EUROPEAN COMMISSION

Brussels, 10.8.2020
C(2020) 5577 final

PUBLIC VERSION

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Subject: **State Aid SA.58054(2020/N) – *Slovakia***
COVID-19: ESIF Liquidity Support State Aid Scheme for Innovative Companies with Limited Access to Credit Facilities

Excellency,

1. PROCEDURE

(1) By electronic notification of 16 July 2020, Slovakia notified aid in the form of convertible loans to innovative companies with limited access to credit facilities ("the measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended ("the Temporary 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 Article 3 of Regulation 1/1958[2] and to have this Decision adopted and notified in English.

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1 Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I , 4.4.2020, p. 1,by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3 and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

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 COVID-19 outbreak has started to affect the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.

(4) Slovakia confirmed 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.

(5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

(6) The measure provides aid in the form of quasi-equity convertible loans comprised of two elements: the principal and the accrued interest payable at maturity or redeemed at conversion.

(7) The aim of the measure is to provide access to liquidity to beneficiaries that are unable to secure financing from usual credit institutions or venture capital firms. The beneficiaries need to possess a scalable innovative product or service with potential for significant growth and penetration on international markets. Their product or service must be fully functional and fully or at least partially commercialised as at the date on which the aid is granted. The revenues from the product or service must be of a recurring nature and must be generated on an arm's length basis.

2.2. Legal basis

(8) The legal basis for the measure is the Act No 323/2015 on financial instruments financed by the European Structural and Investment Funds and amending certain acts, as amended.

2.3. Administration of the measure

(9) The aid grantor is the Ministry of Transport and Construction of the Slovak Republic, represented by the Ministry of Economy. The National Development Fund II, run by the asset management company Slovak Investment Holding, is responsible for administering the measure.

2.4. Budget and duration of the measure

(10) The estimated budget of the measure is EUR 25 million.

(11) The measure will be co-financed through the European Structural and Investment Funds (ESIF), via the Operational Programme Integrated Infrastructure (2014-

2020) managed by the Ministry of Transport and Construction of the Slovak Republic.

(12) Aid may be granted under the measure as from its approval until no later than 31.12.2020.

2.5. Beneficiaries

(13) The final beneficiaries of the measure are micro, small and medium-sized enterprises (SMEs)[3]. However, financial institutions are excluded as eligible final beneficiaries.

(14) Aid may not be granted under the measure to medium[4] and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[5] on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[6] on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[7] or restructuring aid[8].

(15) In addition, the following entities are excluded from receiving aid under the measure:

- undertakings which were established and started their activities later than 12 March 2020;

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

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

5 As defined in Article 2(18) of 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[, Article 2(14) of 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, OJ L 193, 1.7.2014, p. 1, and Article 3(5) of 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, OJ L 369, 24.12.2014, p. 37.]

6 As defined in Article 2(18) of 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[, Article 2(14) of 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, OJ L 193, 1.7.2014, p. 1, and Article 3(5) of 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, OJ L 369, 24.12.2014, p. 37.]

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

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

- undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market;

- undertakings which are in possession of a license to provide paid employment intermediation services or are a temporary employment agency;

- undertakings which are in arrears for over 90 days with respect either to social insurance contributions and/or mandatory old-age pension savings contributions payable to the Social Insurance Institution, or mandatory public health insurance contributions payable to a health insurance company;

- undertakings active in the sectors of primary agricultural production, forestry, fisheries and aquaculture;

- large undertakings, i.e. enterprises which don't fulfil at least one condition of the SME definition;

- undertakings whose final beneficiary is resident for tax purposes in a non-cooperative jurisdiction[9].

2.6. Sectoral and regional scope of the measure

(16) The measure is open to all sectors except primary agricultural production, forestry, fisheries, aquaculture, and the financial sector. It applies to the whole territory of Slovakia.

2.7. Basic elements of the measure

(17) The measure is a scheme and provides aid in the form of quasi-equity convertible loans, in the amount of up to EUR 800 000 per undertaking.

(18) The convertible loans will have the following characteristics:

(a) Maturity from 18 to 36 months;

(b) The sum of the principal and accrued interest shall at no time exceed EUR 800 000. In case the beneficiary has received aid in other forms, the amount will be decreased accordingly to guarantee the maximum aid cap of EUR 800 000.

(c) The maximum amount of the principal will represent the higher of the following (provided that the maximum cap specified in point (b) above is respected):

– The revenues for the accounting year 2019 or estimated revenues for 2020;

[9] i. e. a jurisdiction contained in the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes 2020/C 64/03, OJ C 64, 27.2.2020, p. 8–14

– Double the total personnel costs for the accounting year 2019 or estimated total personnel costs for 2020.

(d) Interest rate of 8% per annum. Interest is accrued and payable together with the principal or will be converted into new shares in the beneficiary undertaking.

(e) The convertible loan will be provided primarily as an unsecured loan. In certain cases, a collateral may be required.

(f) The beneficiaries will commit that between the drawing and repaying of the loan they will not pay out dividends, disburse intra-group loans or other loans or provide loans.

(19) The aid may be granted provided that its nominal value, including other aid granted in accordance with section 3.1 of the Temporary Framework, does not exceed EUR 800 000 per undertaking in gross amount.

(20) The Slovak authorities confirm that where the beneficiaries are undertakings active in the processing and marketing of agricultural products, the aid will not be partly or entirely passed on to primary producers and will not be fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

2.8. Cumulation

(21) 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).

(22) The Slovak authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations[10] or the General Block Exemption Regulation[11] provided the provisions and cumulation rules of those Regulations are respected.

(23) 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 Framework provided the provisions in those specific sections are respected.

(24) 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 3.1 of the Temporary Framework, the

[10] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

[11] 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.

overall maximum cap per undertaking, as set out in points 22(a) of that framework, will be respected.

2.9. Monitoring and reporting

(25) The Slovakian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary 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 granting[12]). For repayable advances, guarantees, loans, subordinated debt and other forms of aid, the nominal value of the underlying instrument shall be inserted per beneficiary.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

(27) 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.

(28) The measure is imputable to the State, since it is administered by the Slovak National Development Fund II and it is based on the legislative act mentioned in recital (8). It is financed through State resources, since it is financed by public funds.

(29) The measure confers an advantage on its beneficiaries in the form of quasi-equity convertible loans (recital (6)). To qualify under the measure, beneficiaries must have been unable to obtain such financing on the market. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(30) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular SMEs that possess a scalable innovative product or service, excluding the financial sector.

(31) 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.

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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.

(32) 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

(33) 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.

(34) 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*".

(35) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that "*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*". The Commission concluded that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*".

(36) The measure aims at facilitating the access of innovative SMEs to external finance at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(37) The measure is one of a series of measures conceived at national level by the Slovak authorities to remedy a serious disturbance in their economy. The importance of the measure to preserve employment and economic continuity 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 ("*Limited amounts of aid*") described in section 3.1 of the Temporary Framework.

(38) 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 conditions of the Temporary Framework. In particular:

- The aid takes the form of quasi-equity convertible loans (recital (6)).

  The overall nominal value of the loans shall not exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges. The measure therefore complies with point 22(a) of the Temporary 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 22(b) of the Temporary Framework;

- Aid may not be granted under the measure to medium[13] and large enterprises that were already in difficulty on 31 December 2019 (see recital (14)). The measure therefore complies with point 22(c) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[14] or restructuring aid[15] (see recital (14)). The measure therefore complies with point 22(c)bis of the Temporary Framework;

- Aid will be granted under the measure no later than 31 December 2020. The measure therefore complies with point 22(d) of the Temporary Framework;

- Aid granted to undertakings active in the processing and marketing of agricultural products are excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers (see recital (20)). The measure therefore complies with point 22(e) of the Temporary Framework.

(39) The Slovak authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (25)). 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 Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (23) and (24)).

(40) The Slovak authorities also confirm that the rules under the European Regional Development Fund (ERDF) will be respected.

(41) 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 Framework.

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

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

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

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