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Subject: State Aid SA.106380 (2023/N) – Lithuania
TCTF: Rules on the granting of State aid by the State Social Insurance Fund to policyholders in financial difficulties as a result of the energy crisis

Excellency,

1. PROCEDURE

- (1) By electronic notification of 10 February 2023, Lithuania notified aid in the form of limited amounts of aid (*Rules for granting of State aid by the State Social Insurance Fund to policyholders in financial difficulties as a result of the energy crisis*, 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⁾.

⁽¹⁾ Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 28.10.2022, p. 1), (“Temporary Crisis Framework”), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

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- (2) Lithuania exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958 ⁽²⁾ 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 by Russia (‘the current crisis’) so far affect the real economy. The current crisis 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 agri-food sector. Affected undertakings have low liquidity reserves and suffer from financial difficulties. They are often unable to pay their tax liabilities in a timely manner. Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.
- (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 and Transition Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of an exemption from payment of interest on the deferred social security contributions.

2.2. Legal basis

- (7) The legal basis for the measure is i) *Point 3 of Protocol No 55 of the Government of the Republic of Lithuania of 7 October 2022* and ii) the *Draft Rules on the granting of State aid to policyholders in financial difficulties due to the energy crisis of the State Social Insurance Fund*.

2.3. Administration of the measure

- (8) The State Social Security Fund (“Sodra”) is responsible for administering the measure.

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

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is EUR 100 million.
- (10) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 31 December 2023. The aid application can be filed from 15 May 2023 to 15 June 2023.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are undertakings of all sizes active in Lithuania that are affected by the crisis. However, credit institutions or other financial institutions are excluded as eligible final beneficiaries, as well as undertakings active in the sectors specified in recital (14).
- (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 regulations ⁽³⁾. 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 beneficiaries active in all sectors except the financial sector and sectors with the following NACE codes: D: Electricity, gas, steam and air conditioning supply; E. Water supply, wastewater treatment, waste management and recovery; L. Real estate operations; O. Public administration and defence.
- (15) It applies to the whole territory of Lithuania.

2.7. Basic elements of the measure

- (16) The aid will be provided to undertakings, including self-employed, that found themselves in financial difficulties caused by the energy crisis and therefore failed to pay the monthly social security contributions in the period from 7 October 2022 to 30 April 2023 (eligible period).
- (17) The following undertakings are not eligible for aid under this measure: (i) undertakings that failed to pay the social security contribution payments before 7 October 2022 and the recovery of which has already been delegated to the bailiff;

⁽³⁾ 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).

- (ii) undertakings to whom a notice of intention to apply to a court for the opening of insolvency proceedings has been sent or insolvency proceedings have been initiated; or (iii) undertakings with a deferred social security contribution payment of less than EUR 125.
- (18) Undertakings are eligible under the measure if their energy costs represented at least 10% of their total operating costs in each year 2021 and 2022.
- (19) The aid will be provided in form of exemption from payment of interest on the deferred social security contributions. The last day for the payments of the deferred social security contribution is 31 December 2024⁽⁴⁾.
- (20) The total nominal amount of the deferred payments of social security contribution in the eligible period per undertaking may not exceed EUR 2 million at any given point in time ⁽⁵⁾. The total nominal amount of the deferred payments may not, at any time, exceed EUR 250 000 per undertaking active in the primary agricultural production sector and EUR 300 000 per undertaking active in the fisheries and aquaculture sectors.
- (21) The aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.
- (22) The aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of the products placed on the market. The aid to undertakings active in the fisheries and aquaculture sector does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/2014.
- (23) Where an undertaking operates in several sectors to which different maximum amounts apply in accordance with points 61(a) and 62(a) of the Temporary Crisis and Transition Framework, the Lithuanian authorities will ensure by appropriate measures, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2 million per undertaking and Member State is not exceeded. Where the undertaking is active in sectors covered by point 62(a) of the Temporary Crisis and Transition Framework, the total amount of EUR 300 000 per undertaking and Member State shall not be exceeded.

⁽⁴⁾ Point 3.3 of Protocol No 55 of the Government of the Republic of Lithuania of 7 October 2022.

⁽⁵⁾ Aid granted on the basis of schemes approved under this section which has been reimbursed before granting new aid under this section will not be taken into account in determining whether the relevant ceiling is exceeded.

2.8. Cumulation

- (24) The Lithuanian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations ⁽⁶⁾ or the General Block Exemption Regulation, Agriculture Block Exemption Regulation and the Fisheries Block Exemption Regulation ⁽⁷⁾ provided the provisions and cumulation rules of those Regulations are respected. Aid granted under the measure may be cumulated with aid granted under the COVID-19 Temporary Framework ⁽⁸⁾, provided the cumulation rules included therein are respected.
- (25) 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 and Transition Framework provided the provisions in those specific sections are respected.
- (26) The Lithuanian authorities confirm that in the case of aid granted under Section 2.1 of the previous Temporary Crisis Frameworks and aid granted under the same section of the Temporary Crisis and Transition Framework, the ceilings set out in that section may not be exceeded, i.e. the overall maximum cap per undertaking per Member State, as set out in points 61(a) and 62(a) of the Temporary Crisis and Transition Framework, will be respected at any given point in time ⁽⁹⁾.

