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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State Aid SA. 49509 – Slovakia - Preferential taxes for biofuels

Sir,

1. PROCEDURE

- (1) Following pre-notification contacts, by an electronic notification dated 8 November 2017, registered at the Commission on the same date, Slovakia has notified the above-mentioned aid measure. Slovakia submitted further information on 7, 11 and 12 December 2017.
- (2) On 23 November 2017 the Slovak authorities provided a language waiver and agreed that the decision will be adopted and notified in English as authentic language.

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2. DETAILED DESCRIPTION OF THE AID

2.1. Objective, form of aid, beneficiaries and legal basis

- (3) The notified aid measure targets to improve the environmental protection by increasing the production of renewable energy, via the production of sustainable biofuels from biomass. It replaces the existing biofuels support scheme approved by the Commission on 19 July 2007 by Commission decision C (2007) 3562.¹
- (4) The aid takes the form of excise duty reductions applicable to fuel blends meeting the conditions for sustainability² and containing a required minimum content of biofuel.
- (5) The applicable reduced excise duty rate for petrol blends³ with the required biofuel content meeting the sustainability criteria is EUR 514/1000 l for the years 2018-2020. The applicable reduced excise duty rate for diesel blends⁴ with the required biofuel content meeting the sustainability criteria is EUR 368/1000 l for the years 2018-2020.
- (6) The level of the excise duty reduction from 1 January 2021 has not yet been set by the Slovak Republic. The Slovak Republic commits that the level of the excise duty reduction for the period concerned will be set in accordance with the requirements of Article 16 of the Council Directive 2003/96/EC (the Energy Taxation Directive)⁵. The Slovak Republic therefore commits that the level of the excise duty reduction will not be higher than the share of the biogenic substance in the fuel blend. The level of the excise duty reduction will be fixed in line with principles set in recitals (22) and (23).
- (7) The biofuels eligible for excise duty reductions consist of ethyl tert-butyl ether or a blend of ethyl tert-butyl ether and bioethanol and biodiesel. These are first and second generation biofuels, satisfying the following criteria:

I. For petrol blends:

CN codes 2710 12 41, 2710 12 45, 2710 12 49 may be taxed at EUR 514/1000 l, if these contain:

a) a bioethanol component:

¹ OJ C/213/2007.

² Outlined in the Decree of the Ministry of Environment of the Slovak Republic N 271/2011 Coll., establishing sustainability criteria and targeting greenhouse gas emission reductions from motor fuels. The Decree transposes the sustainability requirements set out in Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16–62).

³ See recital (5)I. of the current decision.

⁴ See recital (5) II of the current decision.

⁵ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p.51).

- from January 1, 2018 of 5,9 % or more measured to the accuracy laid down in the applicable technical standard;⁶
 - from January 1, 2019 of 6,2 % or more measured to the accuracy laid down in the applicable technical standard;
 - from January 1, 2020 of 7,4 % or more measured to the accuracy laid down in the applicable technical standard including the biogenic substance⁷ of 0,5 % or more measured to the accuracy laid down in the applicable technical standard;
- b) a biogenic substance:⁸
- from January 1, 2021 of 1 % or more measured to the accuracy laid down in the applicable technical standard;
 - from January 1, 2022 of 1,5 % or more measured to the accuracy laid down in the applicable technical standard.

II. For diesel blends:

CN codes 2710 19 43, 2710 19 46, 2710 19 47, 2710 19 48, 2710 20 11, 2710 20 15, 2710 20 17 and 2710 20 19 may be taxed at EUR 368/1 000 l if these contain:

- a) from January 1, 2018 to December 31, 2020:
- biodiesel content of 6,9 % or more measured to the accuracy laid down in the applicable technical standard, or
 - biodiesel of 6,4 % or more measured to the accuracy laid down in the applicable technical standard including the biogenic substance⁹ of 0,5 % or more measured to the accuracy laid down in the applicable technical standard;
- b) from January 1, 2021 the biogenic substance¹⁰ accounting for 1% or more measured to the accuracy laid down in the technical standard.
- (8) Imported sustainable biofuels satisfying the criteria outlined in recitals (4) and (7) above are also eligible for support.

⁶ All technical standards referred to in recital (5) are those outlined in STN EN ISO 4259 Petroleum products.

⁷ Referred to in Article 7 (4) of the Act No 268/2017 Coll. of 11 October 2017, amending and supplementing Act No 98/2004 on excise duty on mineral oil, as amended, and amending and supplementing Act No 309/2009 on the promotion of renewable energy sources and high-efficiency cogeneration and amending certain acts, as amended. These are biofuels produced from materials outlined in Annex no. 1a of Act No 309/2009 Coll. Annex no. 1a of Act No 309/2009 Coll. is the transposition of Annex No IX of Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources.

⁸ See footnote 7.

⁹ See footnote 7.

¹⁰ See footnote 7.

- (9) The Slovak authorities explained that some of the first generation biofuels that will be granted aid are food-based ones. Aid to these food-based biofuels will be limited to 31 December 2020. The Slovak authorities have further confirmed that food-based biofuels will benefit from aid under the scheme only if these are produced in plants that started operation before 31 December 2013 and are not fully depreciated. As of 1 January 2021 until 31 December 2023, aid can be granted only to biofuels containing biogenic substances (non-food based biofuels) as defined in recital (7).
- (10) Slovakia does not apply a quota system, blending obligation or any other system with similar effects for blended biofuels.
- (11) Biofuel blends not satisfying the sustainability criteria and not containing the required minimum content of biofuel will be taxed at the standard excise duty rate.
- (12) Slovakia will amend the standard excise duty rates for petrol and diesel as following¹¹:
- a) on petrol falling within the CN codes 2710 12 41, 2710 12 45, 2710 12 49
 - for 2018, EUR 546/1 000 l,
 - for 2019, EUR 547/1 000 l,
 - for 2020, EUR 555/1 000 l
 - b) on diesel falling within the CN codes 2710 19 43, 2710 19 46, 2710 19 47, 2710 19 48, 2710 20 11, 2710 20 15, 2710 20 17 and 2710 20 19
 - as of 2018, EUR 393/1000 l.
- (13) The national legal basis of the notified scheme is:
- a) Act No 358/2015 Coll. regulating certain relations in the field of State aid and de minimis aid and amending certain laws;
 - b) Act No 98/2004 on excise duty on mineral oil, as amended by Act No 268/2017 Coll. of 11 October 2017;
 - c) Implementing provisions: Paragraph 7 of Act No 268/2017 Coll. of 11 October 2017, amending and supplementing Act No 98/2004 on excise duty on mineral oil, as amended, and amending and supplementing Act No 309/2009 on the promotion of renewable energy sources and high-efficiency cogeneration and amending certain acts, as amended.

2.2. Budget, duration, cumulation, financing and granting authority

- (14) The notified aid measure will cover a period of six years as of 2018, starting on the first day of the calendar month following the Commission's approval of the notified scheme. The scheme will expire on 31 December 2023.

¹¹ As indicated in the communication provided by Slovak authorities on 12 December 2017.

- (15) The foreseen total budget is estimated at ca. EUR 607.08 million.
- (16) The notified aid measure is fully financed from the State budget in the form of foregone tax revenues.
- (17) Slovakia has confirmed that the notified aid measure in question will not be combined with other forms of State aid within the meaning of Article 107(1) of the Treaty or with other forms of Union financing for the same eligible costs.
- (18) The granting authority is the Ministry of Finance of the Slovak Republic.

2.3. Production costs and aid levels

- (19) The Slovak authorities submitted the following data comparing the level of first generation biofuel production costs and the actual market prices of fossil fuel – see Tables 1a and 1b below.

Table 1a Production Costs of petrol blends (2016)

ETBE/1 000 litres	EUR
A) Bioethanol	[...]
A) C4	[...]
B) Labour	[...]
C) Capital repayments	[...]
D) Processing of semi-finished goods (energy, chemicals, catalysts)	[...]
E) Other costs (maintenance and any other costs)	[...]
F) Sale price of by-products (C4raf)	[...]
G) Production costs (sum A to F)	[...]
H) Profit margin (6 %) = (G x 0.06)	[...]
I) Total before tax (G + H)	[...]
J) Reduced excise duty rate ⁽¹⁾	[...]
K) Energy coefficient of conversion (0.462264) ⁽²⁾ x (I + J)	[...]
L) Price of biofuels before VAT (I + J + K)	[...]
M) Price of fossil fuel, including excise duty and excluding VAT	[...]
N) Difference (L - M)	[...]

⁽¹⁾ Bioethanol in ETBE is subject to excise duty on petrol and so coefficient = 1

⁽²⁾ $(31.21.2 - 1) \times 100$ [%] cited in D. Chiamonti ETA December 2003

Source: Slovak authorities

Table 1b Production costs of diesel blends in EUR (2016)

FAME/1 000 litres	EUR
A) Material	[...]
B) Labour force	[...]
C) Capital repayments	[...]
D) Processing of semi-finished goods	[...]
E) Transport costs	[...]
F) Sale price of by-products	[...]
G) Production costs (sum A to F)	[...]
H) Profit	[...]
I) Total before tax (G + H) in EUR/1 000 l	[...]
J) Reduced excise duty rate for biofuels (EUR/1 000 l)	[...]
K) Energy coefficient of conversion	[...]
L) Price of biofuels before VAT on I (I + J + K)	[...]
M) Reference price value of fossil fuels, including excise duty and excluding VAT on I	[...]
Difference (L - M)	[...]

Source: Slovak authorities

- (20) The aid levels are established taking into account biofuel production costs, market prices of biofuels and fossil fuels.
- (21) Currently, production costs data for second generation biofuels are not available since they are not sold on the Slovak market yet. Nevertheless, bearing in mind

their advanced nature it is expected such production costs for advanced second generation biofuels to largely exceed those of first generation biofuels.

- (22) The Slovak authorities have committed to limiting the amount of aid to all types of biofuels benefiting under the notified scheme to the difference between the total levelised costs of producing energy (LCOE) from biofuels and the market price of the form of energy concerned, in particular the market price of fossil fuels. The LCOE may include a return on capital of a maximum of 6 %.
- (23) The Slovak authorities also declared that they will update the LCOE of advanced biofuels regularly, at least every year, and will make public the applicable aid by litre of fuel.

2.4. Transparency and other elements

- (24) Slovakia has committed to complying with the transparency provisions of the Guidelines on State aid for environmental protection and energy 2014-2020 ("EEAG")¹².
- (25) Slovakia has committed to ensuring that no firm in difficulty¹³ can receive aid under the notified scheme.
- (26) Slovakia has also confirmed that it would not grant aid to an undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.

3. ASSESSMENT OF THE AID

3.1. Existence of aid

- (27) In order for a measure to constitute State aid within the meaning of Article 107(1) TFEU it has to fulfil four conditions. Firstly, the aid is granted by Member State or through State resources. Secondly, the measure confers a selective advantage to certain undertakings or the production of certain goods. Thirdly, the measure must be liable to affect trade between Member States. Fourthly, the measure must distort or threaten to distort competition in the internal market.
- (28) Excise tax reduction is granted from State resources – foregone tax revenues of the State and is imputable to the Slovak State. The aid granted by the State to biofuel producers confers on them an advantage by off-setting part of their costs. Biofuels are traded among Member States and compete with other types of fuels (e.g. fossil fuels). Therefore, the measure is likely to affect trade between Member States and to distort competition. It follows that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the aid

- (29) Slovakia has fulfilled its obligation under Article 108(3) of the TFEU by notifying the support scheme prior to its implementation. The legislative acts (see recital (13) above) serving as the legal basis of the support scheme have already

¹² OJ C 200, 28.6.2014, p. 1.

¹³ See point 20 of the Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1–28).

been adopted at the time of adoption of the current decision. As evident from recital (14) Slovakia will implement the legal provisions relevant to the aid scheme, once the latter has been formally approved by the Commission.

3.3. Compatibility of the aid

- (30) The notified support scheme concerns operating aid to renewable installations (biofuel producers) and as such falls within the scope of the EEAG.
- (31) The Commission has thus assessed the compatibility of the support scheme according to Article 107(3)(c) in light of the EEAG, in particular Sections 3.2 and 3.3.

3.3.1. Objective of common interest

- (32) According to paragraph (31) of the EEAG, Member States need to define precisely the objective of common interest pursued and explain the expected contribution of the scheme to that objective.
- (33) The aim of the notified scheme is to reinforce support aimed at improving the environmental protection by increasing the production of renewable energy, in particular the production of biofuels.
- (34) The Commission considers that the notified modification is aimed at an objective of common interest in accordance with Article 107(3) of the Treaty.

3.3.2. Need for State aid and appropriate instrument

- (35) According to paragraph (36) of the EEAG, aid is needed if the Member State demonstrates that the aid effectively targets a (residual) market failure which is not addressed by other policy measures. As far as the deployment of renewable energy is concerned, it is presumed in paragraph (115) of the EEAG that a residual market failure remains, which can be addressed through the granting of aid for renewable energy.
- (36) According to paragraph (116) of the EEAG, in order to allow Member States to achieve their national energy and climate change targets, the Commission presumes aid to energy from renewable sources to be appropriate and have limited distortive effects provided all other compatibility conditions are met.
- (37) Due to the higher costs of producing and using biofuels, it is likely that there would be insufficient incentive to produce these fuels in the quantities needed to achieve the applicable target of 0.5 % of the energy content of advanced biofuels in the Slovakian market. Aid is therefore necessary.
- (38) According to paragraph (113) of the EEAG, operating aid to food-based biofuels can only be granted until 2020. Moreover, such aid can be granted only to plants that started operation before 31 December 2013 until the plant is fully depreciated. The notified support scheme benefits food-based biofuels by granting operating aid to their producers. As stated in recital (9) above, Slovakia has limited the granting of the aid to food-based biofuels until 31 December 2020. Only plants that started operation before 31 December 2013 are eligible to receive aid until they are fully depreciated. In view of that, the conditions of paragraph

(113) of the EEAG are complied with. As of 1 January 2021 until the end of the scheme (31 December 2023), aid will be granted only to biofuels containing biogenic substances (non-food based biofuels) as defined in recital (7).

- (39) The Slovak authorities have confirmed that the biofuels supported by the notified tax scheme would not be subject to a quota system, blending obligations or other systems with a similar effect during the aid period. Paragraph (114) of the EEAG is therefore complied with.

3.3.3. Incentive effect

- (40) In line with paragraph (49) of the EEAG, the incentive effect occurs if the aid induces the beneficiary to change his behaviour towards reaching the objective of common interest which it would not do without the aid.
- (41) This is the case in particular where the costs for producing renewable energy exceed the market price and the aid can help reduce these environmental extra costs. As shown in Tables 1a and 1b, the costs for producing blended biofuels are higher than the market price of the equivalent fossil fuels. Since the tax reductions will encourage the use of first and second generation biofuels, they will also incentivise the production of these biofuels. The aid will therefore have an incentive effect according to paragraph (49) of the EEAG.

3.3.4. Proportionality

- (42) According to paragraph (69) of the EEAG, environmental aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection objective aimed for.
- (43) Paragraph (131) of the EEAG establishes additional compatibility conditions regarding aid for energy from renewable sources other than electricity, namely:
- the aid per unit of energy does not exceed the difference between the total levelised costs of producing energy ("LCOE") from the particular technology in question and the market price of the form of energy concerned (paragraph (131) (a) of the EEAG);
 - the LCOE may include a normal return on capital. Investment aid is deducted from the total investment amount in calculating the LCOE (paragraph (131) (b) of the EEAG);
 - the production costs are updated regularly, at least every year (paragraph (131) (c) of the EEAG);
 - aid is only granted until the plant has been fully depreciated according to normal accounting rules (paragraph (131) (d) of the EEAG).
- (44) As explained in recitals (22) and (23), Slovakia has committed to limiting the aid to the difference between the costs of producing biofuels, including a 6 % rate of return, and the price of mineral fuels. It follows from the Tables 1a and 1b that the aid will indeed not exceed the difference between the costs of the biofuels concerned and the market price of the corresponding fossil fuels. The Slovak authorities further committed to updating, at least annually, the LCOE of biofuels to avoid any overcompensation. That guarantees that aid is limited to the minimum and the condition of paragraph (131) (a) of the EEAG is complied with.

