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**Subject: State Aid SA.102712 (2022/N) – Slovakia
Compensation for indirect ETS costs in Slovakia for 2021-2030**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification dated 25 November 2022, Slovakia notified to the European Commission (the “Commission”), in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), a scheme to compensate undertakings for a share of their indirect emission costs, that is to say the costs resulting from the EU Emission Trading System (“ETS”) passed on in electricity prices (“the measure”).
- (2) The Commission services requested additional information by email of 29 November 2022, to which the Slovak authorities replied on 29 and 30 November 2022.
- (3) By letter dated 25 November 2022, Slovakia exceptionally agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958¹ and to have the present 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

- (4) The measure compensates certain undertakings for increases in electricity prices resulting from the inclusion of the costs of greenhouse gas emissions due to the EU ETS, so called indirect emission costs, as defined in the Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021² (“the ETS Guidelines post-2021”).

2.1. Legal basis, duration, financing, budget and granting authority

- (5) The legal basis for the measure is comprised of:
- Act No 414/2012 on emissions trading and amending certain acts, as amended;
 - Act No 358/2015 regulating certain relations in the field of State aid and de minimis aid and amending certain acts (“State Aid Act”);
 - Act No 587/2004 on the Environmental Fund and amending and supplementing certain acts, as amended;
 - Decree No 157/2005 of the Ministry of the Environment of the Slovak Republic implementing Act No 587/2004 on the Environmental Fund and amending certain acts;
 - Act. No 523/2004 on the budgetary rules of public administration and on the amendment and supplementation of certain laws, as amended;
 - Act No 431/2002 on accounting, as amended;
 - Act of the National Council of the Slovak Republic No 278/1993 on the administration of state property, as amended;
 - Act No 357/2015 on financial control and audit and on the amendment of certain laws as amended.
- (6) The detailed rules concerning the measure are laid down in a document entitled “State aid scheme for undertakings in sectors deemed to be exposed to an actual risk of carbon leakage due to significant indirect costs actually incurred from greenhouse gas emission costs passed on in electricity prices (aid for indirect emission costs)” (the “scheme document”), which will be published in the Commercial Journal after the notification of the Commission’s decision approving the measure to the Slovak authorities.
- (7) According to Section 9(1) of the State Aid Act, the entry into force of the measure is conditional on its approval by the Commission. Moreover, according to point Q.1 of the scheme document, the measure will enter into force after notification of the Commission’s decision approving the measure.

² Communication from the Commission — Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (OJ C 317, 25.9.2020, p. 5), as supplemented by the Communication from the Commission supplementing the Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (OJ C, C/528, 30.12.2021, p. 1).

- (8) The measure covers indirect emission costs incurred in years 2021 to 2030.
- (9) The aid, in the form of a direct grant, will be paid to the beneficiary, upon request, in the year following the one in which the costs were incurred (year $t + 1$).
- (10) By way of derogation, aid for costs incurred in 2021 will be paid until 30 April 2023. The Slovak authorities explained that this additional period compared to that provided for in point 25 of the Guidelines is necessary in view of the time needed to prepare the measure (in particular the new rules on energy audits in accordance with points 54 and 55 of the Guidelines) and implement it following the adoption of the present decision³ as well as in view of the exceptional circumstances linked to the energy crisis and Russia's aggression against Ukraine. According to Slovakia, the services of the Slovak authorities responsible for the preparation of the measure had to cope with an exceptionally high and sudden workload linked to the setting up of urgent legislative and administrative measures to support the sectors affected by the energy crisis since mid-2021 and the current crisis linked to Russia's aggression against Ukraine on 24 February 2022⁴. The Slovak authorities explained that this exceptional workload persists at the present time, as the energy crisis requires constant support from those authorities. The Slovak authorities therefore continue to be strongly involved in the preparation of several types of urgent measures which might prove necessary in an extremely uncertain economic context due to the current crisis.
- (11) The last payments will be made in 2031 for costs incurred in 2030.
- (12) The estimated total budget for 2021-2030 is approximately EUR 250 million and the estimated annual budget is EUR 25 million. The annual budget is determined annually and cannot exceed 25 % of Slovakia's EU allowance auctioning revenues ("EUA") in the previous calendar year.

³ Subject to approval by the Minister, the call for applications will be published by the Environmental Fund on the day after the entry into force of the measure (with the publication of the scheme document in the Commercial Journal). Then, as explained by the Slovak authorities, according to the Act No 587/2004 on the Environmental Fund, the beneficiaries will have at least 60 days to submit their applications. The Slovak authorities estimate that checking the formal correctness and completeness of applications, including requesting of additional documents/explanations will require 10 working days, the technical evaluation of applications 5 working days and the submission of a list of eligible applicants who meet the conditions to the Council of the Environmental Fund (control body of the Fund) 1 or 2 working days. The submission of the list of eligible applicants for decision and signature to the Minister of the Environment of the Slovak Republic will most probably require 5 working days, the preparation of the contract for signing with the eligible recipient 5 working days, the signing of the contract on the provision of compensation 1 or 2 working days and the payment of the aid amounts to the accounts of eligible recipients 2 working days.

⁴ In particular, Slovakia has introduced an aid scheme to support food producers in context of Russia's war against Ukraine (see decision SA.104395 (2022/N) of 12 October 2022, *TCF: State aid scheme to support the food sector following Russia's aggression against Ukraine*) and an aid scheme to support the agricultural, fishery and aquaculture sectors in the context of Russia's war against Ukraine (see decisions SA.104815 (2022/N) of 23 November 2022, *TCF: State aid scheme to support primary agricultural production, fisheries and aquaculture*). In addition, the Slovak authorities are planning to introduce an aid scheme under section 2.1 of the Temporary Crisis Framework, in the form of limited amounts and an aid scheme for additional costs due to exceptionally severe increases in natural gas and electricity prices under section 2.4 of the Temporary Crisis Framework.

- (13) The measure is financed by Slovakia's EUA. Pursuant to Act No 414/2012, the part of the revenues allocated to the measure is determined annually after agreement between the Ministry of the Environment and the Ministry of Finance of the Slovak Republic.
- (14) The granting authority is the Environmental Fund. The Environmental Fund is an independent legal entity and is a specific fund established for the purposes of financing the specially designated tasks of the State. The Fund is managed by the Ministry of Environment of the Slovak Republic. Each year, the Environmental Fund will publish a call for applications on its website.

2.2. Beneficiaries

- (15) The beneficiaries are undertakings active in one of the sectors or sub-sectors listed in Annex I of the scheme document, which corresponds to Annex I to the ETS Guidelines post-2021. All sectors listed in this Annex I of the scheme document will be eligible under the measure. Beneficiaries need to file an application on the basis of a call for applications, which, together with the scheme document, defines the conditions for the granting of aid. The expected number of beneficiaries is between 11 and 50.
- (16) Aid will not be awarded if the applicant for compensation meets the definition of an undertaking in difficulty as defined by the Guidelines on State aid for rescuing and restructuring firms in difficulty⁵, or if it is subject to an outstanding recovery order following a previous Commission decision.
- (17) All beneficiaries, regardless of their size, must comply with the obligation to carry out an energy audit under Article 8 of Directive 2012/27/EU⁶, either as an independent energy audit or within the framework of a certified energy management system according to the harmonised technical standard governing the energy management system or an environmental management system, such as the Eco-Management and Audit Scheme (EMAS)⁷. Beneficiaries must submit, in their application, an energy audit report (not older than four years at the date of application) or a valid certificate proving the existence of a certified energy management system or environmental management system.
- (18) In order to be eligible for compensation under the measure, all beneficiaries, regardless of their size, must also provide evidence in their application that they have either:
 - a) implemented the recommendations contained in the above-mentioned audit report, which must not be older than four years or in the action plan resulting from the implementation of a certified energy management system, to the extent that the payback time for the relevant investments does not exceed three years and that the costs of their investments are at least equal to the aid

⁵ Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, (OJ C 249, 31.07.2014, p.1), as amended or replaced.

⁶ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

⁷ Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 342, 22.12.2009, p. 1).

amount granted to the undertaking for the year preceding the year for which the aid is granted (year t-1)⁸, in advance of applying for the aid; or alternatively

- b) reduced the carbon footprint of their electricity consumption so that they cover at least 30 % of their electricity consumption for the year for which the aid is granted (year t) from carbon-free sources. Beneficiaries can prove compliance with this obligation through on-site or near-site renewable energy generation facilities, carbon-free power purchase agreements or guarantees of origin.
- (19) The obligations described in recital (18) will be renewed with each new grant of aid in each annual call. The Slovak authorities confirmed that the granting authority shall verify that beneficiaries comply with those obligations before the granting of the aid each year during the entire support period.
 - (20) The granting authority, in cooperation with the Ministry of the Environment of the Slovak Republic, shall draw up an expert assessment of whether the application meets the conditions for granting the aid, after completion of the control of the formal correctness of the application and after the verification of the fulfilment of the conditions for granting the aid.

2.3. Aid amount calculation

- (21) The Slovak authorities explained that the maximum aid amount payable per installation will be calculated according to the two formulas outlined in point 28 of the ETS Guidelines post-2021.
- (22) Where electricity consumption efficiency benchmarks have been published, the formula of point 28(a) of the ETS Guidelines post-2021 applies. Where no product-related electricity consumption efficiency benchmarks are published, the formula of point 28(b) of the ETS Guidelines post-2021 applies.
- (23) For the purpose of calculating the aid under the formula set out in point 28(b) of the ETS Guidelines post-2021, a fall-back electricity consumption efficiency benchmark of the baseline electricity consumption will be used, as envisaged by Annex II to the ETS Guidelines post-2021 (Section H, point 2(b) of the scheme document).
- (24) The measure adopts the definitions of point 15 of the ETS Guidelines post-2021 for all the elements of the formulas. The measure also applies the electricity consumption efficiency benchmarks and the regional CO₂ emission factors defined in Annex II and Annex III to the ETS Guidelines post-2021.
- (25) If an installation manufactures products for which an electricity consumption efficiency benchmark listed in Annex II to the ETS Guidelines post-2021 is applicable and products for which the fall-back electricity consumption efficiency benchmark is applicable, the electricity consumption for each product is apportioned according to the respective tonnage of production of each product. If an installation manufactures products that are eligible for aid and products that are

⁸ For the aid granted for costs incurred in 2021, the aid provided to the beneficiaries under the previous scheme SA.43506 is taken in account.

not eligible for aid, the maximum aid payable is calculated only for the products that are eligible for aid.

- (26) The maximum aid intensity will be 75 % of the indirect emission costs incurred.
- (27) If the total amount of compensation requested by beneficiaries exceeds the annual budget of the measure, the individual compensation amounts will be reduced proportionally for all beneficiaries depending on the available budget. The aid intensity will be the same for all eligible beneficiaries.

2.4. Cumulation

- (28) The Slovak authorities confirmed that the scheme will comply with points 33 to 35 of the ETS Guidelines, so that the aid may be cumulated with:
 - any other State aid in relation to different identifiable eligible costs;
 - any other State aid, in relation to the same eligible costs, partly or fully overlapping, and any other State aid without identifiable eligible costs, only if such cumulation does not result in exceeding the maximum aid intensity or aid amount applicable to the aid under this section.
- (29) Union funding centrally managed by the Commission that is not directly or indirectly under the control of the Member State does not constitute State aid. Where such Union funding is combined with State aid, only the latter is considered for determining whether notification thresholds and maximum aid intensities are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the maximum funding rate(s) laid down in the applicable rules of Union law.
- (30) Aid must not be cumulated with *de minimis* aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that laid down in this section.

2.5. Transparency, reporting and monitoring

- (31) The Slovak authorities undertake to comply with and apply the transparency, reporting and monitoring requirements set out in points 56 to 62 of the ETS Guidelines post-2021. The information listed in point 56 of the ETS Guidelines post-2021 will be published on the Website of the Ministry of Environment of the Slovak Republic (www.minzp.sk/), the Website of the Portal for recording and monitoring assistance of the Antimonopoly Office of the Slovak Republic (<https://semp.kti2dc.sk/>), the Website of the Environmental Fund (<https://envirofond.sk/>) and on the Commission's transparency award module (<https://webgate.ec.europa.eu/competition/transparency/>).

3. ASSESSMENT OF THE MEASURE

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

- (32) In order for a measure to constitute State aid within the meaning of Article 107(1) TFEU it has to fulfil four conditions. First, the aid must be imputable to the State and involve State resources. Second, the measure must confer a selective

advantage to certain undertakings or the production of certain goods. Third, the measure must be liable to affect trade between Member States. Fourth, the measure must distort or threaten to distort competition in the internal market.

- (33) The compensation is granted by the Environmental Fund, which is managed by the Ministry of the Environment of the Slovak Republic (see recital (14)), based on law and Government regulation (see recital (5)). The measure is funded through Slovakia's EUA auctioning revenues as determined by the Ministry of the Environment and the Ministry of Finance of the Slovak Republic (see recital (13)). Hence, the measure is imputable to the State and financed through State resources. It confers an advantage to the beneficiaries by compensating for costs they would have borne under normal market conditions. The aid is selective since it is granted only to the undertakings active in certain sectors (see recital (15)). Those sectors are all exposed to international competition as noted in point 20 of the ETS Guidelines post-2021, making it liable to affect trade between Member States and distort competition.
- (34) Based on the above, the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (35) According to the legal basis, the measure will enter into force after the notification of the Commission's decision approving the measure (see recital (7)).
- (36) By notifying the measure before its implementation, the Slovak authorities have fulfilled their obligations under Article 108(3) TFEU (see recital (7)).

3.3. Compatibility

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

- (37) The Commission has assessed if the measure can be considered compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (38) Aid aimed at compensating for ETS allowance costs passed on in electricity prices incurred by undertakings from sectors or subsectors deemed to be exposed to a significant risk of carbon leakage falls within the scope of the ETS Guidelines post-2021. The Commission assessed the measure's compatibility on the basis of section 3.1 of the ETS Guidelines post-2021, which sets out the conditions under which such aid may be deemed compatible.

3.3.2. The aid facilitates the development of an economic activity

3.3.2.1. Contribution to the development of an economic activity

- (39) According to Article 107(3)(c) TFEU, the Commission may consider to be compatible with the internal market aid to facilitate the development of an economic activity, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (40) The measure supports companies active in one of the sectors or sub-sectors listed in Annex I to the Guidelines post-2021 (see recital (15)), which correspond to

sectors and sub-sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs.

- (41) Therefore, the Commission considers that the notified aid measure contributes to the development of certain economic activities, namely sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs.

3.3.2.2. Facilitation of an economic activity and incentive effect

- (42) To be declared compatible with the internal market under Article 107(3)(c) TFEU, the aid must effectively facilitate the development of an economic activity (or of an economic area). State aid has an incentive effect if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity pursued by the aid and if the change in behaviour would not occur without the aid⁹.
- (43) According to point 25 of the ETS Guidelines post-2021, for the aid to have an incentive effect and actually prevent carbon leakage, it must be applied for and paid to the beneficiary in the year in which the costs are incurred or in the following year.
- (44) The measure foresees that the aid will be paid to the beneficiary in the year following the one in which the costs were incurred (year $t + 1$).
- (45) For the first year, the measure provides for a derogation, according to which aid for costs incurred in 2021 will be paid until 30 April 2023 (year $t + 2$). This extension of the period of the payment of aid for the first year of the measure constitutes a deviation from point 25 of the ETS Guidelines post-2021. The Commission therefore assessed whether the circumstances invoked by Slovakia constitute exceptional circumstances capable of justifying such a deviation, and assessed the applicable national rules in the light of the objective of point 25 of the ETS Guidelines post-2021 and in the light of the objective of the measure in accordance with point 20 of the ETS Guidelines post-2021.
- (46) The Commission notes that the Slovak authorities have argued that this additional time is necessary for the preparation and implementation of the measure and in view of exceptional circumstances linked to the energy crisis and Russia's aggression against Ukraine (see recital (10)). The services of the Slovak authorities responsible for the preparation of the measure had to cope with an exceptionally high and sudden workload linked to the introduction of urgent legislative and administrative measures to support the sectors affected by the energy crisis since mid-2021 and the current crisis linked to Russia's aggression against Ukraine on 24 February 2022 (see recital (10)).
- (47) The Commission acknowledges that those exceptional and unexpected circumstances linked to Russia's aggression against Ukraine may have led to administrative delays. The Commission considers that the additional workload faced by the Slovak authorities as a result of those events still persists at the present time (see recital (10)).

⁹ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742.

- (48) In view of those exceptional circumstances, and since this grace period is of a reasonable duration in light of the timetable for setting up the measure (see recital (10)) and only covers the first year of the measure, the Commission considers that the measure is in line with the objective of point 25 of the ETS Guidelines post-2021, namely that the aid has an incentive effect, and more broadly that the grace period is in line with the objective of the measure to prevent the risk of carbon leakage in accordance with point 20 of the ETS Guidelines post-2021. The Commission will apply the same approach to any similar case in the future.
- (49) In addition, the Commission considers that, in view of the current economic situation characterised by a sharp increase in electricity prices, to refuse a reasonable grace period for the aid paid for costs incurred in 2021 could lead to irreversible relocation of production outside the Union despite the aid available in subsequent years.
- (50) The measure therefore complies with points 25 and 26 of the ETS Guidelines post-2021.
- (51) The Commission therefore concludes that the aid has an incentive effect and facilitates the development of certain economic activities. The Commission considers that the deviation from the ETS Guidelines post-2021 referred to in recitals (45) to (49) above does not call this conclusion into question.

3.3.2.3. Compliance with other relevant provisions of EU law

- (52) State aid that contravenes provisions or general principles of EU law cannot be declared compatible¹⁰.
- (53) Beneficiaries must comply with their obligations under Article 8 of Directive 2012/27/EU on energy efficiency (see recital (17)).
- (54) Therefore, the Commission considers that the notified aid measure does not infringe other relevant provisions of EU law.

3.3.3. *The aid does not unduly affect trading conditions to an extent contrary to the common interest*

3.3.3.1. Positive effects of the aid

- (55) The measure will contribute to the development of sectors exposed to a genuine risk of carbon leakage due to indirect emission costs (see recital (41)).
- (56) Addressing the risk of carbon leakage serves an environmental objective since the aid aims to avoid an increase in global greenhouse gas emissions due to shifts of production outside the Union, in the absence of a binding international agreement on reduction of greenhouse gas emissions, as explained in point 20 of the ETS Guidelines post-2021.

3.3.3.2. Need for State intervention

- (57) Point 20 of the ETS Guidelines post-2021 requires that the objective of the aid is to prevent a significant risk of carbon leakage due to EU ETS allowance costs

¹⁰ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

passed on in electricity prices and incurred by the beneficiary, if its competitors from third countries do not face similar CO₂ costs in their electricity prices and the beneficiary is unable to pass on those costs to product prices without losing significant market share.

- (58) According to point 21 of the ETS Guidelines post-2021, for the purposes of those guidelines, a significant risk of carbon leakage is considered to exist only if the beneficiary is active in a sector or subsector listed in Annex I. Moreover, according to point 22 of the ETS Guidelines post-2021, if Member States decide to grant the aid only to some of the sectors listed in Annex I, the choice of sectors must be made on the basis of objective, non-discriminatory and transparent criteria.
- (59) The beneficiaries of the notified measure are undertakings active in one of the sectors or sub-sectors listed in Annex I to the ETS Guidelines post-2021. All sectors listed in that annex will be eligible for aid under the notified measure (see recital (15)). Hence, the Commission concludes that the aid is necessary to realise the measure's objective of developing sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs and, moreover, avoiding an increase in global greenhouse gas emissions.

3.3.3.3. Appropriateness of the aid

- (60) According to point 24 of the ETS Guidelines post-2021, for the purpose of compensating indirect ETS costs, State aid is considered an appropriate instrument independently of the form in which it is granted. In this context, compensation taking the form of a direct grant is considered an appropriate instrument.
- (61) In the present measure, the support will take the form of a direct grant (see recital (9)). Therefore, the Commission considers the type of aid chosen is appropriate to address the risk of carbon leakage.

3.3.3.4. Proportionality of the aid

- (62) According to point 27 of the ETS Guidelines post-2021, the aid is proportionate and has a sufficiently limited negative effect on competition and trade if it does not exceed 75 % of the indirect emission costs incurred. The electricity consumption efficiency benchmark ensures that support to inefficient production processes remains limited and maintains the incentive for dissemination of the most energy-efficient technologies.
- (63) The measure does not provide for full compensation, as this could remove the incentive for beneficiaries to further reduce electricity consumption. The maximum aid intensity will be 75 %, in compliance with point 27 of the ETS Guidelines post-2021. As noted above, the aid intensity may be lower depending on the available budget (see recital (27)).
- (64) The formulas for the calculation of maximum aid payable under the notified aid are in line with point 28 of the ETS Guidelines post-2021 (see recital (21)).
- (65) The measure also complies with points 29 and 30 of the ETS Guidelines post-2021 for the following reasons. The Slovak authorities explained that if an

installation manufactures products for which a product-specific electricity consumption efficiency benchmark is applicable and products for which the fall-back electricity consumption efficiency benchmark is applicable, the electricity consumption for each product must be apportioned according to the respective tonnage of production of each product. If an installation manufactures products that are eligible for aid and products that are not eligible for aid, the maximum aid payable shall be calculated only for the products that are eligible for aid (see recital (25)).

- (66) The measure adopts the definitions of point 15 of the ETS Guidelines post-2021, for all the elements of the formulas. The measure also applies the electricity consumption efficiency benchmarks defined in Annex II of the ETS Guidelines post-2021, as well as the maximum regional emission factor of Annex III of the ETS Guidelines post-2021 (see recital (24)).
- (67) According to point 23 of the ETS Guidelines post-2021, within the eligible sector, Member States need to ensure that the choice of beneficiaries is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation. The eligibility conditions and the procedure laid down in the measure referred to in recitals (15) to (19) comply with those requirements. Moreover, the aid intensity remains the same for all beneficiaries in a given year (see recital (27)).
- (68) The duration of the measure does not exceed the duration of the ETS Guidelines post-2021 (see recital (8)). Therefore, the measure complies with point 36 of the ETS Guidelines post-2021.

3.3.3.5. Cumulation

- (69) The measure's provisions on cumulation are in line with the requirements set out in points 33 to 35 of the ETS Guidelines post-2021 (see recital (28)).

3.3.3.6. Energy audits and management systems

- (70) According to point 54 of the ETS Guidelines post-2021, Member States must commit to verifying that the beneficiary complies with its obligation to conduct an energy audit in the sense of Article 8 of Directive 2012/27/EU, either as a stand-alone energy audit or within the framework of a certified Energy Management System or Environmental Management System, for example the EU eco-management and audit scheme (EMAS)¹¹.
- (71) The measure foresees that beneficiaries must comply with the obligation to carry out an energy audit under Article 8 of Directive 2012/27/EU, either as an independent energy audit or as part of a certified energy management system or certified environmental management system (see recital (17)). The compliance with this obligation is checked before the granting of the aid. The measure therefore complies with point 54 of the ETS Guidelines post-2021.

¹¹ Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 342, 22.12.2009, p. 1).

- (72) According to point 55 of the ETS Guidelines post-2021, Member States must also commit to monitoring that beneficiaries covered by the obligation to conduct an energy audit under Article 8(4) of Directive 2012/27/EU will:
- a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate; or alternatively
 - b) reduce the carbon footprint of their electricity consumption, so as to cover at least 30% of their electricity consumption from carbon-free sources; or alternatively
 - c) invest a significant share of at least 50 % of the aid amount in projects that lead to substantial reductions of the installation's greenhouse gas emissions and well below the applicable benchmark used for free allocation in the EU Emissions Trading System.
- (73) In the measure, in order to be eligible for compensation, the beneficiaries must provide evidence in their application that they have either:
- a) implemented the recommendations contained in the above-mentioned audit report, which must not be older than four years or in the action plan resulting from the implementation of a certified energy management system, to the extent that the return on the relevant investments does not exceed three years and that the costs of their investments are at least equal to the sum of the aid amount granted to the undertaking for the year preceding the accounting year (year t-1), in advance of applying for the aid; or alternatively
 - b) reduced the carbon footprint of their electricity consumption so that they cover at least 30 % of their electricity consumption from carbon-free sources. Beneficiaries can prove compliance with this obligation through on-site or near-site renewable energy generation facilities, carbon-free power purchase agreements or guarantees of origin.
- (74) The Slovak authorities will verify that beneficiaries comply with those obligations. In order to be eligible for compensation under the measure, beneficiaries must provide evidence of compliance with one of those obligations already in their application (i.e. prior to the granting of aid).
- (75) Therefore, the measure complies with point 55 of the ETS Guidelines post-2021.

3.3.3.7. Transparency, reporting and monitoring

- (76) The Slovak authorities committed to comply with the requirements set out in points 56 to 62 of the ETS Guidelines post-2021 on transparency, reporting and monitoring of the measure (see recital (31)).

3.3.3.8. Firms in difficulty or subject to an outstanding recovery order

- (77) According to point 10 of the ETS Guidelines post-2021, aid may not be awarded to firms in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring firms in difficulty. Moreover, according to point 11 of

the ETS Guidelines post-2021, when assessing aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring aid to be illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered¹². In practice, it will assess the cumulative effect of both aid measures and may suspend the payment of the new aid until the outstanding recovery order is implemented.

- (78) Under the measure, no aid will be granted to (i) undertakings in difficulty within the meaning of the Commission guidelines on State aid for rescuing and restructuring firms in difficulty and (ii) undertakings subject to an outstanding recovery order following a previous Commission decision declaring aid to be illegal and incompatible with the internal market (see recital (16)).
- (79) Therefore, the measure complies with points 10 and 11 of the ETS Guidelines post-2021.

3.3.3.9. Remaining distortions of trading conditions

- (80) Compensation for indirect ETS costs risks distorting competition between companies within the same sector active in different EU Member States (intra-sector competition). This is because only some countries may put a compensation scheme in place for the fourth EU ETS trading period from 2021 to 2030¹³.
- (81) Additionally, the measure may create a limited risk of competition distortions to the extent that products of certain eligible sectors may compete with products manufactured in sectors that are not eligible for indirect cost compensation (inter-sector competition).
- (82) Those risks are however mitigated by the fact that the notified measure complies with all the conditions laid down in both ETS Guidelines post-2021, which set a list of eligible sectors, a maximum aid intensity, aid calculation formulas and electricity consumption efficiency benchmarks at Union-level. Moreover, under the notified measure, the same aid intensity will be applied to all beneficiaries depending on the available budget (see recital (27)).

3.3.3.10. Conclusion on distortion of competition and balancing test

- (83) As explained above, the measure will facilitate the development of sectors exposed to a significant risk of carbon leakage due to indirect emission costs and will contribute to avoiding an increase in global greenhouse gas emissions (see recitals (44) and (56)).
- (84) Moreover, the necessity, appropriateness and proportionality of the aid limit its impact on competition and trade. The Commission concludes that even if an

¹² See in this respect the joint Cases T-244/93 and T-486/93, *TWD Textilwerke Deggendorf GmbH v Commission* EU:T:1995:160, and the Notice from the Commission — Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid (OJ C 272, 15.11.2007, p. 4).

¹³ See the impact assessment report for the ETS Guidelines post-2021, p. 13 (available at: https://ec.europa.eu/competition/state_aid/what_is_new/2020_ets_revision/impact_assessment_report_ets_2021_en.pdf).

impact on intra-sector and inter-sector competition cannot be excluded, it appears that the negative effects of the aid are sufficiently limited for the overall balance of the measure to be positive.

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 Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President