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Subject: State Aid SA.104975 (2022/N) – Lithuania
TCF: Temporary State Aid for apple producers

Excellency,

1. PROCEDURE

- (1) By electronic notification of 23 November 2022, Lithuania notified aid in the form of limited amounts of aid (“TCF: *Laikinoji valstybės pagalba obuolių augintojams*”, “the measure”) under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis Framework”)¹. On 1 and 7 December 2022, Lithuania submitted complementary 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

¹ Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 426, 9.11.2022, p. 1). This Temporary Crisis Framework (‘current Temporary Crisis Framework’) replaces the Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131 I, 24.3.2022, p. 1) as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1) (‘previous Temporary Crisis Framework’). The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.

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Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Lithuania considers that the Russian aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken for example by Russia (“the current crisis”) so far affects the real economy. According to the Lithuanian authorities, the current crisis has created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agricultural sector. Those effects taken together have caused a serious disturbance of the economy in all Member States. The geopolitical crisis caused by the Russian aggression against Ukraine has had a particularly serious impact on Lithuanian agriculture. According to the Lithuanian authorities, after Russia’s aggression against Ukraine the economic situation in Lithuania changed significantly. The Lithuanian authorities underline the particular importance of ensuring the continuity of the production of food and agricultural products. Lithuania’s agriculture, forestry and fisheries account for about 3% of the country’s gross domestic product (GDP). This primary sector employs around 6% of the country’s population. The inflation in the Eurozone has had a strong impact on the economy, including agriculture. In Lithuania, inflation rates are among the highest in the EU. Annual inflation in Lithuania reached 24.1% in September 2022. Even though the prices for agricultural products are increasing in the markets, the higher inflation affects food consumption and production cost, leading to a slower flow of working capital for farms. Despite the price increases, the difference between costs and revenues has remained the same or reduced, rendering certain sectors unprofitable. The price of energy resources has a strong impact on agriculture. In addition, the prices of raw materials used in production, fuel, fertilisers, and electricity have increased significantly³. The scheme aims to alleviate particularly the impact of the crisis on the apple sector, specifically the apple producers. Due to the significant increase in energy prices, as well as their impact on other goods and services, apple processing companies did not buy summer and autumn apples that were intended for processing, as the price of the final processed product became lower than its costs. The costs for picking and storing apples in refrigerators intended for processing increased due to the sharply increased price of electricity. Therefore

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

³ According to the data of Nord Pool Group, the price of electricity in 2022 in Lithuania was more than two times higher than in 2021. The information provided by apple producers on the prices of electricity in 2022 comparing to 2021 shows the same trends. According to the National Energy regulatory Council in Lithuania, prices of fuel used for heat production has risen significantly: natural gas prices has almost tripled comparing 2022 III quarter and 2021 III quarter prices, while the prices of biogas increased by more than 120 percent in the same period. (<https://www.regula.lt/en/Pages/updates.aspx>). Moreover, according to Agricultural Information and Rural Business Center, prices of fuel (diesel, gasoline) have also increased on average by 25 percent comparing 2022 III quarter and 2021 III quarter prices. At the same time the price of mineral fertilizers in the 3rd quarter of 2022 compared to the 3rd quarter of 2021 has increased by 155 % and 240 % higher comparing 2022 3rd quarter and 2021 1st quarter.

about 70% of apples were not picked and were left to rot in the fields, and as a result, the income of apple producers decreased significantly. The problems caused by these changed economic conditions could be alleviated by providing aid to producers of apples to cover their loss of income⁴. Thus, the measure aims at remedying the liquidity shortage faced by undertakings that are directly or indirectly affected by the current crisis.

- (4) 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.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of Sections 1 and 2.1 of the Temporary Crisis Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of direct grants.

2.2. Legal basis

- (7) The legal basis for the measure is the draft of the Order of the Minister of Agriculture of the Republic of Lithuania “On the Approval of the Rules for the Provision of Temporary State Aid for the Horticulture Sector”⁵.

