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**COMMISSION IMPLEMENTING DECISION**

**of 6.5.2024**

**on the reduction of the amount of the first instalment of the non-repayable support for  
Lithuania**

(Only the Lithuanian text is authentic)

# COMMISSION IMPLEMENTING DECISION

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## on the reduction of the amount of the first instalment of the non-repayable support for Lithuania

(Only the Lithuanian text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility<sup>1</sup> ('Regulation (EU) 2021/241'), and in particular Article 24(8) thereof,

Whereas:

- (1) According to Article 4(2) of Regulation (EU) 2021/241, the specific objective of the Recovery and Resilience Facility is to provide Member States with financial support with a view to achieving the milestones and targets of reforms and investments as set out in their recovery and resilience plans.
- (2) Council Implementing Decision of 28 July 2021 on the approval of the assessment of the recovery and resilience plan for Lithuania<sup>2</sup> (the 'Council Implementing Decision') provides that the Union is to release instalments in accordance with the Financing Agreement conditional on a decision by the Commission, taken in accordance with Article 24(5) of Regulation (EU) 2021/241, that Lithuania has satisfactorily fulfilled the relevant milestones and targets identified in relation to the implementation of the recovery and resilience plan.
- (3) On 30 November 2022, Lithuania submitted a request for payment of the first instalment of the non-repayable support, accompanied by a management declaration and a summary of audits. Pursuant to Article 24(3) of Regulation (EU) 2021/241, the Commission assessed on a preliminary basis whether the relevant milestones set out in the Council Implementing Decision had been satisfactorily fulfilled. For the purpose of that assessment, the Operational Arrangements concluded between the Commission and Lithuania<sup>3</sup> in accordance with Article 20(6) of Regulation (EU) 2021/241 were taken into account.
- (4) Section 2(1)(1.1) of the Annex to the Council Implementing Decision provides the relevant milestones that are to be satisfactorily fulfilled for the first instalment of the non-repayable support for an amount of EUR 649 543 707.

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<sup>1</sup> OJ L 57, 18.2.2021, p. 17 and OJ L 63, 28.2.2023, p. 1.

<sup>2</sup> ST 10477 2021 INIT; ST 10477 2021 ADD 1; ST 14637 2023 INIT; ST 14637 2023 ADD 1; not yet published.

<sup>3</sup> Recovery and Resilience Facility Operational Arrangements between the European Commission and Lithuania entered into force on 5 May 2022.

- (5) As a result of the preliminary assessment provided for in Article 24(3) of Regulation (EU) 2021/241, the Commission established that milestone 142 on “Delivery of the proposals made on the basis of an in-depth analysis for the withdrawal of tax exemptions and special tax regimes to the Parliament” had not been satisfactorily fulfilled. In accordance with Article 24(6) of Regulation (EU) 2021/241, the Commission communicated to Lithuania its assessment on 28 February 2023 and informed Lithuania that it could present its observations on the Commission’s assessment within one month from the date of that communication.
- (6) On 22 March 2023, Lithuania presented its observations on the Commission’s assessment pursuant to Article 24(6), first subparagraph of Regulation (EU) 2021/241. Following a request for clarification by the Commission, Lithuania presented further details of its observations on 30 March 2023.
- (7) Following the procedure provided for by Article 24(6) of Regulation (EU) 2021/241, taking into account the justification provided in the request for payment and the observations presented by Lithuania, the Commission established that milestone 142 had not been satisfactorily fulfilled. On that basis, the Commission, by means of Implementing Decision on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania of 28 April 2023<sup>4</sup>, suspended EUR 26 201 251 from the disbursement of the first instalment of the non-repayable support as laid down in Section 2(1)(1.1) of the Annex to the Council Implementing Decision. EUR 17 467 501 of that suspended amount was related to milestone 142. Pursuant to Article 24(6) of Regulation (EU) 2021/241, the Commission has determined the suspended amount by applying the methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation explained in its Communication of 21 February 2023<sup>5</sup>.
- (8) On 26 October 2023, Lithuania presented additional justifications to demonstrate that the necessary measures for the satisfactory fulfilment of milestone 142 had been taken and officially requested the Commission to reassess its satisfactory fulfilment.
- (9) After taking into account the additional justifications provided by Lithuania, the Commission considered that Lithuania had not taken the necessary measures to satisfactorily fulfil milestone 142. In accordance with the procedure provided for in Article 24(8) of Regulation (EU) 2021/241, on 19 December 2023, the Commission communicated to Lithuania its conclusions as well as informed Lithuania that it could present its observations on the Commission’s conclusions within two months from the date of that communication.
- (10) On 19 February 2024, Lithuania presented its observations related to the Commission’s conclusions regarding the fulfilment of milestone 142.
- (11) On the basis of the justification provided in the request for payment and the observations presented by Lithuania in accordance with Article 24(6) and Article 24(8) of Regulation (EU) 2021/241, the Commission still considers that milestone 142 has not been satisfactorily fulfilled.
- (12) Milestone 142 is a measure of progress towards the achievement of measure F.1.2 “A fairer and more growth-friendly tax system” whose objective is “to create the

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<sup>4</sup> C(2023) 2956 final.

<sup>5</sup> Annex II to Communication from the Commission to the European Parliament and the Council of 21 February 2023 ‘Recovery and Resilience Facility: two years on. A unique instrument at the heart of the EU’s green and digital transformation’ COM (2023) 99 final.

*conditions for rebalancing the tax system by ensuring a socially fairer, growth-friendly tax structure, encouraging consumers to change behaviour through taxation to adapt to the changing needs of society*". This measure consists of three sub-measures: F.1.2.1, F.1.2.2 and F.1.2.3. Sub-measure F.1.2.1 is entitled *"The abolition of tax exemptions and special tax regimes that are inefficient, no longer reflect state priorities or do not comply with the Green Deal"* and its description states that *"The objective of this measure is to identify tax exemptions and special tax regimes which are inefficient, no longer reflect state priorities or do not comply with the Green Deal and amend the respective tax laws. The Ministry of Finance shall carry out a cost-benefit analysis and draft the necessary amendments to the legislation to be adopted by the Parliament. The amendments shall come into force by 31 March 2023"*.

- (13) Milestone 142 of the Council Implementing Decision, which pertains to sub-measure F.1.2.1, requires that: *"based on the publication of the cost-benefit analysis of existing tax exemptions and special tax regimes that are not effective and (or) no longer reflect state priorities, draft amendments to the relevant tax laws shall be drafted and submitted to the parliament"*. The fulfilment of the milestone is subject to the *"[d]elivery of the proposals made on the basis of an in-depth analysis for the withdrawal of tax exemptions and special tax regimes to the parliament"*.
- (14) Lithuania has not provided to the Commission due justification that milestone 142 has been satisfactorily fulfilled.

***"Based on the publication of the cost-benefit analysis of existing tax exemptions and special tax regimes that are not effective and (or) no longer reflect state priorities, [...] delivery of the proposals made on the basis of an in-depth analysis [...]"***

- (15) The Council Implementing Decision requires the publication of a cost-benefit analysis of existing tax exemptions and special tax regimes that are not effective and (or) no longer reflect state priorities and (or) do not comply with the Green Deal. The Commission considers that this requirement has not been satisfactorily fulfilled for the following reasons.
- (16) In the Commission Implementing Decision of 28 April 2023 on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania, the Commission considered that Lithuania had not presented a published cost-benefit analysis of its tax exemptions and special tax regimes, noting that Lithuania had only provided the recordings of the public discussions of a Tax Working Group (together with the slides presented), and explanatory notes of limited scope. The Commission considered that neither of these constituted an in-depth cost-benefit analysis as required by the milestone.
- (17) In recital 10 of that Decision, the Commission stated that *"The public discussions of the Tax Working Group took place from 23 February 2021 to 29 September 2021 and covered seven meetings on various tax-related topics, with one of the meetings dedicated to the discussion on the revision of special tax regimes and tax exemptions. As neither the summary nor conclusions of the Tax Working Group discussions have been prepared or published, the slides, which were limited in scope and lacked methodological justifications, and the recordings do not constitute an in-depth cost-benefit analysis. In its observations, Lithuania stated that "the Lithuanian authorities have never committed that the Tax Working Group, which has publicly discussed tax exemptions, would result in 'published conclusions'. Instead, the outcome of the analysis and the discussions in the Tax Working Group has materialised through submitting respective draft law amendments" and explained that it provided "detailed*

*explanatory notes on why respective suggestions were put forward and the analysis of their expected impact”. In this respect, as due justification, Lithuania provided accompanying explanatory notes for (i) exemptions to excise duties and (ii) the non-taxable amount of income. As Lithuania points out, explanatory notes are included as evidence for milestone 142 in the Operational Arrangements. However, whilst it is indeed not a requirement that the Tax Working Group has published conclusions, the milestone requires “the publication of the cost-benefit analysis of existing tax exemptions and special tax regimes”. In this respect, whilst the accompanying explanatory notes that Lithuania provided have been taken into account by the Commission, it is noted that the aforementioned Tax Working Group discussions covered more than 20 groups of tax exemptions and special tax regimes. Given the narrow scope of the submitted explanatory notes, covering only two areas, the Commission does not have reasonable assurance that they are equivalent to a published in-depth cost-benefit analysis as required by the milestone.”*

- (18) In recital 12 of that Decision, the Commission stated that *“Lithuania further provided observations that “Given that tax policy in the EU is considered a national prerogative, in [Lithuania’s] opinion, it should be up to the national authorities to decide what type of analysis is needed in order to take optimal, informed and national priority based decisions in tax policy-making”. However, the distribution of competences between the Union and its Member States has no bearing on the commitment by Member States to deliver the milestones and targets set in their recovery and resilience plans.”*
- (19) Following that Decision, as part of its submission of 26 October 2023, Lithuania provided new evidence for an analysis of tax exemptions in Lithuania, which states the cost of each listed exemption in terms of the foregone revenue and provides some qualitative information on the benefits of each listed tax exemption, while quantitative evidence is limited to tax exemptions that are proposed to be amended. For certain exemptions, the evidence provides arguments for maintaining or amending the exemptions.
- (20) As part of its submission of 26 October 2023, Lithuania repeated the arguments made before the adoption of the suspension Decision, that it should be up to the national authorities to decide what type of analysis is needed in order to take optimal, informed and national priority based decisions in tax policy-making, and stated that, *“the Council Implementing Decision in case of milestones 142 and 144 does not specify in detail how the review of the Lithuanian tax system should be done, but the scope of obligations is limited only by the directions and objectives of the reform [...] Therefore, in case of these milestones Lithuania has a prerogative to decide, after carrying out the analysis, which specific measures to implement in order to achieve the milestones, taking into account all the relevant circumstances and arguments, which are also mentioned in the milestones themselves (e.g. effectiveness of tax exemptions and special tax regimes, state priorities etc.). The assessment of the achievement of the relevant milestones therefore should depend on the evaluation, whether actions taken by the Member State correspond to the directions of the reforms stated in the Council Implementing Decision.”*
- (21) Also, as part of its submission of 26 October 2023, Lithuania brought forward the following new arguments. *“Firstly, it is important to determine a clear scope of the obligations of the Member State in relation to every milestone included in the RRP, which should be taken into account during assessment of the achievement of the milestones. According to the RRF regulation, the RRP has to cover all or a significant*

*subset of challenges identified in the CSRs, and the Council Implementing Decision specifically defines the scope of CSRs and the scope of measures related to these CSRs, which are included in the RRP and which become for the Member State obligatory to implement in order to receive funding from the RRF. Based on this, it is reasonable to conclude that specific obligations of Lithuania related to tax CSRs are set out in the Council Implementing Decision. The Member State can always do more than what is required by the Council Implementing Decision, but during the assessment of the achievement of the milestones, only specific obligations in the Council Implementing Decision should be taken into account". In this context, Lithuania notes that "The Commission in its decision refers to the recommendations made in the OECD and the World Bank reports: "<... the Commission also took note of independent analysis on this issue, notably reports by the World Bank and the OECD." We would like to note, that these studies are not included in the description of milestone 142, therefore, recommendations of these studies in no way can be considered as an obligation of Lithuania under the RRP".*

- (22) Further elaborating on the arguments previously made in the submission of 26 October 2023, on 19 February 2024 Lithuania has put forward the following new arguments.
- (23) Lithuania has argued that *"there are significantly more factors which affect the tax policy decisions in the legislative process. Respecting the legal framework for legislative process and given the State priorities and requirement to conduct the cost-benefit analysis for tax policy options established by the Government Programme, the Government of the Republic of Lithuania has been working consistently to ensure that the draft amendments to the tax laws delivered to the Parliament would be aligned with political priorities and take into account the opinions put forth by various stakeholders".* Lithuania has also argued that *"the draft legislation focuses on the review of tax incentives necessary to address the national challenges by withdrawing or deciding to continue applying the respective tax exemptions; on the other hand, the reliefs which are in line with the Government priorities, including the ones that are socially justified, keep being maintained in force."* Lithuania furthermore has argued that *"it would be unjustifiable to use limited administrative resources to make a cost-benefit analysis also for those tax incentives which would not have been proposed to be abolished or narrowed without the respective political mandate indicated in the Government Programme"*.
- (24) Moreover, Lithuania has argued that *"It is worth recalling that recognising Lithuania's commitment on the delivery of the proposals for the tax reform to create the conditions for re-balancing the tax system and improving the efficiency of the tax system established by the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Lithuania (hereinafter Council Implementing Decision), followed by the relevant milestones, particularly 142, 144 and 147 and looking at the justification of the implementation of these milestones, the legislative measures based on the national legal framework for the legislative proposals were purposefully, but also rather artificially divided and assigned to the respective milestones during the dialogue with the Commission. This might have led to the Commission's assessment that the scope of all tax exemptions or special regimes covered by the legislative measures in personal and corporate income taxes, indirect taxes, immovable property tax and social insurance area is insufficient, a conclusion with which we would disagree. Given the general arguments and reasons presented above, we kindly note that the progress made towards the conditions for re-balancing and improving the efficiency of the Lithuania's tax system would, from our*

*perspective, be expected to be measured without asymmetry and taking a more comprehensive view and overall possible impact of the proposals towards a better-designed tax system of Lithuania.”*

- (25) However, the arguments brought forwards by Lithuania do not demonstrate that a cost-benefit analysis has been conducted in accordance with the requirements of the Council Implementing Decision.
- (26) With respect to the new evidence for an analysis of tax exemptions in Lithuania, which states the cost of each listed exemption in terms of the foregone revenue and provides some qualitative information on the benefits of each listed tax exemption, in the communication of its conclusions of 19 December 2023, the Commission considered that, in line with the requirements of the Council Implementing Decision, the cost-benefit analysis should identify tax exemptions and special tax regimes which are inefficient, no longer reflect state priorities or do not comply with the Green Deal. In addition, the Commission pointed out that the Council Implementing Decision requires an *“in-depth analysis for the withdrawal of tax exemptions and special tax regimes.”* When assessing the analysis submitted against those requirements, the Commission considered that the analysis was incomplete both regarding its scope and its substance. Regarding its scope, the analysis focused on tax exemptions and did not provide sufficient information on special tax regimes. In addition, it was limited to 21 personal income tax exemptions and regimes (without making a distinction between these two). However, the independent report of the World Bank, which the Commission took note of in the Commission Implementing Decision of 28 April 2023 on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania, identified 97 income codes, corresponding to 72 unique categories of taxable income. It was additionally noted that multiple special tax regimes were considered as inefficient in the independent reports of the World Bank, the Bank of Lithuania, and the OECD. Several of the regimes identified by those independent reports as inefficient, such as taxation of personal income received from small partnerships and of income received from sole proprietorships, were excluded from the analysis submitted by Lithuania. Regarding its substance, the presented analysis also had several major methodological shortcomings that precluded it from being considered as a cost-benefit analysis, sufficient to meet the requirements of the Council Implementing Decision. Namely: (i) for the elements that were listed in the provided document but were not proposed to be amended (52 out of 73 total listed), the evaluation of benefits was only qualitative, the causal links between the benefits and the exemptions were not explained, and the analysis was supported by neither quantitative nor qualitative evidence in most cases; (ii) for these elements the analysis did not monetise costs and benefits of the policy measure and weigh them against each other with a view to assessing the effectiveness and efficiency of the measure. Taking into account that the Council Implementing Decision requires the *“[d]elivery of the proposals made on the basis of an in-depth analysis for the withdrawal of tax exemptions and special tax regimes to the parliament”*, the above insufficiencies of the analysis compromised the achievement of the reform, given that it was not ensured that the proposals abolishing tax exemptions and tax regimes actually target those exemptions and regimes that are inefficient, no longer reflect state priorities or do not comply with the Green Deal. For the elements that are listed in the analysis submitted but are not proposed to be amended, the evaluation of benefits is only qualitative, the causal links between the benefits and the tax exemptions are not explained, the analysis is supported by neither quantitative nor qualitative evidence in most cases and, overall, the analysis does not follow the main methodological requirements for a

cost-benefit analysis, namely to monetise costs and benefits of the policy measure and weigh them against each other with a view to assessing the effectiveness and efficiency of the measure. Several major existing tax exemptions and special tax regimes identified as ineffective by international organisations have been excluded from the cost-benefit analysis or even prolonged or expanded without sufficient justification. In particular, the analysis does not sufficiently address the corporate and semi-corporate special tax regimes, including small partnerships or sole proprietorships.

- (27) Regarding the argument made by Lithuania that it should be up to national authorities to decide what type of analysis is needed in order to take optimal, informed and national priority based decisions in tax policy-making, as already stated in recital 12 of the Commission Implementing Decision of 28 April 2023, the distribution of competences between the Union and its Member States has no bearing on the commitment by Member States to deliver the milestones and targets set in their recovery and resilience plans.
- (28) With respect to the repeated arguments put forward by Lithuania, and in particular in the context of the 26 October 2023 submission, the Council Implementing Decision in case of milestones 142 and 144 does not specify in detail how the review of the Lithuanian tax system should be done, the Commission notes the following. Firstly, the description of the sub-measure stipulates the objective *“to identify tax exemptions and special tax regimes which are inefficient, no longer reflect state priorities or do not comply with the Green Deal and amend the respective tax laws”* Secondly, the description of target 142 requires *“based on the publication of the cost-benefit analysis of existing tax exemptions and special tax regimes that are not effective and (or) no longer reflect state priorities, draft amendments to the relevant tax laws shall be drafted and submitted to the parliament.”* Thirdly, the Council Implementing Decision requires an *“in-depth analysis for the withdrawal of tax exemptions and special tax regimes.”* It stems from the wording of the Council Implementing Decision that a comprehensive and in-depth cost-benefit analysis needs to be carried out. In particular, the analysis should cover tax exemptions and special tax regimes which are inefficient, no longer reflect state priorities or do not comply with the Green Deal. It also stems from the Council Implementing Decision that the cost-benefit analysis represents a necessary preliminary step that precedes the drafting and submission of proposals for legislative amendments to parliament. Therefore, the Council Implementing Decision established specific requirements for the cost-benefit analysis and the review of the tax system, which the Commission considers as not met.
- (29) With respect to the new arguments brought forward by Lithuania in the submission of 26 October 2023 in relation to the identification of the requirements set out in the Council Implementing Decision and recommendations made in the OECD and the World Bank reports, the Commission agrees with Lithuania that it is important to determine a clear scope of the obligations of the Member State to be taken into account during the assessment of the achievement of milestones and targets. The Commission in that respect has explained in its Communication of 21 February 2023 its framework for assessing milestones and targets under the Regulation (EU) 2021/241 which set out the methodology for establishing the requirements for a specific milestone or target.<sup>6</sup> Against that backdrop and specifically concerning the

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<sup>6</sup> Annex I to Communication from the Commission to the European Parliament and the Council of 21 February 2023 ‘Recovery and Resilience Facility: two years on. A unique instrument at the heart of the EU’s green and digital transformation’ COM (2023) 99 final.



reports of the OECD and the World Bank, the Commission recalls the argumentation set out in recital 14 Commission Implementing Decision of 28 April 2023 where the Commission has considered that, in the absence of a published cost-benefit analysis, the aforementioned reports provide relevant expert input. While the reports are not considered to be binding for Lithuania, the Commission considers those reports as a relevant reliable and comparative element to assess whether the analysis provided by Lithuania complies with the requirements of the Council Implementing Decision and, in particular, whether that analysis sufficiently assessed and identified tax exemptions and special tax regimes which are inefficient, no longer reflect state priorities or do not comply with the Green Deal. In that respect, the Commission notes that existing tax exemptions and special tax regimes identified as ineffective by international organisations (the World Bank, the OECD) and local stakeholders (the Bank of Lithuania) have been excluded from the cost-benefit analysis or even prolonged or expanded without sufficient justification.

- (30) With respect to the new arguments brought forward by Lithuania in the submission of 19 February 2024, in relation to the existence of significantly more factors, other than cost-benefit analysis, which play a role when formulating legislative proposals, the Commission notes that the description of milestone 142 requires that *“based on the publication of the cost-benefit analysis of existing tax exemptions and special tax regimes that are not effective and (or) no longer reflect state priorities, draft amendments to the relevant tax laws shall be drafted and submitted to the parliament”*. In that respect, the Commission recalls the explanation provided above in recital 28. Milestone 142 requires that the draft amendments to be submitted to the Parliament be developed on the basis of a specific cost-benefit analysis and identifies that cost-benefit analysis as necessary pre-condition for the preparation of legislative proposals. Thus, while the conduct of a cost-benefit analysis may not be the only element to be considered, it is clear from the wording of the Council Implementing Decision that there is an interlinkage between the cost-benefit analysis and the legislative proposals and that the draft amendments were meant to rely on the outcome of the cost-benefit analysis.
- (31) With respect to the new arguments brought forward by Lithuania in the submission of 19 February 2024, in relation to the fact that the tax system review was based on national priorities, and that it would be unjustifiable to use limited administrative resources to make a cost-benefit analysis also for those tax incentives which would not have been proposed to be abolished or narrowed without the respective political mandate or for minor tax exemptions, the Commission notes the following. First, the description of the sub-measure stipulates the objective *“to identify tax exemptions and special tax regimes which are inefficient, no longer reflect state priorities or do not comply with the Green Deal and amend the respective tax laws”*. Second, the description of target 142 requires *“a cost-benefit analysis of existing tax exemptions and special tax regimes that are not effective and (or) no longer reflect state priorities”*. In that respect, compliance with state priorities addresses only a part of the measure and milestone description. Furthermore, as outlined above, the Council Implementing Decision requires the submission of government proposals to be preceded by a specific cost-benefit analysis. In this respect, for most of the existing tax exemptions and special tax regimes that are listed in the cost-benefit analysis provided by Lithuania but that are not proposed to be amended, the Commission recalls the explanation provided above in recital 26 that the evaluation of benefits is only qualitative and that the causal links between the benefits and the exemptions are not explained. Additionally, Lithuania has confirmed that its cost-benefit analysis was

selective as it excluded tax incentives falling outside the scope of the government programme. It is noted that it would be against the spirit of the Council Implementing Decision, to exclude certain existing tax exemptions or special tax regimes from the cost-benefit analysis only on the basis of being considered to reflect state priorities and without considering their cost as the same benefits might be achieved with more efficient policy measures. Lithuania itself has confirmed in its submission of 19 February 2024 that it is reasonable to “[evaluate] tax exemptions and special tax regimes guided by a cost-benefit analysis in assessing whether tax benefits are justified”.

- (32) With respect to the new arguments brought forward by Lithuania in the submission of 19 February 2024, in relation to the fact that the Commission should take a more comprehensive view of all proposals put forward for a better-designed tax system, rather than artificially dividing and assigning them to individual milestones, in the Commission’s view, the wording of the descriptions of the three milestones indicated by Lithuania (142, 144 and 147) and their corresponding sub-measures does not lead to the conclusion that the three milestones overlap, as their scope is different and the Commission assesses the content of all proposals against the specific requirements of the corresponding milestones of the Council Implementing Decision. It is also recalled that Articles 18 to 20 of Regulation (EU) 2021/241 clearly describe the process that leads from the submission of the recovery and resilience plans to the adoption of the Council Implementing Decision approving the positive assessment of the plan. In that respect, following the submission by the Member State of the recovery and resilience plan including envisaged milestones and targets, those are discussed and assessed in close cooperation with the Member State. In that respect, the Commission has developed the practice of sharing the text of the milestones and targets set out in the Annex to the Commission proposal for Council Implementing Decision with the Member State concerned to ensure that they reflect the intention of the Member State. In particular, the Commission shared the milestones and targets on 10 June 2021 by means of email and Lithuania replied signalling its agreement in writing on 2 July 2021.

***“... draft amendments to the relevant tax laws shall be drafted and submitted to the parliament.”***

- (33) The Council Implementing Decision requires that, on the basis of the published cost-benefit analysis, draft amendments to the relevant tax laws be drafted and submitted to the parliament. The Commission considers that this requirement has not been satisfactorily fulfilled for the following reasons.
- (34) In the Commission Implementing Decision of 28 April 2023 on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania, the Commission considered that the two draft legislative amendments put forward as due justification by Lithuania were limited in scope.
- (35) In recital 13 of that Decision, the Commission provided that *“In relation to the requirement of milestone 142 that “draft amendments to the relevant tax laws shall be drafted and submitted to the parliament”, Lithuania has put forward two amendments as due justification. The first amendment concerns the reform of the non-taxable amount of income. In the explanatory note accompanying the law, the objective of the amendment is defined as “a targeted measure aimed at more socially sensitive groups*

of the population, ensuring the growth of their disposable income”<sup>7</sup>. Lithuania argues in its observations that the reform would narrow the non-taxable income exemption in the long term, while addressing poverty and income inequality in a more targeted way, by increasing the tax-free earnings thresholds for the lowest earners and narrowing the tax-free earnings for the higher earners. In the present context, it is not disputed that the reform would be material, but the focus of the reform is the revision of personal income taxation levels for different income groups, where the effective tax rates are lowered for low-income earners at the expense of middle-income earners. As such, this draft amendment would be primarily a change to the progressivity of personal income taxation. Therefore, this draft amendment is not related to sub-measure F.1.2.1 but to sub-measure F.1.2.3, which aims to “adjust the personal income tax and social insurance contributions in order to better prevent poverty and reduce income inequality” and requires Lithuania to “prepare a study on possible adjustments to the personal income tax and social insurance contributions and draft the necessary amendments to the legislation to be adopted by the Parliament”. The second draft amendment concerns the reduction of the excise duty exemption for certain heating fuels and agricultural gas oils. In its observations, Lithuania argues that this tax exemption would be material and relevant. While it may be material and relevant within its area of effect, it is narrow in scope because it pertains to only one group of tax exemptions, namely on excise duties. Therefore, it is not reasonable to conclude that this draft amendment covers the “relevant tax laws” for “[t]he abolition of tax exemptions or special tax regimes that are inefficient, no longer reflect state priorities or do not comply with the Green Deal”.

- (36) In recital 14 of that Decision, the Commission provided that “In considering whether the due justification put forward by Lithuania as regards milestone 142 gave reasonable assurance that Lithuania analysed the “tax exemptions or special tax regimes that are inefficient, no longer reflect state priorities or do not comply with the Green Deal” as indicated in the title of sub-measure F.1.2.1, the Commission also took note of independent analysis on this issue, notably reports by the World Bank<sup>8</sup> and the OECD<sup>9</sup>. These reports identified the distortions in taxation of different sources of income as one of the priority areas for reform that pertain to inefficient tax exemptions and special tax regimes in Lithuania. Such distortions are not covered by the draft amendments that Lithuania has submitted as due justification. Although Lithuania objects to referencing these reports as they are not mentioned in the Council Implementing Decision, the Commission considers that, in the absence of a published cost-benefit analysis, the aforementioned reports provide relevant expert input to the

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<sup>7</sup> The explanatory note of the draft Law Amending Article 20 of Republic of Lithuania Law No IX-1007 on Personal Income Tax (14 October 2021) notes that “The purpose and objectives of the draft law on personal income tax are to reduce labour taxation for persons with low and medium incomes by applying a higher non-taxable amount of income (hereinafter referred to as NPD) from year 2022. This measure would primarily act as a targeted measure aimed at more socially sensitive groups of the population, ensuring the growth of their disposable income”. It is further explained that “The greatest benefit from the proposed changes to the application of NPD would be those earning up to one median wage, while those earning more would not see any change in NPD”; [Gyventojų pajamų mokesčio įstatymo Nr. IX-1007 20 straipsnio pakeitimo įstatymo projektas \(lrs.lt\)](#).

<sup>8</sup> World Bank (2022), TSI Project 20LT09: Micro Enterprises and Self-employed Tax & Regulatory Assessment for Removing Hurdles to Growth, Recommendation Report Analyzing the Size and Effects of Tax Optimization and Bunching with a Microsimulation Tool: Output 4, World Bank, <http://documents1.worldbank.org/curated/en/099085002062334324/pdf/P17403105b9fdd0b085280ef6ec8857b91.pdf>.

<sup>9</sup> OECD (2022), OECD Tax Policy Reviews: Lithuania 2022, OECD Tax Policy Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/53952224-en>.

*consideration of the due justification put forward by Lithuania regarding the achievement of the objectives of the reform”.*

- (37) Following the entry into force of that Decision, as part of its submission of 26 October 2023, Lithuania provided new evidence and informed the Commission that it had submitted proposals to the Parliament to amend several tax exemptions and review special tax regimes for areas other than excise duties. These new proposals covered: (a) five tax exemptions and special tax regimes pertaining to personal income tax: (i) limiting the use of business certificates; (ii) limiting deductible expenses applicable to individual activity certificates; (iii) lowering the tax credit threshold for individual activity certificate holders and increasing its upper-bound tax rate; (iv) abolishing the tax exemption for contributions to pensions funds and for life insurance contracts; and (v) limiting tax exemptions for gifts; (b) three tax exemptions pertaining to corporate income tax: (i) abolishing sector relief for private health care institutions; (ii) abolishing sector relief for life insurance companies; and (iii) setting limits for the deduction of the cost of the purchase price of cars; (c) three more amendments of relevance to corporate income tax: (i) clarifying the conditions for the corporate income tax regime applicable to venture and private capital undertakings; (ii) introducing restrictions for goodwill amortisation for tax purposes in cases of transactions between related parties; and (iii) limiting transfer of tax losses between group companies to up to 70% of taxable profits of the receiving entity; and (d) abolishment of the property tax exemption for unfinished or abandoned buildings. At the same time, in that submission to the Commission, Lithuania also explained that it had proposed to the Parliament to expand or prolong some tax exemptions.
- (38) Repeating the arguments which were made before the suspension regarding the amendments to the Law on Personal Income Tax related to changing the structure of the non-taxable amount of income, as part of its submission of 26 October 2023 Lithuania put forward that *“Although it is true that the amendments to the Law on Personal Income Tax contribute also to sub-measure F.1.2.3, but we would like to reiterate once again, that one of the aims of reviewing the structure of maximum non-taxable amount was not only addressing poverty and income inequality, but also to narrow the scope of its application and our calculations provided in cover note show the expected reduction of losses of revenue due to this change. Therefore, we argue that part of the amendments to the Law on Personal Income Tax also contribute to the achievement of milestone 142”.*
- (39) In the submission of 19 February 2024, Lithuania has further provided a mapping for the personal income tax categories identified in the World Bank report related to 21 personal income tax special tax regimes and tax exemption categories. First, Lithuania argues that it was incorrect to consider that *“the number of items which should be treated as pure tax incentives is 97”* instead arguing that *“the overall amount of unique codes is 72”*. It further states that the identified 21 personal income tax (PIT) exemptions and special tax regimes that were provided in the cost-benefit analysis as part of the 26 October 2023 submission are considered by the Ministry of Finance of the Republic of Lithuania as the finalised list of existing tax exemptions and special tax regimes, and it corresponds to 46 out of these 72 unique codes. In this argument, Lithuania admits that not all the unique codes are covered by the 21 personal income tax exemptions and special tax regimes provided as part of the 26 October 2023 submission, as 26 out of 72 unique codes are excluded. These correspond to other income categories such as dividend income, rent income or income from the sale of financial assets. Lithuania does not explain the reasons for this exclusion. Lithuania

further states that five out of 21 personal income tax exemptions and special tax regimes that were identified in the cost-benefit analysis as part of the 26 October 2023 submission are proposed to be amended as part of the proposal submitted to the Parliament. The reviewed personal income tax exemptions and special tax regimes, according to Lithuania, amount to “overall cost EUR 1.3 billion, which constitutes 73% of total cost of PIT exemptions”. Therefore, Lithuania deems the Commission’s argument that an insufficient proportion of personal income tax exemptions and special tax regimes are addressed not valid.

