



EUROPEAN COMMISSION

Brussels, 8.8.2024
C(2024) 5790 final

PUBLIC VERSION

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Subject: State Aid SA.110954 (2024/N) – Slovakia
Amendment of SA.53564 Compensation for EIUs for the part of the
system operation tariff in relation to the RES component

Excellency,

1. PROCEDURE

- (1) By decision of 19 September 2019 in SA.53564 (2019/N) – Slovak Republic - Compensation for EIUs for the part of the system operation tariff in relation to the RES component (the “initial Decision”) ⁽¹⁾, the European Commission approved a support scheme compensating certain users (i.e., energy intensive users or “EIUs”) for the electricity charge financing support to renewable energy (the “initial scheme”) until 31 December 2029.
- (2) On 16 July 2024, following pre-notification contacts, the Slovak authorities notified amendments to the initial scheme to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), with the aim to extend the initial scheme until 31 December 2030 and align it to the relevant conditions of the Guidelines on State aid for climate, environmental protection and energy 2022 ⁽²⁾ (“CEEAG”), which were not in force at the time of

⁽¹⁾ Commission Decision C(2019) 6860 final in case SA.53564, OJ C 381, 8.11.2019, p. 6.

⁽²⁾ OJ C 80, 18.2.2022, p.1.

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the adoption of the initial Decision. The initial scheme, as amended by the notified amendments, is referred to thereafter as the “amended scheme” or the “measure”.

- (3) The Commission sent to the Slovak authorities a request for information on 20 June 2024. The Slovak authorities submitted their replies on 25 June 2024.
- (4) On 25 June 2024, Slovakia exceptionally waived its right under Article 342 of the TFEU in conjunction with Article 3 of EC Regulation No 1/1958 ⁽³⁾ to have the decision adopted and notified in Slovak and agreed that the decision be adopted and notified in English.

2. DETAILED DESCRIPTION OF THE AMENDED SCHEME

2.1. The initial scheme

- (5) In the initial Decision, the Commission approved the initial scheme that, as of 19 September 2019, grants aid to certain EIUs in the form of a reduction of part of the charges financing the support for the production of electricity from renewable energy sources (“RES”) paid by EIUs.
- (6) The legal basis of the initial scheme approved in the initial Decision was (i) act No 309/2018 amending Act No 309/2009 on the support of renewable energy sources and high efficiency cogeneration as amended and amending certain acts. Implementing acts (ii) Act No 309/2009 on the support of renewable energy sources and high-efficiency cogeneration and amending certain acts, and (iii) Act No 358/2015 regulating certain relations in the field of State aid and de minimis aid and amending certain acts.
- (7) The initial scheme budget for 2019 to 2021 was in total EUR 120 million and EUR 40 million annually. The budget for the total duration of the initial scheme was not determined by the Slovak authorities at that time (see recital (23) of the initial Decision). The initial scheme is applicable until 31 December 2029.
- (8) The initial scheme grants reduced payment of the charge only to undertakings that belong to a sector listed in Annex 3 of the Guidelines on State aid for environmental protection and energy 2014-2020 (“EEAG”) and meet the following conditions:
 - (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.

⁽³⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

- (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.
- (9) In the initial scheme, reductions for energy-intensive undertakings are granted as follows (see also recital (20) of the initial Decision):
- (a) Eligible undertakings need to submit an application for compensation for the RES component in the system operation tariff (“RES levy”) paid in the previous calendar year.
 - (b) The application is processed and evaluated by the Ministry of Economy.
 - (c) On this basis, the granting authority grants compensation to eligible undertakings.
- (10) The initial scheme has been in force since 19 September 2019. The Slovak authorities committed to amend the notified scheme accordingly in the event that new guidelines on State aid for environmental protection and energy enter into force (see recital (22) of the initial Decision).

2.2. The notified amended scheme

- (11) The notified amendments to the initial scheme relate to the following areas:
- (a) The Slovak authorities amend the initial scheme’s duration, which extended until 31 December 2029 in the initial scheme (see recital (22) of the initial Decision), until 31 December 2030 and updates its budget accordingly (see recital (18) below).
 - (b) The amended scheme modifies the conditions for granting the reduction on the RES levy in order to bring that in line with the CEEAG, which was not in force at the time of the initial Decision.
- (12) Except for the changes mentioned in recital (11) the features of the initial scheme described in the initial Decision remain unchanged.

2.2.1. Objective

- (13) According to the Slovak authorities, the notified amendments to the initial scheme contribute to the development of the economic activities carried out by EIUs by mitigating the risk of EIUs moving all or part of their activities outside the EU where environmental standards are absent or less ambitious (“carbon leakage risk”) as a result of the increasing costs from the full payment of the RES levy.
- (14) The Slovak authorities note that EIUs are undertakings operating in economic sectors which are exposed to international trade and rely heavily on electricity for their value creation. Slovak authorities explained that, for these undertakings, paying the full amount of the RES levy may increase the risk of moving their activities outside the EU, where environmental standards may be less stringent and ambitious and there are no equivalent costs for EIUs.

2.2.2. National legal basis

- (15) The notified amendments to the initial scheme are set out in the following legislation:
 - (a) Act no. 309/2009 Coll. on the support of renewable energy sources and highly efficient combined production and on the amendment of certain laws as amended, valid from 31 December 2023.
 - (b) Decree of the Ministry of Economy of the Slovak Republic No. 106/2019 Coll., establishing the list of authorized industries, the scope and structure of the administration and the method of providing compensation to entrepreneurs, valid from 1 January 2024.
 - (c) Decree of the Ministry of Economy of the Slovak Republic No. 400/2023 Coll., amending Decree of the Ministry of Economy of the Slovak Republic No. 106/2019 Coll., establishing the list of authorized industries, the scope and structure of the administration and the method of providing compensation to entrepreneurs, which came into force on 1 January 2024.
 - (d) Act no. 358/2015 Coll. on the adjustment of certain relations in the area of state aid and minimum aid and on the amendment of certain laws (the State Aid Act) valid from 9 December 2015

2.2.3. Beneficiaries of the amended scheme

- (16) The Slovak authorities informed the Commission that compensation will be provided under the amended scheme only to undertakings that operate in sectors at risk and at significant risk ⁽⁴⁾, which are identical to the sectors listed in Annex I of the CEEAG and located in the territory of the Slovak Republic. The Slovak authorities expect around 300 beneficiaries.

⁽⁴⁾ Those sectors are set forth in Annex no. 1 of the Decree of the Ministry of Economy of the Slovak Republic no. 400/2023 Coll.

2.2.4. Budget and duration

- (17) The measure will be financed from the State budget. The Ministry of Economy of the Slovak Republic is responsible for overseeing the functioning of the measure and administers the granting the compensation.
- (18) The amended scheme increases the estimated annual budget of the measure of EUR 40 million, which leads to a total budget of the measure to approximately EUR 300 million until 31 December 2030.

2.2.5. The nature and form of aid

- (19) The eligible RES levy is part of the system operation tariff financing the support for the production of electricity from RES. The system operation tariff is applied to the final consumption of electricity and the RES support is therefore paid by final consumers. The short-term electricity market operator OKTE, a.s. collects these sums from electricity suppliers in the course of central billing. 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 levy per MWh of electricity according to the type of RES. The levy represents the difference between the electricity price and the feed-in electricity price, which is paid to RES electricity producers entitled to support under Section 3(1)(c) of Act No 309/2009 on the promotion of renewable energy sources, as last amended, by the entity responsible for clearing support ⁽⁵⁾. This is unchanged from the initial decision (see recitals (5)-(8) of the initial Decision).
- (20) The Slovak authorities submit that the tariff for operating the system, which is currently used to support electricity production from RES, has constituted approximately one-fifth of the final electricity price (before tax) in recent years.
- (21) The aid is granted in the form of refund and is calculated on the basis of monitored levels of electricity consumption during the last year and gross added value for the period during which the eligible charges were applied. The gross added value of the beneficiary is calculated in accordance with point 411 of the CEEAG.
- (22) The granting process will consist of three main steps. The first step is the submission of an application by businesses for the payment of the system operation tariff for the previous calendar year, with a deadline of 30 June each year. The second step is the processing and evaluation of the application by the Ministry of Economy. The third step is the granting of compensation to eligible companies. At any time during the year, the Ministry of Economy may conduct an audit to verify the accuracy of the submitted data.
- (23) The Slovak authorities confirmed that all levy reductions falling within the scope of Section 4.11 of CEEAG are covered by the notified amended scheme and that future levy reductions within such scope will be notified as an amendment to this notified scheme (the amended scheme).

⁽⁵⁾ If the difference between the electricity price and the feed-in tariff in support of RES production is negative, the RES levy is zero.

- (24) The Slovak authorities confirmed that the amended scheme will be put into effect only after the notification of the Commission's decision and, except for the notified amendments, all other provisions of the initial schemes remain unchanged. The last granting of the refund under the initial scheme was for the 2023 period under the initial scheme.
- (25) The Slovak authorities confirmed that the amended scheme does not, by itself, by the conditions attached to it or by its financing method, constitute a non-severable violation of Union law.
- (26) Moreover, to align the conditions for granting a reduced RES levy to the CEEAG, amendments to the initial scheme are introduced in the areas of *eligibility requirements* and *energy audits and management systems* (see sections 2.2.6 and 2.2.7, respectively).

2.2.6. *Eligibility requirements and obligations*

- (27) Under the amended scheme, eligibility is limited to undertakings, irrespective of their size, that operate in a sector listed in Annex 1 to the CEEAG, which lists sectors "at significant risk" and "at risk" of relocation to jurisdictions where environmental disciplines are absent or less ambitious.
- (28) Applicants must prove that they operate in the authorized sector in accordance with Annex no. 1 of the Decree of the Ministry of Economy of the Slovak Republic no. 400/2023 Coll., which establishes the list of authorized industries, the scope and structure of the administration and the method of providing compensation to entrepreneurs. Annex no. 1 of the decree of the Ministry of Economy contains NACE codes identical to Annex I of the CEEAG.
- (29) Aid under this scheme is not granted to companies subject to sanctions adopted by the EU, including but not limited to:
 - (a) to persons, entities or bodies specifically mentioned in the legal acts by which these sanctions are imposed;
 - (b) businesses owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or
 - (c) companies operating in industrial sectors targeted by the sanctions adopted by the EU, since the aid would defeat the objectives of the relevant sanctions; whereas, for the purpose of assessing the application under this scheme, the fulfilment of the conditions specified in this point is demonstrated by a declaration of fulfilment of the conditions.
- (30) The Slovak authorities confirmed that the aid granted under the amended scheme is not awarded to:
 - (a) Undertakings in difficulty as defined by the Commission Guidelines on State Aid for Rescuing and Restructuring non-financial undertakings in difficulty⁽⁶⁾. Beneficiaries must submit their application to obtain the

⁽⁶⁾ Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

EICS with proof that they are not undertakings in difficulty, aligned with point 14 of the CEEAG.

- (b) Undertakings with outstanding claims for recovery against them on the basis of a decision of the European Commission declaring aid to be unlawful and incompatible with the European internal market.
- (31) Aid under the amended scheme can be provided to the beneficiary only if the aid recipient meets all the eligibility criteria set out in the amended scheme and the relevant call. If the aid was provided without authorization, the aid applicant is obliged to return it to the provider or the relevant part thereof, including interest according to the relevant regulations.

2.2.7. Energy audits and management systems

- (32) The Slovak authorities confirmed that the amended measure requires beneficiaries to undertake an energy audit within the meaning of Article 8 of Directive 2012/27/EU ⁽⁷⁾, irrespective of their size. Beneficiaries can conduct the audit either as a stand-alone energy audit or within the framework of a certified Energy Management System or Environmental Management System.
- (33) Slovakia explained that applicants must submit an energy audit report (not older than four years as of the date of application) or a valid certificate proving the existence of a certified energy management system or environmental management system with the compensation application.
- (34) Furthermore, under the amended measure beneficiaries are also required to comply with one of the following two conditions:
- (a) Implement the recommendations set out in the energy audit report, where the payback time for the investments does not exceed three years and that the costs of their investments is proportionate.
 - (b) Reduce the carbon footprint of electricity consumption to cover at least 30% of its needs from carbon-free sources.
- (35) The Slovak authorities informed the Commission that beneficiaries shall demonstrate the fulfilment of the conditions mentioned in recital (34)(a) and (34)(b) as follows:
- (a) The applicant submits to the request for compensation information on the implementation of the recommendations for reducing the energy intensity stated in the energy audit report, which must not be older than four years at the time of submitting the request for compensation. Furthermore, Slovakia committed to monitoring the fulfilment of this condition. The applicant will have to prove that the recommended investments were carried out via the proof of payment through accounting documents or contracts showing the basis for the actions taken. The investment costs incurred by the applicant to meet the energy audit requirement must be at least equal to the maximum possible compensation for the measure in the

⁽⁷⁾ This obligation is set out in Article 8 of the Legislative Decree n. 102 of 4 July 2014.

relevant year, except if all relevant recommendations have been implemented. If multiple measures are listed in the energy audit or action plan, the applicant cannot submit a measure already submitted for compensation in a previous year. If the applicant has implemented all relevant recommendations in the energy audit or action plan, where the payback period for investments did not exceed three years, before applying for compensation and proves this to the provider, it will be considered as having met its energy audit obligations for the purposes of this aid measure.

- (b) At the time of submission of the application, the applicant shall provide evidence for the provision of compensation through consumption of on-site or near-site renewable energy production certified by an energy auditor, and/or through power purchase agreements (“PPAs”) concluded with RES producers, and/or consumption of RES electricity certified by national or international guarantees of origin (“GOs”), which are cancelled annually. The 30% reduction cannot include the existing share of carbon-free electricity in the grid. It must come from sources the applicant can directly prove.
- (36) The deadline for meeting the requirements from recital (34) is the same as the deadline for submitting applications. The applicants will have to meet the environmental conditions for granting compensation already when submitting the application. Demonstration of fulfilment of the conditions will take place on an annual basis.

2.2.8. Aid intensity

- (37) According to the amended scheme, beneficiaries are entitled to receive as reductions 85% of the eligible cost related to the financing of support for the production of electricity from renewable energy sources if the installation belongs to a sector “at significant risk” according to Annex 1 of the CEEAG; and 75% of the eligible cost if the installation belongs to a sector “at risk” according to Annex 1 of the CEEAG.
- (38) Notwithstanding the conditions described in recitals (37), the Slovak authorities confirmed that the aid granting will not result in reduced levies below 0.5 EUR/MWh.
- (39) Regarding cumulation the Slovak authorities confirmed that aid under the amended scheme cannot be cumulated with other aid or de minimis aid received from other local, regional or national aid granting authority to cover the same eligible costs so long as such cumulation would result in an amount of aid in excess of the maximum permissible aid intensity levels under the measure.
- (40) Slovakia confirms that the provider will ensure the transparency of aid granted by publishing on the central register IS SEMP and a comprehensive State aid website allowing easy access to the following relevant information:
- (a) The full text of the approved aid scheme and its implementing provisions;
 - (b) Information on each aid granted under the amended scheme exceeding EUR 100 000 within six months of its grant.

- (41) The Slovak authorities confirm that in order to allow the enforcement of State aid rules under the Treaty, the information will be available for at least 10 years from the date on which the aid was granted.
- (42) Slovakia confirms that the general public has access to the website without restrictions, and no prior user registration is required to access the website.
- (43) The Slovak authorities confirmed:
- (a) That annual reports will be submitted to the Commission, as requested under Council Regulation (EU) 2015/1589⁽⁸⁾ and Commission Regulation (EC) No 794/2004⁽⁹⁾;
 - (b) To maintain detailed records regarding the amended scheme;
 - (c) To maintain detailed records containing all information necessary to establish that the conditions regarding eligible costs and maximum aid intensities have been fulfilled;
 - (d) To maintain those records for 10 years from the date of award of the aid and they will be provided to the Commission upon request.

3. ASSESSMENT OF THE AMENDED SCHEME

3.1. Existence of State aid

- (44) The Commission already concluded in its initial Decision (see recitals (26) to (34) of the initial Decision) that the initial scheme constitutes State aid within the meaning of Article 107(1) TFEU. The notified amendments to the initial scheme do not alter this conclusion. The measure is imputable to the State, since it is administered by the Minister of Economy (see recital (17)), and it is based on national laws (see recital (15)). Since the amended scheme consists of a compensation for a part of the levy (recitals (19) and (17)), Slovakia is foregoing State resources by granting such aid.. Therefore, the amended scheme constitutes State aid within the meaning of Article 107(1) TFEU, for the reasons set out in recitals (26) to (35) of the initial Decision.

3.2. Compatibility of the aid

- (45) The Commission has assessed the compatibility of the measure on the basis of Article 107(3)(c) TFEU. The amended scheme provides aid to EIUs in the form of reduction in a levy on electricity consumption used to finance electricity production from RES and it aims at mitigating (i) the risk of EIUs moving their activities outside the EU to locations where environmental disciplines are absent or less ambitious as the result of the increasing costs from the full payment of the RES levy as well as (ii) the adverse impacts on the environment. Therefore, the measure falls within the scope of the CEEAG. More specifically, it falls under the

⁽⁸⁾ OJ L 248, 24.9.2015, p. 9.

⁽⁹⁾ OJ L 140, 30.4.2004, p. 1.

category of aid in the form of reductions from electricity levies for energy-intensive users (see point 16(l) of the CEEAG).

- (46) The Commission has therefore assessed the amended scheme as support for EIUs under the specific compatibility criteria for aid in the form of reduction from electricity levies for EIUs, laid out in Section 4.11 of the CEEAG, which sets out the criteria for assessing the development of an economic activity, incentive effect, necessity, appropriateness, proportionality and competition impact of the aid, as well as the applicable general compatibility provisions in CEEAG Section.

3.2.1. *Positive condition: the aid must facilitate the development of an economic activity*

3.2.1.1. Contribution to the development of economic activity and incentive effect

- (47) Article 107(3)(c) TFEU provides that the Commission may declare compatible ‘*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*’. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activity of certain economic areas ⁽¹⁰⁾.
- (48) Furthermore, State aid can only be considered to facilitate an economic activity if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour towards the development of an economic activity pursued by the aid and if this change in behaviour would otherwise not occur without the aid ⁽¹¹⁾.
- (49) Point 400 of the CEEAG sets out that ‘*[f]or certain economic sectors which are particularly exposed to international trade and rely heavily on electricity for their value creation, the obligation to pay the full amount of levies on electricity consumption which finance energy and environmental policy objectives can heighten the risk of activities in these sectors moving outside the Union to locations where environmental disciplines are absent or less ambitious. In addition, such levies increase the cost of electricity compared to the cost of direct emissions resulting from recourse to other energy sources and can therefore discourage the electrification of production processes, which is central to the successful decarbonisation of the Union economy. To mitigate those risks and adverse impacts on the environment, Member States can grant reductions from such levies for companies active in the economic sectors concerned*’.
- (50) Point 404 of the CEEAG states that ‘*[t]he location decision of the undertakings and the associated adverse environmental impact are dependent on the overall combined financial effect of levies from which reductions can be granted. Member States wishing to introduce a measure to be assessed under [Section 4.11 CEEAG] therefore have to include all such reductions in a single scheme and*

⁽¹⁰⁾ See judgment in case C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraphs 20 and 24.

⁽¹¹⁾ See in that sense Section 3.1.2 of the CEEAG, as well as the *Hinkley* judgment (C-594/18 P, *Austria v Commission*, EU:C:2020:742, paragraphs 20 and 24).

inform the Commission of the cumulative effect of all eligible levies and all reductions proposed’.

- (51) The notified measure applies only to economic sectors listed in Annex 1 to the CEEAG, which are particularly exposed to international trade and that rely heavily on electricity for value creation, as explained in recitals (16). Therefore, the notified measure aims to contribute to the development of the economic sectors listed in Annex 1 to the CEEAG.
- (52) The Slovak authorities indeed submitted that the amended scheme aims to minimise the carbon leakage risk and shift in production outside the Union, where environmental standards may be less stringent (recital (13)). It will contribute to the development of certain economic sectors particularly exposed to international trade and which rely heavily on electricity for value creation (recital (13)). In the absence of the proposed amended scheme, the obligation to pay the full RES levy could have negative economic consequences for EIUs and may lead to relocating electro-intensive production and decrease public support for decarbonisation policies (recital (13)).
- (53) Reduction is granted only on RES levy, which finances support to renewable sources (see recital (19)). The measure is thus limited to levies on electricity consumption that finance energy and environmental policy objectives, which do not reflect part of the cost of providing electricity to the beneficiaries in question, in line with point 403 of the CEEAG.
- (54) In line with point 404 of the CEEAG, Slovakia has informed the Commission of the cumulative effect of all eligible levies and all reductions proposed, showing that, in the absence of the amended scheme, the economic burden of the full RES levy on the targeted undertakings would be significant (recital (20)). The amended scheme thus reduces the risk, compared to the counterfactual scenario, that the costs linked to the RES levy entail the relocation of eligible EIUs to areas or countries where these costs are not incurred at all or are not at such an intensity.
- (55) The Slovak authorities confirmed that all levy reductions to be granted on the basis of Section 4.11 of the CEEAG are covered by the amended scheme and that possible future levy reductions falling within the scope of this section will be notified as a further amendment to the amended scheme (recital (22)), in line with point 404 of the CEEAG.

3.2.1.2. No breach of any relevant provision of Union law

- (56) According to point 33 CEEAG, if the supported activity, or the aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entail a non-severable violation of relevant Union law, the aid cannot be declared compatible with the internal market ⁽¹²⁾.
- (57) In the present case, Slovakia confirmed that the amended scheme does not, by itself, by the conditions attached to it, or by its financing method, constitute a non-severable violation of Union law (recital (25)).

⁽¹²⁾ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

- (58) Based on the information provided by the Slovak authorities, the Commission has no indications of a possible breach of any relevant provision of Union law that would prevent the amended scheme from being declared compatible with the internal market. Therefore, the Commission considers that the requirements of point 33 CEEAG are fulfilled.

3.2.1.3. Conclusions

- (59) The Commission, therefore, concludes that the amended scheme fulfils the first (positive) condition of the compatibility assessment, i.e., that the aid facilitates the development of an economic activity pursuant to the requirements set out in CEEAG Sections 3 and 4.11.

3.2.2. *Negative condition: the aid cannot unduly affect trading conditions to an extent contrary to the common interest*

3.2.2.1. Positive effects of the aid

- (60) The amended scheme will contribute to the development of certain economic sectors particularly exposed to international trade and which rely heavily on electricity for value creation (recitals (13) and (52)). In doing so and in line with the objectives pursued by Slovakia, it also mitigates the environmental impact of the shift of production in locations outside the EU with lower environmental disciplines (recitals (13) and (51)).

3.2.2.2. The need for State intervention and eligibility

- (61) Point 402 of the CEEAG provides that *‘the Commission has used appropriate measures to identify those sectors which are particularly exposed to the risks mentioned in point 400’*, namely the risk of activities in such sectors moving outside the Union to locations where environmental disciplines are absent or less ambitious. Point 405 of the CEEAG provides that aid can only be granted to undertakings operating in sectors at risk and significant risk of relocation outside the EU, where environmental disciplines are less ambitious. Sectors meeting these eligibility criteria are listed in Annex 1 of the CEEAG.
- (62) The Commission notes that the amended scheme limits eligibility to undertakings operating in the sectors “at risk” and “at significant risk” of relocation as listed in Annex 1 to the CEEAG (recital (27)). In particular, the Slovak authorities have confirmed that the list of eligible sectors in Annex I of the Decree of the Ministry of Economy of the Slovak Republic No. 106/2019 is identical to Annex I of the CEEAG (recital (16)). The amended scheme therefore complies with point 405 CEEAG.
- (63) In the initial Decision, as detailed in recitals (41)-(45), the Commission concluded that the eligibility requirements of the initial measure are objective, transparent, and do not discriminate between undertakings in a similar factual situation. The amended scheme maintains the same eligibility requirements and the Commission therefore considers that it also complies with point 407 of the CEEAG.
- (64) As set out in recital (29), no aid will be granted to undertakings that:

- (a) Are in difficulty in accordance with the provisions of the Commission Guidelines on State aid for rescuing and restructuring non-financial enterprises in difficulty; or
 - (b) Are subject to an outstanding recovery order following a previous decision by the European Commission declaring an aid illegal and incompatible with the internal market.
- (65) The Commission notes that these requirements reflect the conditions of points 14 and 15 of the CEEAG, which are therefore complied with.
- (66) On the basis of these elements, the Commission considers that the notified scheme is necessary to mitigate the carbon leakage risk of the eligible undertakings.

3.2.2.3. The appropriateness of the aid

- (67) Point 403 of the CEEAG states that “*Member States may grant reductions from levies on electricity consumption which finance energy and environmental policy objectives. This includes levies financing support to renewable sources or to combined heat and power and levies financing social tariffs or energy prices in isolated regions. Section 4.11 does not cover levies which reflect part of the cost of providing electricity to the beneficiaries in question*”.
- (68) Reductions are granted only on part of the charges financing of the support for the production of electricity from RES paid by EIUs as described in recital (19). In particular, the Commission notes that the levy is intended to cover the financing needs of energy and environmental policy objectives. The scheme is thus limited to levies in line with point 403 of the CEEAG.
- (69) As explained in recitals (54) and (55), the amended scheme complies with points 403 and 404 of the CEEAG.
- (70) Moreover, point 413 of the CEEAG states that “*Member States can grant the aid in the form of a reduction in levies, as a fixed annual compensation amount (refund), or as a combination of the two ⁽¹³⁾. Where the aid is granted in the form of a reduction in levies, an ex post monitoring mechanism needs to be put in place to ensure that any over-payment of aid will be repaid before 1 July of the following year. Where the aid is granted in the form of a refund, it must be calculated on the basis of the observed levels of electricity consumption and, if applicable, the gross value added over the period of time during which the eligible levies were applied*”.
- (71) As explained in recital (21), the aid is granted in the form of a combination of a refund and a reduction in levies as it is calculated on the basis of the observed levels of electricity consumption and, the gross value added over the period of

⁽¹³⁾ The use of fixed annual compensations (refunds) has the advantage that undertakings benefitting from the aid face the same increase in the marginal cost of electricity (i.e. the same increase in the cost of electricity for every extra MWh consumed), thereby limiting potential distortions of competition within the sector.

time during which the eligible levies were applied. Therefore, the measure complies with point 413 of the CEEAG.

- (72) It follows that the aid provided and the type of aid chosen for the amended scheme is an appropriate instrument to support the targeted economic activity.

3.2.2.4. The proportionality of the aid, including cumulation

- (73) Point 408 of the CEEAG provides that, in order for the aid to be proportionate, beneficiaries from sectors “at significant risk” and from sectors “at risk” shall pay respectively at least 15% and 25% of the costs generated by the electricity levies which a Member State includes in its scheme. Moreover, such reductions must not result in a levy below 0.5 EUR/MWh.
- (74) The Commission notes that, in line with point 408 CEEAG, under the measure, , beneficiaries from sectors “at significant risk” and from sectors “at risk” shall pay respectively at least 15% and 25% of the levies (recital (37)) and such reductions may not, in any event, result in a levy below 0.5 EUR/MWh (recital (38)).
- (75) On the basis of recitals (73)-(74), the Commission considers that the aid granted under the amended scheme complies with point 408 of the CEEAG and is, therefore, proportionate.
- (76) As regards cumulation, point 56 of the CEEAG explains that when aid under one measure is cumulated with aid under other measures, Member States must specify the method used to ensure that the total amount of aid for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under the CEEAG.
- (77) The Slovak authorities declare that aid under the amended scheme can be cumulated, provided that the total amount of aid for a project or activity does not lead to overcompensation or exceed the maximum aid amount allowed under the CEEAG (recital (39)). Therefore, the Commission considers that the conditions in point 56 of the CEEAG are fulfilled.

3.2.2.5. Energy audits and management systems

- (78) Point 414 of the CEEAG sets out that Member States “*must commit to verifying that the beneficiary complies with its obligation to conduct an energy audit within the meaning of Article 8 of Directive 2012/27/EU*”.
- (79) Point 415 of the CEEAG provides that “[t]he Member State must also commit to monitoring that beneficiaries required to conduct an energy audit under Article 8(4) of Directive 2012/27/EU do one or more of the following: (a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate; (b) reduce the carbon footprint of their electricity consumption, so as to cover at least 30% of their electricity consumption from carbon-free sources; (c) invest a significant share of at least 50% of the aid amount in projects that lead to substantial reductions of the installation’s greenhouse gas emissions; where applicable, the investment should lead to reductions to a level well below the relevant benchmark used for free allocation in the Union ETS”.

- (80) In the present case, in line with point 414 of the CEEAG, Slovakia commits to verifying that the beneficiary complies with its obligation to conduct an energy audit within the meaning of Article 8 of Directive 2012/27/EU (recital (32)). In particular, the amended scheme requires beneficiaries to undertake an energy audit either as a stand-alone energy audit or within the framework of a certified Energy Management System or Environmental Management System, within the meaning of Article 8 of Directive 2012/27/EU (recital (32)). The Commission thus considers that the amended scheme complies with point 414 of the CEEAG.
- (81) Moreover, in line with point 415 of the CEEAG, Slovakia committed to monitoring that beneficiaries required to conduct an energy audit under Article 8(4) of Directive 2012/27/EU do the following: (a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate; (b) reduce the carbon footprint of their electricity consumption, so as to cover at least 30% of their electricity consumption from carbon-free sources (recital (34)).
- (82) Furthermore, the Commission notes that in line with point 415 of the CEEAG the amended scheme requires compliance with the first and second alternative condition of point 415 CEEAG as follows (as outlined in recitals (34) and (35)):
- (a) the verification of the obligation to implement the recommendations set out in the energy audit report through submission of the energy audit and the reduction of the energy demand. The applicant will have to prove that the recommended investments were carried out via the proof of payment through accounting documents or contracts showing the basis for the actions taken as outlined in recital (35)(a).
 - (b) the verification of the obligation to reduce the carbon footprint of their electricity consumption is at the time of submission of the application through evidence from renewable energy production facilities at or near the site of operation, or through carbon-free energy purchase agreements or guarantees of origin as outlined in recital (35)(b).
- (83) In addition, as explained in recital (36), the Slovak authorities explained that the demonstration of fulfilment of the conditions will take place on an annual basis and that aid under the amended scheme can be provided to the beneficiary only if the aid recipient meets the criteria set out in the amended scheme. In case the aid was provided without authorization, the undertaking concerned will repay the aid received including interest according to the relevant legal regulations (recital (31)).
- (84) Therefore, the Commission considers that the fulfilment of the requirements described in recital (34) is proven and enforced in an appropriate way, and monitored in a reasonable period of time.
- (85) Therefore, the Commission considers that the measure fulfils the conditions set out in points 414 and 415 of the CEEAG.

3.2.2.6. Avoidance of undue negative effects of the aid on competition and trade

- (86) Point 407 of the CEEAG provides that *“Should a Member State grant support only to a subset of eligible beneficiaries or grant different levels of reductions to eligible beneficiaries falling within the same category of either point 405(a) or (b), it must demonstrate that decision is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted, in principle, the same way for all eligible beneficiaries in the same sector if they are in a similar factual situation”*.
- (87) In light of the consideration in recitals (62)-(63), the Commission considers that the eligibility requirements and the modulation of the aid granted across beneficiaries – essentially based on the electro-intensiveness of the beneficiary – are based on objective, non-discriminatory and transparent conditions and they ensure the minimization of distortions of competition and trade, in line with point 407 of the CEEAG..
- (88) Slovakia, by observing compliance with the eligibility and proportionality conditions of Section 4.11 of the CEEAG, ensures that distortions on competition and trade are kept in check.
- (89) Furthermore, point 70 of the CEEAG explains that the Commission will approve measures under the CEEAG for a maximum period of 10 years. As stated in recital (18), the duration of the amended scheme is until 31 December 2030. Therefore, the requirement in point 70 of the CEEAG is respected.
- (90) The Commission, therefore, considers that aid granted under the amended scheme avoids undue negative effects on competition and trade.

3.2.2.7. The transparency of the aid

- (91) The Commission notes that the Slovak authorities will ensure compliance with the transparency requirements laid down in points 58 to 61 of the CEEAG (recitals (40)-(43)).

3.2.3. *Weighing up the positive and negative effects of the aid*

- (92) Point 402 of the CEEAG provides that *‘[t]he Commission has used appropriate measures to identify those sectors which are particularly exposed to the risks mentioned in point 400 and it has introduced proportionality requirements taking into consideration that, if the levy reductions are too high or awarded to too many electricity consumers, the overall funding of support to energy from renewable sources might be threatened and distortions of competition and trade may be particularly high.’*
- (93) Point 75 of the CEEAG provides that *‘[t]he Commission will generally look favourably at measures’ features proposed by Member States to facilitate the participation of SMEs and, where relevant, renewable energy communities in competitive bidding processes, provided that the positive effects of ensuring participation and acceptance outweigh the possible distortive effects.’*

- (94) Point 76(c) of the CEEAG provides as a further factor to be taken into account to determine the overall balance of certain categories of aid schemes in certain cases *‘a requirement that aid measures be subject to a time limitation’*.
- (95) The Slovak authorities, by observing compliance with the eligibility and proportionality conditions of Section 4.11 of the CEEAG ⁽¹⁴⁾, ensure that both distortions on competition and trade and negative effects remain limited.
- (96) Moreover, in accordance with point 75 of the CEEAG, the Commission notes that the measure is open to all undertakings at ‘risk’ and at ‘significant risk’ of relocation and facilitates the participation of SMEs (recital (27)).
- (97) Further, in accordance with point 76(c) of the CEEAG, the amended scheme is subject to a time limitation because the reduction from the RES levy is time limited to six years (recital (17)).
- (98) Furthermore, the amended scheme helps the sectors which rely heavily on electricity for their value creation to decrease the risk of moving outside the EU to locations where environmental disciplines are absent or less ambitious (recital (13)). Beneficiaries are required to undertake an energy audit as well as prove either (i) implement all measures identified in the energy audit report, or (ii) have a certain share of RES electricity consumption (recital (34)).
- (99) The Commission concludes that the positive effects of the amended scheme outweigh the negative effects on the internal market.

3.2.4. Conclusion on the compatibility of the amended scheme

- (100) The Commission concludes that the aid facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers the aid compatible with the internal market based on Article 107(3)(c) TFEU, as interpreted under the relevant points of the CEEAG.

4. AUTHENTIC LANGUAGE

- (101) As mentioned in recital (4), Slovakia has accepted to have the decision adopted and notified in English. The authentic language will, therefore, be English.

5. 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)(c) of the Treaty on the Functioning of the European Union.

⁽¹⁴⁾ See sub-section 3.2.2.2 for compliance with the eligibility conditions of Section 4.11 of the CEEAG and sub-section 3.2.2.4 for compliance with the proportionality requirements of Section 4.11 of the CEEAG.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President