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Subject: State Aid SA.105458 (2022/N) – Slovakia
TCF: Support scheme for enterprises as a result of the energy crisis emergency following Russia's aggression against Ukraine

Excellency,

1. PROCEDURE

(1) By electronic notification of 21 December 2022, Slovakia notified aid for additional costs due to exceptionally severe increases in natural gas and electricity prices (Support scheme for enterprises as a result of the energy crisis emergency 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, 28.10.2022, p. 1). This Temporary Crisis Framework ('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 The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.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 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 has 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. Rising energy prices affect virtually every economic activity.

(4) In spring 2022, the National Bank of Slovakia expected that the average 2023 rate of inflation in Slovakia would range from 10% to 14%. In August 2022, the national inflation rate reached 13.4%, its highest level since 2000. The increase in oil and gas prices results in higher prices for energy and other input costs in all industrial sectors, especially in those which are energy-intensive. According to Slovakia, the price of electricity and gas for industrial producers of Slovakia has increased by around 126.2% year-on-year in October 2022 ([3]). Many industrial enterprises characterised by high energy consumption are located in Slovakia, such as undertakings active in metallurgy, glassmaking, chemistry, cement production and plastics production. Those sectors are heavily burdened by high energy prices, which cannot be fully reflected in the final products. A serious problem is the lack of liquidity of companies, which causes problems within customer-supplier relations. Slovakia submits that the National Bank of Slovakia has anticipated the liquidation of several industrial undertakings as a consequence.

(5) In light of the foregoing, Slovakia considers necessary to provide financial support to undertakings affected by the increase in the price of gas and electricity. 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.

(6) 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.

(7) 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]) 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.

2.1. The nature and form of aid

(8) The measure provides aid on the basis of a scheme in the form of direct grants, as provided for under article H.1 of the legal basis.

2.2. Legal basis

(9) The legal basis for the measure is the State Aid act to support enterprises due to the emergency situation related to the energy crisis. It will be adopted by the amendment of Act No. 71/2013 Coll. on the granting of subsidies within the competence of the Ministry of Economy of the Slovak Republic and was 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

(10) The Ministry of Economy of the Slovak Republic is responsible for administering the measure, as provided for under section C of the legal basis.

2.4. Budget and duration of the measure

(11) The estimated budget of the measure is EUR 600 million. The budget will be allocated on the basis of the assessment of each potential beneficiary's application by the Ministry of Economy of the Slovak Republic.

(12) The measure will be financed by the national State budget. The Slovak authorities have explained that in the future the measure may be co-financed by the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF).

(13) 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, as provided for under article E.3 of the legal basis.

2.5. Beneficiaries

(14) The final beneficiaries of the measure are legal entities active in Slovakia. However, credit institutions or other financial institutions are excluded as eligible final beneficiaries.

(15) 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.

(16) 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 ([4]). 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

(17) As provided for under section F of the legal basis, the measure is open to all sectors except the financial sector. It applies to the whole territory of Slovakia.

2.7. Basic elements of the measure

(18) The measure provides aid due to exceptionally severe increases in natural gas and electricity prices caused by the current crisis.

(19) 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 I.1 of the legal basis.

(20) The eligible cost is the product of the number of units of natural gas and/or electricity procured from external suppliers by the beneficiary as a final consumer[5] in the eligible or reference period and a certain increase in the price paid by the beneficiary per unit consumed (measured in EUR/MWh)The given cost increase shall be calculated as the difference between the unit price paid by the legal entity in a given month or a period of several consecutive months in the eligible period and one and a half times (150 %) the unit price paid on average over the reference period.

(21) Eligible costs for each month, or a period of several consecutive months within the eligible period are calculated according to the following formula, as provided for under article I.4 of the legal basis:

$$Y(t) = (p(t) – p(ref) * 1.5) * q$$

(a) Where: *Y(t)* = eligible cost in a given month t during the eligible period or a period of several consecutive months within the eligible period (in EUR);

(b) *q* = consumed quantity, i.e. the number of units of electricity and natural gas that the beneficiary purchased from external suppliers as a final customer (in MWh), either during the eligible period (*q(t)*) or during the reference period (*q(ref)*). Sales and own production of gas and electricity are not taken into account to compute the number of units of natural gas and electricity procured. The consumption of the sector itself and losses occurring during transformation and distribution of energy are excluded.

([4]) 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).

(5) As demonstrated by the beneficiary e.g. based on the respective bill. Only the volume of natural gas and/or electricity purchased for own consumption will be counted.

(c) *P (t)* = price per unit of electricity or natural gas paid by the beneficiary (in EUR/MWh) during a period t and does not include taxes, charges, grid tariff, refunds of taxes and duties

(d) *t* = given month or a period of several consecutive months in the eligible period

(e) *p(ref)* = price per unit of electricity or natural gas paid by the beneficiary on average in the reference period from 1 January 2021 to 31 December 2021 (in EUR/MWh).

(f) *ref* = the reference period spanning from 1 January 2021 to 31 December 2021 (in EUR/MWh).

(22) The aid is granted directly by the Ministry of Economy of the Slovak Republic. In this regard, potential beneficiaries shall submit applications to the Ministry of Economy of the Slovak Republic, which shall examine the eligibility of each application.

(23) Figures in this section are gross, that is, before any deduction of tax or other charges, as provided for under article J.11 of the legal basis. Beneficiaries may receive advance payments if the aid has been granted before the eligible costs have been incurred, based on estimatation of eligible criteria, as provided for under article K.14 of the legal basis. Any aid payments exceeding the amount calculated based on the formula in recital (21) or the ceilings in recitals (25) and (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 on the basis of actual data ([6]).

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

(25) Aid will not exceed 50% of the eligible costs of the beneficiary, up to a maximum of EUR 4 million per undertaking at any given point in time, as provided for under article J.2 of the legal basis.

(26) However, as provided under articles J.3 to J.7 of the legal basis, beneficiaries may receive aid exceeding the ceilings set in recital (25) provided that the conditions referred to in recitals (21) and (24) are respected and that the EBITDA of the beneficiary in the eligible period including the aid does not exceed 70 % of its EBITDA ([7]) in the reference period ([8]):

([6]) 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) or than the aid ceilings, the Slovak authorities submit that the aid beneficiary would have to return the excessive aid amount received.

([7]) EBITDA means earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments.

([8]) In case EBITDA was negative in the reference period, the aid must not lead to an increase of EBITDA in the eligible period above 0.

(a) beneficiaries may receive aid not exceeding 40% of the eligible costs, up to EUR 100 million per undertaking at any given point in time;

(b) beneficiaries qualifying as "energy-intensive businesses" ([9]), facing a reduction in EBIDTA (excluding aid) of at least 40% in the eligible period compared to the reference period or a negative EBIDTA in the eligible period (excluding aid), may receive aid not exceeding 65% of the eligible costs, up to EUR 50 million per undertaking at any given point in time;

(c) beneficiaries qualifying as "energy-intensive businesses" ([10]), active in a sector or sub-sector listed in Annex I of the Temporary Crisis Framework and facing a reduction in EBIDTA (excluding aid) of at least 40% in the eligible period compared to the reference period or a negative EBIDTA (excluding aid) in the eligible period may receive aid not exceeding 80% of the eligible costs, up to EUR 150 million per undertaking at any given point in time.

(27) Should the total amount of aid granted to a given undertaking within the scope of the measure exceed EUR 50 million, such beneficiary shall, within one year from the date at which the aid was granted, submit to the Ministry of Economy of the Slovak Republic a plan setting out how it will reduce the carbon footprint of its energy consumption or how it will meet any of the requirements relating to environmental protection or security of supply described in point 33 of the Temporary Crisis Framework, as provided for under article J.9 of the legal basis.

2.8. Cumulation

(28) The aid ceilings and cumulation maxima fixed under the measure will apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the European Structural and Investment Funds (ESIF).

(29) The Slovak authorities submit that, as per article L.7 of the legal basis, aid granted under the measure may be cumulated with aid under *de minimis* Regulations ([11]) or the General Block Exemption Regulation ([12]), the Agricultural

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([9]) An "energy-intensive business" is a legal entity where the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 3.0% of the production value or turnover, based on data from the financial accounting reports for the calendar year 2021. Alternatively, data for the first semester of 2022 may be used, in which case the beneficiary may qualify as "energy-intensive business" if the purchases of energy products "including energy products other than natural gas and electricity) amount to at least 6.0% of the production value or turnover.

([10]) Within the meaning of footnote 9 of the Commission decision.

([11]) 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, 26.4.2012, p. 8).

Block Exemption Regulation ([13]) or the Fishery and aquaculture Block Exemption Regulation ([14]) provided the provisions and cumulation rules of those Regulations are respected.

(30) The Slovak authorities submit that, as per article E.2 of the legal basis, aid under the measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

(31) The Slovak authorities submit that, as per article L.7 of the legal basis, aid under the measure may be cumulated with aid approved by the Commission under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ([15]) (COVID-19 Temporary Framework) and the aid under the notified measure may be cumulated with those measures provided the respective cumulation rules are respected.

(32) The Slovak authorities confirm that, as per article L.4 of the legal basis, 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.

(33) Slovakia confirm that, as per article L.3 of the legal basis, aid under the measure may be cumulated with aid under section 2.1 provided the maximum applicable ceilings per undertaking as described in recitals (25) and (26) are not exceeded.

(34) The Slovak authorities confirm that, as per article L.5 of the legal basis, for the same consumption volume, aid under the measure that is calculated on the basis of historical consumption (*q(ref)*) may not be cumulated with aid granted under section 2.7 of the Temporary Crisis Framework.

(35) Slovakia confirms that, as per article L.2 of the legal basis, 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.

([12]) 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).

([13]) Commission Regulation (EC) 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).

([14]) 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).

([15]) 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).

2.9. Monitoring and reporting

(36) Should the total amount of aid granted within the scope of this scheme exceed EUR 50 million per undertaking, such beneficiary must, within one year from the granting of the aid, submit to the aid provider a plan setting out how it will reduce the carbon footprint of its energy consumption or how it will meet any of the requirements relating to environmental protection or security of supply described in point 33 Temporary Crisis Framework. This requirement shall apply from 1 January 2023.

(37) 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 ([16])).

3. Assessment

3.1. Lawfulness of the measure

(38) By notifying the measure before putting it into effect, the Slovak authorities have respected their obligations under Article 108(3) TFEU (recitals (9) and (13)).

3.2. Existence of State aid

(39) 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.

(40) The measure is imputable to the State, since it is administered by the Ministry of Economy of the Slovak Republic (recital (10)) and it is based on the State Aid act to support enterprises due to the emergency situation related to the energy crisis, adopted on this basis of(recital (9)). It is financed through State resources, since it is financed by public funds (recital (12)).

(41) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (8)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.

(42) The advantage granted by the measure is selective, since credit institutions or other financial institutions are not eligible to the measure (recitals (14) and (17)).

([16]) 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.

(43) 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.

(44) 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

(45) 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.

(46) 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*".

(47) By adopting the Temporary Crisis Framework, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed 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.

(48) 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.

(49) The measure aims at mitigating the consequences of the natural gas and electricity price increases for undertakings 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.

(50) The measure is one of a series of measures conceived at national level by the Slovak authorities to remedy a serious disturbance of the Slovak economy. The importance of the measure to compensate for the severe increase in natural gas and electricity price 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 ("*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.

(51) 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.

(52) In particular, regarding compliance with point 66 of the Temporary Crisis Framework :

- Aid will be granted under the measure no later than 31 December 2023 (recital (13)). The measure therefore complies with point 66(a) the Temporary Crisis Framework.

- The aid takes the form of direct grants (recital (8)) and all figures used must be gross, that is, before any deduction of tax or other charges (see recital (23)). The measure therefore complies with point 66(b) of the Temporary Crisis Framework. The nominal value of the direct grants does not exceed the applicable aid intensity and aid ceilings laid down in point 66(f) of the Temporary Crisis Framework (see recital (25)); The measure therefore complies with point 66(b) 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 (11). As described in recitals (14) and (17), the sectoral scope of the measure is designed to cover all sectors except the financial sector. The Commission considers that the measure is designed 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.

- The eligible costs are calculated in line with point 66(e) of the Temporary Crisis Framework (recital (21)) over the period spanning from 1 February 2022 to 31 December 2023 (recital (19)). 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 (recital (24)). The measure therefore complies with point 66(e) of the Temporary Crisis Framework.

- The overall aid per beneficiary will 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; all figures used must be gross, that is, before any deduction of tax or other charges (recital (25)). The measure therefore complies with point 66(f) of the Temporary Crisis Framework.

- 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 (recital (23)). 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 (recital (23)).

- Aid may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided the maximum ceilings in point 66 of the Temporary Crisis Framework are not exceeded (recital (33)). In addition, for the same consumption volume, aid that is calculated on the basis of historical consumption (*q(ref)*) may not be cumulated with aid granted under section 2.7 of the Temporary Crisis Framework (recital (34)). The measure therefore complies with point 66(g) of the Temporary Crisis Framework.

(53) In addition, regarding compliance with point 67 of the Temporary Crisis Framework:

- Beneficiaries may receive aid not exceeding 40% of the eligible costs, up to EUR 100 million per undertaking at any given point in time (recital (26)(a)) The measure therefore complies with point 67(a) of the Temporary Crisis Framework.

- Beneficiaries qualifying as "energy-intensive businesses", defined as per footnote 9, facing a reduction in EBIDTA (excluding aid) of at least 40% in the eligible period compared to the reference period or a negative EBIDTA in the eligible period (excluding aid) may receive aid not exceeding 65% of the eligible costs, up to EUR 50 million per undertaking at any given point in time (recital (26)(b)). 'Energy-intensive businesses' are defined as legal entities where the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 3% of the production value or turnover, based on data from the financial accounting reports for the calendar year 2021. If data for the first semester of 2022 is used, the beneficiary may qualify as an 'energy-intensive business' if the purchases of energy products (including energy products other than natural gas and electricity) amount to at least 6% of the production value or turnover. In addition, beneficiaries are only those that have either a reduction in EBITDA (excluding aid) of at least 40% in the eligible period ([17]) compared to the reference period ([18]), or a negative EBITDA (excluding aid) in the eligible period. The measure therefore complies with point 67(b) of the Temporary Crisis Framework.

- Beneficiaries qualifying as "energy-intensive businesses" defined as per footnote 9, active in a sector or sub-sector listed in Annex I of the Temporary Crisis Framework and facing a reduction in EBIDTA (excluding aid) of at least 40% in the eligible period ([19]) compared to the reference period ([20]) or a negative EBIDTA (excluding aid) in the eligible period may receive aid not exceeding 80% of the eligible costs, up to EUR 150 million per undertaking at any given point in time (recital (26)(c)).. The measure therefore complies with point 67(c) of the Temporary Crisis Framework.

- For beneficiaries of aid under point 67 (a), (b) and (c) of the Temporary Crisis Framework, the EBITDA in the eligible period, including the overall aid, may not exceed 70% of their EBITDA in the reference period. In cases where the EBITDA was negative in the reference period, the aid may not lead to an increase of EBITDA in the eligible period above 0 (recital (26)).

([17]) As defined in recital (19), the eligible period refers to the period spanning from 1 February 2022 to 31 December 2023.

([18]) The reference period refers to 1 January 2021 to 31 December 2021.

([19]) As defined in recital (19), the eligible period refers to the period spanning from 1 February 2022 to 31 December 2023.

([20]) The reference period refers to 1 January 2021 to 31 December 2021.

The measure therefore complies with point 67(d) of the Temporary Crisis Framework.

- 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 67 of the Temporary Crisis Framework (recital (23)). 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 (23)).

- Aid may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided the maximum ceilings in point 67 of the Temporary Crisis Framework are not exceeded (recital (33). In addition, for the same consumption volume, aid that is calculated on the basis of historical consumption (*q(ref)*) may not be cumulated with aid granted under section 2.7 of the Temporary Crisis Framework (recital (34). The measure therefore complies with point 66(g) of the Temporary Crisis Framework.

(54) As of 1 January 2023, for aid amounts exceeding EUR 50 million, the measure requires the beneficiary to submit to the granting authority, within one year from the moment of granting the aid, a plan that specifies how it will reduce the carbon footprint of its energy consumption or how it will implement any of the requirements related to environmental protection or security of supply described in point 33 of the Temporary Crisis Framework (recital (36)). The measure therefore complies with point 77 of the Temporary Crisis Framework.

(55) Slovakia confirms that, in accordance with point 84 of the Temporary Crisis Framework, 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 (recital (35)).

(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 (recital (6)).

(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 (recital (15)).

(58) The Slovak authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (recital (37)). 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, the COVID-19 Temporary Framework and the

cumulation rules of the relevant Regulations and/or applicable Communications are respected (recital (31)).

(59) 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