- (40) Lithuania further stresses that “the costliest exemption (over EUR 1 billion) is NTA. Counterfactual analysis, provided to the Commission, showed that the proposed and adopted changes in NTA calculation formula structure allow for saving up to EUR 400 million per year, preventing further ballooning of the cost of this exemption”. Lithuania also argues that “in view of the fact that there is no consensus at EU level on what to consider as a tax relief<sup>10</sup>, as well as the fact that the obligations under milestone 142 were drafted on the basis of similar provisions of the Government Programme, we question the doubts on the suitability of the analysis of changes in the formula for calculating non-taxable amount provided by Lithuania in justifying the progress of milestone 142”, thus implicitly stating that the non-taxable amount of income could be considered for the purposes of the assessment of the fulfilment of milestone 142.
- (41) In its submission of 19 February 2024, Lithuania also argues that “the main special tax regime in Lithuania refers to the taxation of the self-employed, so-called individual activities, as it is based on the complex elements (different calculation of taxable income, specific calculation of tax rate or even special taxation rules within the regime applicable to income from self-employment) leading to the special treatment for tax”. Lithuania further argues that “withdrawal of special tax regimes does not refer to disregarding the special features applicable to calculating income from self-employment, but rather to modifications of regime abandoning those elements which can be seen as distortive or ineffective” and, as such, argues that removing or changing certain elements of the Individual Activity Certificate could be considered a withdrawal of the main special tax regime. Lithuania further adds that such an interpretation is supported by the OECD and the World Bank, whose recommendations referred to a modification of the Individual Activity Certificate regime. Regarding the small partnerships and sole proprietorships, Lithuania recognises that, “according to the report of the OECD, there is a room for improving taxation of income received from small partnerships and sole proprietorships, this issue should be analysed further in the wider context”. Lithuania also highlights that some changes were proposed as part of the draft Law on State Social Insurance, which Lithuania acknowledges is relevant for milestone 147 pertaining to sub-measure F.1.2.3 but encourages the Commission to take note of also in the context of assessing the fulfilment of milestone 142.
- (42) In its submission of 19 February 2024, following concerns from the Commission of the expansion of several VAT and corporate income tax exemptions that have been identified as ineffective in contrast to the milestone requirement that such tax exemptions should be withdrawn, Lithuania defends its decision to expand the value-

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<sup>10</sup> Discussion on the topic was initiated in 2023, in the DG TAXUD Meetings of the Expert Group “Structures of the Taxation Systems”. Most recent discussions took place on 5 December 2023. Next steps include a questionnaire prepared by the Commission services on tax expenditure practices and challenges across member countries.

added tax (VAT) exemption for small businesses by stating that the measure received authorisation from the EU and is part of a collaborative effort with the European Commission to support economic growth, and the Council endorsed the decision. Furthermore, Lithuania points out that “*the new Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises, scheduled to take effect from 1 January 2025, allows Member States, including Lithuania, to increase the threshold for VAT exemptions for small businesses further up*”, highlighting a supportive EU policy environment for such measures.

- (43) In its submission of 19 February 2024, Lithuania also defends the expansion of the corporate income tax exemptions by stating that “*draft amendments aimed at promoting small business, creating more favourable conditions for its continuous growth and development, are proposed in the framework of the implementation of the Government Programme seeking for a fairer and more growth-friendly tax system related to the initiative on improving business conditions and increasing transparency, improving small and medium-sized business taxation and tax administration which is in line with the State priorities, as well as a consistent EU policy direction to support small and medium-sized enterprises and their growth*”. Despite recommendations from the World Bank, Lithuania argues that a uniform corporate income tax rate increase is disproportionate and that the approach to scale up the corporate income tax rate incrementally for companies with higher turnover is more balanced and equitable.
- (44) However, the Commission considers that the arguments brought forward by Lithuania do not demonstrate that Lithuania submitted proposals to the Parliament in accordance with the requirements of the Council Implementing Decision.
- (45) With respect to the new evidence provided by Lithuania related to the submission of proposals to the Parliament to abolish several tax exemptions and review special tax regimes for areas other than excise duties, the Commission notes that Lithuania has not submitted to the Parliament a proposal to withdraw any of the special tax regimes. According to the title of milestone 142, Lithuania should deliver “*proposals... for the withdrawal of... special tax regimes to the Parliament*”. This requirement is reinforced by the subsequent milestone of this measure, milestone 143, which requires “*Entry into force of amendments to laws abolishing... special tax regimes that are no longer effective and (or) no longer reflect state priorities*”. The World Bank report<sup>11</sup> identified 97 income codes, corresponding to 72 unique categories of taxable income, many of which are similar to special tax regimes, and recommended simplifying the tax system. The independent reports by the OECD<sup>12</sup>, the Bank of Lithuania<sup>13</sup>, and the World Bank<sup>14</sup> concluded that multiple special personal income tax regimes are ineffective, such as taxation of income received from small partnerships, income received from sole proprietorships, business certificates. Two special tax regimes, namely business certificates and individual activity certificates, are identified in the analysis presented by Lithuania as ineffective, but Lithuania has not proposed to withdraw them.

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<sup>11</sup> World bank (2022).

<sup>12</sup> Ibid.

<sup>13</sup> The Bank of Lithuania, Lietuvos banko išvada dėl numatomo teisinio reguliavimo poveikio, 21 August 2023, [https://www.lb.lt/uploads/documents/files/LB\\_08\\_21\\_isvada\\_del\\_numatomo\\_teisinio\\_reguliavimo\\_poveikio.pdf](https://www.lb.lt/uploads/documents/files/LB_08_21_isvada_del_numatomo_teisinio_reguliavimo_poveikio.pdf).

<sup>14</sup> World Bank (2022).

- (46) Instead, the government submitted proposals to the Parliament to limit the use of business certificates, to limit deductible expenses applicable to individual activity certificates, and to increase the tax rates for individual activity certificates. Although those proposals could be considered steps in the right direction, no proposals have been made to withdraw inefficient special tax regimes and, therefore, the submitted proposals cannot be considered sufficient to conclude that the requirements of the Council Implementing Decision are met.
- (47) Whilst the milestone concerns the abolition of tax exemptions and special tax regimes that are inefficient, no longer reflect state priorities or do not comply with the Green Deal, several VAT and corporate income tax exemptions, which have been identified as ineffective by the World Bank<sup>15</sup> and the Bank of Lithuania<sup>16</sup>, are proposed to be expanded, without providing sufficient analysis to prove their effectiveness. A VAT exemption which exempts small businesses from registering as VAT payers is proposed to be expanded aiming to decrease the administrative costs for small businesses and to promote entrepreneurship. No supporting data regarding the benefits of this tax exemption and the quantification of these benefits has been provided by Lithuania, whereas the cost is estimated to increase by around 25%. The Bank of Lithuania, which was assigned by the Lithuanian Parliament on 4 July 2023 to conduct an independent assessment of the tax law proposals, has concluded that the VAT exemption is not compatible with Lithuania's strategic priority to decrease the VAT gap, which is one of the highest among the EU Member States and which the government aims to reduce<sup>17</sup>. The Bank of Lithuania supports the latter conclusion by an analysis of the comparative data for EU Member States. The Lithuanian government has also submitted a proposal to the Parliament to revise and to expand the corporate income tax exemption for small businesses, which reduces the corporate income tax (CIT) rate from the standard 15% to 5%, with an objective to support small businesses and to solve the issue of the tax exemption creating disincentives for companies to expand in order to stay just below the turnover threshold above which the higher corporate income tax rates applies. The World Bank<sup>18</sup> has concluded in its independent evaluation that this tax exemption is ineffective as it limits businesses' incentive to grow, creates tax arbitrage opportunities and reduces the effective corporate income tax, which, according to the calculations provided by the Bank of Lithuania<sup>19</sup>, was the second lowest among the EU Member States. The World Bank recommended either to abolish this corporate income tax exemption or to increase the preferential corporate income tax rate to at least 10%. The World Bank also highlighted the issue of high revenue losses due to multiple corporate income tax exemptions in Lithuania. However, out of 22 corporate income tax exemptions identified in the analysis submitted by Lithuania, the Lithuanian government has proposed to abolish only two with an estimated fiscal impact of 0.02% of GDP, while three major corporate income tax exemptions are proposed to be expanded or prolonged, with a revenue-decreasing fiscal impact estimated at 0.2% of GDP. That expansion or prolongation, without any prior cost-benefit analysis, puts at risk the achievement of the objective of the reform as described in the Council Implementing Decision.

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<sup>15</sup> World Bank (2022).

<sup>16</sup> The Bank of Lithuania (21 August 2023).

<sup>17</sup> The goal to reduce the VAT gap is included in the Programme of the Eighteenth Government of the Republic of Lithuania.

<sup>18</sup> World Bank (2022).

<sup>19</sup> The Bank of Lithuania (19 April 2023).

- (48) Regarding the argument made by Lithuania with respect to the amendments to the Law on Personal Income Tax related to changing the structure of the non-taxable amount of income, the position of the Commission in recital 13 of the Commission Implementing Decision of 28 April 2023 on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania is recalled, which considers the draft amendment as primarily a change to the progressivity of personal income taxation.
- (49) The fact that Lithuania has provided a mapping of the personal income tax exemptions delineated in the cost-benefit analysis submitted by Lithuania as new evidence in the context of the submission of 19 February 2024 and the personal income tax categories indicated in the World Bank report is welcome. However, the provided list of special tax regimes does not cover 26 unique categories of taxable income out of 72 identified by the World Bank. In addition to that, the Commission cannot agree with the statement by Lithuania that the reviewed personal income tax exemptions “*constitutes 73% of total cost of PIT exemptions*”. When the non-taxable amount of income is excluded from the list of personal income tax exemptions as irrelevant to the fulfilment of milestone 142, in line with the reasoning set out in recital 13 of the Commission Implementing Decision of 28 April 2023, the total cost of amended personal income tax exemptions included in a table presented by Lithuania constitutes only 32% instead of 73% of the costs of the listed tax exemptions. Moreover, it must be noted that the listed tax exemptions are not suggested to be eliminated but only reduced in scope. Therefore, the percentage mentioned above only indicates the relative importance of the amended tax exemptions in the provided list rather than a monetary effect of the amendments. Lastly, due to the omission of other income categories such as dividend income, rent income or income from the sale of financial assets, the values in the table presented by Lithuania only provide a partial overview of the personal income tax exemptions in Lithuania.
- (50) With respect to the arguments put forward by Lithuania in the submission of 19 February 2024, as far as the non-taxable amount of income is concerned, the Commission points out that, in recital 13 of its Implementing Decision of 28 April 2023, it was explained that the focus of the reform is the revision of personal income taxation levels for different income groups, where the effective tax rates are lowered for low-income earners at the expense of middle-income earners. This measure is regarded as a change to the progressivity of personal income taxation rather than directly relating to the inefficiency of tax exemptions or special tax regimes. Therefore, the amendment is linked to sub-measure F.1.2.3, which focuses on preventing poverty and reducing income inequality through adjustments to personal income tax and social insurance contributions, rather than to sub-measure F.1.2.1, under which milestone 142 falls. Lithuania has not provided additional arguments in its submission of 19 February 2024 to rebut the Commission’s assessment included in the Implementing Decision of 28 April 2023 on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania.
- (51) Furthermore, with respect to the arguments put forward by Lithuania in the submission of 19 February 2024 related to withdrawal of special tax regimes, the Commission points out that the key recommendation by the World Bank was to put an end to the practice of taxing by type of income and different form of activity. In this context, despite Lithuania’s argument that removing or changing certain elements of the Individual Activity Certificate or business certificates could be considered a withdrawal of special tax regimes, this does not address the essence of having different



taxation rates for different sources of income. The Commission indicates that a withdrawal is not equal to a reduction or an amendment, and the milestone clearly requires a withdrawal as confirmed by the name of the milestone: “*Delivery of the proposals (...) for the withdrawal of tax exemptions and special tax regimes (...)*” and the name of the corresponding sub-measure: “*The abolition of tax exemptions and special tax regimes that are inefficient, no longer reflect state priorities or do not comply with the Green Deal*”. Furthermore, regarding the private partnerships and sole proprietorships, Lithuania recognises that further work would be necessary for this type of activity, and some changes could be proposed in this regard. Therefore, Lithuania itself implicitly recognises that, when making the legislative proposals, it did not consider the wider picture of special tax regimes in terms of complementarities and their inter-connection with one another for tax arbitrage purposes. Moreover, Lithuania has not submitted a bill to withdraw any of the special tax regimes. The reading that, to meet the requirements of the milestone, Lithuania should propose a withdrawal of the special tax regimes and tax exemptions falling under the milestone, is supported by the policy objectives of the milestone and its corresponding sub-measure.

