



EUROPEAN COMMISSION

Brussels, 3.3.2010

C(2010) 1305

Subject: **State Aid - Slovak Republic**
 Aid No N 707/2009
 Schéma pre dočasné poskytovanie malej pomoci v Slovenskej
 republike počas trvania finančnej a hospodárskej krízy v
 poľnohospodárskej prvovýrobe

Sir,

The Commission wishes to inform the Slovak Republic that, after examining the information supplied by your authorities on the aid referred to above, it has decided to raise no objections to the aid in question, as it is compatible with the Treaty on the Functioning of the European Union (TFEU)¹.

The Commission has taken this decision on the basis of the following considerations:

1. PROCEDURE

- (1) By electronic notification of 21 December 2009, the Slovak authorities notified a temporary aid scheme for granting limited amounts of compatible aid under the Temporary Framework for State aid measures to support primary agricultural production in the current financial and economic crisis" (hereinafter referred to as the Temporary Framework)².
- (2) Additional information was submitted by electronic communications of 21 January 2010 and of 10 February 2010.

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

² Communication from the Commission - Temporary framework for State aid measures to support access to finance in the current financial and economic crisis, OJ C 83, 7.4.2009, p.1, as amended by Communication from the Commission of 28 October 2009, OJ C 26, 31.10.2009, p.2.

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2. DESCRIPTION OF THE AID SCHEME

2.1. Objective of the aid scheme

- (3) The notified measure complements another measure (State aid N 222/2009 as amended by N 711/09) already put in place which aims at remedying the serious disturbance in the economy of Slovakia³. The objective of the present notification is to support access to finance of primary agricultural producers in the current financial and economic crisis.
- (4) In the context of the approved measure (State aid N 222/2009) Slovakia considered that the financial crisis started affecting its real economy as a whole at national, regional and local level. The data submitted in that context already pointed to a rapid slowdown in the Slovak economy resulting from a decline in external and domestic demand.
- (5) The available statistical data⁴ point to a continued decline in the economy over the second half of 2009. Over the 1st-3rd quarter of 2009, production of gross domestic product amounted to €46 828.3 million. Compared with the corresponding period of 2008, gross domestic product was down by 5,3 % at constant prices (it decreased by 6,7 % at current prices)⁵.
- (6) According to the macroeconomic data⁶ and information submitted, the Slovak authorities consider that the crisis resulted in severe adverse market conditions in agricultural sector. On the basis of the submitted statistics the average market prices of agricultural products decreased in 2009 by approximately 30% as compared to the year 2008, with certain commodities (such as milk, wheat, oil seeds and oleaginous fruits) marking over 40% drop in market price.
- (7) The scheme is expressly based on Article 107 (3) (b) TFEU, as interpreted by paragraph 4.2.2 of the Temporary framework.

2.2. The nature and form of the aid

- (8) The aid will be provided in the form of direct grant.

3 Commission Decision C (2009) 3433 from 29 April 2009 concerning aid scheme N 222/2009 notified under Temporary Framework (JO C/146/2009).

4 Sources: Stability Program of Slovakia 2009-2010 (January 2010, p. 14) http://ec.europa.eu/economy_finance/sgp/pdf/20_scps/2009-10/01_programme/sk_2010-01-29_sp_sk.pdf; European Economic Forecast – autumn 2009 (November 2009, p. 144-146) http://ec.europa.eu/economy_finance/publications/publication16055_en.pdf; Statistical Office of the Slovak Republic and National Bank of Slovakia (http://www.nbs.sk/_img/Documents/_Statistika/VybrMakroUkaz/ZaklMakroUkaz/indicators_2009.pdf)

5 <http://portal.statistics.sk/showdoc.do?docid=3071>

6 2008 data: Statistical Office Report (March 2009); 2009 data: provisional statistics and data from the Economic agricultural profit and loss account (*Ekonomický poľnohospodársky účet Slovenskej republiky*).

2.3. Legal basis

- (9) The legal basis for this scheme is *Nariadenie vlády Slovenskej republiky č. 264/2009 Z. z. o podporných opatreniach v pôdohospodárstve v znení neskorších predpisov* and implementing rules *Schéma pre dočasné poskytovanie malej pomoci v Slovenskej republike počas trvania finančnej a hospodárskej krízy v poľnohospodárskej prvovýrobe*.

2.4. Administration of the scheme

- (10) The notified scheme is a national scheme which will be granted by the Minister of Agriculture of the Slovak republic and administered by Agricultural Paying Agency (*Pôdohospodárska platobná agentúra*).

2.5. Budget and duration of the measure

- (11) The notified measure has a budget of €3 319 391.
- (12) Aid can be granted from the approval of the present scheme until 31 December 2010.

2.6. Beneficiaries

- (13) The beneficiaries of the notified scheme will be all primary producers (small and medium-sized undertakings active in the primary production of agricultural products as well as large enterprises active in primary agricultural production).
- (14) Only those agricultural producers that were not firms in difficulty⁷ on 1 July 2008 can benefit from the aid. The aid may be granted to undertakings that entered into difficulties after this date due to the economic and financial crisis. In particular, information will be obtained confirming that the beneficiary was not a company in difficulty on 1 July 2008.
- (15) The Slovak authorities estimate the number of beneficiaries to range between 101 and 500.

2.7. Sectoral scope, exclusion of export aid and aid favouring domestic over imported products

- (16) The scheme is open for all undertakings active in the primary production of agricultural products.
- (17) It does not apply to export aids or aids favouring domestic over imported goods.

2.8. Aid measure

- (18) The Slovak authorities committed that the beneficiaries will have to provide a declaration about any de minimis aid or aid granted under this measure received from

⁷ Within the meaning of point 2.1 of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty (OJ C 244, 1.10.2004, p.2) as regards large firms and within the meaning of Article 1 (7) of the General Block Exemption Regulation (Regulation (EC) No 800/2008, OJ L 214, 9.8.2008, p.3)) as regards SMEs.

1 January 2008 and that the total aid will not exceed €15,000 per undertaking during the period from 1 January 2008 to 31 December 2010.

(19) The Slovak authorities confirm that the conditions laid down in section 4.2.2 of the Temporary Framework (as amended) for granting limited amounts of compatible aid to agricultural undertakings will be fully met. In particular,

- the aid shall not exceed €15,000 per undertaking; All figures used shall be gross, that is, before any deduction of tax or other charge.
- before granting the aid, the aid granting authorities shall obtain from the undertakings concerned a declaration about any *de minimis* aid (as defined in Commission Regulation (EC) No 1535/2007) or aid granted under this measure received in the period since 1.1. 2008;
- the total amount of *de minimis* aid and aid granted under this measure per undertaking in the period 1.1.2008 to 31.12.2010 may not exceed €15,000;
- where the aid granted under this measure is to be combined with other compatible aid or with other forms of Union financing, the maximum aid intensities indicated in the relevant Guidelines or Block exemption regulations will be respected;
- the aid is not fixed on the basis of the price or quantity of products put on the market.

(20) The Slovak authorities specified that the aid will be granted to agricultural holdings affected by the consequences of the global economic crisis in the sector after 1 July 2008 to improve cash-flow of agricultural holdings active in primary production.

2.9. Monitoring and reporting, business secrets, language waiver

(21) The Slovak authorities confirm that the monitoring and reporting obligations laid down in Section 6 of the Temporary Framework will be respected (e.g.: detailed records regarding the granting of aid must be maintained for 10 years; before 31 October of each year during which the Temporary Framework is applicable, a report on the measures put in place should be provided).

(22) The Commission notes that the Slovak authorities have confirmed that the notification does not contain business secrets.

(23) The Slovak authorities confirm their acceptance that the Commission decision is adopted in the English language, due to exceptional circumstances.

3. ASSESSMENT UNDER COMPETITION RULES

3.1. Legality of measure

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

3.2. Presence of aid within the meaning of Article 107(1) of the TFEU

- (25) Under Article 107(1) of the TFEU, 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, insofar as it affects trade between Member States, is incompatible with the internal market.
- (26) The aid at issue is financed out of State resources and benefits certain undertakings (cf. point 2.6). Pursuant to the case law of the Court of Justice, aid to an undertaking is deemed to affect trade between Member States if that undertaking operates in a market open to intra-Union trade.⁸ The mere fact that the competitive position of an undertaking is strengthened compared with other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.⁹ The beneficiaries of the aid at issue operate on a market where intra-Union trade takes place.¹⁰ The aid measure could therefore distort competition and affect trade between Member States and consequently constitutes aid pursuant to Article 107(1) of the TFEU.

3.3. Compatibility of aid pursuant to Article 107(3)(b)

- (27) Having established that the measure involves state aid within the meaning of Article 107 (1) of the TFEU, it is necessary to consider whether the above mentioned measure can be found compatible with the internal market.
- (28) As described in Section 2.1 above, the recent developments in the Slovak economy point to an overall downturn when compared to previous periods. The data provided by the Slovak authorities point as well to a considerable downturn in the agriculture sector, where market prices have dropped in several sub-sectors.
- (29) Slovakia already implemented a framework scheme for limited amounts of compatible aid which aims at remedying the serious disturbance in the Slovak economy (cf. point (3) in connection with footnote 3; this aid is not applicable to primary agricultural producers). By complementary granting limited compatible amounts of aid to agricultural undertakings (up to €15,000 per undertaking during 2010) the Slovak authorities aim at supporting those undertakings that have an increased financing need due to the current crisis (cf. paragraph (6)). Thus, the measure contributes to remedying the severe disturbance in the economy of Slovakia.
- (30) By adopting the Temporary Framework, the Commission indeed acknowledged (section 4.1 thereof) the "seriousness of the current financial crisis and its impact on the overall economy of the Member States". The Commission concluded "that certain categories of State aid are justified, for a limited period, to remedy these difficulties

⁸ See, in particular, judgment of the Court of 13 July 1988, Case 102/87, French Republic v Commission of the European Communities, ECR 1988, p. 4067.

⁹ Judgment of the Court of 17 September 1980, Case 730/79, Philip Morris Holland BV v Commission of the European Communities, ECR 1980, p. 2671.

¹⁰ Intra-EU imports and exports of agricultural products into and from Slovakia in 2007 stood at some €2.38 billion and some €1.53 billion respectively (Source: EUROSTAT).

and that they may be declared compatible with the internal market on the basis of Article 87(3)(b)." The Commission in its Communication of 28 October 2009 furthermore recognised increased difficulties for farmers to obtain credit as a consequence of the financial crisis and extended the scope of section 4.2.2 ("Compatible limited amount of aid") of the Temporary Framework by introducing a separate compatible limited amount of aid possibility for undertakings active in primary agricultural production.

- (31) The Commission considers that the macroeconomic data for the Slovak economy including the whole agriculture sector justify the introduction of a complementary scheme for undertakings active in primary agricultural production.
- (32) The notified measure has been designed to meet the requirements of the additional category of aid ("Compatible limited amount of aid") described in section 4.2.2 of the Temporary Framework as amended.
- (33) The Slovak authorities confirmed that the scheme is open to all undertakings active in the primary production of agricultural production (cf. point (16)).
- (34) By excluding firms in difficulty on 1 July 2008 from the scope of the scheme (cf. point (14)) it is excluded that aid is granted to agricultural producers already in structural difficulties before the beginning of the current crisis.
- (35) Given the sharp decrease in agricultural prices and net profits of the agricultural sector in 2009 (see point 6) the Commission accordingly considers that the notified measure is, in the context of the general limited amount of aid measure already put in place, 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 as amended. In particular,
- The maximum aid amount will not exceed the cash equivalent of €15,000 per undertaking (point 4.2.2 (h));
 - The measure is granted through an aid scheme in line with point 4.2.2 (b);
 - The aid granting authorities will obtain from the undertakings concerned a declaration about any *de minimis* aid or aid granted under this measure received during the current fiscal year and will check that the total aid will not exceed €15,000 per undertaking during the period from 1 January 2008 to 31 December 2010 (point 4.2.2 (g), first sentence)¹¹. Where the aid granted under this measure is to be combined with other compatible aid or with other forms of Union financing, the maximum aid intensities indicated in the relevant Guidelines or Block exemption regulations will be respected. Thus, the cumulation rules with *de minimis* aid and aid for other purposes are respected (in particular point 4.2.2 (g) and point 4.7);
 - Firms in difficulty (situation of 1.7.2008) are excluded from eligibility under the scheme in compliance with point 4.2.2 (c);

¹¹ The Commission notes the relevant commitment given by the Slovak authorities (cf. point (18)).

- The measure applies to undertakings active in the primary production of agricultural products. Aid under this measure is not fixed on the basis of the price or quantity of products put on the market (point 4.2.2 (h));
 - Export aid and aid favouring domestic over imported goods and services are excluded (point 4.2.2 (e)).;
 - In line with point 4.2.2 (f) aid may be granted until 31.12.2010;
 - The monitoring and reporting rules laid down under point 6 of the Temporary Framework will be respected.
- (36) For these reasons, it may be concluded that the notified measure is in conformity with the Temporary Framework as amended and that it can be considered to be compatible with the Treaty on the basis of Article 107 (3) (b) TFEU.
- (37) The Commission notes that the Slovak authorities have confirmed that the notification does not contain business secrets.
- (38) The Commission furthermore notes that the Slovak authorities accepted that the decision is adopted in the English language, due to exceptional circumstances.

4. CONCLUSION

- (39) In view of the foregoing, the Commission has accordingly decided to consider the aid compatible with the internal market under Article 107(3)(b) of the Treaty.

Yours faithfully,
For the Commission

Dacian CIOLOȘ
Member of the Commission