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Subject: State Aid SA.106672 (2023/N) – Lithuania
TCTF: The Incentive Financial Instrument “Direct Loans to Business Operators Affected by War” (amendments to SA.104109 (2022/N) and SA.104854 (2022/N))

Excellency,

1. PROCEDURE

- (1) By electronic notification of 9 March 2023, Lithuania notified amendments (the “notified amendments”) to the existing aid scheme under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis and Transition Framework”) ⁽¹⁾. The Commission approved the existing aid scheme in case SA.104109 [The Incentive Financial Instrument “Direct Loans to Business Operators Affected by War”] ⁽²⁾ (the “initial decision”). The Commission approved the

⁽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, 9.11.2022, p. 1), which had already replaced 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) (‘the Temporary Crisis Framework’). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

⁽²⁾ Commission Decision C(2022)6840 of 21 September 2022 in case SA.104109 (OJ C 396 14.10.2022, p. 7).

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prolongation of this scheme in case SA.104854 [Prolongation of liquidity measures] (“the prolongation decision”) ⁽³⁾.

- (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 ⁽⁴⁾ and to have the present decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

- (3) The objective of the existing aid scheme, as prolonged, is 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 aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken so far by Russia.
- (4) The legal basis for the notified amendments is the Draft Order Amending Order No 4-1004 of the Minister of the Economy and Innovation of the Republic of Lithuania of 22 September 2022 ‘*On the approval of the Scheme of the Financial Incentive Instrument ‘Direct Loans to Business Operators Affected by War’*’ (the “Draft Amending Order”) ⁽⁵⁾.
- (5) Lithuania wishes to amend specific aspects of the existing aid scheme SA.104109 as follows:

- (a) With regard to the conditions that eligible beneficiaries must meet:

The beneficiary’s cumulated import and/or export shares with Ukraine and/or import shares with Russia and/or Belarus must be at least 15% of the beneficiary’s sales income from 1 January 2021 to 31 December 2021 ⁽⁶⁾ (while the existing aid scheme (see recital (12)(a) in initial decision in case SA.104109) refers to ‘*at least 25% of the beneficiary’s total cumulated imports and exports*’ for the same period) ⁽⁷⁾;

- (b) With regard to establishing the eligibility of beneficiaries:

The criterion is that the ‘main economic activity’ carried out by the beneficiary must fall under a type code which is included in Annex I of the Temporary Crisis and Transition Framework ⁽⁸⁾ (while the existing aid

⁽³⁾ Commission Decision C(2022)9607 of 14 December 2022 in case SA.104854 (OJ C 13, 13 01.2023, p. 7).

⁽⁴⁾ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁽⁵⁾ Skatinamoji finansinė priemonė “Tiesioginės paskolos nuo karo nukentėjusiems verslo subjektams”, available at www.e-tar.lt.

⁽⁶⁾ Amended Paragraph 5.1.3.1, Draft Amending Order.

⁽⁷⁾ Compliance with the requirement referred to in this subparagraph shall be assessed on the basis of data obtained by Invega from the Customs Department under the Ministry of Finance of the Republic of Lithuania and from the beneficiary’s 2021 annual financial statements.

⁽⁸⁾ Amended Paragraph 5.1.3.3, Draft Amending Order. Lithuania confirmed that the clarification emerged from the practical application of the measure (when assessing applications) and aims to make the process

scheme (see recital (12)(c) in initial decision in case SA.104109) refers to ‘*at least one of the economic activities*’ that are carried out by the beneficiary the type code of which must be included in Annex I of the Temporary Crisis Framework). The second part of recital 12(c) of the initial decision (‘*that information is registered in the Statistical Register of Economic Operators of the Lithuanian Statistical Department as of 1 January 2022*’) continues to apply;

- (c) With regard to the determination of the riskiness of the beneficiary for loans granted for the purpose of financing working capital ⁽⁹⁾ and/or investments ⁽¹⁰⁾:

Loan interest rates shall depend on the beneficiary's credit risk rating, the size and liquidity of loan collateral, the loan repayment term and the loan repayment schedule (while the existing aid scheme (see recitals (23)(d) and (24)(f) respectively in initial decision in case SA.104109) refers to the beneficiary's ‘riskiness’). Lithuania confirms that this determination will lead to a more targeted risk assessment of the project of each beneficiary and the amount of interest rate will depend on the ability of each beneficiary to offer individual security measures, while the applicable interest rate will not be, in any event, lower than 5%. The interest rate of the loans shall be calculated according to the rate calculator approved by the order of the General Director of Invega, which shall be prepared in accordance with the methodology for calculating loans provided directly by Invega and shall be publicly announced on the Invega website www.invega.lt (while the existing aid scheme (see recitals (23)(d) and (24)(f) respectively, in initial decision in case SA.104109 which instead to the above refers only to a ‘*methodology approved by Invega*’);

- (d) With regard to the eligible costs of an investment project for which a loan is granted:

To extend the eligible costs indicated in the existing aid scheme (recital (24)(b) in initial decision in case SA.104109) to include, in the financing of the acquisition of tangible fixed assets, also the purchase of vehicles as specified in paragraphs 8.2.6.1 to 8.2.6.3 of the Draft Amending Order ⁽¹¹⁾.

clearer for applicants. In addition, the Statistical Register of Business Entities of the Lithuanian Statistics Department defines "main economic activity" as: *the main type of activity that creates the largest share of the total added value (the total value of the output minus the costs incurred in the production of the output).*”

⁽⁹⁾ Amended Paragraph 6.2.3, Draft Amending Order.

⁽¹⁰⁾ Amended Paragraph 6.3.4, Draft Amending Order.

⁽¹¹⁾ Amended Paragraphs 7.1.1 and 8.2.6, Draft Amending Order.

- (6) Apart from the notified amendments, Lithuania confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered. Lithuania confirms that aid granted under section 2.3 of the Temporary Crisis Framework and aid granted under the same respective section of the Temporary Crisis and Transition Framework will not exceed the aid ceiling provided in the respective section of the Temporary Crisis and Transition Framework at any point in time.
- (7) Aid may be granted under the existing aid scheme, as amended, as from the notification of the Commission's decision approving the notified amendments.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid

- (8) 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 be liable to affect trade between Member States.
- (9) The existing aid scheme, as prolonged, constitutes State aid within the meaning of Article 107(1) TFEU for the reasons set out in the initial decision ⁽¹²⁾. The notified amendments do not affect that conclusion. The Commission therefore refers to the respective assessment of the initial decision and concludes that the existing aid scheme, as amended, constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Compatibility

- (10) The existing aid scheme, as prolonged, is compatible with the internal market pursuant to Article 107(3)(b) TFEU, since it meets the conditions of sections 1 and 2.3 of the Temporary Crisis and Transition Framework for the reasons set out in the initial decision in case SA.104109 (see recitals (39) to (48)). The Commission therefore refers to the respective assessment of that initial decision. The Commission notes that that assessment remains valid although the Temporary Crisis Framework has in the meantime been replaced by the version referred to in recital (1) of this Decision, inasmuch as the conditions of sections 1 and 2.3 of the Temporary Crisis Framework that are relevant for the initial decision have not been modified substantively in the Temporary Crisis and Transition Framework.
- (11) The notified amendments do not affect the conclusion that the existing aid scheme is compatible with the internal market pursuant to Article 107(3)(b) TFEU.
- (12) In particular, the amended eligibility condition that must be met by potential beneficiaries (recital (5)(a)) tailors the measure to undertakings that are most affected by the current crisis in line with point 68 of the Temporary Crisis and Transition Framework and constitutes a tightening of the conditions.

⁽¹²⁾ See recitals (33) to (38) of the initial decision in case SA.104109.

- (13) Lithuania explains further that the amendment aims to limit the circle of eligible beneficiaries only to those who have suffered significantly from the economic crisis created by the Russian military aggression against Ukraine. Under the existing aid scheme, there may be cases where the volume of an undertaking's total income from imports and exports is relatively small compared to its total sales income while such undertaking would still be considered a potential beneficiary. The change tightens the criterion, as the calculation procedure changes, i.e., in this case, the relevant import and/or export share will not be calculated anymore based on the beneficiary's total imports and exports of 2021 but from the wider pool of the beneficiary's 2021 total sales income. Thus, the threshold of 15% will be more difficult to reach and will ensure that the measure benefits a smaller but more affected number of beneficiaries. The Draft Amending Order aims to target better the relief provided by the measure only to those undertakings that need it the most. The measure thus complies with point 68 of the Temporary Crisis and Transition Framework.
- (14) The notified amendment concerning the activities of eligible beneficiaries (see recital (5)(b)) is due to the fact that the Statistical Register of Economic entities of the Lithuanian Department of Statistics indicates only the main activity of the economic entity.⁽¹³⁾ The measure thus complies with point 68 of the Temporary Crisis and Transition Framework.
- (15) The introduction of more detailed conditions for the determination of the riskiness of each specific beneficiary (see recital (5)(c)) of a loan granted for the purpose of financing working capital and/or investments does not affect the compliance of the measure with point 70(b) of the Temporary Crisis and Transition Framework. The Lithuanian authorities confirm that this determination will lead to a more targeted risk assessment of each beneficiary's project and the amount of interest rate will depend on each beneficiary's ability to offer individual security measures (see recital (5)(c)). The Commission recalls that the applicable interest rates are not lower than 5% (recitals (23)(d) and (24)(f) of the initial decision in SA.104109), and are, consequently, higher than the base rate (1 year IBOR or equivalent as published by the European Commission ⁽¹⁴⁾) available on 1 October 2022 ⁽¹⁵⁾ plus the highest credit risk margin set-out under point 70(b) of the Temporary Crisis and Transition Framework. The measure therefore complies with point 70(b) of the Temporary Crisis and Transition Framework.
- (16) The introduction of certain types of vehicles under the eligible costs (see recital (5)(d)) of an investment project for which a loan is granted does not affect the compliance of the measure with point 70(f) of the Temporary Crisis and Transition Framework.
- (17) Apart from the notified amendments, Lithuania confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered.

⁽¹³⁾ Amended paragraph 5.1.3.3, Draft Amending Order.

⁽¹⁴⁾ Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, pp. 6-9), published on the website of DG Competition: https://ec.europa.eu/competition/state_aid/legislation/reference_rates.htm.

⁽¹⁵⁾ In accordance with footnote (82) of the Temporary Crisis and Transition Framework: "For loans granted until 31 December 2022, the base rate of 1 February 2022 may be used".

- (18) Lithuania confirms that, in accordance with point 95 of the Temporary Crisis and Transition Framework, overall, aid granted under sections 2.1 to 2.3 of the previous Temporary Crisis Frameworks and aid granted under the same respective sections of the Temporary Crisis and Transition Framework will not exceed the aid ceilings provided in the respective sections of the Temporary Crisis and Transition Framework at any point in time (see recital (6)).
- (19) The Commission therefore considers that the notified amendments are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU, since they meet all the relevant conditions of the Temporary Crisis and Transition Framework.
- (20) The Commission therefore considers that the notified amendments do not alter the Commission's conclusion on the compatibility of the existing aid scheme, as prolonged, in the initial decision.

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>.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