- (52) With respect to the expansion of the VAT exemption for small businesses, the Commission points out that Lithuania’s submission does not directly address the Commission’s concerns regarding the lack of supporting data to justify the increased VAT threshold and the potential negative impact of this on the VAT gap. The fact that the expansion of the VAT exemption has received the authorisation from the Council under Directive 2006/112/EC does not necessarily mean that the exemption is effective and may, for that reason, be excluded from the scope of milestone 142. In this context, the Commission notes that Lithuania has not provided any supportive evidence that the expansion of the VAT exemption would be conducive to growth. The Council approval of the VAT exemption under Directive 2006/112/EC is not based on an economic cost-benefit analysis, whereas the Bank of Lithuania has found the VAT tax exemption not compatible with Lithuania’s strategic priority to decrease the VAT gap, and Lithuania has not responded to this concern.
- (53) In addition, the Commission points out that Lithuania’s justification of expanding the corporate income tax exemptions for small businesses is based on strategic goals and EU policy alignment, as well as on arguing that the extended exemptions are purposeful and appropriate, supporting state priorities such as technological renewal and innovation. However, Lithuania does not address the Commission’s concerns about the lack of cost-benefit analysis weighing the cost (in terms of revenue losses) against the apparent benefits (in terms of technological renewal and innovation), which makes an assessment of whether the exemption is inefficient not possible to undertake. The Commission considers that, while Lithuania’s strategy to adjust the corporate income tax rate mitigates to an extent the ‘bunching effect’, whereby companies choose not to expand in order to stay in a lower corporate income tax band, it does not withdraw this special tax regime, which the World Bank had identified as inefficient.

#### ***Commission methodology for the determination of payment suspension and reduction***

- (54) In its Implementing Decision of 28 April 2023 on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania, the Commission, pursuant to Article 24(6) of Regulation (EU) 2021/241, determined the suspended amount by applying the methodology for the determination of payment

suspension under the Recovery and Resilience Facility Regulation explained in its Communication of 21 February 2023<sup>20</sup>.

- (55) In that Implementing Decision, the Commission rejected Lithuania’s arguments against the upward adjustment and its value, which, in Lithuania’s view, was disproportional, in conflict with legitimate expectations and would result in unequal treatment of Member States, as well as Lithuania’s claim that a downward adjustment should be applied to milestone 142 to reflect that “*progress was made in the achievement of milestones*”, notably concerning the “*reduction of the excise duty exemption for certain heating fuels and agricultural gas oils*”.
- (56) In recital 25 of that Decision, the Commission provided that “[i]n relation to the proportionality of the upward adjustment and its value, in accordance with Article 18(4)(b) and Article 19(3)(b) of Regulation (EU) 2021/241 based on the explanations provided by the Member States in their recovery and resilience plans the Commission had to assess whether that plan is expected to “contribute to effectively addressing all or a significant subset of challenges identified in the relevant country specific recommendations, including fiscal aspects thereof and recommendations made pursuant to Article 6 of Regulation (EU) No 1176/2011 where appropriate, addressed to the Member State concerned or challenges identified in other relevant documents officially adopted by the Commission in the context of the European Semester.” In accordance with Annex V Section 3 to that Regulation, Member States’ recovery and resilience plans could only be approved if they achieved an A rating on that criterion.”
- (57) In recital 26 of that Decision, the Commission provided that “[g]iven the importance of this criterion in the approval process for a recovery and resilience plan, the methodology aims at disincentivising Member States from not implementing those reforms and investments that were considered as particularly important to justify the A rating, through proportional negative consequences on the financial contribution. The upward adjustment in case of non-implementation of such reforms and investments ensures that the approval process of the recovery and resilience plan is not denatured, by not permitting a de facto circumvention of this criterion without a significant consequence. Therefore, an upward adjustment that proportionally reflects the importance of this reform to this assessment criterion is warranted”.
- (58) In recital 27 of that Decision, the Commission provided that “[i]n accordance with Article 24(2) of Regulation (EU) 2021/241, Member States should submit payment requests “[u]pon completion of the relevant agreed milestones and targets” (in the plural). Payments under the Facility depend on the satisfactory fulfilment of sets of milestones and targets, as grouped by the Council Implementing Decisions into instalments. This means that there is no individual payment value attached to the satisfactory fulfilment of each milestone or target and Member States receive the payment of the instalment only upon the satisfactory fulfilment of all the milestones and targets of the respective instalment. In addition, the Recovery and Resilience Facility is a results-based instrument where financing is not linked to costs and the cost a Member State incurs to meet individual milestones or targets is not relevant for the payment of the instalment. It is recalled that reforms generally do not have any expected cost. It is also recalled that Article 24(6) of Regulation (EU) 2021/241 provides for the right of the Commission to suspend the payment of all or part of the

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<sup>20</sup> Annex II to Communication from the Commission to the European Parliament and the Council “Recovery and Resilience Facility: Two years on; A unique instrument at the heart of the EU’s green and digital transformation”, COM (2023) 99 final adopted on 21 February 2023.

*financial contribution in case of non-fulfilment of milestone and targets. Therefore, there cannot be a legitimate expectation of a Member State to receive funding for individual milestones or targets that are fulfilled. Moreover, paying Member States whenever an individual milestone or target is met, regardless of whether all the other milestones and targets set out in that payment request have also been met, would risk a circumvention of the expected results as assessed against the criteria foreseen in Regulation (EU) 2021/241 for the approval of each recovery and resilience plan”.*

- (59) In recital 28 of that Decision, the Commission provided that “[i]n determining the suspended amount, equal treatment is ensured amongst Member States by the publication by the Commission of the methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation. Notably, as Lithuania in its observations considers that the upward adjustments may lead to unequal treatment amongst Member States, the methodology ensures that any such upward adjustments are based on objective factors, with clear links to the assessment criteria that Regulation (EU) 2021/241 establishes for the assessment of the recovery and resilience plans. In the same manner that the Commission ensured equal treatment amongst Member States when applying these assessment criteria in the assessment of the recovery and resilience plans, the Commission will ensure equal treatment in the application of the methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation”.
- (60) In recital 29 of that Decision, the Commission provided that “[f]urthermore, in its observations, Lithuania argues that a downward adjustment should be applied to milestone 142 to reflect that “progress was made in the achievement of milestones”, notably concerning the “reduction of the excise duty exemption for certain heating fuels and agricultural gas oils”. In line with the methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation, the Commission has examined whether the policy objective of the milestone is partly met or if some of the objectives or dimensions of the milestone are met and others are not. In considering whether to apply such a downward adjustment, the Commission has assessed the substantive progress towards the achievement of the overall objective of the reform. In this respect, the overall objective of the reform is “to identify tax exemptions and special tax regimes which are inefficient, no longer reflect state priorities or do not comply with the Green Deal and amend the respective tax laws.” In the absence of the published cost-benefit analysis of Lithuania’s tax exemptions and special tax regimes, it is not possible to quantify progress towards the policy objective of the milestone or the substantive progress towards the overall objective of the reform. Furthermore, no objectives or dimensions of the milestone have been met, notably as neither of the two requirements of the milestone (“publication of the cost-benefit analysis of existing tax exemptions and special tax regimes that are not effective and (or) no longer reflect state priorities” and “draft amendments to the relevant tax laws shall be drafted and submitted to the parliament”) has been met’.
- (61) Following the entry into force of that Decision, as part of its submission of 26 October 2023, Lithuania repeated some of the arguments already put forward in its submission of 22 March 2023. In particular, as part of its submission of 26 October 2023, Lithuania contends that “the Commission still does not provide any specific arguments why tax reforms are considered more important as compared to other reforms in the RRP for Lithuania, it only gives reference to relevant CSRs. Only the reference to CSRs cannot justify such upward adjustment, because almost all of the reforms in the RRP for Lithuania aim at the implementation of CSRs. In our view, there is still no

*justification for such a large increase of suspended amount by application of additional coefficient (multiplying by coefficient 3), as compared to other reforms. We think that the upward adjustment should be based only on objective evaluation criteria, which could justify not only the fact of the upward adjustment, but also justify its size quantitatively.” Likewise, as part of its submission of 26 October 2023, Lithuania repeats that “[a]lthough the Commission itself acknowledged that some actions have been taken by Lithuania to implement milestone 142 (reduction of the excise duty exemption for certain heating fuels and agricultural gas oils), which are relevant, they were treated as insignificant and not worthy of downward adjustment of the corrected unit value. Exemptions and special tax regimes, which do not comply with the Green Deal, are specified in the description of the reform in the Council Implementing Decision as a part of this reform, which shows the importance of these actions. In our opinion, this was not a consistent application of the Commission methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation”.*

- (62) Following the entry into force of that Decision, as part of its submission of 26 October 2023, Lithuania further elaborated on the arguments already put forward before and has put forward the following new arguments. In particular, it argued, regarding the Commission methodology for the determination of payment reduction under the Recovery and Resilience Facility Regulation, that *“there is no legal basis during implementation of the adopted RRP to come back to the process of the approval of the plan”* and that *“the process of payments described in Article 24, the RRF regulation clearly links the payments of the RRF funds with the achievement of specific milestones and targets indicated in the approved recovery and resilience plans. Therefore, the payments to the Member State after adoption of the plan depend only on the proper achievement of the specific milestones and targets. Failure to achieve one or several milestones and targets cannot be considered as a circumvention of the criteria of the adoption of the plan and put in doubt the right of the Member State to receive financing for other milestones and targets of the plan, which are satisfactorily achieved.”* This argument has been repeated in Lithuania’s submission of 19 February 2024, where Lithuania has stated *“that in [Lithuania’s] opinion, there is no legal basis during implementation of the adopted RRP to come back to the process of the approval of the plan as such procedure is not stipulated by the RRF regulation”*. To support this opinion, Lithuania has quoted recitals 18 and 51 and Article 4(2) of Regulation (EU) 2021/241 and has repeated that *“the process of payments described in Article 24 of the RRF Regulation clearly links the payments of the RRF funds with the achievement of specific milestones and targets indicated in the approved recovery and resilience plans. Therefore, the payments to the Member State after adoption of the plan depend only on the proper achievement of the specific milestones and targets. Failure to achieve one or several milestones and targets cannot be considered as a circumvention of the criteria of the adoption of the plan and put in doubt the right of the Member State to receive financing for other milestones and targets of the plan, which are satisfactorily achieved.”*
- (63) Furthermore, as part of its submission of 26 October 2023, Lithuania also states that *“the amount of payments to the Member State by the opinion of the Commission is actually used as a financial sanction with the aim to disincentivising Member States and not as the form of financing based on the achievement of results measured by reference to milestones and targets.”* This argument has been repeated in Lithuania’s submission of 19 February 2024, where Lithuania has stated: *“We fully agree that RRF is an instrument that provides financing, which is not linked to actual costs (...).*

*However, in our opinion, the application of the Commission Methodology does not respect this and distorts result based nature of RRF – the Methodology is actually used as a financial sanction with the aim to disincentivise Member States from not implementing reforms and investments as planned in RRP and not as the form of financing based on the achievement of results measured by reference to milestones and targets. We cannot agree that upward adjustment coefficient for importance of the reforms, which is in itself a doubtful and subjective criterion (...) could be justified.”*

- (64) Moreover, as part of its submission of 26 October 2023, Lithuania argues that “[a]lthough there is no individual payment value attached to each milestone or target indicated in the Council Implementing Decision, but clearly it would be in conflict with the legitimate expectations principle, if the Member State would not receive any payment for the milestone or target, which was satisfactorily achieved. Furthermore, we would like to point out that according to the Methodology, the basis for the calculation of the suspended amount is the ‘unit value’ of a milestone or target, therefore even the Commission itself considers that every milestone and target has a certain value, which could be adjusted using certain coefficients as it is explained in the Methodology.” Furthermore, Lithuania states: “Although we agree, that in case certain milestones and targets are not achieved, the Member State cannot expect to get full payment of the specific instalment, but it would be clear contradiction with legitimate expectations principle, if the Member State would not receive funding for the milestones and targets, which were actually achieved. This not only is in conflict with the principle of legitimate expectations, but also distorts the essence of the RRF as a result-based instrument. In our opinion, when the Member State fulfils milestones and targets, it is a legitimate right of a Member State to receive funding, otherwise it is not line with the RRF regulation.” This has been repeated in Lithuania’s submission of 19 February 2024, where Lithuania has stated that “[a]lthough we agree that a Member state cannot receive the full payment in cases not all milestones and targets are fully satisfactorily achieved, it would be a contradiction to the result based nature of RRF set in the Regulation (recital (18), recital (51) and Article 4(2)) and legitimate expectations of the Member State not to receive adequate payment for the milestones and targets of the specific instalment, which were satisfactorily achieved.”
- (65) In its submission of 19 February 2024, Lithuania has repeated some of the arguments already put forward in its submission of 26 October 2023, as has been summarised above.
- (66) In its submission of 19 February 2024, Lithuania has also put forward some new arguments and further elaborated on those already put forward before. In particular, Lithuania indicates: “We are convinced that the scope of legislative proposals, which were submitted to the Parliament, fully corresponds to the directions established in the Council Implementing Decision and it remains unclear on what basis it was considered that only 50% of the milestone is satisfactorily achieved.’
- (67) In that submission, Lithuania also contends that ‘the Commission’s Methodology is highly subjective, regarding the size of coefficients of upward adjustment. There is no indication in the Methodology what kind of objective factors should be applied or considered by the Commission in deciding on the size of upward adjustments, only relation of reforms to country-specific recommendations is mentioned, which only triggers the upward adjustment. The Methodology gives a possibility for the Commission to set disproportionately high financial sanctions for the underachievement of one milestone, which in turn effectively reduce the amount of payment for the milestones and targets, which were satisfactorily achieved. In case of

milestone 142, we can also see that not only the Methodology itself, but also its practical application cannot be considered meeting the principles of legitimate expectations, proportionality and transparency”.

- (68) In that submission, Lithuania also states: “[t]he Regulation requires the Commission to suspend “all or part” of the payment of the instalment, but it would be unjustified to suspend all of the payment, if only small part of milestones and targets, which represent completely separate reforms and investments, is not achieved. There is no legal basis and no justification to reduce the value of payment for achieved milestones and targets, which are of equal importance to the ones, which were not achieved, by setting disproportionate financial sanction. Also (...), in practice the milestones and targets are joined into the sets comprising separate instalment, based only on timing of the milestones and targets and in no way the size of the instalment is directly related to the contents of the milestones and targets, therefore two instalments could be of the same size, but include very different set of reforms and investments. If we follow the logic of the Commission, the size of the suspension or reduction of funds for some specific milestone or target or the set of milestones and targets would depend on the size of the instalment, which would include these milestones. And as the size of the instalment has relation neither to the importance of the specific reforms and investments nor to the contents of these milestones and targets, this would contradict not only the principles of result based nature of RRF set in the Regulation but also the logic of Commission’s own methodology”.
- (69) In that submission, Lithuania also claims that “the nature of the Facility allows Member States to expect and requires to set specific value for individual milestones and targets, because it is programmed in the nature of result based approach – the payment of RRF funds is linked to the achievement of agreed milestones and targets. We would also like to emphasize again: although there is no individual payment value attached to each milestone or target, indicated in the Council Implementing Decision, but clearly it would be in conflict with the legitimate expectations principle, if the Member State would not receive any payment or would receive relatively small payment for the milestone or target, which was satisfactorily achieved. Every instalment of the RRP is a set of specific milestones and targets representing specific reforms and investments. Achievement of every milestone and target is required to fully implement the RRP, therefore every milestone and target inevitably has its own value for the implementation of RRP. Although in practice the milestones and targets are joined into the sets comprising separate instalment, it is done only based on timing of the milestones and targets and in no way is related to their contents. On the contrary related milestones or targets of the same reform or investment can be put into several instalments. Therefore, every milestone in itself is important. Underachievement of one milestone cannot lead to disproportionate reduction of payments for the milestones and targets, which were achieved satisfactorily. As we have indicated (...), RRF Regulation clearly links the payments of the RRF funds with the achievement of specific milestones and targets indicated in the approved recovery and resilience plans. As we have also indicated (...), the Commission itself considers that every milestone and target has a certain value as it is explained in the Methodology, otherwise it would be impossible to apply the suspension of payments as it is described in the Regulation. Therefore, we cannot agree that no specific value should be attached to the individual milestones and targets”.
- (70) Moreover, in that submission, Lithuania claims “that there is no indication or classification of reforms and investments in the Council Implementing Decision or any

*other document related to the approved RRP, which indicates the level of importance of the reforms and investments. Therefore, there is no basis to state that any of the specific reforms or investments was absolutely necessary for the positive assessment and approval of the plan'. Furthermore, Lithuania contends that "[t]he Commission's statements related to the importance of the specific elements of tax reform related to the implementation of milestone 142 and their importance for the approval of the plan are not based on any objective verifiable criteria. We consider this a subjective assessment, which was explicitly stated by the Commission only during the assessment of the first payment request and only in relation to one reform of the RRP. And since the importance of the reforms is not determined in the RRP itself, applying of the upward adjustment has no basis. Therefore, in our view, there is still no justification for such a large increase of suspended amount by application of additional coefficient (multiplying by coefficient 3), as compared to other reforms".*

- (71) *Furthermore, in that submission, Lithuania adds that "(...) the Commission itself in its statement agrees that the RRP could have been different compared to the one, which was actually approved in 2021, with different set of reforms and investments and it could still be considered as meeting criteria of the Regulation. The plans of Member States are different, they include different scope and range of reforms and investments, which are related to CSR's or not related to CSR's. The scope of coverage of CSR's differs, and there is no requirement to cover all of them with reforms and investments of RRP. Therefore, there is no basis to state now that the plan would be rejected without certain reforms and investments". Lithuania also claims that "in the view of significant changes in the geopolitical and economic situation, if the RRP of Lithuania were prepared and assessed now, it would certainly be different, therefore it cannot be reasoned that it would have been rejected according to the assessment made in 2021, if it did not include some of the reforms, which were included in 2021".*
- (72) *In that submission, Lithuania also contends that "(...) if the Commission considers the importance of reforms and investments for the milestones and targets that were not achieved, the same principle should be applied to the milestones or targets that were satisfactorily achieved. In other words, Member States should receive larger payments for milestones and targets that have been satisfactorily achieved and are also related to important investments and reforms. However, (...) the current application of the Methodology by the Commission would lead to the opposite result. Important reforms and investments might receive reduced payments compared to the average value of the milestone or target or, in some cases, may receive no payment at all. This clearly demonstrates the self-contradictory nature of the Methodology and its application".*
- (73) *Finally, in that submission, Lithuania states: "We would like to emphasize that the Methodology was published neither when Lithuania submitted its first payment request nor when the plan was approved. Legitimate expectations to receive the amounts determined in the Council Implementing Decision, which are allocated for the implementation of the RRP, were created at the time of the adoption of the Council Implementing Decision and not at the time the Methodology was adopted by the Commission. The commitments regarding reforms and investments and their corresponding milestones and targets and expectation to receive payment for the implementation of them were created not by the Commission but by the Council decision. At the time of the adoption of the Council Implementing Decision Lithuania was not in a position to know that milestones 142, 143, 144 and 145, which represent only 4 milestones out of 191 milestones and targets of RRP (2 % of all milestones and targets), and 2 of 125 measures and sub-measures of RRP (1.6 % of all measures and*

*sub-measures), could have been valued with an amount of funds corresponding to 17% of total RRF allocation to Lithuania, which would be a result of current application of the Methodology by the Commission. If the Commission wanted to propose to treat some reforms or investments as particularly important for the implementation of RRP and having disproportionately high value, in order to be fully transparent and meet the requirements of legitimate expectations principle, it had to be explicitly stated in the Council Implementing Decision itself*.

- (74) The Commission does not agree with the arguments put forward by Lithuania.
- (75) As to the argument put forward by Lithuania in its submission of 26 October 2023, in essence repeating the argument put forward in its submission of 22 March 2023, according to which (i) the Commission has not provided specific arguments as to why the tax reforms are considered more important compared to other reforms in the Lithuanian recovery and resilience plan, and (ii) the reference to country-specific recommendations does not constitute such an argument and cannot justify the upward adjustment, the Commission considers the following. Firstly, the Commission recalls its position taken in recital 25 of its Implementing Decision of 28 April 2023 that in accordance with Article 18(4)(b) and Article 19(3)(b) of Regulation (EU) 2021/241, based on the explanations provided by the Member States in their recovery and resilience plans, the Commission had to assess whether that plan is expected to “contribute to effectively addressing all or a significant subset of challenges identified in the relevant country specific recommendations, including fiscal aspects thereof and recommendations made pursuant to Article 6 of Regulation (EU) No 1176/2011 where appropriate, addressed to the Member State concerned or challenges identified in other relevant documents officially adopted by the Commission in the context of the European Semester.” In accordance with Annex V Section 3 to that Regulation, Member States’ recovery and resilience plans could only be approved if they achieved an A rating on that criterion”. Secondly, the Commission recalls that the Council Implementing Decision itself identifies this reform of particular importance regarding the assessment of this criterion, where in recital 12 it is stated that “the RRP includes an extensive set of mutually reinforcing reforms and investments that contribute to effectively addressing to varying degrees all or a significant subset of the economic and social challenges outlined in the country-specific recommendations addressed to Lithuania by the Council in the context of the European Semester in 2019 and in 2020, in particular those in the areas of ... tax compliance and the effectiveness of the tax and benefit system innovation”. Thirdly, it further recalls that the recovery and resilience plans were drawn up by Member States; hence, Member States were free to include reforms and investments in their Plan that they considered pertinent, as long as these were eligible and the Plan overall met the assessment criteria. Given this, the realm of possible reforms and investment in Member States’ plans is not limited to those related to country-specific recommendations (CSRs), as Lithuania recognises in its submission of 19 February 2024. In line with the methodology, and for the reasons referred to in the argumentation above, the Commission maintains that the implementation of the reform is considered by the Commission of particular importance to justify the rating for addressing all or a significant subset of challenges identified in the relevant country-specific recommendations, including fiscal aspects thereof.
- (76) As to the argument put forward by Lithuania in its submission of 26 October 2023, in essence repeating the argument put forward in its submission of 22 March 2023, according to which the Commission should have applied a downward adjustment



following actions taken by Lithuania to implement milestone 142, the Commission considers the following. Firstly, the Commission recalls its position taken in recital 13 of its Implementing Decision of 28 April 2023 on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania that the draft amendment on the reduction of excise duty exemptions for certain heating fuels and agricultural gas oils was narrow in scope because it pertained to only one group of tax exemptions. Secondly, the Commission also recalls its position taken in recital 29 where it was further stated that the Commission examined whether the policy objective of the milestone was partly met or if some of the objectives or dimensions of the milestone were met and others not and that, in the absence of the published cost-benefit analysis of Lithuania's tax exemptions and special tax regimes, it was not possible to quantify progress towards the policy objective of the milestone or the substantive progress towards the overall objective of the reform. Thirdly, in the context of the information submitted by Lithuania in its submission of 26 October 2023, including an analysis and additional draft legislative amendments, the Commission confirms that the aforementioned draft amendment on the reduction of excise duty exemption was taken into account for the determination of the downward adjustment.

- (77) As to the new argument put forward by Lithuania in its submission of 26 October 2023 and partially repeated in its submission of 19 February 2024, according to which (i) there is no legal basis during the implementation of the adopted recovery and resilience plans to come back to the process of their approval and (ii) Regulation (EU) 2021/241 clearly links the payments of the RRF funds to the fulfilment of specific milestones and targets, and as to the argument that the amount of payments to the Member States is used as a financial sanction, the Commission considers the following. Firstly, Article 24(6) of Regulation (EU) 2021/241 provides that where the Commission establishes that the milestones and targets set out in the Council Implementing Decision have not been satisfactorily fulfilled, “*all or part of the financial contribution*” shall be suspended. Secondly, the Financing Agreement between the Commission and the Republic of Lithuania that has been signed in accordance with Article 23(1) of that Regulation provides that “*the Commission shall determine the share of the instalment to be suspended following an observations procedure*”. Thirdly, Article 24(8) of Regulation (EU) 2021/241 requires the Commission to reduce the amount of the financial contribution proportionately, where the Member State concerned has not taken the necessary measures within a period of six months from the suspension. Fourthly, whilst the Commission notes that the Regulation has not established in detail how the Commission should determine the share of the instalment of the financial contribution to be suspended and, later, reduced, in order to ensure respect of the principles of equal treatment and proportionality, the Commission has transparently laid down the applicable methodology for determining this share. Fifthly, the Regulation establishes a number of criteria that a recovery and resilience plan needs to meet to receive any financial contribution. Where a proposed recovery and resilience plan does not meet those criteria, that plan is to be rejected and not receive funding. As of this, the Commission cannot agree with the logic that it should not take into account whether a measure was of particular importance to justify a rating that was necessary for the approval of the recovery and resilience plan and the receipt of any funding at all, when applying the principle of proportionality to determine the amount to be suspended and, later, reduced. The performance-based nature of the Recovery and Resilience Facility and the financing that it provides, which is not linked to actual costs incurred by the

Member States, requires the Commission to determine that amount proportionally to the relative importance of the respective measure by reference to its recovery and resilience plan and its contribution to the positive assessment of that plan.

- (78) As to the new argument put forward by Lithuania in its submission of 26 October 2023 and partially repeated in its submission of 19 February 2024, according to which (i) it would not be compliant with the principle of legitimate expectation and the results-based nature of the Recovery and Resilience Facility if a Member State did not receive any payment for a satisfactorily fulfilled milestone and target, and that (ii) the Commission itself considers that every milestone and target has a certain value, the Commission considers the following. Firstly, the argument brought forward by Lithuania is theoretical and has no link with the application of the methodology in this specific case, given that Lithuania received a payment for the fulfilment of the other milestones and targets of the instalment amounting to EUR 542 307 937. Secondly, the Recovery and Resilience Facility provides financing not linked to costs. As provided for in Article 20(5), point (a) of Regulation (EU) 2021/241, the Council Implementing Decision establishes the financial contribution to be paid in instalments once the Member State has satisfactorily fulfilled the relevant milestones and targets identified in relation to the implementation of the recovery and resilience plan. The Council Implementing Decisions establish the amount of each instalment and the relevant milestones and targets that need to be fulfilled for this instalment to be disbursed. Neither Regulation (EU) 2021/241, nor the Council Implementing Decisions, attach a specific value to individual milestones and targets, taking into account the nature of the Facility. Member States, therefore, are entitled to receive the amount of the instalment, only when all the milestones and targets of that instalment are fulfilled. In case one or several milestones or targets of that instalment are not fulfilled, Article 24(6) of Regulation (EU) 2021/241 requires the Commission to suspend “*all or part*” of the payment of the financial contribution. Therefore, neither the Regulation nor the Council Implementing Decisions create any legitimate expectations to Member States regarding the specific amount they will receive from the instalment in case of non-fulfilment of one or more of its milestones and targets. Thirdly, to the contrary, the “unit value” of the Commission methodology only serves as a basis for the calculation of the amount to be suspended and later reduced and does not create any expectation for Member States to receive a payment, in cases where one or several milestone or targets of that instalment are not satisfactorily fulfilled. Fourthly, the Commission methodology was published on 21 February 2023, prior to the adoption of the Commission Implementing Decision of 28 April 2023 on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania. Therefore, Lithuania was in a position to know that the non-fulfilment of measures of particular importance would have the above negative financial consequences. In any event, even in the absence of the methodology, Article 24(6) of the RRF Regulation provides the right of the Commission to suspend up to all of the financial contribution in case a milestone or target was not satisfactorily fulfilled. Lithuania was therefore aware of the right of the Commission to suspend and later reduce up to all the financial contribution from the moment of the entry into force of the RRF Regulation and could not have any legitimate expectations. The Commission’s methodology did not alter the legal situation or affect any legally founded legitimate expectations, given that it only specifies how the Commission will exercise a right already granted under the RRF Regulation. As of the above, it is apparent that no legitimate expectations for receiving a higher amount could have been created. This is even more obvious in cases where the decision not to fulfil the

milestones and targets concerns a measure which, if it did not form part of its recovery and resilience plan, would have led to the rejection of that plan. In contrast, the Member State should legitimately expect not to receive any funding for taking a decision not to implement measures that were of particular importance for the approval of the recovery and resilience plan. In any event, even if not applicable in the case at hand, the Commission methodology for the determination of payment reduction under the Recovery and Resilience Facility Regulation states: *“The suspension cannot go beyond the full amount of the instalment, except in the case of non-fulfilment of milestones and targets related to a Member State’s control system.”*, which, in all cases except for milestones and targets related to a Member State’s control system, limits the suspension of a milestone or target to a maximum amount of the instalment within which it is contained.

- (79) As to the new argument put forward by Lithuania in its submission of 19 February 2024, according to which (i) the scope of proposals submitted to the Parliament corresponds to the Council Implementing Decision requirements and according to which (ii) it remains unclear what the basis was to consider that only 50% of the milestone is satisfactorily fulfilled, the Commission considers the following. Firstly, it finds the milestone not satisfactorily fulfilled for the reasons explained in the recitals above. Secondly, it points out that, if it had accepted that it was not possible to calculate the progress towards the achievement of milestone 142, this would result in a larger reduction in accordance with the Commission methodology.
- (80) As to the new argument put forward by Lithuania in its submission of 19 February 2024, according to which the Commission methodology is highly subjective and, as such, does not comply with the principles of legitimate expectations, proportionality and transparency, and as to the new argument put forward by Lithuania in that submission, according to which, in essence, it would be unjustified to suspend or reduce an entire payment even if only small part of milestones and targets is not achieved, the Commission considers the following. Firstly, the Commission repeats that the argument brought forward by Lithuania is theoretical and has no link with the application of the methodology in this specific case, given that Lithuania received a payment for the fulfilment of the other milestones and targets of the instalment amounting to EUR 542 307 937. Secondly, the Commission recalls that Regulation (EU) 2021/241, as well as Article 6(5) of the Recovery and Resilience Facility Agreement between the Commission and the Republic of Lithuania of 6 August 2021 give the Commission full discretion to determine amounts to be suspended up to the whole value of the financial contribution, and the Commission has framed the exercise of its discretion via the partial payment methodology so as to ensure transparency, proportionality and equal treatment of Member States. Therefore, the Commission does not agree with Lithuania that the methodology does not comply with the principles of proportionality and transparency, which it is specifically designed to observe. Thirdly, the Commission recalls the explanation provided above in recital 77 that the performance-based nature of the Recovery and Resilience Facility and the financing that it provides, which is not linked to actual costs incurred by the Member States, requires the Commission to determine that amount proportionally to the relative importance of the respective measure by reference to its recovery and resilience plan and its contribution to the positive assessment of that plan. Fourthly, the Commission does not agree with Lithuania’s statement that the size of an instalment has no relation to the importance of the specific reforms and does not inform the contents of the milestones and targets. As communicated by the Commission in its guidance to Member States, when constructing recovery and

resilience plans, “[t]he size of a specific instalment is not to be necessarily linked to the estimated costs of the measures related to the milestones and targets but should rather be commensurate to the relative importance of the relevant milestones and targets and the progress in implementation of the plan they represent.”<sup>21</sup>”

- (81) As to the new argument put forward by Lithuania in its submission of 19 February 2024, according to which, in essence, (i) the nature of the Recovery and Resilience Facility allows the Member States to expect that specific values for individual milestones and targets are set and (ii) every milestones and target has its own value for the implementation of a recovery and resilience plan, the Commission considers the following. Firstly, the Commission notes that neither the RRF Regulation nor the Council Implementing Decisions attach specific values to individual milestones and targets and does not consider that Member States have any grounds for such an expectation. The Commission further recalls its position taken in recital 27 of its Implementing Decision of 28 April 2023 that payments under the Facility depend on the satisfactory fulfilment of sets of milestones and targets, as grouped by the Council Implementing Decisions into instalments. This means that there is no individual payment value attached to the satisfactory fulfilment of each milestone or target and Member States receive the payment of the instalment only upon the satisfactory fulfilment of all the milestones and targets of the respective instalment. Secondly, the Commission recalls its position taken in the same recital that the Recovery and Resilience Facility is a results-based instrument where financing is not linked to costs and the cost a Member State incurs to meet individual milestones or targets is not relevant for the payment of the instalment. Thirdly, the Commission recalls its position taken in the same recital, that Article 24(6) of Regulation (EU) 2021/241 provides for the right of the Commission to suspend the payment of all or part of the financial contribution in case of non-fulfilment of milestone and targets. Therefore, there cannot be a legitimate expectation of a Member State to receive funding for individual milestones or targets that are fulfilled. Fourthly, the Commission recalls its position taken in the same recital that paying Member States whenever an individual milestone or target is met, regardless of whether all the other milestones and targets set out in that payment request have also been met, would risk a circumvention of the expected results as assessed against the criteria laid down in Regulation (EU) 2021/241 for the approval of each recovery and resilience plan.
- (82) As to the new argument put forward by Lithuania in its submission of 19 February 2024, according to which (i) the level of importance of reforms and investments is not indicated in the Council Implementing Decision or any other document related to the approved recovery and resilience plan, (ii) the Commission’s statements related to the importance of the specific elements of tax reform related to the implementation of milestone 142 and their importance for the approval of the plan are not based on any objective verifiable criteria and (iii) because of that, the application of the upward adjustment has no basis, the Commission considers that it has already explained on the basis of the Council Implementing Decision and the accompanying documents why the tax measure is of particular importance, including that the Council Implementing Decision recital on this assessment criterion refers to this measure and the Commission Staff Working Document ‘Analysis of the recovery and resilience plan of Lithuania’ also identifies this measure in relation to this assessment criterion.

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<sup>21</sup> SWD (2021) 12 final PART 1/2.

- (83) As to the new argument put forward by Lithuania in its submission of 19 February 2024, according to which (i) the Recovery and Resilience Plan could have been different compared to the one that was actually approved in 2021, with different set of reforms and investments and it could still be considered as meeting criteria of the Regulation, and (ii) that in view of significant changes in the geopolitical and economic situation, if the recovery and resilience plan of Lithuania were prepared and assessed now, it would certainly be different, the Commission considers the statement that Lithuania could theoretically have included other measures (either in the existing recovery and resilience plan or if it were to submit it in 2023) to also meet the criteria of the Regulation, including the criterion related to country-specific recommendations, to be wholly irrelevant to the question of whether the tax measure was of particular importance for the recovery and resilience plan that Lithuania has put forward as the question is not a theoretical question of what Lithuania could have done but a factual question of what Lithuania has done.
- (84) As to the new argument put forward by Lithuania in its submission of 19 February 2024, according to which, if the Commission considers the importance of reforms and investments for the milestones and targets that were not achieved, the same principle should be applied to the milestones or targets that were satisfactorily achieved and, as a result, the Member States should receive larger payments for milestones and targets that have been satisfactorily fulfilled and are related to important investments and reforms, the Commission considers this as an opinion of theoretical value as to what the content of the legal framework should be according to Lithuania rather than an argument related to the reduction caused by the non-satisfactory fulfilment of milestone 142. In this respect, the Commission recalls the explanation provided above in recital 80 that Regulation (EU) 2021/241 gives the Commission full discretion to determine amounts to be suspended up to the whole value of the financial contribution, and the Commission has voluntarily framed the exercise of its discretion via the preparation and publication of the partial payment methodology so as to ensure transparency and equal treatment of Member States, where the fact that the Commission has not framed its discretion in the way Lithuania describes is not considered to be relevant.
- (85) Finally, as to the new argument put forward by Lithuania in its submission of 19 February 2024, according to which (i) the Commission methodology was published neither when Lithuania submitted its first payment request nor when the plan was approved, (ii) legitimate expectations to receive the amounts determined in the Council Implementing Decision, which are allocated for the implementation of the recovery and resilience plan, were created at the time of the adoption of the Council Implementing Decision and not at the time the methodology was adopted by the Commission and (iii) if the Commission wanted to propose to treat some reforms or investments as particularly important for the implementation of RRP and having disproportionately high value, in order to be fully transparent and meet the requirements of legitimate expectations principle, it had to be explicitly stated in the Council Implementing Decision itself, the Commission considers the following. Firstly, as explained above, the Commission methodology was published on 21 February 2023, after the approval of the plan and the submission of the first payment request by Lithuania but prior to the adoption of the Commission Implementing Decision of 28 April 2023 on the partial suspension of the disbursement of the first instalment of the non-repayable support for Lithuania. Therefore, Lithuania was in a position to know that the non-fulfilment of measures of particular importance would have the above negative financial consequences. In any event, even in the

absence of the methodology, Article 24(6) of the RRF Regulation provides the right of the Commission to suspend up to all of the financial contribution in case a milestone or target is not satisfactorily fulfilled. Lithuania was therefore aware of the right of the Commission to suspend and later reduce up to the full amount of the financial contribution from the moment of the entry into force of the RRF Regulation and could not have any legitimate expectations to receive the amounts determined in the Council Implementing Decision in accordance with Article 24(8) of the RRF Regulation. The Commission's methodology did not alter the legal framework set out in the RRF Regulation or affect the legitimate expectations of Lithuania, given that it only specifies how the Commission will exercise a right already granted under the RRF Regulation. As of the above, it is apparent that no legitimate expectations for receiving a higher amount could have been created. This is even more obvious in cases where the decision not to fulfil the milestones and targets concerns a measure which, if it did not form part of its recovery and resilience plan, would have led to the rejection of that plan. In contrast, the Member State should legitimately expect not to receive any funding for taking a decision not to implement measures that were of particular importance for the approval of the recovery and resilience plan. In any event, even if not applicable in the case at hand, the Commission methodology for the determination of payment reduction under the Recovery and Resilience Facility Regulation states: *"The suspension cannot go beyond the full amount of the instalment, except in the case of non-fulfilment of milestones and targets related to a Member State's control system."*, which, in all cases except for milestones and targets related to a Member State's control system, limits the suspension of a milestone or target to a maximum amount of the instalment within which it is contained. Moreover, as also explained above, the Council Implementing Decision and the accompanying documents identify the tax measure as one of the measures that were of importance for obtaining a necessary 'A' rating.

- (86) Therefore, as Lithuania has not taken the necessary measures within a period of six months from the suspension to satisfactorily fulfil milestone 142 constituting part of Lithuania's request for payment, the Commission does not consider that milestone 142 is satisfactorily fulfilled. Nonetheless, in accordance with the methodology for the determination of payment suspension under the Recovery and Resilience Facility Regulation, the further progress made towards achieving the policy objective of the milestone should be reflected in a revision to the amount that was subject to suspension. As a result, the amount of the financial contribution for the first instalment of the non-repayable support to be disbursed should be increased and will be released to Lithuania with a separate Commission Implementing Decision.
- (87) After consideration of the observations of Lithuania and in line with the methodology for the determination of payment suspension under Regulation (EU) 2021/241, the amount should be recalculated, taking into account the following elements:
- (i) the unit value for the milestone was derived by dividing the financial contribution made available to Lithuania (EUR 2 224 195 119) by the number of milestones and targets in the Council Implementing Decision (191), as applicable at the time of the Commission Implementing Decision on the suspension;
  - (ii) a coefficient of 0.5 was applied for the milestone as it does not concern the entry into force of a reform or the final step for the implementation of a non-legislative reform;

- (iii) an upward adjustment of the corrected unit value was applied (a factor of 3) as the tax reform in Lithuania is considered by the Commission of particular importance to justify the rating for addressing all or a significant subset of challenges identified in the relevant country-specific recommendations.

Milestone 142 represents one out of six milestones in the sub-reform “A fairer and more growth-friendly tax system” in component 6 of the Lithuanian RRP on “Efficient public sector and preconditions to recover after the pandemic”. The component aims at addressing challenges linked to the tax system, tax compliance, the budgetary framework, human resource management in the public sector and business insolvency management. As such, as per the component description, the component contributes to addressing the country-specific recommendation to improve tax compliance and broaden the tax base to sources less detrimental to growth (Country Specific Recommendation 1 2019). Furthermore, through additional tax revenues and potential savings thanks to spending reviews, the component also contributes to addressing recommendations on strengthening the tax and benefit system (Country Specific Recommendation 1 2019 and Country Specific Recommendation 2 2020). This is reflected in recital (12) of the Council Implementing Decision which provides, when referring to this assessment criterion, that “the RRP includes an extensive set of mutually reinforcing reforms and investments that contribute to effectively addressing to varying degrees all or a significant subset of the economic and social challenges outlined in the country-specific recommendations addressed to Lithuania by the Council in the context of the European Semester in 2019 and in 2020, in particular those in the areas of ... tax compliance and the effectiveness of the tax and benefit system innovation”. This upward adjustment factor is applied by taking into consideration the relative importance of this reform in the Lithuanian RRP; and

- (iv) A downward adjustment of the corrected unit value was also applied (a factor of 0.5) as some relevant proposals were submitted to the Parliament. In considering this downward adjustment, the substantive progress towards the achievement of the overall objective of the reform was assessed. Notably, the Commission took into account that several tax exemptions, notably those pertaining to excise duties and corporate income tax, have been proposed to be abolished, while several tax exemptions and special tax regimes pertaining to personal income tax and excise duties have been proposed to be materially reduced in scope. The Commission also took into account that an analysis of tax exemptions in Lithuania was provided, although the analysis submitted is incomplete both on its scope and on substance.
- (88) On this basis, following the assessment of the measures taken by Lithuania within a period of six months from the suspension and the observations provided, the amount of the reduction should be recalculated by applying a downwards adjustment compared to the amount suspended. As a result of the recalculation, an amount of EUR 8 733 750 should be reduced in accordance with Article 24(8) of Regulation (EU) 2021/241,

HAS ADOPTED THIS DECISION:

*Article 1*

*Reduction of the non-repayable support*

The financial contribution made available to Lithuania laid down in Article 2 of Council Implementing Decision of 28 July 2021 on the approval of the assessment of the recovery and resilience plan for Lithuania shall be reduced by EUR 8 733 750. This reduction shall be applied against the amount indicated in Section 2(1)(1.1) of the Annex to that Decision.

*Article 2*

*Addressee*

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 6.5.2024

*For the Commission*

*Paolo GENTILONI*

*Member of the Commission*