity of products put on the market and that the aid is not directly or indirectly linked to measures breaching other provisions of the TFEU, notably as regards the free circulation of goods.

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votes are held directly or indirectly (under a voting agreement, agreement on the transfer of voting rights, power of attorney, etc.), separately or jointly by the State and/or municipality.

<sup>19</sup> Compliance with that requirement is assessed by submitting a refusal to finance certificate from three financial institutions (at least one of which must be a bank licenced in the Republic of Lithuania or a branch of an EU/EEA licenced foreign bank established in Lithuania and at least one financial enterprise as defined in the Law on Financial Institutions of the Republic of Lithuania).

<sup>20</sup> If the beneficiary's main activity is wholesale and (or) retail, the loan will be granted only if the beneficiary's exports to China in 2021 constituted at least 25% of the beneficiary's total exports in that year. Compliance with that requirement will be assessed in accordance with the information received by INVEGA from the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania and (or) Customs Department under the Ministry of Finance of the Republic of Lithuania and (or) provided by the beneficiary.

<sup>21</sup> (\*) Covered by the obligation of professional secrecy [...]

<sup>22</sup> Aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity. See Article 1(1)(d) of 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).



## 2.11. Cumulation

- (21) The Lithuanian authorities confirm that aid granted under the measure may be cumulated with aid or *de minimis* aid<sup>23</sup> received from other local, regional or national aid<sup>24</sup> to cover the same eligible costs. Aid granted will be registered in the national State aid register.

## 2.12. Monitoring

- (22) In order to enable the Commission to monitor the aid scheme, the Lithuanian authorities commit to:
- (a) annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589<sup>25</sup>; and
  - (b) maintain for at least 10 years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request.
- (23) In addition, checks of eligibility of expenditure under the measure will be carried out in accordance with national legislation.

## 2.13. Transparency

- (24) The Lithuanian authorities commit to publish information on the European Commission's State Aid Transparency search website<sup>26</sup> in the case of awarding State aid amounting to at least EUR 500 000 (in accordance with Annex III 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<sup>27</sup>, “GBER”), no later than 6 months after the date on which the aid was granted.

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<sup>23</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) and 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).

<sup>24</sup> Union funding centrally managed by the Commission that is not directly or indirectly under the control of the Member State does not constitute State aid. Where such Union funding is combined with other public funding, only the latter will be considered for determining whether notification thresholds and maximum aid intensities are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the maximum funding rates laid down in the applicable Union legislation.

<sup>25</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9.

<sup>26</sup> <https://webgate.ec.europa.eu/competition/transparency>

<sup>27</sup> OJ L 187, 26.6.2014, p. 1.

- (25) The beneficiary will provide the information specified in Annex III to the GBER to the Ministry of Economy and Innovation no later than 6 months after the date on which the aid was granted. That information will be published by the latter on the website referred to in recital (24).

### 3. ASSESSMENT

#### 3.1. Existence of State aid

- (26) According to Article 107(1) TFEU, “[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”.
- (27) It follows that in order for a measure to qualify as State aid, the following cumulative conditions have to be met: (i) the beneficiary of the measure has to be an undertaking, (ii) the measure has to be granted through State resources and be imputable to the State, (iii) the measure has to confer an economic advantage, (iv) which is selective, (v) and has an effect on trade and competition.

##### 3.1.1. Undertaking

- (28) Undertakings within the meaning of Article 107(1) TFEU are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.<sup>28</sup>
- (29) The final beneficiaries of the measure are micro, SMEs and large enterprises (see recitals (16) and (17)) that will use the aid to adapt their business activities to the new market situation, re-orient their business strategies and improve their liquidity in order to obtain financing in the market from private financial institutions. Enterprises engage in economic activities and thus are undertakings.

##### 3.1.2. State resources and imputability

- (30) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it.<sup>29</sup> As described in recital (11), the measure is financed from the budget of Lithuania. Moreover, as described in recital (13), the financing will be granted by INVEGA (a Lithuanian National Promotional Institution). Hence, State resources are involved and the measure is imputable to the State.

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<sup>28</sup> Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, para. 107.

<sup>29</sup> Judgment of the Court of Justice of 16 May 2002, *France v Commission*, C-482/99, EU:C:2002:294.

### 3.1.3. *Economic advantage*

- (31) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking could not have obtained under normal market conditions, that is to say in the absence of State intervention.<sup>30</sup>
- (32) The measure in question confers an advantage (see recital (13)) on its recipients in the form of working capital loans, under conditions that would not be available under normal market conditions. The measure will allow recipients to reduce their direct and indirect losses as a result of the trade disruptions suffered, such as e.g. the disruptions of logistic networks, disruption of supply chains, rejection by the Chinese custom authorities of all declarations with any mention or reference to Lithuania and Chinese suppliers refusing to sell to Lithuanian undertakings, as a result of re-orienting their business activities.

### 3.1.4. *Selectivity*

- (33) To fall within the scope of Article 107(1) TFEU, a State measure must favour “*certain undertakings or the production of certain goods*”.
- (34) In the case at hand, the measure is selective because final beneficiaries are limited to the eligible enterprises (see recital (17)), namely those enterprises that fulfil the eligibility conditions under the measure (see recital (18)). It follows that the measure confers a selective economic advantage to the eligible enterprises.

### 3.1.5. *Distortion of competition and impact on trade*

- (35) State measures fall within the scope of Article 107(1) TFEU in so far as they distort or threaten to distort competition and affect trade between Member States. According to the case-law of Union courts, the concept of “*effect on trade between Member States*” is linked to the notion of distortion of competition and both are often inextricably linked. In this regard, the Court has stated that “[i]n particular, where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid”.<sup>31</sup>
- (36) The beneficiaries of aid operate on a variety of markets (for example, manufacturing and chemicals), where intra-Union trade takes place. The sectors concerned are open to competition at Union level and therefore are sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.

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<sup>30</sup> Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, EU:C:1999:210, para. 41.

<sup>31</sup> Judgment of the General Court of 4 April 2001, *Regione Friuli Venezia Giulia v Commission*, T-288/97, EU:T:2001:115, para. 41.

### 3.1.6. Conclusion on the existence of aid

- (37) In light of the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article.

### 3.2. Lawfulness of the aid

- (38) The aid scheme was notified to the Commission on 18 March 2022 (see recital (1)). Lithuania has committed not to implement the scheme until the notification of the present Decision. Therefore, Lithuania has complied with its obligation under Article 108(3) TFEU.

### 3.3. Compatibility of the aid

- (39) The Commission assesses the compatibility of the measure pursuant to Article 107(3)(c) TFEU, according to which: “*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*” may be considered to be compatible with the internal market. Thus, in order to be declared compatible, first, the aid must be intended to facilitate the development of an economic activity (or area) and, second, it must not adversely affect trading conditions to an extent contrary to the common interest.<sup>32</sup>

#### 3.3.1. Contribution to the development of an economic activity

- (40) The Lithuanian authorities have submitted that the measure facilitates the development of the economic activity of all eligible beneficiaries.
- (41) In particular, it is expected that beneficiaries whose import or export activities with China which have been stalled or disrupted due to the restrictions imposed by China (recitals (4) to (6)), will be able to pivot towards business strategies not affected by those restrictions.
- (42) Through the measure (in the form of working capital loans) beneficiaries will have greater capabilities to, (for example, adapt to specific market needs (such as packaging and labelling) or market requirements (such as legal documentation and certification)), to increase sales and revenue, and ultimately to restore their liquidity. This, in turn, will allow them to access funding from financial institutions and ultimately, adapt successfully to the restrictions imposed by China.
- (43) There are no elements which indicate that the measure or the activities financed entails a violation of relevant provisions of Union law.
- (44) Based on the above, the Commission considers that the measure may effectively facilitate the adaption by beneficiaries to the restrictions imposed by China by

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<sup>32</sup> Judgment of the Court of Justice of 22 September 2020, *Austria v Commission* (Hinkley Point C), C-594/18 P, EU:C:2020:742, para. 19.

supporting their re-orientation towards new business opportunities which are not affected by the restrictions imposed by China.

3.3.2. *Absence of unduly restriction of trading conditions to an extent contrary to the common interest*

- (45) The measure will have positive effects in that it will allow beneficiaries to re-orient their business activities in reaction to the restrictions imposed by China. The measure will facilitate access to finance in the form of loans for undertakings facing shortages due to the restrictions imposed by China and so will improve the liquidity of such undertakings and help them mitigate the negative effects and maintain the continuity of their business operations. Through the loans, undertakings facing liquidity issues will have an additional option to secure a continuous cash flow. In turn, securing such cash flow will help companies bridge the period of declined income due to the restrictions imposed by China (see recitals (4) to (6)).
- (46) The measure will also allow beneficiaries to cover the current shortage of working capital (as a result of the decline in income from import and export activities with China) and help them to maintain their liquidity needs (through the funds obtained by the loans). In turn, once the financial strength of beneficiaries gradually improves, it will also allow them to obtain financing in the market from private financial institutions, which they are currently unable to access.
- (47) In light of the trade restrictions directed against Lithuanian operators, on 27 January 2022, the Union launched a case at the World Trade Organization (“WTO”) against China challenging the restrictions<sup>33</sup> covered in the present Decision. This further highlights the exceptional nature of the situation that the measure under assessment aims to remedy.
- (48) The measure is needed and targeted to addressing a situation where it can bring about a material improvement that the market cannot deliver itself. In fact, as a result of the restrictions imposed by China, undertakings with a sufficiently strong commercial relationship with China are suffering direct or indirect economic losses (import/export disruptions) and cannot obtain financing on the market. This financing gap argues in favour of the need for State intervention. Any aid would be targeted to improving the liquidity situation of such companies. As described in recital (18), beneficiaries must have a minimum share (25%) of their total amount of either imports or exports in 2021 related to China and must provide evidence (a refusal to finance certificate (for example, refusal to grant a loan) from three financial institutions) that there is no access to financing in the market. Undertakings in difficulties are excluded from the beneficiaries. Those safeguards ensure that only companies that are significantly affected by the restrictions imposed by China and are not already at risk of default will be able to apply for the aid.

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<sup>33</sup> See: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2355>.

- (49) The measure (in the form of working capital loans) is an appropriate policy instrument for companies facing liquidity issues and a lack of working capital. The envisaged loans are aimed at mitigating the negative effects resulting from the restrictions imposed by China and maintain the continuity of their business operations. In sum, the objective of the measure is to help such companies to reorient their business strategies and improve their liquidity in order to be able to gradually obtain financing in the market from private financial institutions.
- (50) The measure is proportionate and limited to the minimum necessary to attain its objective. The aid is in the form of a discount applied to the interests, paid on a working capital loan, still set to reflect the borrower's risk profile (see recital ((13)(e)). The nominal amount of the loan is linked to the actual needs of the beneficiary, as defined in a business plan, (see recital (18)(i) and cannot exceed the maximum limits of EUR 5 million per single beneficiary and EUR 10 million per group of beneficiaries (see recital (13)(d)). In addition, the maturity of the loan is limited to 24 months (see recital (13)(b)). The gross grant equivalent, if estimated equal to the envisaged discount on the interests, can be expected not to exceed EUR 1 million per group of beneficiaries, assuming that the reference rate will remain at negligible levels, while observing that (i) the maximum margin, as envisaged under the Reference Rate Communication, is 650 bps<sup>34</sup>, and (ii) the maximum amount and maturity of the loans are EUR 10 million and 24 months, respectively.
- (51) In light of the exceptional circumstances, which are likely to affect the situation of the companies concerned for a longer period, the measure is limited in time to a reasonable period (from the notification of the Decision until 31 December 2027, see recital (12)) to allow companies to reorient their business and find new business opportunities which are not affected by the restrictions imposed by China. Moreover, the fact that loans will be granted for a maximum period of 24 months as from the date of signing the loan agreement (see recital (13)(b)), also ensures that they are granted for a reasonable time.
- (52) The measure complies with the requirements on monitoring, reporting and transparency. As concerns monitoring and reporting, as described in recital (22), the Lithuanian authorities commit to annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589<sup>35</sup> and to maintain for at least 10 years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request. The Lithuanian authorities also commit to carry out

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<sup>34</sup> Excluding undertakings in financial difficulties and/or a CCC-equivalent risk profile and low collateral. Those undertakings are unlikely to be among the beneficiaries, in light of the possibility provided to INVEGA to ask additional collateral and the exclusion of undertakings in difficulty, 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, OJ L 187, 26.6.2014, p. 1.

<sup>35</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

eligibility checks of expenditure under the measure in accordance with national legislation, as described in recital (23).

- (53) The measure also ensures sufficient transparency. As described in recitals (24) and (25), the Lithuanian authorities committed to comply with the applicable transparency requirements. The Lithuanian authorities also committed to publishing information on the European Commission's State Aid Transparency search website in the case of awarding State aid amounting to at least EUR 500,000, no later than 6 months after the date on which the aid was granted. Moreover, beneficiaries shall provide the information specified in Annex III to Regulation (EU) No. 651/2014<sup>36</sup> to the Ministry of Economy and Innovation no later than 6 months after the date on which the aid was granted.

#### **3.4. Weighing the positive effects of the aid against the negative effects on competition and trade**

- (54) A carefully designed State aid scheme must ensure that the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (55) The Lithuanian authorities have demonstrated that the measure is addressing a highly exceptional situation whereby a third country imposes very significant trade restrictions (recitals (4) to (6)). The measure will provide positive effects on the supported beneficiaries and their corresponding economic activities when compared with what would have happened without the aid. In particular, the measure is needed to allow beneficiaries who are not undertakings in difficulty to re-orient their business activities. The measure will also allow beneficiaries to transit the period of current shortage of working capital, while re-orienting their business strategies until they are in a position to obtain financing in the market from private financial institutions, which they are currently unable to access.
- (56) The Lithuanian authorities have demonstrated that the negative effects are limited to the minimum necessary. The Lithuanian authorities have designed the measure in such a way as to minimise the potential distortion of competition arising from it. For example, the measure is granted in the form of loans with limited duration, which have lower distortive effects than cash grants. The purpose of the aid scheme is to help maintain the liquidity of undertakings affected by the restrictions imposed by China (recitals (4) to (6)) and promote a sustainable business recovery, which will allow them to obtain private financing from financial institutions going forward. The amount of aid will be limited to an amount which is necessary and will only be used for the purposes described in recital (13)(a) to ensure the operational continuity of beneficiaries.
- (57) The overall impact of the measure on competition is deemed to be positive. The negative effects on competition, if any, would be very limited.

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<sup>36</sup> 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.

(58) In light of the above, the positive impact of the measure outweighs any potential negative effects on competition and trade. On balance, the measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates the development of an economic activity. Moreover, the measure does not adversely affect competition to an extent contrary to the common interest.

#### 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) TFEU.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President

