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Subject: SA.64546 (2021/N) – Slovakia – Workshops for light maintenance of passenger trains in Kosice and Zilina

Sir,

1. PROCEDURE

- (1) By electronic notification dated 20 August 2021, Slovakia notified to the European Commission a measure concerning workshops for the light maintenance of passenger trains in Kosice and Zilina (“the notified measure” or “the measure”). The measure was registered under the State aid case number SA.64546. On 15 October 2021, the Commission services sent a request for information to Slovakia. Slovakia replied on 19 October 2021. On 8 and 17 December 2021, the Commission services held a teleconference with the Slovak authorities. The Commission services requested additional information from Slovakia on 8, 10, 17 December 2021 and 3 February 2022. The Slovak authorities provided the requested information on 8, 10, 13, 17 December 2021 and 3 February 2022.
- (2) Slovakia exceptionally agreed 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 1/1958¹, and to have this Decision adopted and notified in English.

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

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2. DESCRIPTION OF THE MEASURE

2.1. Objective of the aid measure

- (3) The notified measure aims at building quality workplace infrastructure that will provide day-to-day technical-hygienic maintenance services (“light maintenance services”) for rolling stock at Kosice and Zilina railway hubs for all rail passenger transport carriers on the rail network of Slovakia.
- (4) The objective of the notified measure is to contribute to the provision of high-quality, safe, reliable, cost-effective rail passenger transport services, thereby helping to increase the competitive position of rail passenger transport as a key component of Slovak public passenger transport. Moreover, the measure will contribute to the long-term development of rail passenger transport in Slovakia.
- (5) The specific objective of the proposed measure is to build two sites (hereinafter referred to also as “workshops”) for the provision of operational technical and sanitary maintenance services at Kosice and Zilina railway hubs with sufficient space capacity and modern equipment. These two workshops will ensure the provision of operational technical inspection, maintenance and cleaning of the rail passenger transport vehicles, thus making an important contribution to the construction of a comprehensive light maintenance infrastructure for rail passenger transport in Slovakia.
- (6) The measure aims at solving the existing problems and inefficiencies caused by a lack of appropriate light maintenance infrastructure. Those issues negatively impact the quality of and the access to light maintenance services for rail passenger trains in Slovakia, which in turn risks to have a negative impact on passenger demand.
- (7) The shift of passenger and goods traffic away from less environmentally friendly modes, such as road in particular, towards rail and inland waterways, constitutes a central pillar of the EU transport decarbonisation strategy.²
- (8) According to the feasibility study provided by the Slovak authorities, the development of modern light maintenance workshops will contribute to improving the technical and quality standard of rail passenger transport by reducing vehicle malfunctioning, improving transport safety, reliability and comfort, thus making rail passenger transport more attractive overall. It will also strengthen the competitiveness of rail passenger transport vis-à-vis other modes of transport.
- (9) The Slovak authorities submit that the modernisation of rolling stock and the associated construction of the workshops will contribute to better quality of rolling stock and thus an improved customer experience which will lead to increased demand and consequently to a shift from road to rail transport, and

² See in particular recitals 7, 34 and 35 of Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’), OJ L 243 of 9 July 2021, p. 1.

thus in turn contribute to decarbonisation and to the reduction of emissions of passenger transport.

- (10) The Slovak authorities explained that the long-term unrealised upgrade of the network of light maintenance workshops has led to a large investment deficit. Consequently, light maintenance sites are technologically outdated and do not meet the environmental protection standards and the technical standards. The sites are not sufficiently spacious and are scattered across multiple locations.
- (11) According to the Slovak authorities, to achieve a higher attractiveness of the Slovak railway passenger transport, a series of changes are required. The modernisation of the light maintenance facility network plays an important role in the required changes.
- (12) According to the feasibility study provided by the Slovak authorities, the light maintenance workshops are expected to:
 - Improve the quality of daily maintenance, technical inspections and maintenance and hygienic services for passenger rolling stock in order to improve the comfort of passengers and fulfil the requirements set by manufacturers of the modern train units;
 - Increase labour productivity;
 - Reduce the extent and duration of unplanned repairs of vehicles and
 - Reduce the operational costs of workplaces and carriers.
- (13) Furthermore, the notified measure will ensure the liquidation of train waste, excrements, oil and fat separators and that the requirements on air, water and soil protection³ are met.
- (14) According to the Slovak authorities, the notified measure is in line with the EU's common transport policy and the national transport policy of Slovakia and contributes in particular to the implementation of:
 - Europe 2020 headline targets for smart, sustainable and inclusive growth of public passenger transport⁴;
 - The objectives of removing bottlenecks in the rail passenger transport infrastructure identified in the Partnership Agreement for the 2014-2020 programming period⁵, which provides a framework for the implementation of EU funds and specifies as one of the key problems of Slovakia 'the absence or poor quality of transport infrastructure, in particular rail and road transport, and the lack of safety, reliability, accessibility and efficiency of transport', as well as the need to support the

³ See in particular Act No 359/2007 on prevention and reparation of environmental damage, Act No 79/2015 on waste, Act No 137/2010 on air, Act No 64/2004 on water.

⁴ Communication from the Commission Europe 2020: A strategy for smart, sustainable and inclusive growth, COM/2010/2020 final.

⁵ The Partnership Agreement covers five funds: the European Regional Development Fund (ERDF), the Cohesion Fund (CF), the European Social Fund (ESF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

development of road and rail infrastructure. In doing so, it stresses that rail transport is significantly more environmentally efficient than road transport;

- Strategic Transport Development Plan for Slovakia up to 2030⁶ and the global objective of the Integrated Infrastructure Operational Programme 2014-2020⁷, since the results of the implementation of the notified measure will help to improve the performance and efficiency of the regional rail passenger transport, to improve the supply of quality parameters for transport services, the attractiveness and competitive position of the rail passenger transport in the Slovak transport market and the comfort offered, travel standards, reliability and safety of rail passenger transport services.
- (15) The implementation of this measure is thus linked to the strategic plans of Slovakia in the area of rail passenger transport.
- (16) Taking into account that currently more than 98% of passenger trains in Slovakia are operated under public service contracts (“PSCs”), the new workshops will primarily serve the trains used by providers of public services. The Slovak authorities consider that this situation will not change significantly in the foreseeable future. However, the Slovak authorities commit that the equal and non-discriminatory access of other passenger trains (i.e. trains operated commercially) to the workshops will be safeguarded in line with Directive 2012/34/EU.⁸ According to this Directive, operators of service facilities including operators of light maintenance facilities are required, *inter alia*, to provide access to their facilities in a non-discriminatory manner to all railway undertakings.
- (17) The Slovak authorities confirmed that the notified measure largely follows the design of an existing aid measure authorised by the Commission on 23 August 2017 under case number SA.42525⁹ (the “2017 Decision”). Under the 2017 Decision, the Commission approved individual aid in the form of a direct grant of EUR 96.452 million to Železničná spoločnosť Slovensko, a.s (“ZSSK”). The aid approved under the 2017 Decision aimed at the modernisation/construction of three workshops for the provision of light maintenance services for passenger trains in Nove Zamky, Zvolen and Humenne¹⁰.
- (18) The Slovak authorities confirmed that apart from the structure of the funding, the mechanism of financing under the notified measure is the same as the

⁶ The Strategic Transport Development Plan of the Slovak Republic up to 2030 is a long-term strategic document of the Ministry of Transport and Construction of the Slovak Republic that guides effective development of the transport sector and determines the implementation of its development vision.

⁷ Operational Programme Integrated Infrastructure (OPII) is a programming document produced by the Slovak Republic to draw aid from the European Union in the transport sector and Information Technology for the period 2014-2020 (Cohesion Fund, European Regional Development Fund).

⁸ Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast), OJ L 343 of 14.12.2012, pp. 32–77.

⁹ SA.42525 (2017/N) – Slovakia – Workshops for light maintenance of trains, OJ C 20 of 19.1.2018, p. 1–8.

¹⁰ See recital 12 of the 2017 Decision.

mechanism of financing set out in the 2017 Decision. Since light maintenance workshops in Slovakia are of a local nature, serving trains at their starting/end points, a comprehensive network throughout the country is needed.

2.2. The investment project

- (19) The measure concerns the construction of two new light maintenance workshops including the relevant railway infrastructure and equipment¹¹ in Kosice and Zilina. Those workshops will replace the maintenance facilities that are dispersed across several locations currently serving passenger trains in the vicinity of the Kosice and Zilina railway hubs. The notified investment costs amount to EUR 151.6 million.

2.3. Beneficiary

- (20) The primary beneficiary of the aid is the national incumbent ZSSK, a stock company whose shares are 100% State-owned. The rights of the Slovak Republic, as the sole shareholder, are administered via the Ministry of Transport and Construction. ZSSK is the main provider of passenger rail transport services in Slovakia. ZSSK also provides passenger rail transport services under a PSC related to Kosice and Zilina.
- (21) A subsidiary company of ZSSK, as a special purpose vehicle, will be entrusted with the construction of the workshops and will also assume ownership.
- (22) After the construction phase, the ownership of the workshops will be transferred to a separate entity (hereinafter: "SE") set up by the Ministry of Transport and Construction which will own the workshops.
- (23) The project is divided into three phases (see Table 1). The Slovak authorities indicated that:
- Phase 1 (the construction phase) will consist in the building of the light maintenance facilities by a subsidiary of ZSSK, which will be created for that special purpose. The building of the light maintenance facilities will be governed by an amendment to the current PSC concluded between ZSSK and the Ministry of Transport and Construction. At the end of Phase 1, the subsidiary of ZSSK will transfer the ownership of the light maintenance facilities to SE under direct control of the Ministry of Transport and Construction. Phase 1 will start after the approval of the measure by the Commission.
 - Phase 2 is considered a transitional phase during which the operation of the light maintenance facilities will be ensured by ZSSK whilst ownership is assumed by SE. The operation of the light maintenance facilities will be regulated by an "operation contract" between SE and ZSSK. Phase 2 will end with a handover of the light maintenance operations by ZSSK to other eligible railway undertakings.

¹¹ Costs cover in particular the construction of facilities such as railway superstructure and substructure, switches, halls for serving train sets, shed for a stable washer, driving energy system, roofing of halls and technological facilities such as technology for train servicing hall, washing hall technology, pre-heating devices, air compressing stations, water cleaning station, shunting devices, security equipment.

- Phase 3 will kick in when the PSCs for operating passenger lines are tendered. The operation of the respective facility will be transferred to the railway undertaking operating the relative majority of train kilometres in the catchment area of the light maintenance facility. The duration of Phase 2 and the start of Phase 3 will depend on the progression of the market opening in the Slovak railway sector.

Table 1: Phases of the project

		PSC (Ministry of Transport and Construction)	Light maintenance workshops			
			Building	Ownership	Operation	Use
Phase 1	- Construction and operation of light maintenance workshops under existing PSC	ZSSK (existing PSC)	Daughter company of ZSSK	Daughter company of ZSSK	ZSSK	ZSSK/other
Phase 2	- Transfer of ownership to separate entity - Operation of light maintenance workshops contract	ZSSK/other	-	Separate entity	ZSSK	ZSSK/other
Phase 3	- Respective light maintenance workshops will be operated by the operator of relative majority of capacity km in the catchment area of workshop	ZSSK/other	-	Separate entity	ZSSK/other	ZSSK/other

2.4. Form and amount of the aid and aid intensity

- (24) The project has not yet started, apart from planning/preparatory phase. The aid for the project will be granted by means of a ministerial decision to be adopted by the Ministry of Transport and Construction of Slovakia and a grant agreement to be signed following approval of the aid by the Commission.
- (25) The aid will take the form of a direct grant co-financed under the Integrated Infrastructure Operational Programme (recital (14)), priority axis 2 Railway Infrastructure (other than TEN-T Core), investment priority 7d, activity E – Developing the infrastructure for the inspection and maintenance of passenger rail rolling stock for operation as part of public services and the forthcoming programming period for 2021 – 2027.
- (26) The Slovak authorities provided financial analyses for a 30-year period. Over that period, the Internal Rate of Return (IRR) of the project has been calculated as being equal -20.38%; it means that the profitability of this investment project is negative. According to the same analyses, the funding gap amounts to EUR 150.9 million.

- (27) The financial analyses were carried out on the assumption that the light maintenance workshops will serve primarily trains operated under PSCs. For services provided to PSCs operators, the workshop operator will charge a price reflecting only operating costs (plus a reasonable profit). The funding gap is not equal to the total investment costs (recitals (19) and (26)) due to expected, albeit limited, profits from serving commercial trains (estimated at EUR 0.67 million). Operators of commercial trains will pay a full price for the services provided, i.e. a price reflecting both operating and investment costs (including a profit).
- (28) The total eligible investment costs amounts to EUR 151.6 million. The planned aid is equal to the funding gap of the project (i.e. EUR 150.9 million). Thus, the aid accounts for 99.6% of the eligible investment costs (i.e. the aid intensity is 99.6%).
- (29) It is planned that 85% of the aid (EUR 128.3 million) will be co-financed using funds from the European Regional Development Fund and the remaining 15% (EUR 12.8 million) will be financed from the Slovak State budget.

2.5. Special provisions

- (30) The Slovak Ministry of Transport and Construction will make it mandatory for ZSSK to use the light maintenance workshops in question. This will guarantee a steady utilization of the light maintenance workshops.
- (31) The Slovak authorities indicated that since the construction of the light maintenance workshops will be financed almost totally from State resources, the investment costs will not be reflected in the tariffs for light maintenance services applied to trains operated under PSCs to avoid an increase in the compensation to be paid by the contracting authority.
- (32) In the course of phase 2 of the project (see recital (23)), the Slovak authorities intend to organise tender procedures for specific lines/networks. The PSC with the highest volume of train km in the catchment area of a given light maintenance workshop will include the obligation for the operator of the PSC to take over the operation of that light maintenance workshop from ZSSK (phase 3 of the project, see recital (23) above).
- (33) All future PSCs will include a clause providing for the obligation to use the light maintenance workshops for their light maintenance services. Any operation contract will contain a clause making it mandatory to transfer the operation of the light maintenance workshop to the subsequent winner of the PSC tender in the catchment area of Kosice and Zilina. Therefore, the operation contract will be limited to the duration of the PSC.

2.6. Legal basis and transparency

- (34) The legal basis of the notified aid is:
- Ministerial decision to be adopted by the Ministry of Transport and Construction and a grant agreement to be signed following approval of the aid by the Commission (recital (24));
 - Act No 358/2015 on adjustments to certain relations concerning State aid and de minimis aid, amending certain acts (State Aid Act);

- Act No 128/2020 amending Act No 292/2014 on the contribution from the European Structural Funds and Investment Funds, amending certain acts and supplementing Act No 528/2008 on assistance and support from European Community funds, as amended;
 - Strategic Transport Development Plan of the Slovak Republic until 2030;
 - Act No 513/2009 on railways, amending certain acts, as amended;
 - Act No 351/2016 amending Act No 514/2009 on railway transport, as amended and Act No 513/2009 on railways, amending certain acts, as amended and
 - Act No 259/2001 on Železničná spoločnosť, a.s., amending Act of the National Council of the Slovak Republic No 258/1993 on Slovak Railways, as amended by Act No 152/1997, as amended.
- (35) Information on the measure will be made available online on the website of the Slovak Ministry of Transport and Construction¹² as well as in the register of State aid run by the Antimonopoly Office of the Slovak Republic of Slovakia¹³.
- (36) The Slovak authorities have confirmed that no aid will be granted under this measure prior to the Commission’s approval (see recital (24)).

2.7. Cumulation of aid

- (37) Aid under the measure cannot be cumulated with aid including *de minimis* aid received from other local, regional, national schemes and Union funds to cover the same eligible costs.

3. ASSESSMENT OF THE AID

3.1. Existence of aid within the meaning of Article 107(1) of the TFEU

- (38) According 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.*”
- (39) The qualification of a measure as State aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be financed through State resources and be imputable to the State; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

State resources and imputability to the State

- (40) The aid measure will be co-financed for 85% using the resources from the European Regional Development Fund, which are transferred to Slovakia to

¹² www.mindop.sk.

¹³ <http://semp.kti2dc.sk/>.

implement activities set out in its operational programmes. The Slovak authorities are responsible for implementing and managing the operational programmes, including the selection of beneficiaries and projects under the specific measures and payment of the financing to the selected beneficiaries for realisation of their projects. Union funds channelled through the authorities of Member States become State resources. Therefore, the co-financing from the European Regional Development Fund, that is at the disposal of the Slovak authorities, constitutes State resources and is imputable to the Slovak authorities.

- (41) The remaining part of the grant (i.e. 15%) will be financed directly from the Slovak State budget.
- (42) Hence, it can be concluded that the grant is provided through State resources and is imputable to the State.

Selective economic advantage

- (43) According to the case-law of the Court of Justice of the European Union, the construction and operation of infrastructure may constitute an economic activity¹⁴. As the notified measure concerns investment aid for infrastructure that is used for commercial exploitation, the construction and operation of such infrastructure must be considered to constitute an economic activity.
- (44) The direct grant allows ZSSK to be relieved of the costs that it would normally have to bear itself when constructing the light maintenance workshops. The direct grant can therefore be considered to confer a selective advantage upon ZSSK.

Distortion of competition and effect on trade between Member States

- (45) When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid¹⁵. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition¹⁶. ZSSK provides international passenger services that are open to competition¹⁷. Consequently, the measure is liable to distort competition and affect trade between Member States.

¹⁴ See inter alia Case C-82/01P *Aéroports de Paris* [2002] ECR I-9297 and Cases T-443/08 and T-445/08 *Freistaat Sachsen and Land Sachsen-Anhalt v Commission*.

¹⁵ See, in particular, Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, paragraph 11; Case C-53/00 *Ferring* [2001] ECR I-9067, paragraph 21; Case C-372/97 *Italy v Commission*, [2004] ECR I-3679, paragraph 44 .

¹⁶ Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

¹⁷ The international passenger rail transport market was opened to competition as of 2010, based on Directive 2007/58/EC amending Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure, OJ L 315 of 3.12.2007.

Conclusion on the existence of aid

- (46) For the reasons set out above, the Commission finds that the direct grant to ZSSK to finance the construction of two light maintenance workshops in Kosice and Zilina constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (47) The Commission notes that the aid measure has not been implemented so far (recitals (24) and (36)). Therefore, Slovakia has complied with the obligation laid down in Article 108(3) TFEU.

3.3. Compatibility of the aid

- (48) The project covers the construction of two light maintenance workshops aimed primarily at improving the service offered to rail passengers and, hence, encourage the modal shift from road to rail and consequently increase the modal share of rail.
- (49) Article 93 TFEU provides that “aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.”
- (50) The concept “coordination of transport” has a significance which goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by the public authorities, which is aimed at guiding the development of the transport sector in the common interest. Moreover, aid to transport is compatible with the TFEU only in well-defined cases, which do not jeopardise the general interests of the Union.¹⁸
- (51) For a given aid measure to be considered to “meet the needs” of transport coordination, it has to contribute to the coordination of transport and be necessary and proportionate. The access to the infrastructure in question should be open to all users on a non-discriminatory basis. Furthermore, undue negative effects on competition and trade in the Union should be avoided.

Development of the transport sector and contribution to transport coordination

- (52) The Commission notes that the overall European strategy for the transport sector is to complete the internal market for transport.¹⁹ Transport infrastructure investments play a crucial role for the realisation of the ambitious aim of modernising and developing the transport system.

¹⁸ Judgment of the Court of Justice of 12 October 1978, Case 156/77, Commission v Belgium, EU:C:1978:180, paragraph 10.

¹⁹ Fourth Railway Package: COM(2013) 26, COM(2013) 27, COM(2013) 28, COM(2013) 29, COM(2013) 30, COM(2013) 31.

- (53) The 2011 White Paper²⁰ specified the need for high quality mobility services, for an improvement of the energy efficiency performance and of the quality and reliability of rail passenger services and for modern infrastructure, which minimises the impact on the environment.
- (54) In this context, the Commission considers that the construction of the light maintenance facilities will enable an improvement of the services provided, in terms of quality and efficiency, that will contribute to increasing the attractiveness of passenger railway transport in Slovakia. The Commission notes that, apart from the availability of the transport service, its quality is very important to passengers (especially if alternative modes of transport are available). By aiming to achieve a higher degree of quality and efficiency and ensuring sustainability of railway passenger transport, the project aims to support modal shift to railway services. Such modal shift is given a high priority by the European Green Deal²¹ and the Commission Sustainable and Smart Mobility Strategy²² – both supporting the development of high-quality, reliable, safe and efficient rail services.
- (55) Moreover, the Commission considers that the investment in question will lead to significant environmental improvements, linked to the implementation of modern technologies (e.g. a reduction in water and air pollution, noise reduction, soil protection (see recital (13))).
- (56) By pursuing these objectives, the notified measure stimulates the development of the railway transport sector in Slovakia and contributes to the coordination of transport.
- (57) The Commission therefore concludes that the aid pursues the objective of coordinating transport.

Necessity and the incentive effect of aid

- (58) The Slovak authorities indicated that the current light maintenance facilities in Kosice and Zilina are obsolete and do not meet the needs of an increasingly modernised rolling stock. To improve the situation, significant investments are required.
- (59) In this context, the Commission notes that more than 98% of passenger train services in Slovakia are provided on the basis of PSCs. Therefore, the trains that are operated under PSCs account for the same proportion (around 98%) of the total demand for light maintenance services in Slovakia.

²⁰ White Paper: Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system, COM(2011)0144 final.

²¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - the European Green Deal, COM(2019)640 final.

²² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 9 December 2020 - Sustainable and Smart Mobility Strategy – putting European transport on track for the future, COM(2020)789.

- (60) According to the information provided by the Slovak authorities, the current PSC operator on the route between Zilina and Kosice, ZSSK, does not have the resources to conduct the investment on its own.
- (61) The Commission observes that any undertaking planning such an investment would need at least the following :
- expected revenues from offering the light maintenance facilities to potential users would have to exceed the investment costs over the amortisation period of 30 years;
 - long-term risk protection: a sufficient minimum demand would have to exist over the whole 30-year amortisation period.
- (62) The Commission notes that according to the financial analyses provided by the Slovak authorities, the initial investment costs would not be covered by the expected revenues of the project over the amortisation period, as it can be inferred from the negative IRR and the significant funding gap of the project (recital (26)).
- (63) As to the expected revenues, the Commission notes that currently the light maintenance services are provided in old facilities that are dispersed across several locations (recital (19)). The PSC compensation covers only the operating costs of the light maintenance services. The Slovak authorities indicated that increasing the PSC compensation to cover also capital expenditure on new workshops is not considered a viable option due to budgetary constraints. Increasing passenger fares to cover those new costs is not a viable option either, since the objective of the measure is to maintain the rail passenger transport competitive and attractive vis-à-vis other modes of transport, in particular road transport.
- (64) The Commission further observes that, as indicated by the Slovak authorities, trains used to provide services under PSCs will continue to be responsible for a significant part of demand for light maintenance services and increasing the PSC compensation or passenger fares to cover capital expenditure for the new workshops are not considered viable options. Moreover, the expected investment costs largely exceed the revenues that can be expected from the new workshops. The financial analyses provided by the Slovak authorities show that the funding gap of the investment project amounts to EUR 150.9 million, that corresponds to 99.6 % of the eligible investment costs. On the basis of the above, the Commission considers that ZSSK or any other entity could not undertake the investment without public support.
- (65) As to the long-term risk protection, the Commission notes that in the current situation, which is not expected to change in the near future, it is the State intervention that creates the demand (and market) for light maintenance services in Slovakia, since it compensates the operating costs of light maintenance services under the PSCs. The degree of the State intervention depends on political decisions as well as on the allocation of funds in the State budget. As regards more specifically the support to public transport, the Member States' authorities have the choice between alternative modes: a minimum or basic level of public transport could be accomplished for instance by the provision of bus services as an alternative to rail. The fact that rail and bus services are to a

certain degree interchangeable may make public demand for railway services less stable in a long-term perspective. Because of this, investments into light maintenance infrastructure involve a certain degree of risk that commercial actors are not ready to bear.

- (66) In light of the above, the Commission considers that light maintenance services in Slovakia are characterised by the existence of a market failure and that market forces will not provide the service level that is required by rail passengers. Thus, the Commission considers that the aid for the construction of two new light maintenance facilities is necessary and it has an incentive effect.

Proportionality of aid and non-discrimination

- (67) For an aid to be proportionate, it requires that the public funding is kept to the minimum necessary. For infrastructure projects, a State aid measure is in principle considered proportional if the aid intensity (i.e. the proportion of public funding to the investment costs) is limited to the funding gap.²³ The funding gap is determined on the basis of an ex ante business plan/study as the net present value of the difference between the positive and negative cash flows (including investment costs) over the lifetime of the investment. The financial and economic conditions described in detail in the feasibility study, provided by the Slovak authorities (recitals (26) - (28)), result in a severe dependency of the investment in question on public funds. This is due to the specific characteristics of the project under assessment. In particular, the construction of light maintenance workshops requires a high initial capital expenditure. Moreover, the light maintenance workshops will serve primarily the trains operated under the PSCs.
- (68) Projects normally generate revenues on the market. In those cases, while additional initial funding is required, investment costs are over time covered largely by commercial revenues from the sale of services or goods to third parties.
- (69) In the present case, however, the light maintenance facilities will generate only marginal commercial revenues (i.e. revenues from railway undertakings operating commercial transport services and using the light maintenance facilities services).
- (70) The Commission approved investment aid for railway infrastructure with an aid intensity covering up to 50% of the eligible costs. However, in specific circumstances, a higher aid intensity was found to be justified.²⁴ In the present

²³ State aid SA.40197 (2016/N) – Lithuania - Investment in infrastructure at Vilnius airport, 25.8.2016, OJ C 425 of 18.11.2016, p. 5; State aid SA.45156 (2016/N) – Luxembourg - Aide individuelle pour l'aménagement d'une Plateforme multimodale à Bettembourg / Dudelange, 16.6.2016, OJ C 471 of 16.12.2016, p. 7 ; State aid SA.35124 (2012/N) - Italy - Investment Aid to Interporto Regionale della Puglia, 16.12.2013, OJ C 354 of 4.12.2013, p. 6

²⁴ State aid SA.52716 (2018/N) – Poland – Construction of Treeden Group transshipment terminal at the PKP LHS station in Wola Baranowska, 31.3.2020, OJ C 336 of 9.10.2020, p.1; State aid SA.35124 (2012/N) - Italy - Investment Aid to Interporto Regionale della Puglia, 16.12.2013, OJ C 354 of 4.12.2013, p. 6; State aid SA.55451 (2019/N) – The Netherlands Support for ERTMS upgrade, 05.11.2019, OJ C 59 of 21.2.2020, p. 1; State aid SA.45156 (2016/N) – Luxembourg - Aide individuelle pour l'aménagement d'une Plateforme multimodale à Bettembourg / Dudelange,

case, the aid intensity accounts for 99.6% of the eligible investment costs. The Commission notes that, while this aid intensity is high, the aid remains limited to the funding gap..

- (71) In this case, the Commission takes also into account the fact that, until present, ZSSK has provided light maintenance services related in Kosice and Zilina under conditions that did not allow accumulating resources to carry out the investment project in question itself. Therefore, the funding gap of the project (and consequently also the proposed aid intensity) could only be reduced if light maintenance services fees are increased, allowing the entity entrusted with the construction to cover at least part of the initial investment costs of the workshops. Higher light maintenance fees are not possible without in turn increasing the PSC compensation paid to the PSC operator by the Slovak State or/and without increasing fares paid for rail tickets by passengers.
- (72) However, the Slovak authorities explained that an increase of the PSC compensation to cover the investment costs in question is not a viable option due to budgetary constraints. Moreover, increasing fares to passengers is not possible either because that would make transportation via rail less competitive and risks reversing the positive trend in the rail passenger transport sector observed in the recent years in Slovakia. The Commission finds that, in light of the specific circumstances of the present case, those elements justify the aid intensity proposed by the Slovak authorities.
- (73) In light of the above, the Commission considers that the aid is proportionate.
- (74) The Slovak authorities have confirmed that the operator of the light maintenance workshops – ZSSK in phases 1 and 2, and ZSSK and/or third operators in phase 3 – will be obliged to grant non-discriminatory access to the light maintenance facilities in line with Directive 2012/34/EU (see recital (16)). Article 31 of that Directive provides that the charge imposed for the light maintenance services shall not exceed the cost of providing it, plus a reasonable profit²⁵.
- (75) Compliance with the requirements of Directive 2012/34/EU will be monitored by the relevant regulatory body – the Railway Regulatory Authority (Úrad pre Reguláciu železničnej dopravy). Therefore, the Commission considers that the criterion of open and non-discriminatory access is met.

Avoidance of undue negative effects on competition and trade between Member States

- (76) As regards the undue negative effects on competition and trade between Member States, the Commission has analysed the impact of the investment on i) the providers of light maintenance services as well as ii) on the railway undertakings providing passenger services.

16.6.2016, OJ C 471 of 16.12.2016, p. 7; State aid SA.34501 (2012/N) – Germany - Extension of the inland port Königs Wusterhausen / Wildau, 17.10.2012, OJ C 176 of 21.6.2013, p. 3; State aid SA.33434 (2011/N) – France - Aide au financement d'un chantier multimodal sur le Grand port maritime du Havre, 20.12.2011, OJ C 53 of 23.2.2012, p. 4.

²⁵ Article 31, point 7 of the Directive.

- (77) With regard to the market for light maintenance services, the Commission notes that three different models are possible. Under a first model (Model 1), those services are provided by the railway undertaking to its own train fleets. Under a second model (Model 2), the light maintenance services are procured with new rolling stock as part of a package.
- (78) Under a third model (Model 3), which is not widely used, maintenance services are provided by a third party, i.e. an entity that is neither the operator of the rolling stock in question or its subsidiary company, nor the manufacturer of the rolling stock in question²⁶.
- (79) The Commission considers that the investment in question will not have any impact on the providers of light maintenance services supplied under Model 1 and Model 2, since the demand for their services is guaranteed and, in general, these providers do not compete on a market for light maintenance services. For the reasons explained in recitals (61) - (65), i.e. the very high share of passenger trains operated under PSCs in Slovakia and the resultant strong dependency of the demand for those services on political decisions and budgetary constraints, there is no perspective of development in Slovakia of Model 3, where light maintenance services are provided by (commercial) third party operators.
- (80) The Commission also notes that light maintenance services are by nature services provided locally, since they are provided to trains that end their routes close to the workshops. Therefore, the construction of the workshops in question will not have any impact on the activities of light maintenance services providers located in other Member States.
- (81) With regard to the market of rail passenger transport providers, the Commission notes that, as already mentioned in recital (14), at all phases of the project, an open and non-discriminatory access is guaranteed to all railway undertakings. Moreover, in line with the Directive 2012/34/EU, the charge for the supply of light maintenance services shall not exceed the cost of providing it, plus a reasonable profit. The operators of light maintenance workshops are obliged by the same Directive to maintain separate accounts, including separate balance sheets that allow for transparency in relation to the imposed charges and their monitoring by the Railway Regulatory Authority (Úrad pre Reguláciu železničnej dopravy).
- (82) The Commission also notes that the construction of the light maintenance workshops will not block the opening of the rail passenger transport market, including tenders for PSCs, in Slovakia, since at the end of phase 2 or in phase 3, the workshops can be transferred to railway undertakings other than ZSSK (see recital (23)).
- (83) In light of the above, the Commission considers that aid to the construction of two light maintenance workshops in Kosice and Zilina is unlikely to have undue negative effects on competition and trade between Member States.

²⁶ According to the information provided by the Slovak authorities, this model is widely used in only one Member State, Sweden, where many routes are operated on an open access (i.e. commercial) basis.

Conclusion on the compatibility of the measure

- (84) In view of the above, the Commission considers that the notified measure fulfils the conditions set out in Article 93 TFEU. The Commission therefore concludes that it meets the need of coordination of transport. The measure is therefore compatible with the internal market pursuant to Article 93 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 93 of the Treaty on the Functioning of the European Union.

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 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:

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Your request should be sent electronically to the following address:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