2.3. Administration of the measure

- (8) The Ministry of Agriculture is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget is EUR 2 million, financed from the State budget.
- (10) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure⁶ until no later than 31 December 2022.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are primary agricultural producers engaged in the growing of apples intended for processing with at least five hectare of apple orchards declared in 2022, and that are affected by the current crisis. The estimated number of beneficiaries is up to 50.

⁴ Source: State Enterprise Agricultural Information and Rural Business Centre of Lithuania.

⁵ *Lietuvos Respublikos žemės ūkio ministro 2022 m. lapkričio 28 d. įsakymas Nr. 3D-734 „Dėl laikinosios valstybės pagalbos sodininkystės sektoriui teikimo taisyklių patvirtinimo“.*

⁶ According to Article 22 of the draft of the Order of Minister of Agriculture of the Republic of Lithuania “On the Approval of the Rules for the Provision of Temporary State Aid for the Horticulture Sector”, legal basis of the measure, “*the decision to grant aid can only be made after receiving the approval of the European Commission to grant aid in accordance with the Rules. In the event that the European Commission does not approve the provision of aid, the aid is not provided*”.

- (12) Lithuania confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.
- (13) Lithuania confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations⁷. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

- (14) The measure is open to undertakings active in the production of apples intended for processing as described in recital (11). It applies to the central and west Lithuania region and the capital region. Lithuania confirms that credit institutions or other financial institutions are excluded from being beneficiaries of the aid.

2.7. Basic elements of the measure

- (15) The measure aims to preserve the viability of the apple production sector against disruptions in the market for apples, intended for processing, due to Russia's military aggression against Ukraine. The aid will help maintain the continuity of the economic activity of the beneficiaries and will ensure that sufficient liquidity remains available on the market. The aid will cover the loss of income for producers of apples in 2022 resulting from the disruption of the market for apples, intended for processing, due to Russia's aggression against Ukraine.
- (16) The aid will be equal to EUR 400 per hectare of declared apple orchards. Aid will be paid only if the total income of the apple producers from apples intended for processing in September 2022 (according to the data of the Center for Agricultural Information and Rural Business on the quantities and prices of apples, intended for processing) is at least 50% lower as compared to the total average income of those producers in September 2017-2021 (excluding the year in which the highest and lowest quantities of apples for processing were purchased). In addition, sales revenue from apples must exceed 50% of total sales revenue in 2021 for each beneficiary.
- (17) However, the overall nominal value of the direct grants under the measure will not exceed EUR 250 000 per undertaking, at any given point in time; all figures are gross, that is, before any deduction of tax or other charges.
- (18) The Lithuanian authorities confirm that the aid is not fixed on the basis of the price or quantity of products put on the market.

⁷ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

2.8. Cumulation

- (19) The Lithuanian authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations⁸ or the Block Exemption Regulations⁹ provided the provisions and cumulation rules of those Regulations are respected.
- (20) The Lithuanian authorities confirm that aid under the 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.
- (21) The Lithuanian authorities confirm that aid under the measure will not be cumulated with aid under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak¹⁰ (“COVID-19 Temporary Framework”).
- (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 Crisis Framework provided the provisions in those specific sections are respected.
- (23) Lithuania confirms that for aid granted under Section 2.1 of the previous and current Temporary Crisis Framework, the aid ceilings provided in the respective section of the current Temporary Crisis Framework are respected at any point in time.
- (24) The Lithuanian authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under Section 2.1 of the Temporary Crisis Framework, the overall maximum cap per undertaking, as set out in points 55(a) or in 56(a) of that framework, will be respected. Aid granted under the measure and other measures approved by the Commission under Section 2.1 of the Temporary Crisis Framework which has been reimbursed before granting of new

⁸ 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) 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).

⁹ 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) and Commission Regulation (EC) 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 on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

¹⁰ 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), C(2021) 8442 (OJ C 473, 24.11.2021, p. 1) and C(2022) 7902 (OJ C 423, 7.11.2022, p. 9).

aid under that section will not be taken into account in determining whether the relevant ceiling is exceeded.

2.9. Monitoring and reporting

- (25) The Lithuanian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 3 of the Temporary Crisis Framework (including the obligation to publish relevant information on each individual aid above EUR 10 000 granted under the measure on the comprehensive national State aid website or Commission’s IT tool within twelve months from the moment of granting¹¹).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (26) By notifying the measure before putting it into effect, the Lithuanian authorities have respected their obligations under Article 108(3) TFEU (recital (10)).

3.2. Existence of State aid

- (27) 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.
- (28) The measure is imputable to the State, since it is administered by the Ministry of Agriculture (recital (8)) and it is based on the draft of the Order of the Minister of Agriculture of the Republic of Lithuania “On the Approval of the Rules for the Provision of Temporary State Aid for the Horticulture Sector” (recital (7)). It is financed through State resources, since it is financed by public funds (recital (9)).
- (29) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (6)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (30) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. undertakings active in the apple production sector, excluding the financial sector, and only to such undertakings from the central and west Lithuania region and the capital region (recital (14)).
- (31) 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.

¹¹ Referring to information required in Annex III to Commission Regulation (EU) No 702/2014.

- (32) Therefore, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Lithuanian authorities do not contest that conclusion.

3.3. Compatibility

- (33) 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.
- (34) 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*”.
- (35) By adopting the Temporary Crisis Framework, the Commission acknowledged (in Section 1) that the military aggression against Ukraine by Russia, the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agricultural sector. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Lithuania. 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 if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine.
- (36) The measure aims at providing liquidity to certain undertakings active in the primary production of agricultural products at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Lithuania.
- (37) The measure is one of a series of measures conceived at national level by the Lithuanian authorities to remedy a serious disturbance in the Lithuanian economy. The importance of the measure to ensure sufficient liquidity of the beneficiaries that face cost increases of fertilisers, fuel, and other production inputs is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the Lithuanian economy, especially in the regions concerned. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Limited amounts of aid*”) described in Section 2.1 of the Temporary Crisis Framework.
- (38) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis Framework. In particular:
- The aid takes the form of direct grants (recital (6)).

- The overall nominal value of the grants does not exceed EUR 250 000 per undertaking active in the primary production of agricultural products; all figures used are gross, that is before any deduction of tax or other charges (recital (17)). If the beneficiary receives aid on several occasions under the measure or aid under other measures approved by the Commission under Section 2.1 of the Temporary Crisis Framework, the overall maximum cap per undertaking, as set out in points 55(a) or 56(a) of that framework, will be respected (recital (24)). The measure therefore complies with point 56(a) of the Temporary Crisis Framework.
 - Aid is granted under the measure on the basis of a scheme with an estimated budget, as indicated in recital (9). The measure therefore complies with point 55(b) of the Temporary Crisis Framework.
 - Aid will be granted under the measure no later than 31 December 2022, as indicated in recital (10). The measure therefore complies with point 55(c) of the Temporary Crisis Framework.
 - Aid will be granted only to undertakings affected by the current crisis (recitals (3), (11) and (15)). The measure therefore complies with point 55(d) of the Temporary Crisis Framework.
 - Aid granted is not fixed on the basis of the price or quantity of products put on the market (recital (18)). The measure therefore complies with point 56(b) of the Temporary Crisis Framework.
- (39) Lithuania confirms that, in accordance with point 84 of the Temporary Crisis Framework, overall aid granted under Section 2.1 of the previous and current Temporary Crisis Framework will not exceed the aid ceilings provided in the respective section of the current Temporary Crisis Framework at any point in time (see recital (23)).
- (40) The Lithuanian authorities confirm that, pursuant to point 46 of the Temporary Crisis Framework, 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 (4)).
- (41) The Lithuanian authorities confirm that, pursuant to point 47 of the Temporary Crisis Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (recitals (12) and (13)).
- (42) The Lithuanian authorities confirm that the monitoring and reporting rules laid down in Section 3 of the Temporary Crisis Framework will be respected (recital (25)). 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 Crisis Framework and the cumulation rules of the relevant Regulations are respected (recitals (19) to (22)).

- (43) 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 Crisis 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