⁽⁶⁾ 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).

⁽⁷⁾ 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 of 26.6.2014, p. 1), 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) and 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 on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

⁽⁸⁾ 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 112 I, 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 340 I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1)

⁽⁹⁾ Aid granted on the basis of schemes approved under this section which has been reimbursed before granting new aid under this section will not be taken into account in determining whether the relevant ceiling is exceeded.

2.9. Monitoring and reporting

- (27) The Lithuanian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting ⁽¹⁰⁾).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (29) 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.
- (30) The measure is imputable to the State, since it is administered by the State Social Security Fund controlled by the Ministry of Social Security Labour of Lithuania and it is based on the legal acts listed in recital (7). It is financed through State resources, since it is financed by public funds (recital (9)).
- (31) The measure confers an advantage on its beneficiaries in the form of an exemption from payment of interest on the deferred social security contributions (recital (6)). The measure thus relieves those beneficiaries of costs in the form of interest rate payable on the deferred social security contributions, which they would have had to bear under normal market conditions.
- (32) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings in financial difficulties with energy costs representing at least 10% of the total operating expenses and excluding the financial sector (recitals (12), (16) and (18)).
- (33) 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.

⁽¹⁰⁾ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

- (34) In view of the above, 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

- (35) 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.
- (36) 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*”.
- (37) By adopting the Temporary Crisis and Transition 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.
- (38) 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.
- (39) The measure aims to remedy the liquidity shortage faced by the affected undertakings 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.
- (40) 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 avoid insolvencies of undertakings affected by increased energy costs is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Lithuania’s economy. 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 and Transition Framework.
- (41) 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 and Transition Framework. In particular:
- the aid takes the form of an exemption from payment of interest on the deferred social security contributions (recital (6));
 - the overall nominal value of deferred social security contribution payments will not exceed EUR 2 000 000 per undertaking at any given point in

time ⁽¹¹⁾; all figures used must be gross, that is, before any deduction of tax or other charges (recital (20)). The measure therefore complies with point 61(a) of the Temporary Crisis and Transition 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 61(b) of the Temporary Crisis and Transition Framework;
- aid will be granted under the measure no later than 31 December 2023 (recital (10)). The measure therefore complies with point 61(c) of the Temporary Crisis and Transition Framework; aid will be granted only to undertakings affected by the crisis (recitals (16) and (18)). The measure therefore complies with point 61(d) of the Temporary Crisis and Transition Framework;
- aid granted to undertakings active in the processing and marketing of agricultural products ⁽¹²⁾ is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned (recital (21)). The measure therefore complies with point 61(e) of the Temporary Crisis and Transition Framework;
- the overall nominal value of deferred social security contribution payments does not exceed EUR 250 000 or 300 000 per undertaking active in the primary production of agricultural products, fishery and aquaculture sectors; all figures used must be gross, that is, before any deduction of tax or other charges (recital (20)). The measure therefore complies with point 62(a) of the Temporary Crisis and Transition Framework;
- aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (22)). The measure therefore complies with point 62(b) of the Temporary Crisis and Transition Framework;
- aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in points (a) to (k) of Article 1(1) of Commission Regulation (EU) No 717/2014 (recital (20)).

⁽¹¹⁾ Aid granted on the basis of schemes approved under this section which has been reimbursed before granting new aid under this section will not be taken into account in determining whether the relevant ceiling is exceeded.

⁽¹²⁾ As defined in Article 2(6) and Article 2(7) of 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).

The measure therefore complies with point 62(c) of the Temporary Crisis and Transition Framework;

- where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 61(a) and 62(a) of the Temporary Crisis and Transition Framework, Lithuania will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2 000 000 is not exceeded per undertaking per Member State (recital (20)). Where an undertaking is active in the sectors covered by point 62(a) of the Temporary Crisis and Transition Framework, the overall maximum amount of EUR 300 000 is not exceeded per undertaking per Member State (recital (20)). The measure therefore complies with point 63 of the Temporary Crisis and Transition Framework.
- (42) Lithuania confirms that, in accordance with section 2.1 of the Temporary Crisis and Transition Framework, overall aid granted under section 2.1 of the previous Temporary Crisis Framework and the current Temporary Crisis and Transition Framework will not exceed the aid ceilings provided in that section of the Temporary Crisis and Transition Framework at any given point in time (see recital (26)).
- (43) The Lithuanian authorities confirm that, pursuant to point 51 of the Temporary Crisis and Transition 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)).
- (44) The Lithuanian authorities confirm that, pursuant to point 52 of the Temporary Crisis and Transition 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 (recital (12)).
- (45) The Lithuanian authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (27)). 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 and Transition Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Regulations and/or applicable Communications are respected (recitals (24) and (25)).
- (46) 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 and Transition 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