- (45) As explained in recital (17) above, biofuel producers do not receive any other type of aid for the same eligible costs.
- (46) The aid guarantees a 6 % rate of return to biofuel producers, which could be considered a normal rate of return as it is within the ranges of the costs of capital typically observed for renewable installations in Europe.¹⁴
- (47) It follows from the facts described in recitals (45) and (46) above that the aid under the notified modification is in line with paragraph (131) (b) of the EEAG.
- (48) As stated in recital (23), Slovakia has committed to updating the production costs on a yearly basis and to grant aid only to biofuels originating from biogas plants that have not been fully depreciated under normal accounting standards. Thus the requirements of paragraph (131) (c) and (d) are respected.
- (49) The confirmation of Slovakia not to combine the aid measure with other forms of State aid within the meaning of Article 107(1) of the Treaty or with other forms of Union financing for the same eligible costs (see recital (17) above) is in line with the cumulation requirements of section 3.2.5.2 of the EEAG.
- (50) Based on the above the Commission concludes that aid under the notified biofuel support scheme is proportional.

3.3.5. *Compliance with Union Tax Law*

- (51) As the notified measure concerns excise duty reductions, the Commission also assessed its compliance with the Energy Taxation Directive.¹⁵
- (52) Article 16(1) of the Energy Taxation Directive allows Member States to apply a reduced rate of taxation on biofuels. Article 16(2) limits the reduction in taxation to the part of the product that actually derives from biomass. On the basis of the information submitted by the Slovak authorities and reported in recitals (5), (6), (7), (11), (12) and (19), this is the case under the assessed measure as the level of the tax reduction will not be greater than the part of the blended fuel that derives from biomass.
- (53) In case of petrol, the level of reduction will amount to 5.86 % in 2018 (with the biofuel share amounting to at least 5.9 %), 6.03 % in 2019 (with the biofuel share amounting to at least 6.2 %) and 7.39 % in 2020 (with the biofuel share amounting to at least 7.4 %). In case of diesel, the level of reduction will amount to 6.36 % (with the biofuel share amounting to at least 6.4 %). For the period following 1 January 2021, the levels of the standard excise duty rates and of the excise duty reductions have not yet been set by the Slovak Republic. The Slovak Republic however committed, as mentioned in recital (6), to setting the level of the preferential tax for the period concerned in accordance with the requirements of Article 16 of the Energy Taxation Directive.

¹⁴ By decision C(2016) 250 final of 25.01.2016 in case SA.33313 – Lithuania – Excise duty reduction for biofuels, the Commission approved a rate of return of 5 %. A rate of return of up to 5 % was also approved in decision C(2017) 6169 final of 14.09.2017 in case SA.48069 (2017/N) – Sweden - Tax reductions for pure and high-blended liquid biofuels.

¹⁵ See footnote 5.

- (54) Furthermore, the notified measure under assessment also complies with Article 16(3) of the Energy Taxation Directive. As was concluded in recital (44) above, the aid will not entail overcompensation of biofuel producers. Moreover, the Slovak authorities have committed to limiting the amount of aid to the difference between the LCOE of the biofuels and the market price of fossil fuels as well as to monitoring the biofuels' LCOEs at least on an annual basis.
- (55) As stated in recital (8) above, the reduced rate of excise duty is applicable regardless of the origin of the biofuels.
- (56) Accordingly, the notified measure is compliant with the Energy Taxation Directive.

3.3.6. Distortion of competition and balancing test

- (57) According to paragraph (116) of the EEAG, the Commission presumes aid to energy from renewable sources to have limited distortive effects provided the relevant conditions are met. As illustrated above the Commission considers that these conditions are met.
- (58) Consequently, the Commission concludes that the distortion of competition caused by the aid under the notified support scheme is balanced by the positive contribution towards common policy objectives.

3.3.7. Transparency

- (59) According to paragraph (104) of the EEAG, Member States have the obligation to ensure the transparency of the aid granted, by publishing certain information on a comprehensive State aid website. In line with paragraph (106) of the EEAG, Member States are requested to comply with this obligation as of 1 July 2016.
- (60) Slovakia has provided a commitment to respect the transparency requirements set out in section 3.2.7 of the EEAG as described in recital (24) above.

3.3.8. Conclusion with regard to the compatibility of the notified measure

- (61) In light of the above assessment, the Commission concludes that the notified biofuel support scheme in Slovakia is compatible with the internal market on the basis of the EEAG.

4. CONCLUSION

- (62) 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) of the Treaty on the Functioning of the European Union.

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION