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**Subject: State Aid SA.100438 (2022/N) – Slovakia
COVID-19: Aid scheme to support Slovak air carriers**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 24 February 2022, Slovakia notified an aid scheme in the form of a direct grant to air carriers in Slovakia in the context of the COVID-19 pandemic (the “aid scheme”). The aid scheme was notified under two compatibility basis: (a) section 3.1 of the Communication from the Commission on Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”)¹ (the “Limited amounts of aid” or “Measure 1”) and (b) section 3.12 of the Temporary Framework (the “Support for uncovered fixed costs” or “Measure 2”).

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

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- (2) Slovakia exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE AID SCHEME

2.1. The travel restrictions linked to the COVID-19 pandemic and their impact on the civil aviation sector in Slovakia

- (3) On 11 March 2020, the government of Slovakia declared an extraordinary situation for the territory of Slovakia effective from 12 March 2020 in relation to the threat to public health due to transmittable disease COVID-19. On 15 March 2020, the government of Slovakia declared a state of emergency that lasted until 13 June 2020. The objective of the state of emergency was to create the conditions for taking the necessary measures to prevent and mitigate the consequences of the public health emergency due to COVID-19.
- (4) With the aim of preventing the spread of infections by the COVID-19 from other countries into the territory of Slovakia, the national authorities suspended the international transport connections by air, bus, rail and inland waterways with stops in the territory of Slovakia from 13 March 2020 until 6 September 2020. From 13 March 2020 until 19 September 2021, temporary border controls were introduced at border crossing points with almost all neighbouring countries. In October 2020, Slovakia reinstated the state of emergency that lasted until 14 May 2021. A new state of emergency was declared in November 2021 and was terminated as of 23 February 2022.
- (5) The measures that were taken by Slovakia following the declaration of the state of emergency (recital (3)) and by other countries in relation to the COVID-19 pandemic – including flight bans and quarantine measures – had a major impact on the activities of air carriers which faced a sudden shortage or even unavailability of liquidity. In particular, the ban on designated civil flights combined with the reduced demand for commercial air transport contributed to a significant loss of revenue for air carriers.
- (6) The measures taken by the Slovakia also led to the loss of income for travel agents and other undertakings active in the tourism sector,³ a service-based sector characterized by the highest added value in terms of state budget. This negatively affected commercial air transport, due to the cross-cutting nature of the tourism sector.
- (7) Slovakia does not have a flag air carrier, therefore during the COVID-19 pandemic, at the request of the Slovak authorities and in order to ensure the necessary air accessibility of the territory of Slovakia, flights for the transport of

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

³ For instance, according to data from the Association of Hotels and Restaurants of Slovakia, 75 % of hotels in Slovakia recorded the decrease in visitors and overnight stays during the summer season 2020.

medical supplies, repatriation flights, and flights to ensure other economic and social functions were operated by air carriers with an operating licence issued by Slovakia (the “Slovak air carriers”). Slovak air carriers have their principal place of business in the country’s territory, and they are under the supervision of the competent Slovak civil aviation authorities (i.e. Ministry of Transport of the Slovak Republic and Transport Authority). This entailed that the Slovak authorities had all relevant information in relation to the technical specifications (e.g. types and number of aircraft, capacity, airworthiness) and actual deployment of the fleet.

- (8) On 14 May 2021, the Slovak authorities ended the state of emergency in the country. However, the situation in the commercial air transport sector did not significantly improve because measures taken by other Member States of the European Union or third countries and the various COVID-19 mutations have had a major impact on the possibility and/or people’s willingness to travel.
- (9) On 24 November 2021, the Slovak authorities reinstated the state of emergency on the Slovak territory as of 25 November 2021 and, at the same time, restricted the freedom of movement by imposing a daily curfew between 05:00 am and 01.00 am of the following day, in addition to imposing other specific restrictions. Such measures started to be phased out at the beginning of February 2022.

2.2. Objective of the aid scheme

- (10) Slovakia considers that the COVID-19 pandemic affects the real economy. The aid scheme forms part of an overall package of measures⁴ and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings due to the pandemic, to ensure that the disruptions caused by the pandemic do not undermine the viability of Slovak air carriers and thereby to preserve the continuity of economic activity during and after the pandemic.
- (11) The Slovak authorities indicate that the airline sector in Slovakia has been hit particularly hard by the pandemic. Both in Slovakia and worldwide, airlines were precluded in whole or in part from carrying out their normal activities because of the governmental measures imposed to contain the spread of the COVID-19 pandemic. Moreover, the demand for passenger travel by air in Slovakia has dropped significantly since the beginning of the COVID-19 pandemic. Air passenger traffic in Slovakia was reduced by 82% in 2020 and by 77% in 2021, compared to 2019. That led to a serious collapse in airlines’ financial revenues, causing serious liquidity problems.
- (12) According to the Slovak authorities, the airline industry generates economic growth, creates jobs, and facilitates trade, tourism and regional development. In

⁴ For example: SA.101088 COVID 19 – SK – Bus companies, SA.63294 COVID-19 TF aid to preserve employment and self-employment during the health crisis, SA.60212 COVID 19 – Aid for professional sport clubs – SK. SA. 59996 COVID 19: cost subsidies under 3.1 of the Temporary Framework, SA.58054 COVID 19: ESFI Liquidity Support State Aid Scheme for Innovative Companies with Limited Access to Credit Facilities, SA.57485 Covid-19 ESIF Basic Level Liquidity Needs Support State Aid Scheme – SIH, SA.57484 Covid-19 Government Resources Basic Level Liquidity Needs Support State Aid Scheme – SIH.

addition, the airline industry has a multiplier economic effect, maintaining the existence of ancillary activities and related industries, including travel agents, tour operators, hotels and land transport operators. The disruption of the air traffic severely affects the Slovak economy as a whole.

- (13) In that context, the objective of the notified measure is to provide liquidity in the form of direct grants to air carriers with an EU operating licence to carry passengers issued by the competent licensing authority in Slovakia⁵ (a “Slovak licence”), to ensure their viability and help them overcome the negative economic consequences of COVID-19.
- (14) Slovakia notes that due to the extremely negative economic consequences of COVID-19, some of the air carriers holding a Slovak licence have already lost or are at risk of losing their license or even facing insolvency. Overall, air carriers with a Slovak licence⁶ recorded on average an 87% reduction in passenger traffic in 2020 and an 83% reduction in 2021, compared to 2019. Such a decrease had a significant negative impact on the thousands of jobs directly and indirectly related to the Slovak air carriers’ operations, as well as on trade, tourism, and regional development in Slovakia. Therefore, the Slovak authorities submit that financial support to such air carriers would generate a positive cumulative effect for the Slovak economy as a whole.
- (15) Slovakia confirms that the support under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (16) The compatibility assessment of the aid scheme is based on Article 107(3)(b) TFEU, in light of sections 2, 3.1 and 3.12 of the Temporary Framework.

2.3. Legal basis and administration of the aid scheme

- (17) The legal basis for the aid scheme is the Act No 213/2019 Coll.⁷ The Slovak authorities provided the Commission with:
 - a draft call for application “Support to civil aviation sector”; and

⁵ I.e. an operating license for a “Community air carrier”, with a permit to carry passengers, issued by the Slovak Ministry of Transport and Construction pursuant to Articles 2(1) and 3 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ L 293, 31.10.2008, p. 3 (“Regulation No 1008/2008”).

⁶ This is an operating license of category A – i.e. without the restrictions established Article 5(3) of Regulation No 1008/2008.

⁷ Act No 213/2019 Coll. of 25 June 2019 (published on 17 July 2019) on fees and charges and the provision of a contribution in civil aviation and amending of some acts (as amended by Act No 90/2020, Act No 341/2020 and Act No 310/2021), . Available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2019/213/20220101>.

- a draft amendment to Act No 213/2019 Coll. that would introduce §25c and set out, *inter alia*, the eligibility criteria, the application procedure, and the method for evaluating applications.

(18) The Slovak authorities note that the additional legal bases for the aid scheme are:

- Act No 358/2015 Coll. on the regulation of certain relations in the field of State aid and minimum aid and amending certain acts (State aid Act);⁸
- Act No 431/2002 Coll. on accounting, as amended;⁹
- Act No 523/2004 Coll. on the budgetary rules of public administration and amending certain acts, as amended;¹⁰
- Act No 343/2015 Coll. on public procurement and amending certain acts, as amended; and¹¹
- Act No 357/2015 Coll. on financial control and audit and amending certain acts, as amended.¹²

(19) The Ministry of Transport and Construction of Slovakia is responsible for granting and administering of the aid.

2.4. Form, budget, and duration of the aid scheme

(20) The support under the aid scheme takes the form of direct grants.

(21) The overall estimated budget of the aid scheme is EUR 3 000 000 and it is divided between Measure 1 and Measure 2 as follows:

- a) EUR 1 000 000 available under Measure 1, in accordance with section 3.1 of the Temporary Framework,
- b) EUR 2 000 000 available under Measure 2, in accordance with section 3.12 of the Temporary Framework.

⁸ Act No 358/2015 Coll. of 10 November 2015 (published on 9 December 2015) on the regulation of certain relations in the field of State aid and minimum aid and on amendments to certain acts (State Aid Act), available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/358/20160101>.

⁹ Act No 431/2002 Coll. of 18 June 2002 (published on 1 August 2002) on accounting, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/431/20201001>.

¹⁰ Act No 523/2004 Coll. of 23 September 2004 (published on 30 September 2004) on the budgetary rules of public administration and amending certain acts, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/523/20200101>.

¹¹ Act No 343/2015 Coll. of 18 November 2015 (published on 3 December 2015) on public procurement and amending certain acts, as amended, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/343/20220309>.

¹² Act No 357/2015 Coll. of 10 November 2015 (published on 9 December 2015) on financial control and audit and amending certain acts, as amended, available at <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/357/20190101>.

- (22) The funds will be allocated from the Slovak State budget to beneficiaries by the Ministry of Transport and Construction of Slovakia.
- (23) The Slovak authorities confirm that the aid scheme will not enter into force nor will any aid be paid out before notification of the Commission's approval. According to the § 25c (6) (b) of Act no 213/2019 Coll. as amended in conjunction with the points 17.1 and 18.5 of the aid scheme, aid may be granted under the aid scheme as from the notification of the Commission's decision approving the aid scheme until no later than 30 June 2022.

2.5. Beneficiaries

- (24) The beneficiaries of the aid scheme are air carriers in the civil aviation sector meeting all the eligibility criteria listed below:
- (a) they hold a valid licence to operate commercial air transport, i.e. an operating licence¹³ issued by the Ministry of Transport and Construction of the Slovak Republic^{14,15}
 - (b) in 2020 or in 2021 they have conducted scheduled¹⁶ or non-scheduled commercial air transport, or leased aircraft and crew to another air carrier¹⁷ for commercial air transport with approval according to specific regulation;¹⁸
 - (c) in 2020 they carried less than 40 % of the number of passengers carried in 2019 by operating scheduled commercial air transport, non-scheduled commercial air transport or wet leased aircraft or any combination thereof.
- (25) Aid may not be granted under Measure 1 and/or Measure 2¹⁹ to medium²⁰ and large undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")²¹ on 31 December 2019. Aid may be granted to micro and small²² undertakings that were in difficulty within the meaning of the GBER on 31 December 2019, if those undertakings, at the

¹³ Article 2 (1) of the Regulation (EC) No 1008/2008 as amended.

¹⁴ As defined in recital (13).

¹⁵ The beneficiary must have held the operating licence before 1 January 2021 and has to hold a licence at the time of the application.

¹⁶ Article 2 (16) of the Regulation (EC) No 1008/2008 as amended.

¹⁷ Article 2 (25) of the Regulation (EC) No 1008/2008 as amended.

¹⁸ §41 (11) of the Act No 143/1998 Coll. as amended by the Act No 544/2004 Coll.

¹⁹ This condition applies to both measures under 3.1 and 3.12 of the Temporary Framework according to the §25c (3) (c), (d), (e), (j) of the Act no 213/2019 Coll. as amended in conjunction with the points 5.6 (c), (d), (e), (j) and 11.3 (e) (2), (3), (4), (8) of the aid scheme.

²⁰ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

²¹ As defined in Article 2(18) of the GBER.

²² As defined in Annex I to the GBER.

moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid²³ or restructuring aid²⁴.

(26) The Slovak authorities submit observations in relation to the first eligibility criterion under the aid scheme i.e. the holding of a Slovak licence (recital (24)). In particular,

- one of the conditions for granting a Slovak licence is that the air carrier has its principal place of business in Slovakia²⁵. The condition of holding a Slovak licence, in so far as it requires the principal place of business of the air carriers to be on the Slovak territory, ensures a stable administrative and financial presence of those air carriers, so that the Slovak authorities can control the manner in which that aid is used by the recipients. That would also help ensuring that the aid meets the intended objective to maintain Slovak air carriers' operations in the country rather than having them exiting the market, which would further contribute to the serious disturbance in the country's economy.
- Second, the continued airworthiness management – i.e. the process by which an aircraft is kept in a condition where it remains airworthy (technically fit for flight) throughout its lifecycle – must also be ensured from the air carrier's principal place of business, pursuant to Article 2(26) of Regulation No 1008/2008.²⁶ The eligibility condition relating to the beneficiaries holding a Slovak licence reflects the need for Slovakia to ensure a certain stability of the beneficiaries' presence and their durable links to the Slovak economy. That condition requires not only that a beneficiary should be registered in Slovakia but also that its principal place of business be located in that territory. According to the Slovak authorities, that is because the aid scheme at issue is intended to support undertakings which are genuinely and enduringly linked to the Slovak economy and this is consistent with the objective of the scheme..

²³ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

²⁴ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

²⁵ Article 4(a) of Regulation No 1008/2008.

²⁶ That consideration is supported by Article 5 (on the financial conditions for granting an operating licence), Article 7 (on proof of good repute) and Article 8 (on the validity of an operating licence) of Regulation No 1008/2008. Those provisions create reciprocal regulatory obligations between air carriers holding a Slovak licence and the Slovak authorities, and thus a specific, stable link between them. In addition, air carriers with a Slovak licence hold an Air Operator Certificate issued by the Slovak Transport Authority, in line with the Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 296, 25.10.2012, p. 1–148 as amended.

- Third, the condition of holding a Slovak licence reflects the possibility and the obligation for the Slovak authorities to carry out financial checks of the beneficiaries.²⁷
- Fourth, air carriers with a Slovak licence play an important role in the country's economy, as they directly employed 250 persons in 2021 (many with specialized technical skills) and more generally generated thousands of jobs in Slovakia.²⁸
- Furthermore, the role of air carriers with a Slovak licence was essential during the COVID-19 emergency, as Slovakia does not have a national flag air carrier would not have been able to carry out operations without the support of air carriers established in Slovakia. During the COVID-19 pandemic, air carriers with their principal place of business in Slovakia were readily available to provide support by operating repatriation flights to/from the country and transporting the necessary medical equipment. In turn, Slovakia was able to grant an exemption under Article 71 of the Regulation (EU) No 2018/1139 ("Basic Regulation")²⁹ to air carriers with a Slovak license to operate passenger aircraft with non-approved design modifications to allow the transport of cargo in the context of the COVID-19 pandemic – the Slovak Transport Authority being the competent authority to grant such exemption under Basic Regulation.
- Finally, the Slovak authorities submit that, given the very limited total amount of support that Slovakia envisages to grant (i.e. EUR 3 000 000), limiting eligibility for the aid only to those air carriers which hold a Slovak licence and thus have their principal place of business in the country ensures a more efficient use of State resources. Allowing all air carriers operating in Slovakia to benefit from the aid scheme would render the support meaningless for each one of them because of the limited amount of aid, the State will be able to grant in this case. As a result, the measure would not achieve its intended objective.

2.6. Basic elements of the aid scheme

2.6.1. Description of the aid scheme

- (27) The aid scheme is composed of two measures aiming at supporting the viability of air carriers with a Slovak licence and meeting the other eligibility criteria as listed above in recitals (24) and (25) through direct grants available to all

²⁷ The Slovak authorities are only competent to monitor the financial situation of air carriers which hold a Slovak licence, in accordance with the obligations arising, in particular, under Article 5 and Article 8(2) of Regulation No 1008/2008.²⁷

²⁸ In particular, jobs related to airport services, ground handling services, maintenance services, air traffic services, etc.

²⁹ Regulation (EU) No 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91; OJ L 212, 22.8.2018, p. 1–122 as amended.

interested airlines in a transparent manner, through an open call for applications. The two measures are designed to meet the requirements of section 3.1 (Measure 1) and section 3.12 (Measure 2) of the Temporary Framework.

- (28) In light of the exceptional situation that generated serious disturbances of the Slovak economy and consequent suspension or reduction of the eligible air carriers' business activity, Measure 1 and Measure 2 will help to reduce the negative effects of the COVID-19 pandemic on the seriously affected air carriers.

2.6.2. *Measure 1: Limited amounts of aid*

- (29) The estimated budget for Measure 1 is EUR 1 000 000 under section 3.1 of the Temporary Framework. This amount is expressed as gross amount (i.e. before deduction of value added tax ("VAT") or other charges) and it corresponds to the total nominal value of State aid granted under section 3.1 of the Temporary Framework. The amount of aid that can be granted to a given beneficiary shall be calculated based on the costs of procuring goods and services as well as personnel costs incurred during the period from 13 March 2020 to 31 December 2021 for which EU or other public funds have not been or will not be granted, including from another public authority or other entities managing State funds or which have not been or will not be covered by the applicant's turnover for the provision of air transport services or reimbursed on the basis of payments resulting from other measures, decisions, judgments or from insurance contracts.
- (30) The aid under Measure 1 will be granted no later than 30 June 2022. The Slovak authorities indicate that the aid granted under Measure 1 will not exceed the overall budget of EUR 1 000 000 and, hence, the ceiling of EUR 2 300 000 per undertaking is respected, pursuant to section 3.1 of the Temporary Framework.

2.6.3. *Measure 2: Support for uncovered fixed costs*

- (31) The estimated budget for the aid provided under Measure 2 is EUR 2 000 000.
- (32) State aid under Measure 2 can be granted for the period from 13 March 2020 to 31 December 2021 (the "eligible period").
- (33) According to the Slovak authorities, under Measure 2 support may only be granted to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019, a comparison made for a period in 2020 or 2021 with the respective period in 2019. The Slovak authorities confirmed that the losses of undertakings from their profit and loss statements during the eligible period³⁰ are considered to constitute uncovered fixed costs. The avoided costs are excluded from the calculation. The aid under this measure may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts or on

³⁰ One-off impairment losses which can occur as the result of an unusual or one-time event (such as a change in legal or economic conditions or damages that impact an asset) are not included in the calculation of the losses.

the basis of the eligible beneficiaries' certified tax accounts, in line with point 87(c) of the Temporary Framework.³¹

- (34) According to the Slovak authorities, aid under Measure 2 will not exceed the overall budget (recital (21)), hence the ceiling of EUR 12 000 000 per undertaking as per section 3.12. of the Temporary Framework is respected.
- (35) The Slovak authorities submit that uncovered fixed costs are defined, in accordance with point 87(c) of the Temporary Framework, as costs:
- (a) incurred by undertakings during the eligible period;
 - (b) during the same period not covered by the profit contribution (i.e. revenues minus variable costs); and
 - (c) not covered by other sources, including insurance, temporary aid measures granted under the Temporary Framework or support from other sources.
- (36) As confirmed by the Slovak authorities, the aid may be granted no later than 30 June 2022, as specified in recital (23) for uncovered fixed costs incurred during all or part of the eligible period.
- (37) The maximum aid intensity under Measure 2 is 70 % of the uncovered fixed costs. The aid intensity is the gross amount of State aid expressed as a percentage of the eligible costs.

2.6.4. Conditions attached by the Slovak authorities to the granting of the aid

- (38) According to §25 c (6) of Act No 213/2019 Coll. and the draft aid scheme, the aid may be granted on the basis of electronically submitted application within the time limit specified in the call for applications³². The applications will be evaluated by a committee composed of at least three members and set up by the Minister of Transport and Construction of the Slovakia.³³ The support is granted to the beneficiaries by the Minister on the basis of a proposal from the above-mentioned committee.³⁴
- (39) The method of distributing the aid amounts to the beneficiaries will be proportionate and it will be based on a percentage of the amount requested by

³¹ The amount of aid for the eligible period is calculated on the basis of approved aid intensity from actual eligible costs presented in the audited financial statements for the relevant financial year (point 10.1.3.3 (a) of the State aid scheme). According to point 11.15 of the State aid scheme, the eligible beneficiary is required to submit audited financial statements and the annual report for the financial year in which the state aid was granted (point 13.6.5 (a) of the State aid scheme).

³² Point 13.2.3 of the State aid scheme.

³³ §17(1) of the Act No 213/2019 Coll.

³⁴ §17(4) of Act No 213/2019 Coll.

each beneficiary out of the total amount requested by all beneficiaries multiplied by the available budget.³⁵

2.7. Cumulation

- (40) The Slovak authorities confirm that aid granted under the aid scheme may be cumulated with aid under *de minimis* Regulations³⁶ or the General Block Exemption Regulation³⁷ provided the provisions and cumulation rules of those Regulations are respected.
- (41) The Slovak authorities also confirm that aid granted under the aid scheme may be cumulated with aids granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (42) The Slovak authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the aid scheme or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 22(a) of that Framework, will be respected.
- (43) Besides, the Slovak authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the aid scheme or aid under other measures approved by the Commission under section 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected.
- (44) Finally, the Slovak authorities confirm that support granted under the aid scheme under section 3.12 shall not be cumulated with other aid for the same eligible costs.

2.8. Monitoring and reporting

- (45) The Slovak authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework. All the information regarding the granting of aid must be maintained for 10 years from the moment of granting of the aid. Any payment exceeding the final amount of the aid will be recovered.

³⁵ For example, if applicant 1 requests EUR 1 000 000, applicant 2 EUR 750 000, and applicant 3 EUR 800 000, for a total amount of EUR 2 550 000 against an available budget of EUR 1 500 000 (i.e. 58.82% of the total requested amount), applicant 1 will be entitled to EUR 588 230 (i.e. EUR 1 000 000 * 58.82 %), applicant 2 to EUR 441 180 (EUR 750 000 * 58.82%), and applicant 3 to EUR 470 590 (i.e. EUR 800 000 * 58.82%).

³⁶ 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

³⁷ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

3. ASSESSMENT

3.1. Lawfulness of the aid scheme

- (46) By notifying the measure before putting it into effect, the Slovak authorities have respected their obligations under Article 108(3) TFEU (see recital (23) above).

3.2. Existence of State aid

- (47) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (48) The measure is imputable to the State, since it is administered by the Ministry of Transport and Construction of the Slovak Republic (recital (20)) and it is based on Act No 213/2019 (recital (17)). It is financed through State resources, since it is financed by public funds.
- (49) The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions. The advantage corresponds to the amount of grants paid under the measure to each of the beneficiaries.
- (50) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. air carriers with a Slovak license operating in the civil aviation sector and having their principal place of business in Slovakia.
- (51) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (52) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU. The Slovak authorities do not contest that conclusion.

3.3. Compatibility

- (53) Since the notified measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that it is compatible with the internal market within the meaning of Article 107(3) TFEU.
- (54) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (55) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by*

undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs”.

- (56) The aid scheme aims at providing liquidity to air carriers with a Slovak operating licence at a time when the normal functioning of markets is severely disturbed by the COVID-19 pandemic and that pandemic is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (57) The aid scheme is one of a series of measures conceived at national level by the Slovak authorities to remedy this serious disturbance in their economy. The Commission considers that air transport can play a key role in Slovakia’s economic recovery and long-term economic growth. The aviation sector is not only providing a service to other industries and the travelling public but is also a key driver and facilitator of economic growth (see recitals (12) and (13)), as it directly and indirectly generates thousands of jobs (recital (14)). In addition, air transport contributes to Slovakia’s integration into the global economy.
- (58) The Commission considers that the eligibility criterion relating to the beneficiaries of the aid holding a Slovak operating licence and therefore having their principal places of business in Slovakia seeks to ensure the stability of their presence and their durable links to the Slovak economy. Air carriers holding a Slovak operating licence and thus subject to monitoring by the Slovak authorities within the meaning of Regulation No 1008/2008 have a stable reciprocal link with Slovakia, as explained in recital (26). In addition, Slovak air carriers would be able to readily assist in crisis situations with repatriation flights and transport of medical equipment, as it happened during the COVID-19 pandemic (recital (26)).
- (59) Furthermore, as submitted by the Slovak authorities, Slovak air carriers with their stable presence in the country support the national economy, as detailed in recital (26). That criterion demonstrates precisely that the aid scheme is intended to support undertakings which are genuinely and enduringly linked to the Slovak economy. That is consistent with the objective of the aid scheme, which is to remedy the serious disturbance in that economy. By contrast, the existence of such stable and durable links to the Slovak economy is, in principle, less likely in the case of undertakings which have their principal places of business outside the territory of Slovakia, so that any aid intended to support their activities is less likely to contribute to remedying the serious disturbance in the economy of that Member State.
- (60) Thus, by limiting eligibility for the aid only to those air carriers which hold a Slovak licence and imposing as a prerequisite to benefit from the aid the existence of a stable reciprocal link to the Slovak economy, the measure is appropriate to achieve the objective of remedying a serious disturbance in the Slovak economy as a result of the COVID-19 pandemic.
- (61) In addition, given the scale of the present COVID-19 pandemic and of its economic fallout, the eligibility criteria linked to the national operating licence takes into account a budgetary constraints that a Member State may face in supporting air carriers
- (62) Furthermore, the aid scheme has been designed to meet the requirements of specific categories of aid (*“Limited amount of aid”* and *“Aid in the form of*

support for uncovered fixed costs”) described in section 3.1 and 3.12 of the Temporary Framework.

- (63) The Commission accordingly considers that the aid scheme is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework, as detailed below.

3.3.1. Compatibility of Measure 1

- (64) Measure 1 meets all the conditions provided for in section 3.1, point 22 of the Temporary Framework. In particular:

- i. The aid takes the form of direct grants (recital (20)).
- ii. The overall nominal value of the grants will not exceed EUR 2 300 000 million per undertaking at any given point in time; all figures used must be gross, that is, before any deduction of tax or other charges. Measure 1 therefore complies with point 22(a) of the Temporary Framework.
- iii. Aid is granted under Measure 1 on the basis of an aid scheme with an estimated budget as indicated in (recital (21)). Measure 1 therefore complies with point 22(b) of the Temporary Framework.
- iv. Aid may not be granted under Measure 1 to medium³⁸ and large enterprises that were already in difficulty on 31 December 2019 (recital (39)). The measure therefore complies with point 22(c) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid³⁹ or restructuring aid⁴⁰ (recital (39)). The measure therefore complies with point 22(c)bis of the Temporary Framework.
- v. Aid will be granted under Measure 1 no later than 30 June 2022. Measure 1 therefore complies with point 22(d) of the Temporary Framework (recital (30)).

3.3.2. Compatibility of Measure 2

- (65) Measure 2 meets all the conditions provided for in section 3.12 of the Temporary Framework for the following reasons:

³⁸ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

³⁹ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

⁴⁰ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

- i. Aid is granted under Measure 2 no later than 30 June 2022 and covers uncovered fixed costs incurred during the eligible period (i.e. between 13 March 2020 and 31 December 2021). Measure 2, therefore it complies with point 87(a) of the Temporary Framework.
- ii. Aid is granted under Measure 2 on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019 (recital (33)). Measure 2 therefore complies with point 87(b) of the Temporary Framework.
- iii. Uncovered fixed costs are defined under Measure 2 in accordance with point 87(c) of the Temporary Framework and the aid intensity will not exceed 70% of the uncovered fixed costs (recital (37)). The losses of undertakings from their profit and loss statements during the eligible period⁴¹ are considered to constitute uncovered fixed costs. The aid under this measure may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts or on the basis of tax accounts (recital (36)). Any payment exceeding the final amount of the aid will be recovered (recital (45)). Measure 2 therefore complies with point 87(c) of the Temporary Framework.
- iv. The aid takes the form of direct grants. The overall nominal value of those direct grants will not exceed the overall budget (recital (21)) and, hence, it will not exceed EUR 12 000 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (34)). Measure 2 therefore complies with point 87(d) of the Temporary Framework.
- v. The aid under Measure 2 will not be cumulated with other aid for the same eligible costs (recital (44)). Measure 2 therefore complies with point 87(e) of the Temporary Framework.
- vi. Aid may not be granted under Measure 2 to medium⁴² and large enterprises that were already in difficulty on 31 December 2019 (recital (39)). Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid⁴³ or restructuring aid⁴⁴ (recital (39)). Measure 2 therefore complies with point 87(f) of the Temporary Framework.

⁴¹ One-off impairment losses are not included in the calculation of the losses.

⁴² As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

⁴³ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

⁴⁴ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

3.3.3. *Monitoring, cumulation and relocation*

- (66) The Slovak authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (45)). The Slovak authorities further confirm that the aid under the aid scheme may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recital (41)).
- (67) As confirmed by the Slovak authorities, the aid under the aid scheme is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (15)). Therefore, the Commission considers that the aid scheme complies with point 16ter of the Temporary Framework.

3.3.4. *Conclusions*

- (68) The Commission therefore considers that the aid scheme is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

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)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.]

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION