



EUROPEAN COMMISSION

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**Subject: State Aid SA.104356 (2022/N) – Slovakia**  
**RRF: Investment aid to infrastructure, equipment and facilities of**  
**kindergartens and primary schools**

Excellency,

## **1. PROCEDURE**

- (1) By electronic notification registered on 21 September 2022, the Slovak authorities notified to the Commission an aid scheme for investments in infrastructure, equipment and facilities of non-State kindergartens and primary schools (the “notified scheme”), in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”).
- (2) By letters of 28 October 2022, 11 January 2023 and 5 May 2023, the Commission services requested further information, which Slovakia submitted by letters of 29 November 2022, 3 March 2023 and 16 June 2023.

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- (3) Slovakia exceptionally agrees to waive its rights deriving from Article 342 of the TFEU, in conjunction with Article 3 of Regulation 1/1958 <sup>(1)</sup> and to have this Decision adopted and notified in English.

## 2. DETAILED DESCRIPTION OF THE NOTIFIED SCHEME

### 2.1. Objective of the notified scheme

- (4) The objective of the notified scheme is to facilitate the development of non-State <sup>(2)</sup> kindergartens and primary schools in certain regions of Slovakia, by supporting investments in infrastructure, equipment and facilities of non-State <sup>(3)</sup> kindergartens and primary schools in Slovakia so as to enable them to develop their activities and create additional capacity to host pupils at this level of education.
- (5) According to the Slovak authorities, the notified scheme primarily contributes to the increase of pupil capacity provided by non-State kindergartens and primary schools in Slovakia <sup>(4)</sup>. In particular, the Slovak authorities explain that this is necessary following the adoption of reforms under the Slovak Recovery and Resilience Plan (“RRP”) <sup>(5)</sup>, which introduced a legal entitlement for all pupils

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<sup>(1)</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 16.10.1958, p. 385.

<sup>(2)</sup> The Slovak “non-State” education system is composed of “private” institutions and “church” institutions. According to the Slovak authorities, educational institutions that are founded and managed by natural persons or private legal entities are referred to as “private”. Conversely, “church” institutions refer to educational institutions that are founded and managed by State-acknowledged churches or religious societies. Thus, the use of the term “non-State” in the present decision refers to educational institutions that are non-State owned and encompasses both, private institutions and church institutions. According to official data from the Slovak Centre of Scientific and Technical Information, in 2021, there were 337 non-State kindergartens and 215 non-State primary schools in Slovakia (available at [https://www.cvtisr.sk/cvti-sr-vedecká-knižnica/informácie-o-skolstve/statistiky/statistická-ročenka-publikácia.html?page\\_id=9580](https://www.cvtisr.sk/cvti-sr-vedecká-knižnica/informácie-o-skolstve/statistiky/statistická-ročenka-publikácia.html?page_id=9580)).

<sup>(3)</sup> The Slovak private education system is composed of “private” institutions and “church” institutions. According to the Slovak authorities, educational institutions that are founded and managed by natural persons or private legal entities are referred to as “private”. Conversely, “church” institutions refer to educational institutions that are founded and managed by State-acknowledged churches or religious societies. Thus, the use of the term “non-State” in the present decision refers to educational institutions that are non-State owned and encompasses both, private institutions and church institutions. According to official data from the Slovak Centre of Scientific and Technical Information, in 2021, there were 337 non-State kindergartens and 215 non-State primary schools in Slovakia (available at [https://www.cvtisr.sk/cvti-sr-vedecká-knižnica/informácie-o-skolstve/statistiky/statistická-ročenka-publikácia.html?page\\_id=9580](https://www.cvtisr.sk/cvti-sr-vedecká-knižnica/informácie-o-skolstve/statistiky/statistická-ročenka-publikácia.html?page_id=9580)).

<sup>(4)</sup> The Slovak education system is composed of the following programmes: (a) pre-primary education, which mostly concerns pupils aged from three to six years-old, and which is taught in kindergartens, (b) primary education, which concerns pupils aged from six to fifteen years-old, and which is taught in primary schools, and (c) secondary education, which concerns pupils aged from fifteen to nineteen years-old, and which is taught in secondary schools.

<sup>(5)</sup> The Slovak RRP was approved by Council Implementing Decision (EU) 2021/0163 of 13 July 2021 on the approval of the assessment of the recovery and resilience plan for Slovakia (ST 10156/21; ST 10156/21 ADD1; ST 10156/21 COR1), available at <https://www.consilium.europa.eu/en/documents-publications/public-register/public-register-search/results/?WordsInSubject=&WordsInText=&DocumentNumber=10156%2F21&InterinstitutionalFiles=&DocumentDateFrom=&DocumentDateTo=&MeetingDateFrom=&MeetingDateTo=&Docum>

aged three to four to attend kindergartens and made compulsory pre-primary education, for all children as of five years of age <sup>(6)</sup>.

- (6) Indeed, according to the Slovak authorities' internal analyses of the estimated needs/gap analysis, the number of missing capacities is estimated at 9 088 places in kindergartens and to approximately 703 full classrooms (with an average of 20 pupils) in primary schools <sup>(7)</sup>.
- (7) The Slovak authorities further explain that, while pre-primary and primary education is now compulsory and mostly provided free of charge by State education institutions <sup>(8)</sup>, non-State education institutions complement the State in its duty to provide educational services <sup>(9)</sup>.
- (8) However, the Slovak authorities also submit that in light of the territorial constraints in Slovakia <sup>(10)</sup>, the existing needs, which have increased following the adoption of reforms under the Slovak RRP with regard to pupils aged three to five years old, are not sufficiently addressed by the private sector on the market and that the investments required to increase the capacity of existing education facilities and/or the construction of additional infrastructures would not be profitable in most cases.

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[entLanguage=EN&OrderBy=DOCUMENT\\_DATE+DESC&ctl00%24ctl00%24cpMain%24cpMain%24btnSubmit=](#). This Decision does not prejudice the Commission's assessment of the satisfactory fulfilment of the relevant milestones and targets as laid out in the Slovakian recovery and resilience plan.

- <sup>(6)</sup> See Law No.245/2008 on education and education (the Education Act) ("Zákon č. 245/2008 Z.z. o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov v znení neskorších predpisov"), as amended by the Government Bill amending the Law No. 245/2008 adopted by the National Council of the Slovak Republic on 9 May 2023 (Journal of Laws number 182/2023)(<https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=8&CPT=1467>). Previous to the adoption of Law No.245/2008, as amended by the Government Bill amending the Law No. 245/2008 adopted by the National Council of the Slovak Republic on 9 May 2023, pre-primary education was not compulsory and admission to kindergartens for pupils aged three (two in exceptional cases) to five was possible, subject to compliance with the conditions set by the respective kindergartens.
- <sup>(7)</sup> These analyses have been prepared by the Ministry of Education, Science, Research and Sport of the Slovak Republic on the basis of aggregate data published by the Statistics Office of the Slovak Republic, the Demographic Research Centre, the Ministry of Interior of the Slovak Republic and the Ministry of Education, Science, Research and Sport of the Slovak Republic. Official statistics on the yearly attendance of pupils in kindergartens and in primary schools during the period 2003-2023 are published by the Slovak Centre of Scientific and Technical Information and are respectively available at [https://www.cvtisr.sk/cvti-sr-vedecka-kniznica/informacie-o-skolstve/statistiky/statisticka-rocenka-publikacia/statisticka-rocenka-materske-skoly.html?page\\_id=9602](https://www.cvtisr.sk/cvti-sr-vedecka-kniznica/informacie-o-skolstve/statistiky/statisticka-rocenka-publikacia/statisticka-rocenka-materske-skoly.html?page_id=9602) and [https://www.cvtisr.sk/cvti-sr-vedecka-kniznica/informacie-o-skolstve/statistiky/statisticka-rocenka-publikacia/statisticka-rocenka-zakladne-skoly.html?page\\_id=9601](https://www.cvtisr.sk/cvti-sr-vedecka-kniznica/informacie-o-skolstve/statistiky/statisticka-rocenka-publikacia/statisticka-rocenka-zakladne-skoly.html?page_id=9601).
- <sup>(8)</sup> According to the Slovak authorities, State educational institutions account for approximately 90% of the total number of educational institutions in Slovakia.
- <sup>(9)</sup> See recital (6).
- <sup>(10)</sup> The Slovak authorities refer in particular to areas with a significant lack of critical physical infrastructures, such as accessible roads, canalization networks, access to clean water, electricity and gas, which result in higher construction costs for project development. According to the Slovak authorities, inhabitants of these areas are often subject to generational poverty and low household income, which leads to the impossibility for non-State kindergartens and primary school to apply increased tuition fees such as to cover any potential investment they would make.

- (9) In support of their argument, the Slovak authorities first submit that in certain areas of Slovakia, an increase in economic activity of non-State educational entities has not been recorded so far, notwithstanding the fact that the demand for pre-primary and primary education has been exceeding supply<sup>(11)</sup> for a prolonged period of time and this information being available to the public<sup>(12)</sup>, as reported by media<sup>(13)</sup>, government institutions<sup>(14)</sup>, academia<sup>(15)</sup> and think-tanks<sup>(16)</sup>.
- (10) In particular, the Slovak authorities explain that the number of newly established State and non-State kindergartens and primary schools in Slovakia shows a decreasing trend across the whole territory with the exception of the Bratislava region (see Graphs 1 and 2 below). At the same time, the demand for new schools is growing as certain districts are experiencing significant population growth due to increasing birth rates or internal and external migration. Nevertheless, only in Bratislava and its surrounding areas (which rank among the most affluent areas of Slovakia) does the number of kindergartens and primary schools respond to growing demand, albeit to an insufficient extent.

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<sup>(11)</sup> See recital (6).

<sup>(12)</sup> Relevant data is published annually on the website of the Slovak Centre of Scientific and Technical Information ([www.cvtisr.sk](http://www.cvtisr.sk)).

<sup>(13)</sup> See for example articles in the DenníkN (2016) <https://dennikn.sk/638505/tento-rok-nedostalo-miesto-v-statnej-skolke-takmer-12-tisic-deti/>; MYNitra (2020) <https://mynitra.sme.sk/c/22445924/deti-pribuda-miest-v-zakladnej-skole-je-vsak-nedostatok.html>; Plus jeden deň (2018) <https://www1.pluska.sk/regiony/zapadne-slovensko/zufali-rodicia-juzneho-slovenska-co-mame-teraz-robit-nasimi-detmi>; Noviny (2021) <https://www.noviny.sk/slovensko/607531-materske-skoly-riesia-akutny-nedostatok-miest-pre-predskolakov>; SITA (2021) <https://sita.sk/vskolstve/nedostatok-miest-v-skolkach-nadalej-pretrvava-podla-grohlinga-mozu-mat-problem-deti-do-styroch-rokov/>; Plus jeden deň (2018) <https://www1.pluska.sk/rady-a-tipy/zacina-tvrdy-boj-miest-skolke-kazde-siedme-dieta-slovensku-ma-smolu>; Bratislavský kuriér (2021) <https://www.bakurier.sk/aktualne-dianie/clanok-skoly-a-skolky-zapasia-s-kapacitnym-problemami-ake-riesenia-prinasaju-mestske-casti>; Zoznam (2022) <https://bratislava.zoznam.sk/sokujuce-informacie-zacina-sa-novy-skolsky-rok-ale-v-bratislave-a-okoli-je-nedostatok-tried-na-zakladnych-skolach/>; and the Bratislavské noviny (2021) <https://www.bratislavskenoviny.sk/samosprava/65963-nedostatok-miest-v-bratislavskych-skolkach-mozu-podla-sav-zmiernit-mimosietove-zariadenia>.

<sup>(14)</sup> See for example reports by the Supreme Audit Office of the Slovak Republic (2019) <https://www.nku.gov.sk/documents/10157/265201/96670-0-110.pdf>; Educational Policy Institute (2020) <https://www.minedu.sk/data/att/15248.pdf>; Value for Money Unit (2020) <https://www.noveskolstvo.sk/upload/pdf/15944.pdf>; Slovak Centre of Scientific and Technical Information (2003-2023) [https://www.cvtisr.sk/cvti-sr-vedecka-kniznica/informacie-o-skolstve/statistiky/statisticka-rocenka-publikacia/statisticka-rocenka-materske-skoly.html?page\\_id=9602#](https://www.cvtisr.sk/cvti-sr-vedecka-kniznica/informacie-o-skolstve/statistiky/statisticka-rocenka-publikacia/statisticka-rocenka-materske-skoly.html?page_id=9602#); and the Institute for Financial Policy (2012) [https://www.mfsr.sk/files/archiv/priloha-stranky/20403/63/2012\\_18\\_Slovenske-skolky.pdf](https://www.mfsr.sk/files/archiv/priloha-stranky/20403/63/2012_18_Slovenske-skolky.pdf).

<sup>(15)</sup> See for example publications in the Geographical Journal 73 (2021) <https://doi.org/10.31577/geogrcas.2021.73.4.16>; Geografia Cassoviensis (2011) [https://www.researchgate.net/profile/Janetta-Nestorova-Dicka/publication/281288368\\_Transformacia\\_siete\\_predskolskych\\_zariadeni\\_v\\_Kosiciach\\_po\\_roku\\_1989/links/55dffb3808aecb1a7cc1c134/Transformacia-siete-predskolskych-zariadeni-v-Kosiciach-po-roku-1989.pdf](https://www.researchgate.net/profile/Janetta-Nestorova-Dicka/publication/281288368_Transformacia_siete_predskolskych_zariadeni_v_Kosiciach_po_roku_1989/links/55dffb3808aecb1a7cc1c134/Transformacia-siete-predskolskych-zariadeni-v-Kosiciach-po-roku-1989.pdf); and the XIX. International Colloquium of Regional Studies (2016) DOI:10.5817/CZ.MUNI.P210-8273-2016-63.

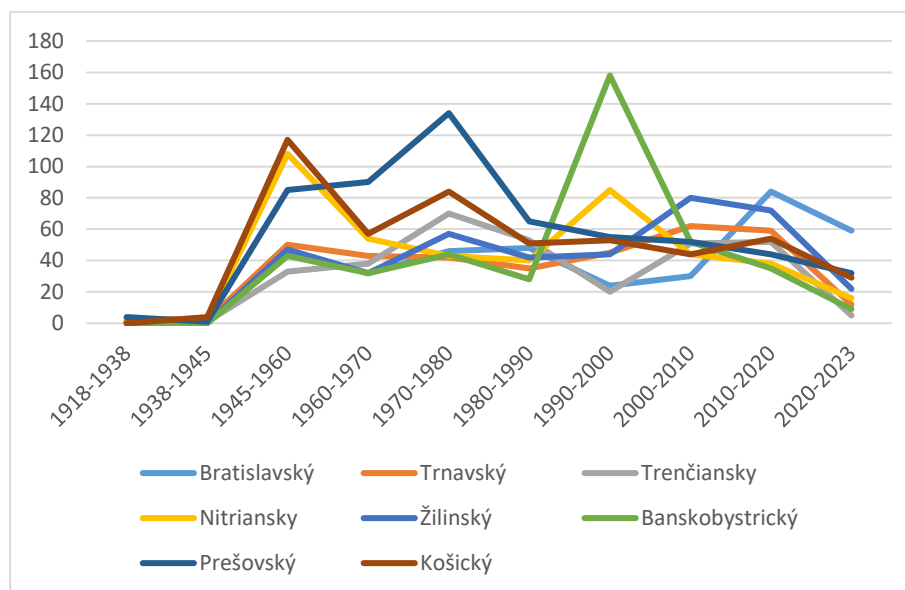
<sup>(16)</sup> See for example studies by the Carpatian Foundation (2020) <https://karpatskanadacia.sk/wp-content/uploads/2020/10/No-child-left-behind-FINAL-ENG.pdf>; and the civic association Tobias <https://3ec4b80e22.cbauil-cdnwnd.com/2243dd5480b4a93ebf9fe5ec1778fdc0/200000174-a7bb7a7bba/Anal%C3%BDza%20vstupn%C3%A9ho%20monitoringu.pdf?ph=3ec4b80e22>.

- (11) With regard to private kindergartens and primary schools, the Slovak authorities also explain, in particular, that due to commercial banks' strict rules and demanding criteria when providing long-term investment loans, access to funding aimed at building new infrastructures or capacities for undertakings operating private kindergartens and primary schools is particularly restrained<sup>(17)</sup>. The Slovak authorities further explain that, in the field of education, loans are unattractive for commercial banks due to their low return.

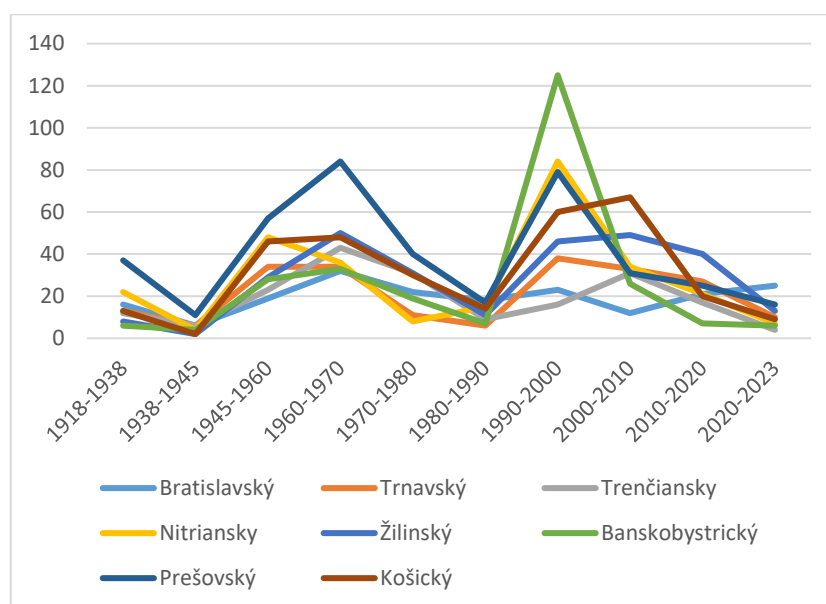
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<sup>(17)</sup> For example, commercial banks require debtors to demonstrate their ability to repay their loans by submitting their business history, including their revenue, profits, cash flow and assets. According to the Slovak authorities, an undertaking without a proven track record will not be able to pass a credit check and thus to obtain a loan from a commercial bank. As a result, only established undertakings are in the position to fund investment projects through credit lines. However, even in these cases, loan terms are unfavourable and rarely provide a sufficient basis for the realization of investment projects of the necessary scope within the education sector.

**Graph 1: Evolution of the number of newly established State and non-State kindergartens in Slovakia by region and year of establishment <sup>(18)</sup>**



**Graph 2: Evolution of newly established State and non-State primary schools in Slovakia by region and year of establishment <sup>(19)</sup>**



- (12) In addition, the Slovak authorities submit that without the notified scheme, the investment in the construction or refurbishment of the infrastructure, equipment or facilities of non-State kindergartens and primary schools to increase their capacity to a sufficient extent to complement the State in its duty to provide educational services would not take place because the expected market revenues would not suffice to cover the entirety of the costs of all projects.

<sup>(18)</sup> Data from the Ministry of Education, Science, Research and Sport of Slovakia.

<sup>(19)</sup> *Ibid.*

- (13) In particular, the Slovak authorities explain that the level of regular income derived from normative funding<sup>(20)</sup> in combination with tuition fees<sup>(21)</sup> does not provide sufficient incentives to invest in the construction of new infrastructures. According to the Slovak authorities, this is particularly so in remote municipalities, where household income is on average substantially lower compared to regional capital cities. Indeed, in those municipalities, the Slovak authorities explain that non-State pre-primary and primary educational services providers would not be able to charge premiums on top of common tuition fees that would make the operation of non-State kindergartens and primary schools profitable enough to generate sufficient capital to proceed with the necessary level of investments for the construction of additional capacity. Moreover, the Slovak authorities submit that, due to a lack of critical physical infrastructure in those areas, such as canalization, clean water, electricity and gas, development projects face significantly higher construction costs.
- (14) Therefore, the objective of the notified scheme is to provide investment aid to non-State education institutions operating kindergartens and primary schools listed in eligible areas<sup>(22)</sup> so as to enable them to develop their activities and create additional capacity.
- (15) With regard to kindergartens, the Slovak authorities have explained that eligible areas were identified as follows:
- (a) First, the Slovak authorities calculated the school enrolment rate for three, four and five-year old pupils in each district.
  - (b) Second, the Slovak authorities calculated the difference between the desired enrolment rate (82% in the case of three and four-year old pupils, 95% in the case of five-year old pupils) and the observed one for each district, based on the enrolment rate of each municipality within a single district.

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<sup>(20)</sup> The normative funding refers to the public funding received by non-State kindergartens and primary schools covering personnel and operating costs in accordance with Law No. 597/2003.

<sup>(21)</sup> Including the additional expected income from tuition fees generated by the capacity increase.

<sup>(22)</sup> According to the Slovak authorities, the eligible areas have been determined on the basis of a needs/gap analysis, which takes into account the number of missing capacities in kindergartens/primary schools, the presence of marginalized communities as well as the degree of market failure present in those areas. As a result of this analysis, the following 67 districts are considered as eligible areas with regard to projects relating to kindergartens : Bánovce nad Bebravou, Banská Bystrica, Bardejov, Bratislava I, Bratislava II, Bratislava III, Bratislava IV, Bratislava V, Brezno, Čadca, Dolný Kubín, Dunajská Streda, Galanta, Gelnica, Humenné, Kežmarok, Komárno, Košice - okolie, Košice I, Košice II, Košice III, Košice IV, Krupina, Levice, Levoča, Liptovský Mikuláš, Lučenec, Malacky, Martin, Medzilaborce, Michalovce, Nitra, Nové Mesto nad Váhom, Nové Zámky, Pezinok, Piešťany, Poltár, Poprad, Prešov, Prievidza, Púchov, Revúca, Rimavská Sobota, Rožňava, Ružomberok, Sabinov, Senec, Senica, Skalica, Snina, Sobrance, Spišská Nová Ves, Stará Ľubovňa, Stropkov, Svidník, Šaľa, Topoľčany, Trebišov, Trenčín, Trnava, Veľký Krtíš, Vranov nad Topľou, Zlaté Moravce, Zvolen, Žarnovica, Žiar nad Hronom and Žilina. The following 32 districts are considered as eligible areas with regard to projects relating to primary schools: Banská Bystrica, Bratislava I, Bratislava II, Bratislava III, Bratislava IV, Bratislava V, Čadca, Dolný Kubín, Galanta, Kežmarok, Košice I, Košice II, Košice III, Malacky, Myjava, Námestovo, Nitra, Pezinok, Piešťany, Považská Bystrica, Prešov, Púchov, Rožňava, Ružomberok, Sabinov, Senec, Stará Ľubovňa, Stropkov, Trnava, Turčianske Teplice, Zlaté Moravce and Žarnovica.

- (c) Third, in the event that the result was negative, no need to increase the capacity of kindergartens in that district was recorded; in the event that the result was positive, the number of existing free capacities within each municipality was subtracted from the result.
  - (d) Finally, in the event that the final result was still positive, and that a minimum missing capacity of 20 pupils within a municipality was recorded, the district was listed on the registry of eligible areas.
- (16) With regard to primary schools, the Slovak authorities have explained that eligible areas were identified as follows:
- (a) First, the Slovak authorities calculated the difference between the predicted number of primary school pupils in the year 2030 and the observed number of primary school pupils in the year 2021, and divided the total by the average number of students in a classroom for each district.
  - (b) Second, the Slovak authorities defined the result as the number of additional classrooms needed in any given district to meet the demand in 2030.
  - (c) Third, in the event that the result was negative, no need to increase the capacity of primary schools was recorded within the district; in the event that the result was positive, the number of suitable unused classrooms within that district was subtracted from the result.
  - (d) Finally, in the event that the final result was positive, and that a missing capacity of at least one classroom was recorded, the district was listed on the registry of eligible areas.
- (17) The main eligible areas are regions listed in the Atlas of Roma Communities which rank among the poorest areas in Slovakia. Indeed, the Slovak authorities explain that, in municipalities with a predominantly Roma population, there are often exclusively State schools for children with disabilities or children from socially disadvantaged backgrounds, as the number of children with special educational needs exceeds those without. Therefore, by targeting in particular those specific areas, the Slovak authorities intend to foster the construction of non-State kindergartens and primary schools which would allow parents to have the possibility to place their children in non-State infrastructures which may better cater their educational standards and abilities.
- (18) The Slovak authorities submit that the objective of the notified scheme is in line with the objectives enshrined in the national RRP <sup>(23)</sup>.

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<sup>(23)</sup> Reform 1 (*“Ensuring conditions for the implementation of compulsory pre-primary education for children from 5 years of age and introducing a legal entitlement to a place in kindergarten or other providers of pre-primary education from 3 years of age”*) of Component 6 and Investment 2 (*“Completion of school infrastructure”*) of Component 7 of the RRP.



## 2.2. Legal basis

- (19) The national legal bases of the notified scheme consist of the following legislative acts:
- Law No 368/2021 on the Recovery and Resilience Facility and amending certain acts <sup>(24)</sup>;
  - Law No 358/2015 regulating certain relations in the field of State aid and minimum aid and amending certain acts (State Aid Act) <sup>(25)</sup>;
  - Law No 245/2008 on education (the Education Act) and amending certain acts, as amended <sup>(26)</sup>;
  - Law No 597/2003 on the financing of primary, secondary and educational establishments, as amended <sup>(27)</sup>;
  - Law No 523/2004 on budgetary rules for the public administration, amending certain laws, as amended <sup>(28)</sup>;
  - Law No 431/2002 on accounting, as amended <sup>(29)</sup>;
  - Law No 357/2015 on financial control and audit and amending certain acts, as amended <sup>(30)</sup>.

## 2.3. The nature and form of the aid

- (20) The aid will take the form of non-reimbursable direct grants covering part of the eligible costs of investments in infrastructures, equipment, and facilities.

## 2.4. Beneficiaries

- (21) Eligible beneficiaries under the notified scheme are exclusively non-State educational institutions, irrespective of their size, which are established in Slovakia and provide educational services listed under the following NACE codes:

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<sup>(24)</sup> *Zákon o mechanizme na podporu obnovy a odolnosti a o zmene a doplnení niektorých zákonov*, 368/2021 Z.z. (LP/2021/110).

<sup>(25)</sup> *Zákon o úprave niektorých vzťahov v oblasti štátnej pomoci a minimálnej pomoci a o zmene a doplnení niektorých zákonov (zákon o štátnej pomoci)*, 358/2015 Z.z. (Journal of Laws number 98/2015).

<sup>(26)</sup> *Zákon o výchove a vzdelávaní (školský zákon) a o zmene a doplnení niektorých zákonov*, 245/2008 Z.z. (Journal of Laws number 96/2008).

<sup>(27)</sup> *Zákon o financovaní základných škôl, stredných škôl a školských zariadení*, 597/2003 Z.z. (Journal of Laws number 243/2003).

<sup>(28)</sup> *Zákon o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov*, 523/2004 Z.z. (Journal of Laws number 220/2004).

<sup>(29)</sup> *Zákon o účtovníctve*, 431/2002 Z.z. (Journal of Laws number 68/2002).

<sup>(30)</sup> *Zákon o finančnej kontrole a audite a o zmene a doplnení niektorých zákonov*, 357/2015 Z.z. (Journal of Laws number 98/2015).

- P.85.1: Pre-primary education <sup>(31)</sup>;
  - P.85.2: Primary education.
- (22) In addition to the above criteria, eligible beneficiaries will also have to operate the project (see recitals (24) to (28)) in one or several municipalities listed in the register of eligible areas (see recitals (14) and (17)).
- (23) According to the Slovak authorities, the estimated number of eligible beneficiaries is approximately 780 undertakings.

## **2.5. Eligible projects**

- (24) In order to be eligible for aid under the notified scheme, projects will have to take place in one or several municipalities listed in the register of eligible areas (see recitals (14) and (17)).
- (25) In particular, under the notified scheme, the following projects will be eligible for aid:
- Construction of new buildings of kindergartens and primary school facilities;
  - Expansion of the capacity of existing kindergarten buildings by means of extension, reconstruction, change of layout of buildings;
  - Technical modifications of existing buildings and adaptation to the needs of kindergartens and primary schools;
  - Building and/or technical modifications of associated infrastructures (e.g. canteen spaces, outdoor spaces);
  - Acquisition of real estate for the purpose of increasing the capacity of existing kindergartens and primary schools or the associated infrastructures;
  - Acquisition of material and technical equipment of kindergartens and primary schools.
- (26) In addition, in order to be eligible for aid under the notified scheme, projects related to the construction, expansion, modification of existing infrastructures which include works on the façade in the range of more than 25% of the façade's area, must result in primary energy savings achievements of at least 30% compared to the situation predating the works <sup>(32)</sup>.

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<sup>(31)</sup> The Slovak authorities have explained that, while pre-primary education in Slovakia can be provided by other structures than kindergartens (e.g., nurseries), eligible beneficiaries for aid under the notified scheme providing pre-primary education will exclusively be kindergartens.

<sup>(32)</sup> According to the Slovak authorities, such requirement would be applicable, in particular, to works relating to the insulation of exterior walls, roof covering, replacement of original open fillings, as well as the change or renovation of the infrastructures' energy sources.

- (27) Furthermore, in order to be eligible for aid under the notified scheme, projects must relate to newly built or renovated facilities exclusively used for the purpose of providing educational services and must remain operational and comply with the capacity objectives set in each call for application for a period of at least 10 years following the completion of the project <sup>(33)</sup>.
- (28) Finally, in order for their project to be eligible for aid under the notified scheme, eligible beneficiaries shall commit to provide educational services in the subsidised infrastructure for a period of at least ten years after reception of the full amount of aid and guarantee that a positive cash-flow will result from their project so as to ensure that operating expenses will be covered in each year of that period.

## **2.6. Eligible costs and aid intensity**

- (29) The eligible costs under the notified scheme correspond to the entirety of the costs incurred by the eligible beneficiaries for the implementation the abovementioned projects (see recital (25)).
- (30) In order to incentivise additional investments by the beneficiaries of the aid, only costs incurred following the announcement of each call for application will be eligible under the notified scheme <sup>(34)</sup>.
- (31) In addition, the Slovak authorities have confirmed that, in any event and irrespective of the amount of funding per newly created capacity (see recital (34)) or the amount of funding based on the funding gap analysis (see recitals (35) to (38)), the maximum aid intensity shall be limited to a maximum of 60% of all eligible costs.
- (32) Without prejudice to the above, the aid intensity may be increased as follows:
- (a) by 10 percentage points for medium sized enterprises <sup>(35)</sup>;
  - (b) by 20 percentage points for small and micro enterprises;
  - (c) by an additional 10 percentage points for enterprises, irrespective of their size, operating kindergartens or primary schools in a municipality listed in the Atlas of Roma Communities <sup>(36)</sup>.

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<sup>(33)</sup> The Slovak authorities explain that each call for application will set a minimum additional capacity to be induced by the project in order for the latter to be eligible to aid under the scheme.

<sup>(34)</sup> In this regard, the Slovak authorities explain that, since applicants are required to submit all documentation of the public procurement along with the application, including a valid contract with the supplier of the main construction works, costs – such as those related to the procurement of building plans – will necessarily incur following the call for application but prior to the submission of the application. Those costs shall therefore be regarded as a part of the eligible costs under the notified scheme. Moreover, given that the measure is part of the Slovak RRP, which sets out the time-eligibility of investments, only costs incurred before 30 June 2026 shall be eligible under this measure.

<sup>(35)</sup> In this respect, the Slovak authorities have explained that while small and medium-sized enterprises (SMEs) generate more than half of the total value added and provide employment to roughly three-quarters of employed persons in Slovakia, they struggle more with access to appropriate financing due to the lower willingness of banks to lend and higher costs of borrowing for SMEs and therefore present a higher need of State intervention to achieve the same targets.

## 2.7. Amount of aid

- (33) For the purposes of determining the amount of aid per eligible beneficiary under the notified scheme, the Slovak authorities will consider the two following methodologies, it being understood that the one giving rise to the lowest amount of public funding will prevail.
- (34) First, the amount of aid granted per eligible beneficiary shall be limited to the amount of funding per newly created capacity set in the respective calls for applications (see recital (41)) <sup>(37)</sup>.
- (35) Second, the Slovak authorities explain that the amount of aid will be calculated on the basis of the eligible projects' funding gap during the period of the economic lifecycle of the investment ("reference period") <sup>(38)</sup> and shall be limited to that gap.
- (36) For the determination of the amount of aid, the Slovak authorities will base themselves on an *ex-ante* financial analysis of the eligible project that will take into account the standard principles of financial analysis calculation such as the reference period, discounted financial flows, the use of the incremental methodology (i.e., additional income and expenses generated by the project), and the application of the residual value principle.
- (37) In particular, the amount of aid granted under the notified scheme will be determined on the basis of the following formula:

$$\mathbf{\check{P}} = \mathbf{OV} \times \mathbf{MFM} \text{ }^{(39)}$$

Where **MFM** is calculated as follows:

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- <sup>(36)</sup> Available at [https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.minv.sk%2Fswift\\_data%2Fsource%2Ffromovia%2Fatlas\\_romskych\\_komunit\\_2019%2FARK2019\\_B.xlsx&wdOrigin=BROWS ELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.minv.sk%2Fswift_data%2Fsource%2Ffromovia%2Fatlas_romskych_komunit_2019%2FARK2019_B.xlsx&wdOrigin=BROWS ELINK). According to the Slovak authorities, municipalities listed in the Atlas of Roma Communities are among the least developed areas in Slovakia. The Slovak authorities submit that these municipalities often lack critical infrastructure, including roads, access to clean water, canalization and electricity, which are responsible for a very unfavourable business environment. In addition, they explain that inhabitants of these municipalities are subjected to generational poverty and structural discrimination due to their ethnicity, socio-economic background and language barriers, which cannot be addressed by neither the public sphere nor the free market alone.
- <sup>(37)</sup> The maximum amount of contribution per newly created capacity is always determined in the relevant call for application. While no aid ceiling per project is provided in absolute terms, the Slovak authorities expect the amount of aid per project to be between approximately EUR 137 500 to EUR 2 750 000 per beneficiary.
- <sup>(38)</sup> The reference period for each project shall be determined according to the period of the longest depreciated part of the investment in order to quantify the residual value of the investment after the end of the 10-year period referred to in recital (28). As a result, the residual value is determined as the cumulated value of the net revenue that the investment would generate over a 10-year horizon over which its purpose is to be maintained and serves to determine the discounted value of net revenue of the investment.
- <sup>(39)</sup> **ŠP** refers to the amount of aid granted under the measure, **OV** refers to the eligible costs under the measure, and **MFM** refers to the funding gap rate of the project.

$$MFM = \left( \frac{NFPV(C)}{DIV} \right) \times (up\ to) 100\% \quad (40)$$

Where  $NFPV(C)$  and  $DIV$  are calculated as follows:

$$NFPV(C) = DIV - DPZ \quad (41)$$

$$DIV = \sum_{i=1}^n \frac{IV_i}{(1 + DS)^i} \quad (42)$$

Where  $DPZ$  is calculated as follows:

$$DPZ = DPP - DPN \quad (43)$$

Where  $DPP$  and  $DPN$  are calculated as follows:

$$DPP = \sum_{i=1}^n \frac{PP_i}{(1 + DS)^i} \quad (44)$$

$$DPN = \sum_{i=1}^n \frac{PN_i}{(1 + DS)^i} \quad (45)$$

- (38) Based on the result of the above funding gap analysis, the individual amount of aid is determined and calculated for a period of 10 years during which the beneficiary is obliged to maintain its educational activities in the aided infrastructure.
- (39) The Slovak authorities explain that a monitoring mechanism will be put in place in order to ensure that the aided infrastructure remains operational during the whole abovementioned period of 10 years. Should the beneficiary violate its obligation to use the aided infrastructure for the 10-year period, the Slovak authorities undertake that any excessive aid (taking into account a residual value of the infrastructure on the date, when the beneficiary breached its obligation) will be recovered from the beneficiary.

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(40)  $NFPV(C)$  refers to the net financial present value of the investment (i.e., the difference between investment expenses and operating profit) and  $DIV$  refers to the discounted eligible costs.

(41)  $DPZ$  refers to the discounted operating profit.

(42)  $IV_i$  refers to the investment costs incurred in each relevant year (“i”) of the reference period,  $DS$  refers to the applied discount rate and “n” refers to the last year of the reference period.

(43)  $DPP$  refers to the discounted operating income and  $DPN$  refers to discounted operating costs.

(44)  $PP$  refers to the operating income and  $DS$  refers to the applied discount rate. The discount rate refers to the reasonable profit under the investment and will be set at the level of average profitability undertakings providing basic education in primary schools and kindergartens on the basis of data collected and provided by the Ministry of Finance.

(45)  $PN$  refers to the operating costs.

## **2.8. Administration of the notified scheme and procedure**

- (40) The granting and administering authority of the notified scheme is the Ministry of Education, Science, Research and Sport of Slovakia.
- (41) Eligible projects and beneficiaries will be selected through calls for applications organised by the Ministry of Education, Science, Research and Sport to be published only following the approval of the notified scheme by the Commission.
- (42) Once a call for application is published on the Ministry of Education, Science, Research and Sport's website <sup>(46)</sup>, applicants shall submit the required documents and annexes within the indicated timeframe, aiming at demonstrating that they comply with the requirements mentioned in section 2.5 above as well as possible specific additional requirements laid down in each call for application.
- (43) The selection of the eligible beneficiaries in the context of each individual call for application will be implemented on a first-come, first-served basis.
- (44) The Slovak authorities have confirmed that the entry into force of the notified scheme is conditional upon its approval by the Commission.

## **2.9. Budget and duration of the notified scheme**

- (45) The overall budget of the notified scheme is estimated to be EUR 24 155 864 <sup>(47)</sup>, which will be financed from the State budget. All funding earmarked for the notified scheme in the State budget is made available through the Recovery and Resilience Facility ("RRF") <sup>(48)</sup>.
- (46) Aid under the notified scheme may be granted as from the Commission's notification of this Decision until the allocated budget is exhausted, but in any case no later than 30 June 2026.

## **2.10. Transparency, reporting and monitoring**

- (47) The Slovak authorities will submit annually to the Commission the reports provided for in Article 26 of Council Regulation (EU) 2015/1589 <sup>(49)</sup>.
- (48) In addition, the Slovak authorities commit to comply with the transparency requirements laid down in the Commission's Transparency Communication <sup>(50)</sup>.

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<sup>(46)</sup> Available at <https://www.minedu.sk/vyhlasene-otvorene-vyzvy/>.

<sup>(47)</sup> The Slovak authorities have explained that this estimated amount consists of two separate financial allocations under the Slovak RRP: (i) aid provided for under Reform 1 ("*Ensuring conditions for the implementation of compulsory pre-primary education for children from 5 years of age and introducing a legal entitlement to a place in kindergarten or other providers of pre-primary education from 3 years of age*") of Component 6 of the RRP, equalling to EUR 15 483 252; and (ii) aid provided for under Investment 2 ("*Completion of school infrastructure*") of Component 7 of the RRP, equalling to EUR 8 672 612. The Slovak RRP is available at <https://www.planobnovy.sk/kompletny-plan-obnovy/>.

<sup>(48)</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.02.2021, p. 17.

<sup>(49)</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.09.2015, p. 9.

In particular, the Slovak authorities commit to ensure the publication of the following information on a comprehensive State aid website, at national or regional level: (a) the full text of the approved aid scheme and its implementing provisions, or a link to it, (b) the identity of the granting authority, and (c) the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking, the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level). Such a requirement can be waived with respect to individual aid awards below EUR 500 000.

- (49) More specifically, the Slovak authorities indicated that they will publish the information on the websites of the Ministry of Education, Science, Research and Sport<sup>(51)</sup> and the Antimonopoly Office of the Slovak Republic's Portal<sup>(52)</sup> for recording and monitoring aid within six months from the granting act and the information will be kept for at least ten years and will be available to the general public without restrictions.

### **2.11. Cumulation**

- (50) The aid cannot be cumulated with any other aid or *de minimis* aid<sup>(53)</sup> to cover the same eligible costs.

## **3. ASSESSMENT OF THE NOTIFIED SCHEME**

### **3.1. Existence of State aid pursuant to Article 107(1) TFEU**

- (51) Pursuant to Article 107(1) TFEU any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (52) Therefore, a State measure must meet the following cumulative criteria in order to constitute aid within the meaning of Article 107(1) TFEU<sup>(54)</sup>:

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<sup>(50)</sup> Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audio-visual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines (OJ C 198, 27.6.2014, p. 30).

<sup>(51)</sup> <https://www.minedu.sk/about-the-ministry/>.

<sup>(52)</sup> <https://www.antimon.gov.sk/rocne-spravy-o-poskytnutej-statnej-pomoci/?csrc=17536922485114732707>.

<sup>(53)</sup> 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.

<sup>(54)</sup> Judgment of the Court of Justice of 19 December 2019, *Arriva Italia and Others*, C-385/18, ECLI:EU:C:2019:1121, paragraph 31 and case-law cited.

- a) the measure must be financed through State resources and be imputable to the State <sup>(55)</sup>;
- b) the measure must grant a selective <sup>(56)</sup> advantage <sup>(57)</sup> liable to favour certain undertakings <sup>(58)</sup> or the production of certain goods;
- c) the measure must distort or threaten to distort competition <sup>(59)</sup>; and
- d) the measure must have the potential to affect trade between Member States <sup>(60)</sup>.

### 3.1.1. *Presence of State resources and imputability*

- (53) In order for a measure to be considered as granted by a Member State or through State resources in any form whatsoever, it must (i) be granted directly or indirectly through State resources and (ii) be imputable to the State.
- (54) In this case, since the measure in the notified scheme is administered by the Ministry of Education, Science, Research and Sport of Slovakia (see recital (40)) and takes the form of direct grants to the beneficiaries, which are financed out of the Slovak national budget, from resources that are planned to be made available through the RRF (see recital (45)), the notified scheme is financed with State resources.
- (55) Moreover, since the notified scheme is enacted, in particular, through the Law No 368/2021 on the Recovery and Resilience Facility and amending certain acts (see recital (19)), the decision to provide the aid under the notified scheme is imputable to the Slovak State.
- (56) Thus, the Commission concludes that the notified scheme is financed out of State resources and is imputable to the State.

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<sup>(55)</sup> Judgment of the Court of Justice of 18 May 2017, *Fondul Proprietatea*, C-150/16, ECLI:EU:C:2017:388, paragraph 14 and case-law cited.

<sup>(56)</sup> Judgment of the Court of Justice of 29 June 1999, *DMTransport*, C-256/97, ECLI:EU:C:1999:332, paragraph 27; Judgment of the General Court of 6 March 2002, *Territorio Histórico de Álava — Diputación Foral de Álava et al. v Commission*, Joined Cases T-127/99, T-129/99 and T-148/99, ECLI:EU:T:2002:59, paragraph 149.

<sup>(57)</sup> Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

<sup>(58)</sup> Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 74; Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU: C:2006:8, paragraph 107.

<sup>(59)</sup> Judgment of the Court of Justice of 17 September 1980, *Philip Morris*, C-730/79, ECLI:EU:C:1980:209, paragraph 11; Judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., ECLI:EU:T:2000:151, paragraph 80.

<sup>(60)</sup> Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraph 65; Judgment of the Court of Justice of 8 May 2013, *Libert and others*, Joined Cases C-197/11 and C-203/11, ECLI:EU:C:2013:288, paragraph 76.



### 3.1.2. *Existence of a selective advantage to an undertaking*

- (57) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention. Article 107(1) TFEU also requires that a measure, in order to constitute State aid, is selective in the sense that it favours “*certain undertakings or the production of certain goods*”.
- (58) The beneficiaries of the notified scheme are exclusively non-State educational institutions that provide pre-primary and primary educational services (see recital (21)). While the non-State nature of the beneficiaries may not, as such, prejudice the economic or non-economic nature of the activities they perform<sup>(61)</sup>, the Slovak authorities have not provided any evidence in support of the fact that the activities performed by any of the eligible beneficiary would be non-economic in nature.
- (59) Therefore, for the purposes of the present decision, the Commission considers the beneficiaries of the notified scheme to be undertakings within the meaning of Article 107(1) TFEU, which the Slovak authorities do not dispute.
- (60) By reducing the investment costs for the construction or renovation of infrastructures, equipment and facilities of kindergartens and primary schools via a non-reimbursable grant (see recital (20)), the notified scheme confers an advantage on its beneficiaries which they would not have had under normal market conditions.
- (61) The advantage granted by the notified scheme is also selective, since it is awarded only to certain undertakings, which provide pre-primary and primary educational services and fulfil the criteria laid down in recitals (21) and (22), and which have been selected in the context of the calls for applications described in recitals (41) to (43).

### 3.1.3. *Distortion of competition*

- (62) The notified scheme is liable to distort competition, since it strengthens the competitive position of its beneficiaries as compared to undertakings that are not eligible for aid under the notified scheme and that compete on the market of educational services.

### 3.1.4. *Effect on trade between Member States*

- (63) To classify a measure as State aid in the sense of Article 107(1) TFEU, the Commission is required, not to establish that the aid in question has a real effect on trade between Member States and that competition is actually being distorted,

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<sup>(61)</sup> See in particular, Commission Decision of 8 November 2018. SA.43700 (C(2018) 7215 final) – *Alleged aid to the Fundació Privada Conservatori del Liceu* and Commission Decision of 19 December 2012, SA.20829 (C 26/2010, ex NN 43/2010 (ex CP 71/2006)) – *Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes implemented by Italy*.

but only to examine whether the aid is liable to affect such trade and distort competition.

- (64) According to case-law, an adverse effect on trade can be established by determining that the favoured undertaking is active in a market which is open to competition (import or export of goods or transnational provision of services) <sup>(62)</sup>. It is irrelevant whether the affected markets are local, regional, national or Union-wide. Indeed, it is not the definition of the substantively and geographically relevant markets which is decisive, but rather the potential adverse effect on intra-Union trade. The relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that intra-Union trade might be affected <sup>(63)</sup>. In fact, neither the insignificant amount of the aid nor the small size of the favoured undertakings rules out the presence of the aid <sup>(64)</sup>.
- (65) Bearing in mind the above, the Commission concludes that the notified scheme is liable to affect trade between Member States, since the beneficiaries of the notified scheme are active in a sector in which intra-Union trade exists (i.e., provision of non-State pre-primary and primary educational services).

#### *3.1.5. Conclusion regarding the existence of State aid*

- (66) In light of the above, the Commission concludes that the notified scheme involves State aid within the meaning of Article 107(1) TFEU.

### **3.2. Lawfulness of the notified scheme**

- (67) As noted in recitals (40) and (44), the Slovak authorities have confirmed that the notified scheme's entry into force is conditional upon its approval by the Commission and that the calls for applications aiming at selecting the beneficiaries of the aid under the notified scheme will only be published following its approval by the Commission.
- (68) By notifying the measure before putting it into effect, the Slovak authorities have respected the notification and standstill obligation laid down in Article 108(3) TFEU.

### **3.3. Compatibility**

#### *3.3.1. Legal basis for the assessment of the compatibility of the aid*

- (69) The Commission has assessed the scheme on the basis of Article 107(3)(c) TFEU.
- (70) Article 107(3)(c) TFEU provides that the Commission may declare compatible aid to facilitate the development of certain economic activities or of certain

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<sup>(62)</sup> Judgment of the General Court of 15 June 2000, *Alzetta*, Joined Cases T-298/97, T-312/97 etc., ECLI:EU:T:2000:151, paragraph 93 *et seq.*

<sup>(63)</sup> Judgment of the Court of Justice of 21 March 1990, *Belgium v Commission* ("*Tubemeuse*"), C-142/87, ECLI:EU:C:1990:125, paragraph 43.

<sup>(64)</sup> Judgment of the General Court of 15 June 2005, *Sardegna v Commission*, T-171/02, ECLI:EU:T:2005:219, paragraph 86 *et seq.*

economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, compatible aid under that provision of the TFEU must contribute to the development of a certain economic activity <sup>(65)</sup>. Furthermore, the aid should not distort competition in a way contrary to the common interest.

3.3.2. *Positive condition: the aid must facilitate the development of an economic activity*

- (71) Pursuant to Article 107(3)(c) TFEU, aid compatible under this provision must facilitate the development of certain economic activities <sup>(66)</sup>.

3.3.2.1. Identification of the economic activity, which is being facilitated by the measure, its positive effects for society at large and, where applicable, its relevance for specific policies of the Union

- (72) In the present case, the Commission notes that aid under the notified scheme aims at facilitating the development of non-State pre-primary and primary educational services in Slovakia (see recital (4)). It thus contributes to the development of a certain economic activity within the meaning of Article 107(3)(c) TFEU.
- (73) As referred to in recitals (4) to (16), aid under the notified scheme will enable non-State providers of pre-primary and primary educational services in the eligible areas to increase their capacity and therefore increase their economic activity, by allowing an appropriate return on investment associated with such increases in capacity.
- (74) In addition, the Commission notes that the increase in capacity of non-State educational service providers will also contribute to meeting the education needs identified under the Slovak RRP (see recitals (5) and (7)) in areas where existing capacities are not sufficient to provide education to all eligible pupils (see recitals (14) to (16)).
- (75) Finally, the Commission also refers to the assessment of the Slovak RRP <sup>(67)</sup>, where the benefits of the increase in kindergartens attendance, such as for instance alleviating the disproportionate burden on women caring for dependants and enable them to participate in the labour market in line with the principles of the European Pillar of Social Rights, have been set out.
- (76) Considering the above, the Commission concludes that the measure contributes to the development of economic activities of non-State pre-primary and primary educational services, as required by Article 107(3)(c) TFEU, in a manner that also (i) allows for an increase in the attendance of pupils in pre-primary and primary education in areas where existing capacities are not sufficient to provide

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<sup>(65)</sup> Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 20 and 24.

<sup>(66)</sup> *Ibid.*

<sup>(67)</sup> Council Implementing Decision (EU) 2021/0163 of 13 July 2021 on the approval of the assessment of the recovery and resilience plan for Slovakia (ST 10156/21; ST 10156/21 ADD1; ST 10156/21 COR1).

education to all eligible pupils and (ii) has also other positive effects on the Slovak education level as well as on the enhancement of social rights in Slovakia.

#### 3.3.2.2. Incentive effect

- (77) Pursuant to Article 107(3)(c) TFEU, aid can be considered as facilitating an economic activity only if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour, to engage in additional economic activity, which it would not carry out without the aid or would carry out in a restricted or different manner. The aid must not support the costs of an activity that the aid beneficiary would carry out even without the aid and must not compensate for the normal business risk of an economic activity.
- (78) The Slovak authorities submitted that, in the absence of the aid, investors would not have the appropriate incentive to undertake the eligible investments required for increasing the required capacity (see recitals (8) to (13)).
- (79) The Slovak authorities have also explained that without the aid, the investment in the construction or refurbishment of the infrastructure, equipment or facilities of non-State kindergartens and primary schools in the eligible areas to increase their capacity would not take place because the expected market revenues would not suffice to cover the entirety of the costs of the projects (see recitals (8) to (13)). Without the aid, the increased capacities of non-State kindergartens and primary schools would not materialise and would therefore not contribute to the development of the economic activities of non-State educational service providers to the extent needed. The Slovak authorities have also confirmed that aid will only cover works related to projects that have started following the aid application by the beneficiary to the national authorities (see recital (30)).
- (80) Taking into account the above considerations, the Commission concludes that the notified scheme has an incentive effect, as it induces the beneficiaries to engage in an economic activity that they would not carry out without the aid or would carry out in a restricted or different manner.

#### 3.3.2.3. No breach of any relevant provision of Union law

- (81) Pursuant to Article 107(3)(c) TFEU, if the supported activity, or the aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entail a non-severable violation of relevant Union law, the aid cannot be declared compatible with the internal market.
- (82) In the present case, the Commission has assessed, in particular, whether the notified scheme contravenes any relevant Union legislation, in particular in the education sector and has found no breaches of applicable legislation or general principles.
- (83) In addition, the Commission notes that the notified scheme is open to all non-State educational service providers, whose projects are established in the target areas of Slovakia. In addition, the Commission notes that aid under the notified scheme aims at increasing the capacity of non-State kindergartens and primary schools while allowing an increased number of pupils, without distinction, to access education at an early age.

- (84) Finally, the Commission notes that Slovakia intends to fund the notified scheme entirely through the RRF, in accordance with the Slovak RRP and in line with the objectives set therein.
- (85) In view of the above considerations, the Commission concludes that the notified scheme does not contravene any relevant provision or general principles of Union law.

*3.3.3. Negative condition: the aid measure must not unduly affect trading conditions to an extent contrary to the common interest*

**3.3.3.1. Minimisation of distortions of competition and trade**

- (86) The notified scheme affects mainly the market for the provision of pre-primary and primary educational services in Slovakia, in which several non-State educational services providers are in competition with each other as well as with State educational institutions. In addition, the notified scheme is also liable to affect the market for the provision of non-State pre-primary and primary educational services in neighbouring countries, in view of cross-border interconnections, in particular in certain border areas of Slovakia.

**3.3.3.1.1. Necessity of the aid**

- (87) In order to demonstrate the necessity of the measure, it has to be established that the measure is targeted towards a situation where aid can bring about a material improvement that the market alone cannot deliver.
- (88) In the present case, the Commission notes that, based on the Slovak authorities' analysis of the market for non-State pre-primary and primary educational services, the market revenues generated by the increased capacity of kindergartens and primary schools would not suffice to ensure the viability of the investments required for increasing such capacity (see recitals (8) to (13)).
- (89) In particular, the Slovak authorities have indicated that, so far, notwithstanding the fact that the increased demand for pre-primary and primary education has been exceeding supply for a prolonged period of time and this information being available to the public, no increase in economic activity of non-State educational entities in eligible areas has been recorded (see recitals (8) to (13)). This indicates the existence of a specific market failure, which can relate to the generally low return on the financing invested in the pre-primary and primary education sector in particularly poor or scarcely populated areas (i.e., the target areas of the notified scheme). Hence, economic pressure to reduce costs hinders potential additional investment in construction, capacity expansion or modification of infrastructure and equipment and therefore the intervention of the State appears necessary.
- (90) The State intervention in the form of partial reimbursement of costs incurred by non-State pre-primary and primary educational service providers for the completion of eligible projects (see recitals (25)) aiming at increasing their capacity will therefore mitigate the significant burden created by those high costs, thereby promoting a sustainable and viable increase of capacity and the related development of the economic activity of non-State pre-primary and primary educational services.

- (91) In light of the above, the Commission concludes that aid under the notified scheme is necessary for the development of the economic activity of non-State pre-primary and primary educational services in Slovakia.

#### 3.3.3.1.2. Appropriateness of the aid

- (92) The proposed aid scheme must be an appropriate policy instrument to achieve the intended objective of the aid, that is to say there must not be a less distortive policy and aid instrument capable of achieving the same results.
- (93) In this respect, the Commission recalls that the granting of State aid is a way to overcome market failures. In the present case, based on the Slovak authorities' analysis of the market for non-State pre-primary and primary educational services (see recitals (8) to (13)), the Commission notes that, due to the particularly low return on the resources invested in the pre-primary and primary education sector in the target areas, compared to the significantly high investments costs required for the implementation of projects aiming at increasing their capacity, no provider of pre-primary and primary educational services would, under market conditions, invest in such projects. In addition, in light of the above, the Commission also notes that, absent any non-reimbursable grant, no alternative means of State aid which would be less distortive of competition (i.e., repayable loans, guarantees, etc) would be such as to incentivise the level of investment required <sup>(68)</sup>.
- (94) Thus, given the need for a non-reimbursable grant in order to finance the level of investment required for the achievement of the projects referred to in recital (25), the Commission considers that the measure constitutes an appropriate instrument to bring the projects forward, thereby facilitating the development of the economic activity of the provision of non-State pre-primary and primary educational services in Slovakia.

#### 3.3.3.1.3. Proportionality of the aid

- (95) Under Article 107(3)(c) TFEU, aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided project or activity.
- (96) In this respect, the Commission notes that the Slovak authorities have taken several commitments such as to ensure that individual aid granted under the notified scheme is proportionate.
- (97) First, the Commission notes that the notified scheme is designed in such a way as to define the maximum aid intensity applicable to each project on an individual basis for each selected beneficiary, based on the size of the enterprise and the area in which it operates (see recitals (21) and (22)). In this respect, the Slovak authorities have explained that while small and medium-sized enterprises generate more than half of the total value added and provide employment to roughly three-quarters of employed persons in Slovakia, they struggle more with access to appropriate financing due to the lower willingness of banks to lend and

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<sup>(68)</sup> In particular, while the RRF allows for the granting of repayable loans or guarantees, they require significant collateral or high-grade credit ratings that non-State kindergartens and primary schools services providers in the eligible areas would hardly be capable of providing.

higher costs of borrowing for SMEs (see recital (11)). Moreover, the Slovak authorities have explained that municipalities listed in the Atlas of Roma Communities are among the least developed areas, i.e., areas with the most severe market failures, in Slovakia. These municipalities often lack critical infrastructure, including educational infrastructure. Inhabitants of these municipalities are subjected to generational poverty and structural discrimination due to their ethnicity, socio-economic background, and language barriers, which cannot be addressed by neither the public sphere nor the free market alone (see recital (32)).

- (98) Second, the Commission notes that, in addition to the above, (i) the eligible beneficiaries will be selected based on a call for applications which will set additional requirements on the basis of the achievements needed and the areas concerned by the projects, and (ii) the amount of aid granted per eligible beneficiary will be limited to either (a) the amount of funding per newly created capacity determined by the Slovak authorities in the respective calls for applications (see recitals (31) and (34)) or (b) the amount resulting from the application of the funding gap rate to the eligible costs of the project<sup>(69)</sup> (see recitals (35) to (38)), it being understood that the one giving rise to the lowest amount of public funding will prevail (see recital (33)). Therefore, the Commission notes that the notified scheme is designed in such a way as to favour the funding of the most efficient projects and reduce the burden on public funding to the minimum required to achieve the objectives of the development of the targeted economic activity.
- (99) Third, the Commission notes that the notified scheme is designed in such a way as to avoid any overcompensation of the selected beneficiaries, since the maximum aid intensity under the notified scheme can be up to 90% of the eligible costs incurred by the beneficiaries (i.e., at least 10% of the costs will be supported by the beneficiaries themselves)<sup>(70)</sup> and the individual amount of aid will factor any revenues generated following the completion of the project (see recital (37)) .
- (100) Fourth, for a period of at least ten years following the completion of the funded projects, the beneficiaries will not be in a position to dispose freely of their assets (including any potential sale of the latter) and will have to ensure the provision of educational services therein (see recital (27)). Since, the individual amount of aid is determined and calculated for a period of 10 years during which the beneficiary is obliged to maintain its educational activities in the aided infrastructure, the Slovak authorities undertake that a monitoring mechanism will be put in place in order to ensure that the aided infrastructure remains operational during the whole abovementioned period of ten years. Should the beneficiary violate its obligation to use the aided infrastructure for the ten-year period, any excessive aid (taking

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<sup>(69)</sup> For the purposes of determining the amount of aid under the funding gap methodology, since the amount is determined and calculated for a period of 10 years during which the beneficiary is obliged to maintain its educational activities in the aided infrastructure, the Slovak authorities will factor in the *ex ante* analysis, the residual value of the project. The latter is determined as the cumulated value of the net revenue that the investment would generate over a 10-year horizon over which its purpose is to be maintained and serves to determine the discounted value of net revenue of the investment.

<sup>(70)</sup> As explained in recital (32), the 90% aid intensity ceiling can only be attained by small and micro enterprises operating kindergartens or primary schools in a municipality listed in the Atlas of Roma Communities.

into account a residual value of the infrastructure on the date, when the beneficiary breached its obligation) will be recovered from the beneficiary.

- (101) Finally, the Commission notes that the Slovak authorities have confirmed that the measure will not be cumulated with other forms of support to cover the same eligible costs (see recital (50)).
- (102) In view of the above considerations, the Commission concludes that aid under the notified scheme is limited to the minimum needed for carrying out the aided project, thereby contribution to the development of the targeted economic activity. Thus, the Commission concludes that aid under the notified scheme is proportionate.

#### 3.3.3.1.4. Transparency

- (103) The Slovak authorities have committed to comply with the monitoring and transparency requirements laid down in Article 26 of Council Regulation (EU) 2015/1589 and in the Commission's Transparency Communication and will publish any aid granted under the notified scheme on publicly available national websites (see recitals (47) to (49)).

#### 3.3.3.2. Avoidance of undue negative effects on competition and trade

- (104) Pursuant to Article 107(3)(c) TFEU, for the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the development of the target economic activity.
- (105) In the present case, the Commission notes that the Slovak authorities have demonstrated that any potential negative effects of the notified scheme on competition and trade will be kept to the minimum in view of the increased demand for pre-primary and primary educational services in Slovakia (see recital (8)), the fact that the notified scheme is open to all non-State pre-primary and primary school educational services providers within the eligible areas (see recitals (21) and (22)), the overall relatively limited budget of the notified scheme (see recital (45)), the number of expected eligible beneficiaries (see recital (23)), the characteristic of the sector concerned and the lack of existing investments thereof (i.e., the market for non-State pre-primary and primary services) (see recitals (8) to (12) and (79)) and the expected range of individual amounts (see recital (34)).
- (106) Finally, the Commission notes that the notified scheme excludes the possibility for beneficiaries to relocate their activity or dispose of their assets within a period of ten years following the completion of the project (see recital (27)).
- (107) In view of the above, the Commission concludes that the risk of undue negative effects on competition and trade from the notified scheme is limited to the minimum necessary.



### *3.3.4. Weighing the positive effects of the aid against the negative effects on competition and trade*

- (108) Pursuant to Article 107(3)(c) TFEU, for aid to be compatible with the internal market, the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.
- (109) As shown in section 3.3.2 above, the aid will facilitate increasing the capacity of non-State kindergartens and primary schools in Slovakia and, in so far as these carry out economic activities, contribute to the development of economic activities of non-State pre-primary and primary education.
- (110) Furthermore, aid under the notified scheme will lead to benefits for the Slovak education rate and level and contribute to the enhancement of social rights in Slovakia.
- (111) In addition, the Slovak authorities have designed the measure in such a way as to minimise the potential distortion of competition arising from the measure.
- (112) In light of the above, the positive effects of the measure outweigh any potential negative effects on competition and trade. On balance, the measure is in line with the objectives of Article 107(3)(c) TFEU as it facilitates the development of non-State pre-primary and primary educational services in Slovakia, while it does not adversely affect competition to an extent contrary to the common interest.
- (113) In addition, the Commission takes note that this scheme is reported to be part of the Slovak RRP and that compliance of measures provided under the RRP (such as the notified scheme) with the “do no significant harm” principle is considered fulfilled <sup>(71)</sup>.

### **3.4. Conclusion on the compatibility of the notified scheme**

- (114) In light of the above assessment, the Commission concludes that the aid under the notified scheme facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers the aid to be compatible with the internal market based on Article 107(3)(c) TFEU.

## **4. CONCLUSION**

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

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be

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<sup>(71)</sup> Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Slovakia, COM/2021/339 final, 21.06.2021.

deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:  
<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President

