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Subject: State Aid SA.104395 (2022/N) – Slovakia
TCF: State aid scheme to support the food sector following Russia's aggression against Ukraine

Excellency,

1. PROCEDURE

- (1) By electronic notification of 26 September 2022, Slovakia notified aid in the form of limited amounts of aid (State aid scheme to support the food sector following Russia's aggression against Ukraine, the “measure”) under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis Framework”)¹. Slovakia provided additional information on 5 and 6 October 2022.
- (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.

¹ Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 131 I, 24.3.2022, p. 1), as amended by Commission Communication C/2022/5342 (OJ C 280, 21.7.2022, p. 1).

² 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

- (3) Slovakia considers that the Russian aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken by Russia ('the current crisis') so far affect the real economy. The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. Slovakia considers that, although the current crisis affects all sectors of the economy of Slovakia, the population is especially sensitive to the effects of the crisis on the agriculture and food industry. The food sector experiences many difficulties due to the sanctions and increases in energy prices and other production inputs. The increase in oil and gas prices results in higher prices for energy and other input costs in food production. In addition, the prices of electricity and lubricants increased by 23% year-on-year. Prices of agricultural and food commodities, and costs of inputs for food production also increased year-on-year. For example, in the period May 2021 to May 2022, the input costs have increased by 27.9% for beef, by 19% for pork, by 29.4% for poultry, by 47.2% for eggs, by 26.7% for milk, by 70.8% for cereals, by 61% for flour, by 59.2% for oilseeds and by 40.1% oils and fats, which shows the need for facilitating access to finance for food producers to cover operating costs³. The disturbances have created liquidity and cash-flow problems for undertakings active in the processing and marketing of agricultural products and/or producing of foodstuffs. As a result, there is a need to facilitate access to funds for businesses in these sectors to cover liquidity needs, so that they are able to continue their business activity.
- (4) The measure aims to remedy the liquidity shortage faced by undertakings active in the sectors of processing of agricultural products and/or food production that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken so far by Russia, and thereby to support investments to ensure security of energy supply.
- (5) Slovakia confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the 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.
- (6) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 1 and 2.1 of the Temporary Crisis Framework.

2.1. The nature and form of aid

- (7) The measure provides aid in the form of direct grants.

³ Information processed by the analytical department of the Ministry of Agriculture of the Slovak Republic on the basis of data from the Statistical Office of the Slovak Republic, market factsheet prepared by the Commission and report of ATIS (Agrarian market information of Slovakia).

2.2. Legal basis

- (8) The legal bases for the measure are the following laws and decrees:
- (a) Act no. 280/2017 Coll. on the provision of support and subsidies in agriculture and rural development and on the amendment of Act no. 292/2014 Coll. on the contribution provided from the European structural and investment funds and on the amendment of certain laws, as amended;
 - (b) Decree of the Ministry of Agriculture and Rural Development of the Slovak Republic dated December 10, 2014 no. 660/2014-100 on the provision of support in agriculture, food production, forestry and fishing;
 - (c) Act no. 358/2015 Coll. on the adjustment of certain relations in the field of state aid and minimum aid and on the amendment of certain laws (Act on State Aid)⁴;
 - (d) Act no. 357/2015 Coll. on financial control and audit and on the amendment of certain laws, as amended;
 - (e) Act no. 523/2004 Coll. on budgetary rules of public administration and amendments to certain laws, as amended;
 - (f) Act no. 177/2018 Coll. on some measures to reduce the administrative burden by using public administration information systems and on the amendment of some laws (Act against Bureaucracy).
 - (g) Draft Guidelines on “State aid scheme to support the food sector following Russia’s aggression against Ukraine”, a binding and enforceable document that actually sets the conditions of application of the measure.

2.3. Administration of the measure

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

2.4. Budget and duration of the measure

- (10) The estimated budget of the measure is EUR 10 million.
- (11) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 December 2022.

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

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

2.5. Beneficiaries

- (12) The beneficiaries of the measure are micro, small, medium-sized⁶ and large undertakings operating in the sectors of processing of agricultural products and/or food production (which fall under the NACE codes 10 and 11). Primary production of agricultural products, the fishery and aquaculture sectors are excluded under the measure. Credit and financial institutions are excluded from the scope of this scheme and cannot benefit from the aid.
- (13) The Slovak authorities estimate that the number of beneficiaries will be more than 1000.
- (14) Slovakia confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.
- (15) Slovakia confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations⁷. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

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

2.7. Basic elements of the measure

- (18) The aim of the measure is to support undertakings active in the sectors referred to in recital (12), and maintain their competitiveness by providing grants determined as part of their operating costs. The aid provided will thus help to maintain the continuity of their economic activity, otherwise threatened by the current crisis, and ensure that sufficient liquidity remains on the market.
- (19) The aid granted will cover the increased costs of natural gas and electricity. The eligible cost shall be the product of the natural gas and/or electricity units (for example in MWh) procured by the undertaking from external suppliers as a final

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

⁷ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

consumer⁸ between 1 February 2022 and 31 December 2022 at the latest ('the eligible period') and the increase in the price paid by the undertaking per unit consumed (expressed, for example, in EUR/MWh). That increase in the price shall be calculated as the difference between the unit price paid by the undertaking in a given month of the eligible period and the unit price that the undertaking paid on average during the reference period from 1 January 2021 to 31 December 2021. As part of the application, the beneficiary submits, among other, a budget of estimated eligible costs and a declaration that its activity in the sectors referred to in recital (12) is affected by the current crisis.

- (20) Aid under this scheme may be granted up to 100% of the eligible costs calculated according to recital (19).
- (21) The total amount of aid shall not exceed EUR 500 000 per undertaking at any given moment. This amount is expressed as a gross amount, i.e. before deduction of tax or other charges.
- (22) The Slovak authorities confirm that the aid is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.

2.8. Cumulation

- (23) The Slovak authorities confirm that aid granted under the measure may be cumulated with de minimis Aid⁹ and/or with aid under the General Block Exemption Regulation¹⁰ or with aid under the Agricultural Block Exemption Regulation¹¹ or with aid under the Fisheries Block Exemption Regulation¹². The provisions of the relevant Regulations will be respected.

⁸ As demonstrated by the beneficiary, e.g. on the basis of the relevant invoice. Only final consumption will be calculated, sales and captive production are excluded.

⁹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

¹⁰ 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).

¹¹ Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 1.7.2014, p.1).

- (24) There is no approved scheme under the COVID-19 Temporary Framework with which cumulation of aid provided under this scheme would be possible.
- (25) The Slovak authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis Framework, provided the provisions in those specific sections are respected.
- (26) The Slovak authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 2.1 of the Temporary Crisis Framework, the overall maximum cap per undertaking, as set out in point 41(a) of that framework, will be respected.

2.9. Monitoring and reporting

- (27) The Slovak authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹³).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (29) 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.
- (30) The measure is imputable to the State, since it is granted by the Ministry and implemented by the APA (recital (9)) and it is based on the legal bases listed in recital (8)). It is financed through State resources, since it is financed by public funds (recital (9) and (10)).

¹² Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

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

- (31) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (7)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (32) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, namely those operating in the sectors of processing of agricultural products and/or food production (recital (12)) and that are affected by the current crisis (recital (18)).
- (33) 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.
- (34) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Slovak authorities do not contest that conclusion.

3.3. Compatibility

- (35) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (36) 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*”.
- (37) By adopting the Temporary Crisis Framework on 23 March 2022, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed by the EU or its international partners and the counter measures taken, for example by Russia, have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Slovakia. The Commission concluded that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU for a limited period if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as the economic counter measures taken so far, for example by Russia.
- (38) The measure aims at supporting undertakings facing liquidity shortages because of the current crisis at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Slovakia.
- (39) The measure is conceived at national level by the Slovak authorities to remedy a serious disturbance in their economy. The importance of the measure to support undertakings facing liquidity shortages because of the current crisis is widely

accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Slovak economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid described in section 2.1 of the Temporary Crisis Framework.

(40) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis Framework. In particular:

- the aid takes the form of direct grants (recital (7));
- the overall nominal value of the grants will not exceed EUR 500 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (21)). The measure therefore complies with point 41(a) of the Temporary Crisis Framework;
- aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (10). The measure therefore complies with point 41(b) of the Temporary Crisis Framework;
- aid will be granted under the measure no later than 31 December 2022. The measure therefore complies with point 41(c) of the Temporary Crisis Framework;
- aid will be granted only to undertakings affected by the current crisis (recital (3) and (18)). The measure therefore complies with point 41(d) of the Temporary Crisis Framework;
- aid under the measure cannot be conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned (recital (22)). The measure therefore complies with point 41(e) of the Temporary Framework.

(41) The Slovak authorities confirm that, pursuant to point 32 of the Temporary Crisis Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (5)).

(42) The Slovak authorities confirm that, pursuant to point 33 of the Temporary Crisis Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (recital (14)).

- (43) The Slovak authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (recital (27)). The Slovak authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework and the cumulation rules of the relevant regulation are respected (recitals (23) to (25)).
- (44) The Commission therefore considers that the measure 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 Crisis 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