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Subject: State Aid SA.109113 (2023/N) – Slovakia
TCTF: State aid scheme to support the food, the feed mixtures production and manufacture of beverages sectors following Russia's aggression against Ukraine

Excellency,

1. PROCEDURE

- (1) By electronic notification of 21 August 2023, Slovakia notified aid in the form of limited amounts of aid (*“State aid scheme to support the food and the feed mixtures production sectors following Russia's aggression against Ukraine”*, the “measure”) under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis and Transition Framework”) ⁽¹⁾. Slovakia submitted additional information on 31 August 2023.

⁽¹⁾ Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1), (“Temporary Crisis Framework”), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

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- (2) Slovakia exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958 ⁽²⁾ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Slovakia considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken, for example by Russia have economic repercussions on the entire internal market (‘the current crisis’). The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. Slovakia considers that, although the current crisis affects all sectors of the economy of Slovakia, the population is especially sensitive to the effects of the crisis on the agriculture and food industry. The increase in oil and gas prices results in higher prices for energy and other input costs in food production. To manage economic practice, in the current situation of increased input costs, operating resources are continuously needed for the management of inputs and resources, including energy, raw materials, packaging materials, labour costs, waste disposal, etc. The prices of the supply of products and services (inputs) to agriculture and the food industry increased by 39,8% year-on-year in 2022. Record increases were recorded mainly in the prices of fertilizers and soil improvers (+ 139,7%), energy and lubricants (+ 79,5%), animal feed (+ 43,6%), seeds and plantings (+ 18,0%) and agricultural machinery and other equipment (+ 18,5%). In the first quarter of 2023, the growth of the input price index continued and increased by 18,1% year-on-year, which was mainly influenced by the high prices of energy and lubricants (+31,8%), animal feed (+29,2%), fertilizers and soil improvers (+ 21,5%), which requires the need for food businesses and enterprises operating in the sector of production of feed mixtures to facilitate access to state intervention to cover operating costs to remedy the serious disturbance in the economy of Slovakia ⁽³⁾.
- (4) Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.
- (5) Slovakia confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the European Economic Area (“EEA”) to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

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

⁽³⁾ Information processed by the analytical department of the Ministry of Agriculture of the Slovak Republic on the basis of data from the Statistical Office of the Slovak Republic.

- (6) The compatibility assessment of the measure is based on Article 107(3), point (b), TFEU, in light of sections 1 and 2.1 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

- (7) The measure provides aid on the basis of a scheme in the form of direct grants.

2.2. Legal basis

- (8) The legal bases for the measure are the following laws and decrees:
- (a) Act no. 277/2023 Coll. on the provision of subsidies within the purview of the Ministry of Agriculture and Rural Development of the Slovak Republic and on the amendment of certain laws;
 - (b) Act no. 280/2017 Coll. on the provision of support and subsidies in agriculture and rural development and on the amendment of Act no. 292/2014 Coll. on the contribution provided from the European structural and investment funds and on the amendment of certain laws, as amended;
 - (c) Act no. 358/2015 Coll. on the adjustment of certain relations in the field of state aid and minimum aid and on the amendment of certain laws (Act on State Aid) ⁽⁴⁾;
 - (d) Act no. 357/2015 Coll. on financial control and audit and on the amendment of certain laws, as amended;
 - (e) Act no. 523/2004 Coll. on budgetary rules of public administration and amendments to certain laws, as amended;
 - (f) Act no. 177/2018 Coll. on some measures to reduce the administrative burden by using public administration information systems and on the amendment of some laws (Act against Bureaucracy);
 - (g) Draft Guidelines on “State aid scheme to support the food and the feed mixtures production sector following Russia's aggression against Ukraine”, that actually set the conditions of application of the measure. The draft Guidelines will be published in the Official Gazette after the Commission Decision approving the measure and will enter into force then.

⁽⁴⁾ Art. 9 (1) of the Act on State aid contains a general standstill clause.

2.3. Administration of the measure

- (9) The Ministry of Agriculture and Rural Development of the Slovak Republic (“Ministry”) is the granting authority and the measure is managed and implemented by the Agricultural Payment Agency (“APA”) ⁽⁵⁾.

2.4. Budget and duration of the measure

- (10) The estimated budget of the measure is EUR 20 million and is financed by the State budget.
- (11) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 December 2023.

2.5. Beneficiaries

- (12) The beneficiaries of the measure are micro, small, medium-sized ⁽⁶⁾ and large undertakings operating in the sectors of processing of agricultural products and/or food production and the sector of production of feed mixtures, and manufacture of beverages ⁽⁷⁾. Primary production of agricultural products, the fishery and aquaculture sectors are excluded under the measure. Credit and financial institutions are excluded from the scope of this measure and cannot benefit from the aid.
- (13) Slovakia confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the Union, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or (iii) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions.
- (14) Slovakia confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the Union or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations ⁽⁸⁾. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

⁽⁵⁾ The APA is a budgetary organisation of the Ministry established on the basis of Act No 473/2003 on the Agricultural Paying Agency, on the promotion of entrepreneurship in agriculture and amending of certain acts. The APA provides for the administration of support mechanisms in the agriculture sector and is a paying agency.

⁽⁶⁾ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

⁽⁷⁾ These sectors are identified by NACE codes, division C.10, with the exclusion of division C.10.2, and whole division C.11 (source: https://ec.europa.eu/competition/mergers/cases/index/by_nace_c_.html).

⁽⁸⁾ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

2.6. Sectoral and regional scope of the measure

- (15) The measure is open only to undertakings operating in the sectors referred to in recital (12).
- (16) The measure applies to the whole territory of Slovakia.

2.7. Basic elements of the measure

- (17) The aim of the measure is to support undertakings active in the sectors referred to in recital (12), and maintain their competitiveness by providing grants to cover part of the operating costs. The aid provided will thus help to maintain the continuity of their economic activity, otherwise threatened by the current crisis, and ensure that sufficient liquidity remains on the market following the severely increased costs for natural gas and electricity.
- (18) The aid can be granted to cover the increased costs for natural gas and electricity. The eligible cost are the product of the natural gas and/or electricity units (for example in MWh) procured by the undertaking from external suppliers as a final consumer ⁽⁹⁾ between the period from 1 January 2023 to 31 December 2023 or in a timeframe of several consecutive months in that period (“the eligible period”) ⁽¹⁰⁾ and the increase in the price paid by the undertaking per unit consumed (expressed, for example, in EUR/MWh). That increase in the price will be calculated as the difference between the unit price paid by the undertaking in a given month of the eligible period and the unit price that the undertaking paid on average during the reference period from 1 January 2021 to 31 December 2021. As part of the application, the beneficiary submits, among other, a budget of estimated eligible costs and a declaration that its activity in the sectors referred to in recital (12) is affected by the current crisis.
- (19) Aid under this measure may be granted up to 100% of the eligible costs calculated according to recital (18).
- (20) The overall aid under the measure (gross, *i.e.*, before any deduction of tax or other charge) will not exceed EUR 2 million per undertaking in Slovakia at any given point in time.
- (21) The Slovak authorities confirm that the aid is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.

⁽⁹⁾ As demonstrated by the beneficiary, *e.g.*, on the basis of the relevant invoice. Only final consumption will be calculated, sales and own production are excluded.

⁽¹⁰⁾ The concrete eligible period, *i.e.*, whether it is the period from 1 January 2023 to 31 December 2023 or just a shorter period of few consecutive months within the period from 1 January 2023 to 31 December 2023 will be determined for the purposes of the corresponding call for application.

2.8. Compliance with relevant provisions of Union law

- (22) The Slovak authorities confirm that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law.

2.9. Cumulation

- (23) The Slovak authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations⁽¹¹⁾ or the General Block Exemption Regulation⁽¹²⁾ or the Agricultural Block Exemption Regulation⁽¹³⁾ provided the provisions and cumulation rules of those Regulations are respected.
- (24) The Slovak authorities confirm that aid granted under the measure may be cumulated with aid under a measure approved by the Commission under the COVID-19 Temporary Framework⁽¹⁴⁾ or the previous Temporary Crisis Frameworks for the same eligible costs. The cumulation rules in the COVID-19 Temporary Framework or the previous Temporary Crisis Frameworks and the TCTF will be respected. Currently, there is no approved scheme under COVID-19 Temporary Framework with which cumulation of aid provided under this measure would be possible. Under the previous Temporary Crisis Frameworks there are approved schemes with which cumulation of aid provided under this measure would be possible:
- (a) scheme to support food producers in context of Russia's war against Ukraine (SA.104395);
 - (b) scheme to support the agricultural, fishery and aquaculture sectors in the context of Russia's war against Ukraine (SA.105113) - amendments to SA.104815;

(¹¹) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

(¹²) Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

(¹³) Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p.1).

(¹⁴) Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340 I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), C(2021) 8442 (OJ C 473, 24.11.2021, p. 1), and C(2022) 7902 (OJ C 423, 7.11.2022).

- (c) scheme to support the agricultural sector in the context of Russia's war against Ukraine (SA.104872);
 - (d) scheme to support undertakings following Russia's aggression against Ukraine (SA.104486);
 - (e) scheme for enterprises as a result of the energy crisis emergency following Russia's aggression against Ukraine (SA.105458).
- (25) The Slovak authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis and Transition Framework, provided the provisions in those specific sections are respected.
- (26) Slovakia confirms that for aid granted under sections 2.1 of the Temporary Crisis and Transition Framework and the previous Temporary Crisis Framework, the aid ceilings provided in the respective sections of the Temporary Crisis and Transition Framework are respected at any point in time.
- (27) The Slovak authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 2.1 of the Temporary Crisis and Transition Framework, the overall maximum cap per undertaking, as set out in point 61(a) of that framework, will be respected.

2.10. Monitoring and reporting

- (28) The Slovak authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting ⁽¹⁵⁾).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (29) By notifying the measure before putting it into effect (recital (11)), the Slovak authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (30) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

⁽¹⁵⁾ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 2022/2472.

- (31) The measure is imputable to the State, since it is granted by the Ministry and implemented by the APA (recital (9)) and it is based on the legal bases listed in recital (8)). It is financed through State resources, since it is financed by public funds (recitals (9) and (10)).
- (32) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (7)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (33) The advantage granted by the measure is selective, since it is awarded only to certain undertakings active in the sectors referred to in recital (12).
- (34) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (35) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Slovak authorities do not contest that conclusion.

3.3. Compatibility

- (36) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (37) Pursuant to Article 107(3), point (b), TFEU the Commission may declare compatible with the internal market aid *“to remedy a serious disturbance in the economy of a Member State”*.
- (38) By adopting the Temporary Crisis and Transition Framework, the Commission acknowledged (in section 1) that the current crisis has created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods.
- (39) Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Slovakia. The Commission concluded that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (b), TFEU for a limited period if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the current crisis.
- (40) The measure aims at supporting undertakings facing liquidity shortages at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Slovakia.
- (41) The measure is conceived at national level by the Slovak authorities to remedy a serious disturbance in their economy. The importance of the measure to support undertakings facing liquidity shortages because of the current crisis is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Slovak economy.

Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Limited amounts of aid*”) described in section 2.1 of the Temporary Crisis and Transition Framework.

- (42) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis and Transition Framework. In particular:
- the aid takes the form of direct grants (recital (7));
 - the overall nominal value of the grants will not exceed EUR 2 000 000 per undertaking per Member State; all figures used must be gross, that is, before any deduction of tax or other charges (recital (20)). The measure therefore complies with point 61(a) of the Temporary Crisis and Transition Framework;
 - aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (10). The measure therefore complies with point 61(b) of the Temporary Crisis and Transition Framework;
 - aid will be granted under the measure no later than 31 December 2023. The measure therefore complies with point 61(c) of the Temporary Crisis and Transition Framework;
 - aid will be granted only to undertakings affected by the current crisis (recitals (3) and (17)). The measure therefore complies with point 61(d) of the Temporary Crisis and Transition Framework;
 - aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned (recital (21)). The measure therefore complies with point 61(e) of the Temporary and Transition Framework.
- (43) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market ⁽¹⁶⁾.
- (44) Slovakia has confirmed that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law. In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market.

⁽¹⁶⁾ Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paragraphs 96 *et seq.*

- (45) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.
- (46) Slovakia confirms that, in accordance with point 95 of the Temporary Crisis and Transition Framework, overall aid granted under sections 2.1 of the Temporary Crisis and Transition Framework and the previous Temporary Crisis Framework will not exceed the aid ceilings provided in the respective sections of the Temporary Crisis and Transition Framework at any point in time (recital (20)).
- (47) The Slovak authorities confirm that, as required by point 51 of the Temporary Crisis and Transition Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (4)).
- (48) The Slovak authorities confirm that, as required by point 52 of the Temporary Crisis and Transition Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the Union, including but not limited to:
- a) persons, entities or bodies specifically named in the legal acts imposing those sanctions;
 - b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or
 - c) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions (recital (13)).
- (49) The Slovak authorities confirm that the monitoring and reporting rules set out in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (28)). The Slovak authorities further confirm that the aid under the measure may only be cumulated with other aid if the specific provisions in the relevant sections of the Temporary Crisis and Transition Framework, the previous Temporary Crisis Framework and the COVID-19 Temporary Framework and the cumulation rules in the relevant Regulations and applicable Communications are respected (recitals (23) to (25)).
- (50) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and is compatible with the internal market pursuant to Article 107(3), point (b), TFEU since it meets all the relevant conditions of the Temporary Crisis Framework.

4. CONCLUSION

The Commission has decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3), point (b), TFEU.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <https://competition-cases.ec.europa.eu/search?caseInstrument=SA>.

Yours faithfully,

For the Commission

Didier REYNDERS
Member of the Commission