Subject: SA.43506 (2015/N) – Compensation of indirect CO₂ costs in Slovakia

Sir, /Madam,

1. **PROCEDURE**

(1) By electronic notification dated 5 November 2015, the Slovak Republic notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), a scheme to compensate undertakings for a share of their indirect emission costs, that is to say the costs resulting from the EU Emission Trading System (ETS) passed on in electricity prices. The notification followed pre-notification contacts, initiated by Slovakia in September 2014.

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2. DESCRIPTION OF THE MEASURE

2.1. Objective

(2) Slovakia intends to grant State aid to compensate electro-intensive industries that are most at risk of carbon leakage for increases in electricity prices resulting from the inclusion of the costs of greenhouse gas emissions due to implementation of the EU ETS. The Slovak authorities take the view that addressing the risk of carbon leakage serves an environmental objective, since the aid aims to avoid an increase in global greenhouse gas emissions due to shifts of production outside the Union, in the absence of a binding international agreement on reduction of greenhouse gas emissions.
2.2. **Legal basis, granting authority**

(3) The legal basis for the aid measure comprises: of the following:

1) Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 (C/2012 3230)\(^1\) – "the ETS Guidelines";


3) Act No 414/2012 on emission allowance trading, amending certain laws\(^3\);

4) Act No 231/1999 on state aid, as amended;

5) Act No 523/2004 on budgetary rules for the public administration, amending certain laws, as amended;

6) Act No 575/2001 on the organisation of government activities and the central state administration, as amended;

7) Act No 25/2006 on public procurement, amending certain laws, as amended;

8) Act No 431/2002 on accounting, as amended;

9) Act No 278/1993 on the administration of state property, as amended;

10) Act No 502/2001 on financial control and internal audit, amending certain laws, as amended.

(4) The authority granting the notified aid measure is the Environmental Fund (*Environmentálny fond*) supervised by the Ministry of the Environment of the Slovak Republic.

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\(^1\) OJ C 158, 05.06.2012, p. 4.

\(^2\) Article 10a(6)

\(^3\) Article 26(5)
2.3. Beneficiaries

(5) The beneficiaries are companies seated in the Slovak Republic provided that they meet the following two conditions:

a) They operate in a sector or subsector listed in the following table:

<table>
<thead>
<tr>
<th>NACE Code</th>
<th>Description of activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 27.42</td>
<td>Aluminium production</td>
</tr>
<tr>
<td>2. 14.30</td>
<td>Mining of chemical and fertiliser minerals</td>
</tr>
<tr>
<td>3. 24;13</td>
<td>Manufacture of other inorganic basic chemicals</td>
</tr>
<tr>
<td>4. 27.43</td>
<td>Lead, zinc and tin production</td>
</tr>
<tr>
<td>5. 18;10</td>
<td>Manufacture of leather clothes</td>
</tr>
<tr>
<td>6. 27.10</td>
<td>Manufacture of basic iron and steel and of ferro-alloys, including seamless steel pipes</td>
</tr>
<tr>
<td>7. 21.12</td>
<td>Manufacture of paper and paperboard</td>
</tr>
<tr>
<td>8. 24.15</td>
<td>Manufacture of fertilizers and nitrogen compounds</td>
</tr>
<tr>
<td>9. 27.44</td>
<td>Copper production</td>
</tr>
<tr>
<td>10. 24.14</td>
<td>Manufacture of other organic basic chemicals</td>
</tr>
<tr>
<td>11. 17.11</td>
<td>Spinning of cotton-type fibres</td>
</tr>
<tr>
<td>12. 24.70</td>
<td>Manufacture of man-made fibres</td>
</tr>
<tr>
<td>13. 13.10</td>
<td>Mining of iron ores</td>
</tr>
<tr>
<td>14. 24161039</td>
<td>Low Density Polyethylene (LDPE)</td>
</tr>
<tr>
<td>14. 24161035</td>
<td>Linear Low Density Polyethylene (LLDPE)</td>
</tr>
<tr>
<td>14. 24161050</td>
<td>High Density Polyethylene (HDPE)</td>
</tr>
<tr>
<td>14. 24165130</td>
<td>Polypropylene (PP)</td>
</tr>
<tr>
<td>14. 24163010</td>
<td>Polyvinyl Chloride (PVC)</td>
</tr>
<tr>
<td>14. 24164040</td>
<td>Polycarbonate (PC)</td>
</tr>
<tr>
<td>15. 21111400</td>
<td>The following subsector within the Manufacture of pulp sector (2111): Mechanical pulp</td>
</tr>
</tbody>
</table>

b) The eligible beneficiaries will have to bear a certain share of their indirect CO₂ costs for which no aid will be paid out. This retention will be operated by deducting from the total amount of aid a beneficiary can claim for all installations an amount of aid corresponding to the CO₂ costs of 1 GWh of electricity consumption per year and per installation. This can mean in practice that beneficiaries with small installations of less than 1 GWh of consumption per year will not receive any aid. The purpose of the retention is to limit the administrative burden in the processing of applications.

(6) In addition, the beneficiaries may not be:

a) Undertakings in difficulty;

**NACE rev.1.1:**
http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=LST_CLS_DLD&StrNom=NACE_1_1&StrLanguageCode=EN&StrLayoutCode=HIERARCHIC
b) Undertakings from which repayment of aid is sought on the basis of an earlier decision of the Commission;

c) Undertakings that have violated a prohibition on illegal employment;

d) Entities that do not perform any economic activity in those areas into which aid is directed under the notified aid measure.

2.4. Form of aid, budget and source of financing

(7) The aid measure will be provided in the form of a direct grant.

(8) The maximum volume of funds earmarked for the scheme for the years 2014 - 2020² is EUR 250 million. The granting authority will publish the amount of funds available for a calendar year on its website by 31 January of the calendar year in question.

(9) The aid measure will be financed through the proceeds from the sale of emission allowances in auctions.

2.5. Aid amount calculation

(10) The maximum aid amount payable per installation will be calculated according to the two formulae outlined in point 27 of the ETS Guidelines. Where electricity consumption efficiency benchmarks have been published the formula of point 27(a) applies. If no product-related electricity consumption efficiency benchmarks are published the formula of point 27 (b) applies.

(11) The measure applies the definitions of Annex I of the ETS Guidelines for all the elements of the two formulae. It applies the electricity consumption efficiency benchmarks defined in Annex III, as well as the maximum regional emission factor of Annex IV.

(12) The measure applies the aid intensity levels set out in point 26 of the ETS Guidelines.

(13) The Slovak authorities confirm that:

a) If an installation manufactures various eligible products, the electricity consumption for each product must be apportioned according to the respective tonnage of the production of each product in line with point 28 of the ETS Guidelines.

b) If an installation manufactures eligible and ineligible products, the maximum aid amount that can be paid is only calculated for those

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² Within a period of five years from the day of the hearing on the results of the relevant control, Article 2(4) of Act N°231/1999

² The validity of the scheme ends on 31 December 2020. Agreements on the provision of grants may be concluded with the aid recipient up to 31 December 2020. The payment of eligible expenditure ends on 31 December 2021.

products which are eligible for aid in line with point 29 of the ETS Guidelines.

(14) The Slovak authorities have stated that it will not be possible to receive aid from other schemes for the same costs.

2.6. Granting Methodology

(15) The aid within the scheme will be granted on an annual basis. Slovakia explains that a beneficiary may not submit more applications for compensation for the same installation in the same calendar year. Applications can be submitted in pursuance of call for application which will be announced every year separately, depending on available resources.

(16) Aid may be paid to the recipient in the year in which the expenditure is incurred or in the following year. If aid is paid in the same year in which the expenditure is incurred, the recipient will repay, by 30 June of the following year, any part of the grant in excess of the amount the recipient would have ordinarily received, by virtue of including in the calculation of the grant expenditure that was not ultimately incurred.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

(17) 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.

(18) The measure is funded directly from the State budget therefore it is considered to be granted from State resources. It confers an advantage to the beneficiaries by compensating for costs they would have incurred under normal market conditions. The aid is selective since it is granted only to undertakings active in certain sectors. These sectors are all exposed to international competition as noted in the ETS Guidelines\(^8\), making it likely the aid can affect trade between Member States and distort competition.

(19) Based on the above, the Commission considers that the scheme constitutes State aid within the meaning of Article 107 (1) TFEU.

3.2. Lawfulness of aid

(20) By notifying the scheme before its implementation, the Slovak Republic has fulfilled its obligation according to Article 108(3) TFEU. Slovakia also confirmed that no aid has been or will be granted until the approval of the Commission.

(21) Further, the Slovak authorities have committed to notifying any amendment that would constitute a modification of the present aid scheme, in particular in case the

\(^8\) Annex II of the ETS Guidelines
revenues from the sales of emission allowances in auction would lead to the increase of the initially set budget by more than 20%.

3.3. **Compatibility with the internal market**

(22) In 2012, the Commission adopted the ETS Guidelines, which spell out the conditions under which State aid that is granted with regard to the effects of the ETS may be deemed compatible with the internal market.

(23) The Commission has assessed the compatibility of the scheme notified by Slovakia with the internal market on the basis of Section 3.1 of the ETS Guidelines, which sets out the conditions for aid to undertakings in sectors and subsectors deemed to be exposed to a significant risk of carbon leakage due to EU ETS allowance costs passed on in electricity prices (aid for indirect emission costs).

3.3.1. **Objective and necessity of the aid**

(24) The notified aid falls within the scope of the ETS Guidelines as the objective of the aid is to prevent a significant risk of carbon leakage due to EU ETS allowance costs which is in line with point 24 of the ETS Guidelines.

(25) The beneficiaries of this aid measure are companies active in one of the sectors listed in Annex II of the ETS Guidelines in the Slovak Republic in line with point 25 of the ETS Guidelines (see recital Error! Reference source not found. above).

(26) The agreements in the notified scheme are open to all potential beneficiaries. This is therefore consistent with the underlying objective of section 3.1 of the ETS Guidelines on the prevention of a significant risk of carbon leakage.

(27) Hence, the Commission concludes that the aid is necessary to realise the scheme's well-defined objective of common interest.

3.3.2. **Proportionality**

(28) The measure applies the aid intensities and benchmarks of the ETS Guidelines. The maximum aid amount payable per installation is determined on the basis of the formulae spelled out in point 27 of the ETS Guidelines. The measure uses the definitions of Annex I and the values of Annex III and IV of the ETS Guidelines.

(29) The Slovak Republic confirmed that the aid will be granted only for compensation of the increased prices of electrical energy in relation to the inclusion of the costs of greenhouse gas emissions into electricity prices due to the introduction of the EU ETS. In order to do so, the contract for the delivery of electrical energy will be required to supplement the application.

(30) The maximum aid intensities will be 85% of the eligible costs incurred in 2013, 2014 and 2015, 80% of the eligible costs incurred in 2016, 2017 and 2018 and 75% of the eligible costs incurred in 2019 and 2020. This is in line with the maximum aid intensities set out in point 26 of the ETS Guidelines.

(31) The measure does not provide for full compensation, as this could remove the incentive to further reduce electricity consumption.
Concerning the threshold of 1 GWh per year and per installation explained in recital (5) b), the Slovak authorities state that the threshold’s purpose is to reduce the administrative burden of processing applications from and paying out small amounts of aid. In that respect, the electricity consumption threshold of 1 GWh per year and installation is an objective criterion. Moreover, the aid amounts subject to the retention should be relatively low. Indeed, if one calculates the hypothetical aid value of 1 GWh of electricity consumption, this results in a retention amount of approximately EUR 4,300 per installation\(^9\). Overall, this amount is relatively small compared with the amount of administrative resources that would be required to process applications in respect of such small amounts of aid and therefore such restriction can be considered as justified.

As described in recital (16) the Slovak authorities will introduce an ex-post payment adjustment mechanism that will ensure that any overpayment of aid will be repaid by beneficiaries.

For the reasons set out above, the Commission concludes that the aid is proportional.

3.3.3. Incentive effect

According to point 31 of the ETS Guidelines, if all the conditions set out in Section 3.1 of the ETS Guidelines are met the aid is presumed to have an incentive effect. The Commission considers that as the requirements in 3.3.1 and 3.3.2 above are fulfilled, the measure has an incentive effect.

3.3.4. Cumulation

The scheme's provisions on cumulation are in line with the requirements set out in point 47 of the ETS Guidelines.

3.3.5. Annual reporting, transparency and monitoring

The Slovak authorities have committed to following the requirements set out in points 52 to 54 of the ETS Guidelines on reporting, transparency and monitoring of the proposed scheme therefore the Commission considers these requirements to be met.

4. Conclusion

As the measure fulfils the conditions of the ETS Guidelines' Section 3.1, 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.

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\(^9\) This calculation is based on the formula in point 27(b) of the ETS Guidelines and on the following values: maximum aid intensity of 85 %; CO\(_2\) emission factor of 0.76 tCO\(_2\)/MWh; 2012 EUA forward price for 2013 of EUR 8.03; fall-back electricity consumption efficiency benchmark of 80 %; 1 GWh (1,000 MWh) of electricity consumption which is the proportion subject to the retention.
deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: 

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission