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PUBLIC VERSION

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**Subject: State Aid SA.58574 (2020/N) – Lithuania
Amendment of the scheme SA.57508 (2020/N) - Granting aid to undertakings engaged in the processing of agricultural products in the poultry and eggs sectors and which have incurred losses due to the epidemic of COVID-19.**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 7 September 2020, Lithuania notified an amendment to the State aid scheme SA.57508 (2020/N) (“the existing aid scheme”) approved by Commission Decision C(2020) 5334 final of 29 July 2020 (“the initial decision”) under Article 107(2)(b) TFEU and the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020¹ (hereinafter “the Guidelines”). By emails of 16, 18 and 25 September 2020, Lithuania submitted supplementary information on the measure.
- (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 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) A number of agricultural sectors are severely affected by the COVID-19 outbreak and the containment measures taken by the government. Those agricultural sectors are characterized by: (i) a production which, because of its characteristics,

* Handling instructions for SENSITIVE information are given at <https://europa.eu/ldb43PX>

¹ OJ C 204 of 1.7.2014, p. 1. Amended by the Notices published in OJ C 390, 24.11.2015, p. 4. OJ C 139, 20.4.2018, p. 3 and OJ C 403, 9.11.2018, p. 10.

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

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has had to continue even though demand from companies in the downstream markets directly affected by governmental containment measures has dropped significantly during March, April and May 2020, (ii) the poor or unsustainable quality of the production due to its perishability and the limited alternative to immediate consumption. Because of the combined effect of those two factors, the agricultural sectors concerned suffered damage until 16 June 2020.

- (4) The above combination occurs in the poultry and eggs sector.
- (5) The objective of the existing measure is to compensate damage incurred by undertakings active in the processing of agricultural products in the poultry and eggs sectors, resulting from the diversion of unsold fresh poultry products to freezing facilities and unsold eggs for processing, due to the COVID-19 outbreak and the governmental containment measures in the interest of public health that Lithuania has taken thereafter.
- (6) The compatibility assessment of the existing aid scheme is based on Article 107(2)(b) TFEU, in light of Part II, Chapter 1, Section 1.2.1.1: "*Aid to make good the damage caused by natural disasters or exceptional occurrences*" of the Guidelines.

2.1. Legal basis

- (7) The legal bases of the measure are:
 - a) Draft Order of Minister of Agriculture of the Republic of Lithuania "*Rules for Granting Aid to Undertakings Engaged in the Processing of Agricultural Products in the Poultry and Eggs Sectors and Which Have Incurred Losses due to the Epidemic of COVID-19 Disease (Coronavirus Infection)*", under which the existing aid scheme was notified and the initial decision was taken.
 - b) Draft Amendment Order of the Minister of Agriculture of the Republic of Lithuania "*Order No. 3D-573 of 31 July 2020 Rules for Granting Aid to Undertakings Engaged in the Processing of Agricultural Products in the Poultry and Eggs Sectors and Which Have Incurred Losses due to the Epidemic of COVID-19 Disease (Coronavirus Infection)*", under which the amendments are notified.

2.2. Administration of the measure and form of aid

- (8) The granting authority is the National Paying Agency under the Ministry of Agriculture of the Republic of Lithuania (hereinafter, "the Agency").
- (9) The measure provides aid in the form of direct grants.

2.3. Budget and duration of the measure

- (10) The overall estimated budget for the aid scheme is EUR 20 million, which is financed from the general State budget of Lithuania from funds borrowed on behalf of the Republic of Lithuania.
- (11) Aid may be granted under the measure as from its approval until no later than 31 March 2021.

2.4. Beneficiaries

- (12) Under the existing aid scheme the beneficiaries are producers fulfilling the eligibility criteria and engaged in one of the activities described in recital (10) of the initial decision.
- (13) Aid under the scheme will not be granted to undertakings that have benefited from earlier unlawful aid declared incompatible by a Commission Decision (either as an individual aid or an aid under an aid scheme being declared incompatible), until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest. Aid may be granted under the scheme to undertakings that are in difficulty as defined in point (35)15 of the Guidelines.
- (14) The number of beneficiaries is estimated at about 25 producers active in the poultry and eggs sector, including small and medium enterprises ('SMEs') as well as large undertakings.

2.5. Sectoral and regional scope of the measure

- (15) The existing aid scheme is open to undertakings active in the processing of agricultural products in the poultry and eggs sectors. It applies to the whole territory of Lithuania.

2.6. Amendment to the existing aid scheme

- (16) With the present notification, the Lithuanian authorities wish to amend the existing aid scheme, in order to adjust the methodology for calculating losses.
- (17) The formula for the loss calculation methodology is being amended because the sales prices of frozen products and eggs sold to the industry in the fixed period of 2020 reflect more accurately the income and losses incurred by companies due to the COVID-19 pandemic, than the average sales prices of that period in 2017-2019. This is because the formula evaluates for each product the loss by taking as a basis the quantity that normally would have been sold as a fresh product times a higher price (represented by an average price of the same period in the years 2017-2019) and deducting from this the revenue actually obtained from the products converted to other uses (frozen poultry, powder or industrial use eggs) at a lower price. For the revenue actually obtained in 2020 it is more appropriate to use prices from 16 March – 16 June 2020, whereas for the counterfactual of what the producers would normally have obtained absent the crisis, it is adequate to use average price of the same period in the years 2017-2019, as it is reasonable to assume that in the absence of the exceptional occurrence the additional stored products would have been sold as fresh products at a price not lower than the average price of the same period in the years 2017-2019.
 - *Amendment to the formula*
- (18) The damage for enterprises of poultry slaughtering and processing of eggs is calculated under the amended scheme as the product of an increase in the quantity of stored products in the period of compensation compared to the same period of 2017-2019, and the difference between the average sales prices of the fresh

product for the period from March to June of 2017-2019 and the frozen product for the period from March to June of 2020.

- (19) The formula presented in recital (25) of the existing aid scheme is amended as follows:

$$NB_A = \sum N_j + N_M,$$

where:

NB_A – losses incurred by the applicant during the period from 16 March to 16 June 2020 (EUR);

N_j – losses incurred by the applicant under the different types of eligible products in storage as identified below³ (EUR) which are calculated by the following formula:

$$N_j = (SK_{2020} - SK_{2017-2019}) \times (K1_{vid} - K2_{vid}),$$

where:

SK_{2020} – the quantity of stored product during the period from 16 March to 16 June 2020 (t);

$SK_{2017-2019}$ – average quantity of product in storage for the period from 16 March to 16 June in each of the years 2017-2019 (t);

$K1_{vid}$ – average sales price of chilled product for the period of 16 March to 16 June 2017-2019 (EUR/t);

$K2_{vid}$ – average selling price of the frozen or deep-frozen product during the **period from 16 March to 16 June 2020** (EUR/t);

j – type of product in storage: poultry carcass, poultry meat part, egg product (liquid egg mixture, liquid egg mass)

N_M – losses incurred by the applicant as a result of the increase in the quantity of eggs directed to the production of egg powder (EUR), calculated by the following formula:

$$N_M = ((KK_{2020} - KK_{2017-2019}) \times K3_{vid}) - (KM \times K4_{vid}),$$

where:

KK_{2020} – the quantity of eggs during the period from 16 March to 16 June 2020 from which the egg powder was produced (t);

$KK_{2017-2019}$ – average quantity of eggs, from which the egg powder was produced, for the period 16 March to 16 June in each of the years 2017-2019 (t);

³ i.e., poultry carcass, poultry meat part, egg product (liquid egg mixture, liquid egg mass).

K_{3vid} – average price of fresh packaged eggs sold in the period of 2017-2019 in March-June (EUR/t);

K_M – the quantity of egg powder produced from an increased quantity of eggs (increased quantity of eggs taken as the difference between KK_{2020} and $KK_{2017-2019}$) (t);

K_{4vid} – average selling price of egg powder **during the period of 16 March to 16 June 2020** (EUR/t).

- (20) The damage for enterprises of sorting and packing of eggs is calculated under the amended scheme as the product of an increase in the quantity of eggs sold to the industry during the period of compensation for losses compared to the same period in 2017-2019, and the difference between the average selling prices for fresh packaged eggs for the period from March to June of 2017-2019 and eggs intended for the industry for the period from March to June of 2020.
- (21) The formula presented in recital (27) of the existing aid scheme is amended as follows:

$$NB_A = (PK_{2020} - PK_{2017-2019}) \times (K_{5vid} - K_{6vid}),$$

where:

NB_A – losses incurred by the applicant (EUR);

PK_{2020} – the quantity of eggs sold to the industry during the period from 16 March to 16 June 2020 (t);

$PK_{2017-2019}$ – average quantity of eggs sold to the industry during the period from 16 March to 16 June in each of the years 2017-2019 (t);

K_{5vid} – average price of fresh packaged eggs sold in the period of 2017-2019 in March - June (EUR/t);

K_{6vid} – average price of eggs sold to the industry **during the period from 16 March to 16 June 2020** (EUR/t).

- (22) All the other conditions of the existing aid scheme remain unchanged as described in the initial decision.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (23) By notifying the amendment to the existing aid scheme before putting it into effect, the Lithuanian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (24) 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.

- (25) The existence of aid within the meaning of Article 107(1) TFEU was assessed and established in recitals (41) to (46) of the initial decision. The amendments introduced by the Lithuanian authorities do not affect those findings. The Commission therefore refers to that assessment.

3.3. Compatibility

- (26) 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.
- (27) Under Article 107(2)(b) TFEU, aid shall be considered compatible with the internal market if it is found to make good the damage caused by natural disasters or exceptional occurrences.
- (28) In its initial decision, the Commission concluded that the existing aid scheme was compliant with Article 107(2)(b) TFEU and the compatibility conditions set out by the Guidelines. As regards the assessment of the existing aid scheme, reference is made to recitals (47) to (92) of the initial decision.
- (29) In recital (54) of the initial decision, the Commission concluded that the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU. The proposed modifications to the existing aid scheme (recital (16) of this decision) do not affect the assessment made in this regard (recitals (49) to (53)) of the initial decision). Therefore, the Commission sees no reason to alter its finding in this regard.
- (30) In recital (60) of the initial decision, the Commission concluded that the direct link between the damage caused by the exceptional occurrence and the aid is ensured. The proposed modifications to the existing aid scheme (recital (16) of this decision) do not affect the assessment made in this regard (recitals (55) to (59) of the initial decision). Therefore, the Commission sees no reason to alter its conclusion in this regard.
- (31) The Commission considers that the modification of the calculation method for the damage suffered (recitals (17) to (21)) is a relevant change and it is thus necessary to assess that the aid remains proportional to the damage and in compliance with the Guidelines. The adaptation of the calculation method to reflect more accurately the income and losses incurred by companies due to the COVID-19 pandemic is justified. In particular, using the sales prices of frozen products and eggs sold to the industry in the fixed period of 2020 is deemed more appropriate than the average sales prices of that period in 2017-2019, as explained in recital (17).
- (32) In the formulas in recitals (19) and (21), the calculation method with regard to fresh products (K1vid, K3vid, K5vid) remains unchanged, as well as the aid intensity. The safeguards introduced by the Lithuanian authorities to ensure that the compensation does not exceed what is necessary to make good the damage (as described in recitals (65) to (69) of the existing aid scheme) remain in place.

Therefore, the Commission considers that the adapted calculation method, as notified by Lithuania, does not lead to overcompensation.

- (33) Under the existing aid scheme, the calculation of the loss of income is made on the basis of damage and loss of value, by comparing the period in 2020 with the average of a three-year reference period and has been assessed by the Commission as consistent with point 341 of the Guidelines (recital (84) of the initial decision). The now notified calculation method maintains, for fresh products, the comparison with the three-year reference period and therefore fulfils the conditions of point 341 of the Guidelines.
- (34) In addition, pursuant to point 344 of the Guidelines the Commission will accept other methods for the calculation of damage provided it is satisfied that these are representative, not based on abnormally high yields and do not result in the overcompensation of any beneficiary. The Commission considers that it follows from recitals (17) to (21) that the adapted calculation method based on sales prices of frozen products and eggs sold to the industry in the fixed period of 2020, specifically for these products, does not lead to overcompensation and therefore, complies with the conditions of point 344 of the Guidelines.
- (35) The Commission notes that apart from the modification mentioned in recital (16), there are no other alterations to the existing aid scheme (recital (22)).
- (36) The Commission therefore considers that the notified scheme fulfils the applicable conditions of the Guidelines and is eligible for the derogation provided for in Article 107(2)(b) TFEU.

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(2)(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

