EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: **State Aid SA.104872 (2022/N) – Slovakia**
TCF: Support scheme for enterprises operating in primary agricultural production in the context of Russia's aggression against Ukraine

Excellency,

1. PROCEDURE

(1) By electronic notification of 15 November 2022, Slovakia notified aid in the form of support to promote the storage of primary agricultural products 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]).

(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

([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 426, 9.11.2022, p. 1). This Temporary Crisis Framework (‘current Temporary Crisis Framework’) replaces the Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1) as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1) (‘previous Temporary Crisis Framework). The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.

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Article 3 of Regulation 1/1958 [2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) Slovakia considers that the Russian military aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken for example by Russia (the "current crisis") affect the Slovak economy negatively and that Slovak economic operators face exceptional liquidity needs stemming from the current crisis. 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. Rising energy prices affect virtually every economic activity.

(4) According to Slovakia, the price of electricity and gas for industrial producers of Slovakia has increased by around 147 % year-on-year in September 2022 [3]. Furthermore, the Slovak authorities submit that the wholesale prices of agricultural inputs have also increased steeply over the past year. For example, the wholesale price of winter barley seeds has increased by around 19 % year-on-year in the second quarter of 2022 [4].

(5) Slovakia submits that for agricultural undertakings, the cost of electricity and gas represents a much more significant expense item than in other industries in the production process, as it not only feeds in increase in energy costs per se, but also in the price of other inputs, such as soil and nutrient improvements or agrochemicals, and especially in the storage of agricultural production, which represents a heavy financial burden. As a result, undertakings producing and storing primary agricultural products face liquidity and cash-flow stress.

(6) Moreover, Slovakia submits that the added value produced by the agricultural industry represents 1.99 % of the total economy of Slovakia, providing around 2.8 % of the jobs in the country. The food and beverages industry directly exports goods in the amount of EUR 3.2 billion, which represents 3.6 % of the total export of goods. Therefore, the negative effects of the increasing electricity and gas prices taken together have caused a serious disturbance of the economy of Slovakia.

(7) In light of the foregoing, Slovakia considers necessary to provide some financial support to undertakings affected by the increase in the price of gas and electricity, in particular targeted support to agricultural undertakings storing their primary agricultural products either in their own warehouses or in the warehouses of another undertaking.

(8) Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.

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

[3] According to the data of the Statistical Office of the Slovak Republic.

[4] According to the data of the Statistical Office of the Slovak Republic.

(9) 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, as provided for under article F.2. of the legal basis. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(10) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 1 and 2.4 of the Temporary Crisis Framework.

2.1. The nature and form of aid

(11) The measure provides aid in the form of direct grants, as provided for under article G.1 of the legal basis.

(12) The Slovak authorities confirm that all figures expressing the quantum of aid under the measure are gross, that is, before any deduction of tax or other charges, as provided for under article F.4 of the legal basis.

2.2. Legal basis

(13) The legal basis for the measure is the State Aid Scheme for the Storage of Primary Agricultural Production following Russia's aggression against Ukraine, which will be adopted in light of §7 of Act no. 358/2015 on the adjustment of certain relations in the field of state aid and *de minimis* aid and on the amendment of certain laws ([5]) (the "national legal basis"), which has been submitted to the Commission in draft form. The national legal basis will enter into force only after the notification of the Commission's decision approving the measure.

2.3. Administration of the measure

(14) The National Agricultural and Food Centre of Slovakia (NPPC) is public body responsible for administering the measure, as provided for under articles D.3 to D.6 of the legal basis.

2.4. Budget and duration of the measure

(15) The estimated budget of the measure is EUR 50 million, financed from the national budget. The budget will be allocated on the basis of the assessment, by the NPPC, of each potential beneficiary's application. If the sum of the eligible requirements of all applicants exceeds the available amount of funds in the budget approved by the Minister for Agriculture and Rural Development, the NPPC recalculates the aid amounts for all eligible applications by applying a fixed coefficient so that all eligible applications receive aid, *pro rata* their eligible costs, in the limit of the estimated budget of the measure.

(16) 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 2023.

([5]) https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/358/20160101

2.5. Beneficiaries

(17) The final beneficiaries of the measure are undertakings of any size engaged in primary agricultural production that store their own primary agricultural products, as well as undertakings that store the production of the former and associate them ([6]).

(18) The Slovak authorities estimate that the measure will benefit more than a thousand undertakings.

(19) 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.

(20) 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 regulations ([7]). 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

(21) The measure is open to undertakings active in the following sectors, (following NACE code classification):

(a) Section A – Agriculture, Forestry and Fisheries

– 01. Hunting of crops and animal husbandry and related services

- 01.1 Cultivation of non-perennial crops
- 01.2 Cropping
- 01.3 Plant propagation
- 01.5 Mixed farming

(b) Section G – Wholesale and retail trade; repair of motor vehicles and motorcycles

– 46. Wholesale trade, except of motor vehicles and motorcycles

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([6]) For example, as producers organisations, or associations of producers organisations.

([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).

- 46.11. Brokering of trade in agricultural raw materials in live animals, textile raw materials and semi-finished products

- 46.19. Arranging the trade in various goods

- 46.31. Wholesale trade services of fruit and vegetables

(22) The measure applies to the whole territory of Slovakia.

2.7. Basic elements of the measure

(23) The measure provides aid for additional storage costs due to exceptionally severe increases in natural gas and electricity prices. The aim of the measure is to alleviate the exceptionally severe increases in the price of natural gas and electricity for the storage of agricultural products.

(24) Undertakings are eligible for the aid if (i) their main activity falls under the categories listed under recital (21); (ii) they are engaged in primary agricultural production and (iii) they store their own primary agricultural product, or if they associate such undertakings and store their production, as provided for under section E of the legal basis.

(25) The aid will be granted for eligible costs incurred between 1 February 2022 and 31 December 2023 (the "eligible period"), as provided for under article H.2 of the legal basis.

(26) Aid will not exceed 50 % of the eligible costs of the beneficiary, up to a maximum of EUR 4 million at any given point in time per undertaking, as provided for under section I of the legal basis.

(27) The eligible costs are calculated based on the increase in natural gas and electricity costs linked to the current crisis. The eligible cost is the product of the number of units of natural gas and electricity procured by the beneficiary as a final consumer ([8]) from external suppliers and a certain increase in the price that the beneficiary pays per unit consumed (measured in EUR/kWh) (the "eligible costs"). That price increase will be calculated as the difference between the unit price paid by the beneficiary in a given month in the eligible period and 1.5 time (150 %) of the unit price paid by the beneficiary on average for the reference period from 1 January 2021 until 31 December 2021 (the "reference period"). As provided for under section L of the legal basis, the aid is granted directly by the NPPC to the aid beneficiary. In this regard, the NPPC shall conclude an aid agreement with each beneficiary specifying the conditions for granting the aid and the amount of the aid granted and entering into force on the day following that of its publication in the Central Contract Register. After the signature and entry into force of the agreement, the NPPC will transfer the aid amount to the beneficiary's account.

([8]) As demonstrated by the beneficiary e.g. based on the respective bill (see article H.3 of the national legal basis). Only final consumption will be counted, sales and own production are excluded.

(28) Slovak authorities confirm that, as from 1 September 2022, the quantity of natural gas and electricity used to calculate the eligible costs will not exceed 70 % of the beneficiary's consumption in the same period in 2021.

(29) The eligible costs are calculated, for each month of the eligible period for which aid is requested, according to the following formula ([9]), as provided for under article H.3 of the national legal basis:

(p(t) — p(ref) * 1.5) * q

(30) Beneficiaries may receive advance payments if the aid has been granted before the eligible costs have been incurred, based on estimates of eligible costs, as provided for under article F.4 of the national legal basis. Any aid payments exceeding the amount calculated based on the formula in recital (29) or the ceilings in recital (26) will be recovered by Slovak authorities no later than six months after the end of the eligible period, based on *ex post* checks that will be conducted for every advance payment ([10]).

2.8. Cumulation

(31) The Slovak authorities submit that, as per section K of the national legal basis, aid granted under the measure may be cumulated with other sections of the Temporary Crisis Framework provided that the specific provisions of the relevant sections of the Temporary Crisis Framework are respected, including aid ceilings.

(32) The Slovak authorities submit that, as per section K of the national legal basis, aid granted within the scope of this scheme may be cumulated with *de minimis* aid or with aid under block exemption regulations, provided that the provisions and cumulation rules laid down in those Regulations are respected. The Slovak authorities submit that currently, there is no approved scheme under the COVID temporary framework ([11]) with which cumulation of aid provided under the measure would be possible. Aid under the measure may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided the maximum applicable ceilings per undertaking as described in recital (26) are not exceeded.

([9]) In this formula, p(t) denotes the unit price of natural gas or electricity in EUR/kWh borne by the undertaking during the relevant month of the eligible period; p(ref) denotes the average unit price of natural gas or electricity in EUR/kWh borne by the undertaking during the reference period (i.e. from 1 January 2021 to 31 December 2021); for the period from 1 February 2022 until 31 August 2022, q denotes the quantity of natural gas or electricity consumed by the undertaking in the relevant month of the eligible period, while for the period from 1 September 2022 until 31 December 2023, q denotes the quantity of natural gas or electricity consumed by the undertaking in the relevant month of the reference period.

([10]) Beneficiaries shall provide Slovak authorities with accounting documents as soon as they are available. Should those documents demonstrate that the level of advance payment was higher than the eligible costs (calculated based on costs incurred), the Slovak authorities submit that the aid beneficiary would have to return the excessive aid amount received.

([11]) 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 340 I, 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).

(33) Slovakia confirms that aid granted under the previous and current Temporary Crisis Framework cannot exceed the aid ceilings provided by the current Temporary Crisis Framework in section 2.4 for the same eligible period.

2.9. Monitoring and reporting

(34) 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 and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting ([12])).

3. ASSESSMENT

3.1. Lawfulness of the measure

(35) By notifying the measure before putting it into effect, the Slovak authorities have respected their obligations under Article 108(3) TFEU (see recitals (13) and (16)).

3.2. Existence of State aid

(36) 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.

(37) The measure is imputable to the State, since it is administered by the National Agricultural and Food Centre of Slovakia (see recital (14)) and based on the national legal basis (see recital (13)). It is financed through State resources, since it is financed by public funds through the national budget (see recital (15)).

(38) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (11)). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(39) The advantage granted by the measure is selective, since it is awarded only to undertakings fulfilling the eligibility criteria referred to in recital (17) whose activity falls under the NACE codes referred to in recital (21).

(40) 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.

([12]) Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

(41) Therefore, 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

(42) 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.

(43) 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*".

(44) By adopting the Temporary Crisis Framework, 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.

(45) 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 of time if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.

(46) The measure aims at mitigating the consequences for undertakings of the natural gas and electricity price increases at a time when a wide range of economic sectors are affected and the normal functioning of markets severely disturbed, leading to severe disturbances of the economy of Member States, including in the economy of Slovakia.

(47) The measure has been designed to meet the requirements of a specific category of aid (*"Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices"*) described in section 2.4 of the Temporary Crisis Framework, and in particular its point 66.

(48) 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:

(49) Aid will be granted under the measure no later than 31 December 2023 (see recital (16)). The measure therefore complies with point 66(a) of the Temporary Crisis Framework.

(50) Aid will be granted to undertakings of any size engaged in primary agricultural production that store their own primary agricultural products, as well as undertakings that store the production of the former and associate them (see recital (17)), whose activity falls in one or more of the NACE codes referred to

under recital (21). The Commission considers that such criteria are compatible with the Temporary Crisis Framework insofar as it allows to focus the scope of the measure to undertakings that are particularly concerned by the increase in energy prices for the storing of agricultural products and are therefore particularly hit by the current crisis (see recitals (3) to (8) and recital (44)).

(51) Aid takes the form of direct grants (see recital (11)); the aggregate nominal value of those direct grants per undertaking does not exceed the applicable aid intensity and aid ceilings laid down in point 66(f) of the Temporary Crisis framework (see recital (26)); all figures used are gross, that is, before any deduction of tax or other charges. The measure therefore complies with points 66(b) and 66(f) of the Temporary Crisis Framework.

(52) Aid is granted under the measure on the basis of a scheme with an estimated budget (see recital (15)). As described in recital (21), the sectoral scope of the measure is designed to be accessible to the sectors and subsectors likely to store agricultural products. The Commission considers that the measure is designed sufficiently broadly and does not lead to an artificial limitation of potential beneficiaries. The measure therefore complies with point 66(d) of the Temporary Crisis Framework.

(53) The eligible costs are calculated in line with point 66(e) of the Temporary Crisis Framework (see recitals (27) and (29)) over the period spanning from 1 February 2022 to 31 December 2023 (see recital (25)). In addition, as from 1 September 2022, the quantity of natural gas and electricity used to calculate the eligible costs must not exceed 70% of the beneficiary's consumption for the same period in 2021 (see recital (28)). The measure therefore complies with point 66(e) of the Temporary Crisis Framework. The overall value of aid per beneficiary does not exceed 50 % of the eligible costs and the overall aid per undertaking will not exceed EUR 4 million at any given point in time (see recital (26)). The measure therefore complies with point 66(f) of the Temporary Crisis Framework.

(54) The measure includes an *ex post* mechanism on the basis of actual cost incurred to verify that the advance payments do not exceed the ceilings laid down in point 66(f) of the Temporary Crisis Framework (see recital (30)). In line with point 68 of the Temporary Crisis Framework, the measure includes also a claw back mechanism recovering any aid payment that exceeds those ceilings no later than six months after the eligible period has ended (see recital (30)).

(55) Aid under point 66 of the Temporary Crisis Framework may be cumulated with aid under other sections of the Temporary Crisis Framework provided that the specific provisions of the relevant sections of the Temporary Crisis Framework are respected, including aid ceilings (see recitals (31) and (33)). The measure therefore complies with points 66(g) of the Temporary Crisis Framework.

(56) The Slovak authorities confirm that, pursuant to point 46 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 (see recital (9)).

(57) The Slovak authorities confirm that, pursuant to point 47 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 (see recitals (19) and (20)).

(58) The Slovak authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (see recital (34)).

(59) The Slovak authorities further confirm that granted support for the same eligible costs cannot be combined with funding within the framework of another support program or individual support project for which funding is granted from local, regional, national or European Union financial resources.

(60) The Slovak authorities 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 Regulations are respected (see recital (31) and (32)).

(61) The Slovak authorities confirm that aid granted under the previous and the current Temporary Crisis Framework cannot exceed the aid ceilings provided by the current Temporary Crisis Framework for the same eligible period (see recital (33)).

(62) 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, as 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