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**Subject: State Aid SA. 53564(2019/N) – Slovak Republic
Compensation for EIUs for the part of the system operation tariff in
relation to the RES component**

Sir,

The Commission wishes to inform the Slovak Republic that, having examined the information supplied by your authorities on the measure referred to above, it has decided not to raise objections to the notified scheme.

1. PROCEDURE

- (1) On 22 February 2019, the Slovak authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), the above-mentioned measure, consisting of a support scheme compensating energy intensive users (“EIUs”) for a component of charges paid on electricity to contribute to the financing of electricity production from renewable energy sources (“RES”).
- (2) The Commission sent to the Slovak authorities requests for information on 17 April 2019 and on 24 July 2019. The Slovak authorities submitted their replies on 24 May 2019 and on 23 August 2019.

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- (3) On 23 August 2019, Slovakia waived its right under Article 342 of the TFEU in conjunction with Article 3 of EC Regulation No 1/1958¹ to have the decision adopted and notified in Slovakia and agreed that the decision be adopted and notified in English.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. The financing of the support system for promotion of the production of electricity from renewable energy sources

- (4) The notified measure concerns the reimbursement of part of the charges associated with the financing of the support for the production of electricity from RES paid by EIUs.
- (5) Support for electricity produced from RES is currently paid from funds collected from final consumers via the system operation tariff. The short-term electricity market operator OKTE, a.s. (“OKTE”) collects these sums from electricity suppliers in the course of central billing. OKTE is a wholly-owned subsidiary of the transmission system operator, Slovenská elektrizačná prenosová sústava, a.s.
- (6) The system operation tariff is calculated as a percentage of the planned costs of operating the system and total planned final consumption of electricity in the specific territory to which system operation tariffs apply. The system operation tariff takes into account an aliquot of the costs of producing electricity from indigenous coal, and of producing electricity from RES and high-efficiency cogeneration, and the activities of the short-term electricity market organiser.
- (7) The amount of the RES component in the system operation tariff is fixed based on the estimated volume of electricity generated from RES and the amount of the surcharge per MWh of electricity according to the type of RES. The Regulatory office of Network Industries (“URSO”) calculates the total amount needed to cover the costs of producers of electricity from RES.
- (8) The RES component currently accounts for 62.47% of the system operation tariff. The table below presents a trend in the share of RES component in the total system operation tariff in the years 2014 to 2019.

Year	2014	2015	2016	2017	2018	2019
RES (EUR/MWh)	14.0209	13.9795	16.2543	17.5751	16.5857	16.253
System operation tariff (G/MWh)	19.8200	21.8200	22.9000	26.2000	26.2011	25.9880
% RES	70.74	64.06	70.97	67.08	63.30	62.47

Source: Slovak authorities

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

2.2. Reduction in the financing of the support system for energy intensive users

- (9) Pursuant to the notified measure, the scheme will provide for the possibility to apply for compensation in the amount determined per MWh within the scope of the approved budgetary limit. The amount of compensation should not exceed 85% of the tariff component for the production of electricity from RES paid by the eligible EIUs. The scheme applies to EIUs whose electricity consumption exceeded 1 GWh in the preceding year.
- (10) The objective of the notified measure is to ease the burden of the RES surcharge in the Slovak Republic for those undertakings that are characterized by high electro-intensity and are exposed to international trade.
- (11) According to the Slovak authorities, the RES component in the system operation tariff results in higher costs for EIUs that negatively affect their competitiveness with regard to producers in countries outside the European Union, which face less stringent environmental protection obligations.
- (12) By reducing the RES component paid by EIUs, the Slovak authorities expect to maintain the viability and competitiveness of the beneficiaries.

2.3. Beneficiaries

- (13) The beneficiaries of the notified scheme eligible to a compensation for 85% of the RES component system operation tariff are undertakings that belong to a sector listed in Annex 3 of the Guidelines on State aid for environmental protection and energy 2014-2020 ("EEAG").
- (14) Furthermore, the undertakings need to satisfy the following cumulative requirements:
 - (a) The undertaking's electricity consumption in the previous year must be at least 1 GWh.
 - (b) For the previous year, the undertaking's share of gross value added from activities covered by NACE codes listed in Annex 3 of the EEAG was at least 50 % of the total gross value added of the undertaking.
 - (c) In the previous year, the undertaking duly paid the system operation tariff and did not have an individual system operation tariff rate set in the previous year.
 - (d) No bankruptcy proceedings are pending against the undertaking, it is not bankrupt or undergoing restructuring, and no bankruptcy petition brought against it has been rejected due to insufficient assets.
 - (e) The enforcement of a judicial decision is not pending against the undertaking.
 - (f) The undertaking has no recorded arrears of health insurance contributions, social insurance contributions or compulsory contributions to old-age pension savings.

- (g) The undertaking is entered in the public sector partners register further to a special regulation, if a legal person or a natural person engaging in business who is required to register with the public sector partners register.
- (15) The Ministry of Economy may audit an undertaking that has been granted compensation at any time during the year to check the correctness of the data provided.
- (16) The Slovak authorities estimated that approximately 200 undertakings active in sectors listed in Annex 3 of the EEAG would be eligible to compensation for the RES component in the system operation tariff.

2.4. Legal basis

- (17) The national legal basis of the notified scheme is the act No 309/2018 amending Act No 309/2009 on the support of renewable energy sources and high efficiency cogeneration and amending certain acts, as amended, and amending certain acts (the “Act”).
- (18) Furthermore, the Slovak authorities indicated regulatory acts implementing the Act:
 - Act No 309/2009 on the support of renewable energy sources and high-efficiency cogeneration and amending certain acts,
 - Act No 358/2015 regulating certain relations in the field of State aid and de minimis aid and amending certain acts (the State Aid Act).

2.5. Functioning of the scheme and aid granting authority

- (19) The Ministry of Economy is the granting authority.
- (20) Eligible undertakings need to submit an application for compensation for the RES component in the system operation tariff paid in the previous calendar year. The application is processed and evaluated by the Ministry of Economy. On this basis, the granting authority grants compensation to eligible undertakings.
- (21) Undertakings have to provide a confirmation from the entity to whom, in the previous year, they paid a system operation tariff. The beneficiaries will therefore have to pay first the full RES charge before receiving compensation the year after.

2.6. Duration and budget

- (22) It is envisaged that the State aid scheme will be applied until 31 December 2029. The Slovak authorities confirmed that the scheme would be applied only after a positive Commission decision has been adopted. The Slovak authorities undertook to amend the notified scheme accordingly in the event that new guidelines on State aid for environmental protection and energy enter into force.
- (23) The budget allocated to the notified scheme for the years 2019 to 2021 is in total EUR 120 million and EUR 40 million annually. The Slovak authorities explained that as the provision of financial resources is contingent on the Slovak government’s approval of the central government budget and subsequent approval

by the legislature (the National Council of the Slovak Republic); it is not yet possible to determine the amount of financial resources for subsequent years.

2.7. Cumulation

- (24) The Slovak authorities confirmed that compensation for the RES component could not be cumulated with aid or *de minimis* aid received from other local, regional or national aid to cover the same eligible costs.

2.8. Transparency

- (25) The Slovak authorities confirmed that all transparency requirements set out in section 3.7.2 of the EEAG would be complied with. The information concerned by these requirements will be published on the following websites: <http://www.mhsr.sk/> and <https://semp.kti2dc.sk>.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of State aid

- (26) Article 107(1) of the TFEU provides that “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market*”.

3.1.1. Selective advantage

- (27) In the present case, EIUs are advantaged because they are being compensated for part of the cost of the mandatory RES levy. The measure is selective as only EIUs within certain sectors, namely those belonging to a sector listed in Annex 3 of the EEAG may benefit from support under the scheme.

3.1.2. State resources and imputability

- (28) Article 107(1) of the TFEU requires that State aid is granted by a Member State or through State resources.
- (29) Since the notified scheme consists of a compensation for a part of the surcharge, Slovakia is foregoing State resources by granting such aid.
- (30) In its *Vent de Colère* judgment, the Court of Justice recalled that “[t]he concept of ‘intervention through State resources’ is intended to cover, in addition to advantages granted directly by the State, those granted through a public or private body appointed or established by that State to administer the aid”².
- (31) The notified scheme is financed from the State budget. The granting of compensation is administered by the Ministry of Economy. The aid measure conferring an advantage to EIUs is thus imputable to the Slovak State.
- (32) In the light of those considerations, the Commission observes that the aid is therefore financed from State resources and imputable to the State.

² Case C-262/12, *Association Vent de Colère* !, EU:C:2013:851, paragraph 20

3.1.3. Effect on trade and impact on competition

- (33) The potential beneficiaries are all EIUs active in sectors listed in Annex 3 of the EEAG, in which trade between Member States takes place. The measure is therefore liable to distort competition and affect trade between Member States.

3.1.4. Conclusion with regard to the existence of State aid

- (34) For the reasons set out above, the Commission considers that the notified scheme for EIUs constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.1.5. Lawfulness of the aid

- (35) The Slovak authorities have confirmed that the notified scheme would not be applied before the Commission has adopted a final decision. The Slovak Republic therefore complies with the stand-still obligation set out in Article 108(3) TFEU.

3.2. Compatibility of the aid

- (36) As the notified scheme compensates EIUs for part of the RES surcharge used to finance electricity production from RES, the Commission has assessed the compatibility of the notified scheme on the basis of the EEAG and, in particular, section 3.7.2 thereof (*Aid in the form of reductions in the funding of support for energy from renewable sources*).
- (37) Points 185 and 186 of the EEAG provide that the aid should be limited to sectors that are exposed to a risk to their competitive position due to the costs resulting from the funding of support to RES as a function of their electro-intensity and their exposure to international trade. Accordingly, the aid can, as a general rule, only be granted if the undertaking belongs to the sectors listed in Annex 3 of the EEAG or for undertakings belonging to sectors listed in Annex 5 of the EEAG in so far as an undertaking has an electro-intensity of at least 20%.
- (38) It follows from information provided by the Slovak authorities, set out in recital (14) above, that the aid will be granted to EIUs belonging to the sectors listed in Annex 3 of the EEAG. In particular, the Slovak authorities confirmed that the electro-intensity of the beneficiaries would be calculated according to the requirements of Annex 4 of the EEAG.
- (39) The Slovak authorities also require that the beneficiaries are not undertakings in difficulty, as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty³ and that they do not have any unrecovered or outstanding debts stemming from an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market. These requirements directly reflect the requirements of points 16 and 17 of the EEAG.
- (40) In addition, where Member States impose additional eligibility criteria, point 187 of the EEAG provides that Member States need to ensure that within the eligible sectors, the choice of beneficiaries is made on the basis of objective, non-

³ Communication from the Commission — Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, p. 2–17

discriminatory and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation.

- (41) First of all, eligibility under the notified scheme is limited to undertakings with an annual electricity consumption of at least 1 GWh in the preceding year. The Commission observes that this threshold has been introduced for reasons of administrative simplification. It finds that this additional criterion is objective and transparent and does not discriminate between undertakings in a similar factual situation.
- (42) Second, for the previous year, an undertaking's share of gross value added from activities in one of the NACE codes listed in Annex 3 of the EEAG must be at least 50 % of the total gross value added of the undertaking. The Commission finds this minimum threshold criterion justified as it aims at preventing undertakings from deliberately manipulating their NACE codes in order to obtain compensation.
- (43) Third, eligible undertakings cannot be the subject of bankruptcy proceedings, cannot be bankrupt or undergoing restructuring, and no bankruptcy petition brought against them must have been rejected due to insufficient assets. Furthermore, the enforcement of a judicial decision must not be pending against the beneficiary undertaking. In addition, the undertaking must have no recorded arrears of health insurance contributions, social insurance contributions or compulsory contributions to old-age pension savings. The Commission finds that these additional criteria are objective and transparent and do not discriminate between undertakings in a similar factual situation.
- (44) Finally, eligible undertakings are entered in the public sector partners register, if a legal person or a natural person engages in business that is required to register with the public sector partners register. The Commission finds this eligibility criterion justified as it is an anti-corruption measure aimed at helping to identify the beneficiary's owners.
- (45) Based on the above, the Commission finds that these additional requirements are objective and transparent, and apply equally to all beneficiaries in the same factual situation, in line with point 187 of the EEAG.
- (46) As undertakings eligible for the aid would pay 15% of the full RES surcharge in line with point 188 of the EEAG, the measure is found to be proportionate. The Commission also notes that the requirements concerning the monitoring obligation set out in point 192 of the EEAG are complied with.

3.2.1. Transparency

- (47) In relation to aid falling under section 3.2.7 of the EEAG, point 27(g) of the EEAG requires that the aid measure is transparent. The Commission takes note of the Slovak authorities' commitment to publish all information required by point 104 of the EEAG, in line with the requirements of point 106 of the EEAG.

3.2.2. Conclusion with regard to the compatibility of the measure

- (48) In light of the above assessment, the Commission considers that the notified scheme pursues an objective of common interest in a necessary and proportionate way and that the aid is therefore compatible with the internal market on the basis of the EEAG, and in particular section 3.7.2 of the EEAG.

4. AUTHENTIC LANGUAGE

- (49) As mentioned under Section 1 of this decision, the Slovak Republic has waived its right to have the decision adopted and notified in Slovak and agreed to have the decision adopted and notified in English. The authentic language of this decision will therefore be English.

5. CONCLUSION

The Commission has decided, on the basis of the foregoing assessment, not to raise any objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission