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Subject: State Aid SA.46046 (2016/NN) – Slovakia – excise duty exemption for inland waterways

Sir/Madam,

1. PROCEDURE

- (1) On 21 June 2016, the Slovak authorities notified to the Commission the prolongation of an aid scheme in support of inland waterway transport pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU).
- (2) The Commission approved the original scheme on 2 April 2008 (NN46B/2006),¹ with duration from 01 May 2004 to 30 April 2014.
- (3) On 5 August 2016, the Commission requested further information from Slovakia, which was provided on 3 October 2016.
- (4) Subsequently, the measure was transferred to the registry of non-notified aids because it was clarified that the scheme was continued after the previous authorisation by the Commission had expired on 30 April 2014.

¹ Commission's decision of 02.04.2008, OJ C/140/2008.

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2. DESCRIPTION OF THE MEASURE

2.1. Objective

- (5) The notified measure aims to address the structural imbalances between road and inland waterway transportation in Slovakia, by means of the excise duty exemption for fuel used in inland waterway transportation.
- (6) In terms of technical characteristics and operational flexibility, the inland waterway transport has inherent disadvantages compared to road. In particular, inland waterway transport does not allow for a direct door-to-door delivery. This constraint exposes it to additional expenses, among which transshipment costs play an important role.
- (7) At the same time, inland waterway transport offers considerable external cost savings. Therefore the need for development of inland waterway transportation is *inter alia* stressed in the Slovak Strategic Transport Infrastructure Development Plan up to 2020.

2.2. National legal basis

- (8) The aid scheme is based on Act No 98/2004 on excise duty on mineral oil, as amended. Article 10(1)c of the Act foresees an exemption from the duty for mineral oil used in the carriage of passengers and freight on the Danube, performed in the context of commercial activity.
- (9) This tax advantage, in turn, is provided on the basis of Article 15 (f) of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity², which allow for certain derogations from the national rates even below the minimum rate of taxation.

2.3. Background

- (10) The previous scheme, approved by the Commission in case NN46B/2006, covered both an excise duty exemption for inland waterway transport as well as a partial excise duty reduction for railway transport. The excise duty reductions for railway transport were repealed as of 1 January 2011. The current notified scheme covers only the excise duty exemption for inland waterway transport.

2.4. Budget and duration

- (11) In line with the submission of the Slovak authorities, the notified scheme covers a period of 10 years, from 1 May 2014 until 30 April 2024.
- (12) Based on the application of excise duty exemption on inland waterways on previous years, the Slovak authorities estimate the loss of revenue for the whole period of the duration of the scheme to amount to EUR 38.4 million.

2.5. Beneficiaries

- (13) The measure applies to all undertakings providing transport services on inland waterways in Slovakia. The number of beneficiaries will vary depending on how many undertakings wish to provide such transport services. The Commission notes that there are currently five operators.

² OJ L 283, 31.10.2003, p. 51–70

- (14) Any inland waterway transport operator may take advantage of the tax exemption provided for in Section 10(1)(c) of Act No 98/2004 as long as it fulfils the conditions laid down in Section 11 of Act No 98/2004 on registering user undertakings and issuing exemption vouchers. That is, if they apply to the customs office for registration as a user undertaking. A user undertaking is then authorised to purchase reduced-duty mineral oil on the basis of the exemption voucher issued at the request of the customs office.³

2.6. Supervision and control

- (15) In the course of tax supervision over a user undertaking that uses tax-exempt mineral oil pursuant to Section 10(1)(c) of Act No 98/2004, the tax administration (customs office) performs at least one tax inspection every two years during any tax period, focusing on whether the conditions for mineral oil excise duty exemption are met.

2.7. Rules of cumulation

- (16) Slovak authorities do not allow for cumulation with other EU, State or regional grants, including similar contributions as regards aid granted to inland waterway operators on the basis of external cost savings.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (17) Pursuant to Article 107 (1) TFEU ‘*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*’.
- (18) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) TFEU all of the following conditions need to be fulfilled. The financial support must:
- be granted by the State or through State resources,
 - favour certain undertakings or the production of certain goods,
 - distort or threaten to distort competition, and
 - affect trade between Member States.
- (19) In its decisions of 2 April 2008, the Commission concluded that the original scheme constitutes State aid within the meaning of Article 107(1) TFEU. The notified measure confers an economic advantage as it relieves the direct beneficiaries of a part of the operational costs which they would normally have to bear and enables them to transport their goods at a reduced price; it involves State resources given that the subsidies are granted from the budget of the central government; it is selective in nature because it is confined to certain segments of the transportation services market, i.e. inland waterway transport, and it is liable to distort competition and affect trade between Member States since the transportation services market is a highly competitive market within EU, both at intra-, and also at inter-modal level. Therefore, the measure qualifies as State aid.

³ The Commission notes that the aid does not involve any discretion on the part of the public authorities. These fiscal advantages are granted on a general and, as far as conditions related to the fiscal control are respected, automatic basis.

3.2. Lawfulness of the aid

- (20) The Commission notes that the relevant support scheme was continued with respect to inland waterway transport after expiry of the previous Commission authorisation which lasted until 30 April 2014. Therefore the Slovak Republic has not complied with the obligation laid down in Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. *Legal basis*

- (21) The notified aid falls within the scope of Article 93 TFEU and has therefore to be assessed on that basis.
- (22) Article 93 TFEU states that State aid shall be compatible with the Treaty if it meets the needs of coordination of transport. The concept of aid meeting the needs of coordination of transport refers to the need for public intervention arising notably in the presence of a market failure. In this regard, the Commission notes that measures of coordination of transport may be needed when certain modes of transport do not bear the costs of the negative externalities which they impose to the society.
- (23) Inland waterway transport has for decades been one of the most environmentally friendly modes of transport. It has clear advantages as regards energy efficiency, low congestion and low noise and accident levels. It should be noted that air pollution emission limits for inland waterway vessels have been recently significantly tightened under the so called Stage V regulation and have to be reached by 2019-2020⁴, following introduction of so called EURO VI norms in road freight sector.
- (24) The policy to promote inland waterway transport in Europe is encapsulated in the NAIADES Action Programme⁵. A European Strategy for Low-Emission Mobility⁶ adopted by the Commission on 20 July 2016 re-iterates the necessity of incentivizing a shift towards lower emission transport modes such as inland waterways, short-sea shipping and rail.
- (25) The NAIADES II package "Towards quality inland waterway transport" adopted on 10 September 2013 the Commission aims at creating the conditions for inland navigation transport to become a quality mode of transport. It sets out the programme for policy action in the field of inland waterway transport for the period 2014-2020. Actions are taken in the following key areas of intervention:
- quality infrastructure, quality through innovation, smooth functioning of the market; environmental quality through low emissions;
 - skilled workforce and quality jobs; integration of inland navigation into the multimodal logistics chain.

⁴ The Stage V limits, are applicable to propulsion and auxiliary engines above 19 kW, including engines of all types of ignition

⁵ https://ec.europa.eu/transport/modes/inland/promotion_en

⁶ COM(2016) 501 final

- (26) The Commission also notes that over the last years, the increase in the transportation by road continued which resulted in a considerable negative environmental impact. At the same time, inland waterway operators struggled to keep the existing transportation volumes. Table 1 below summarises the development in inland waterway transport sector as compared to road transport sector.

Table 1 – Transport development statistics 2004-2015⁷

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Passenger transport (public transport), million passenger km												
IWW ⁸	4.2	3.9	2.4	2.8	3.1	3.0	3.1	2.8	3.0	4.2	3.7	3
Road (public)	7882	7525	7665	7596	6446	4538	4436	4611	4584	4388	4495	4499
Freight transport, million ton-km												
IWW million tkm	91	88	106	1 004	1 101	899	1 189	931	986	1 006	905	741
Road	18516	22550	22114	27049	29094	27484	27411	29044	29503	30005	31304	33525

- (27) In addition, the Slovak authorities stress that it is important to upgrade infrastructure to make it more attractive to transport operators. The main focus is on improving the navigability of watercourses⁹ and removing bottlenecks. Projects under the Operational Programme Integrated Infrastructure 2014–2020 are focused on improving the navigability of the Danube waterway (the trans-European transport network TEN-T CORE) and modernising the public port in Bratislava.
- (28) Under the light of the above, and as it was done in the previous decision-making practice of the Commission¹⁰, the compatibility assessment of the present measure will be carried out in the light of the provisions of the Railway Guidelines¹¹ (hereafter "Guidelines") as regards aid for reducing external costs (notably points 103, 105, 107, 109, 110, 111) which will be applied by analogy.

3.3.2. Existence of external costs savings

- (29) According to point 103 of the Guidelines, as regards aid for reducing external costs, the eligible costs are the part of the external costs which cleaner transport modes make it possible to avoid compared to road transport mode.
- (30) Point 105 of the Guidelines requires a transparent, reasoned and quantified comparative cost analysis between the supported transport mode and the alternative options.

⁷ <http://statdat.statistics.sk>

⁸ Transport organisations

⁹ It should be noted that According to point 220 Commission Notice on the notion of State aid, (C/2016/2946, OJ C 262, 19.7.2016) inland waterways (for example rivers and canals) made available for free public use are general infrastructures and their public funding does not fall under State aid rules subject to respect of other conditions of the Notice including point 212.

¹⁰ See e.g. Commission decision in State aid case NN29/2008 – Hungary – Excise duty exemptions and refunds for energy products used as fuel for railway transportation and navigation on inland waterways; OJ C36 of 13.02.2010.

¹¹ Communication from the Commission Community guidelines on State aid for railway undertakings (2008/C 184/07), OJ C183 of 22.7.2008, p.13

- (31) It is acknowledged that transport modes such as rail transport and inland waterway transport produce lower negative externalities than road transport in terms of accident and pollution costs. In particular in what regards inland waterway transport, this has for decades been one of the most environmentally friendly modes of transport. It has clear advantages as regards energy efficiency, low congestion and low noise and accident levels.
- (32) Inland waterway transport mode also has considerable spare capacity and can therefore play a role in shifting traffic away from the congested parts of the road networks.
- (33) In 2012 the Joint Research Centre of the Commission has produced a calculation of external costs for different transport modes in Slovak republic based on the methodology presented in a Handbook on estimation of external cost in the transport sector published by the Commission¹² and on the data from the TREMOVE model¹³. The relevant figures are still deemed broadly valid by the Commission services.

Table 2. External cost comparison between inland waterway transport and road transport, EUR per 1000 tkm.¹⁴

<i>Cost element</i>	Road	Inland waterway	Rail
Accident	11.8	0.0	0.3
Noise	3.4	0.0	1.0
Pollutants	33.3	6.8	5.5
Climate Costs	12.6	0.9	1.4
Congestion ¹	6.0	Negligible	0.6
Total	67.2	7.7	8.8
<i>External cost savings (EUR) from shifting 1000 tkm from road</i>		59.5	53.7

- (34) In line with points 103 and 105 of the Railway Guidelines, the Commission therefore concludes that the eligible costs of the scheme correspond to the part of the external costs which inland waterway transport makes it possible to avoid compared with road transport.

3.3.3. *Necessity and proportionality of the aid measure*

- (35) According to point 107 (b) there is a presumption of necessity and proportionality for the aid for reducing external costs when the intensity of the aid stays below the following values: 50% of the eligible costs and up to 30% of the total cost of a cleaner transport mode. The Commission notes that the Slovak authorities committed not to exceed these thresholds.
- (36) According to point 109 of the Guidelines, and as the aid at hand is below the intensity thresholds referred to above, it is presumed that there is no overcompensation in this case

¹² http://ec.europa.eu/transport/themes/sustainable/studies/sustainable_en

¹³ TREMOVE is an EU-wide transport model used as a policy assessment model, designed to study the effects of different transport and environment policies on the transport sector. The model estimates for technical and non-technical measures and policies such as road pricing, public transport pricing, emission standards, subsidies for cleaner cars etc., the transport demand, modal shifts, vehicle stock renewal and scrappage decisions as well as the emissions of greenhouse gases, air pollutants and the welfare level. For more details see <http://www.tremove.org/>.

¹⁴ JRC, 10 June 2012.

and that the aid granted is limited to compensation for opportunity costs connected with the use of inland waterway transport.

3.3.3.1. Aid not exceeding 50% of the eligible costs: comparison of aid per tonne-km with external cost savings per tonne-km

- (37) On the basis of a current excise duty in Slovak Republic of 386.4€ per 1000 litres and an average fuel consumption in railway transportation in Slovak Republic not exceeding 11,4 litres per 1000 tonne-km¹⁵, the aid per 1000 tonne-km should not exceed 4.4€ per 1000 tonne-km.
- (38) This represents 7.4% of the external avoided costs (which amount to 59.6€ per 1000 tonne-km according to Table 2 above) and is therefore clearly less than 50% aid intensity in compliance with the presumption threshold laid down in point 107(b) of the Guidelines.
- (39) The Slovak authorities confirmed that the notified aid will not be cumulated with any other form of aid.
- (40) While there are no precise data available for the corresponding proportion in passenger transportation (given negligible share of inland waterway mode in passenger transportation¹⁶), it is not conceivable that the subsidy per passenger-kilometre could be higher than the corresponding external cost avoided by using inland waterway transport instead of road transport.

3.3.3.2. Aid not exceeding 30% of the cost of a cleaner transport mode

- (41) According to the data gathered by the Slovak authorities excise duty exemption accounts up to 28.53 % of the total costs of inland waterway transportation in low fuel price scenario. With the increase of fuel prices, the relative magnitude of excise duty will diminish and therefore it is highly unlikely for the aid intensity to exceed the threshold of 30% in the period under review.

3.3.4. Other conditions

- (42) As the measure is an excise duty exemption falling under Article 15(1)(f) of Directive 2003/96/EC, which allows for Member States to apply tax reductions for energy products supplied for use as fuel for navigation on inland waterways, its impact on the price of transport can be presumed (see point 110 including its footnote 1 of the Guidelines).
- (43) In any event, the measure has the effect of encouraging the shift to inland waterway. Indeed, fuel costs make up a significant part of the costs for inland waterway transportation. Therefore, without a tax exemption for inland waterway transportation companies using

¹⁵ The latest estimate by the Slovak authorities - estimate for 2014 - is 8 litres per 1000 t/km (7,14 g/tkm). According to TRACCS data (a project funded by European Commission, DG CLIMA during 2012-2013) the fuel consumption by Slovak inland waterway operators was 11,4 litres per 1000 t-km in 2010.

¹⁶ See *inter alia* <https://slovak.statistics.sk/wps/portal/ext/themes/sectoral/transport/indicators/>

diesel fuel to power vessels would be forced to raise the end prices for customers by at least the amount of excise duty.¹⁷

- (44) According to point 111 of the Guidelines, in case of aid for reducing external costs, there must be realistic prospects of keeping the traffic transferred to inland waterway transport so that aid leads to a sustainable transfer of traffic.
- (45) In this respect, figures in Tables 1 show that the fiscal measure under investigation helps to keep the volume of transportation in inland waterway transport at a relatively steady level in spite of different challenges faced by the inland waterway transport including modernisation of the Danube waterway artery. This is also shown by the increase in inland waterways transport during the period of the previous scheme¹⁸

3.3.5. The aid scheme is granted on non-discriminatory terms, the aid scheme is transparent and limited in time

- (46) The Slovak authorities have demonstrated that transport operators registered in other EU Member States are subject to the same treatment as the operators registered in the Slovak Republic. Therefore the aid is granted on non-discriminatory terms.
- (47) The scheme is transparent, as the conditions for benefiting from excise duty reductions/exemptions are clearly stipulated in Act No 98/2004 on excise duty on mineral oil (e.g. labelling of the fuel the Euromarker to ensure fiscal control).
- (48) As explained above, the aid scheme has been notified by the Slovak authorities for limited time period until 30 April 2024. This is in line with the time limitation imposed by point 97 including its footnote 3 of the Guidelines and the decision-making practice of the Commission concerning a timeframe of maximum 10 years for measures which fall within the scope of Article 15(1)(f) of Council Directive 2003/96/EC. Possible prolongation of the scheme beyond 30 April 2024 is subject to re-notification obligation.

3.3.6. No effect on competition and trade contrary to the common interest

- (49) Point 96 of the Guidelines stipulates that ‘distortion of competition which is inherent in aid must not jeopardise the general interests of the [Union]. By way of illustration, aid likely to shift traffic flows from short sea shipping to rail would fail to meet these criteria’.
- (50) The notified aid scheme is clearly designed to reduce imbalances between inland waterway and road transport modes. As shown by Table 2 above, the external cost comparison shows that this is higher for rail than for inland waterways. In addition, the importance of rail transport in Slovakia is much higher than inland waterways transport.¹⁹ Indeed, inland waterway represents a very small proportion of transport in Slovakia and the percentage of

¹⁷ According to the Slovak authorities, the average end price for customers excluding excise duty is 8.06 EUR/t while the average end price for customers including excise duty is 10.40 EUR/t.

¹⁸ According to the data published by the Slovak Statistical Office, transport of goods in inland waterways increased from 1.636 thousand tonnes in 2004 to 1.838 thousand tonnes in 2014.

¹⁹ According to the data published by the Slovak Statistical Office, transport of goods in railway in 2015 amounted to 47.358 thousand tonnes while transport of goods in inland waterways amounted to 1.683 thousand tonnes. For passenger traffic, the trend is similar: 60.566 thousand passengers for rail and 132 thousand passengers for inland waterways in 2015.

rail transport in Slovakia is much higher than the one for inland waterway.²⁰ Therefore, the impact of this measure on rail transport will be very limited.

- (51) Given the geographic location of the Slovak Republic, competition with short-sea shipping, which is normally even more advantageous in environmental terms than inland waterway transport, cannot be affected by the notified aid scheme.
- (52) Consequently, the Commission concludes that the present aid scheme does not give rise to a distortion of competition to an extent contrary to the common interest according to point 96 of the Guidelines.

3.3.7. *Transparency*

- (53) The Slovak authorities confirmed that they will provide, on the national websites dedicated to state aid, the appropriate information on the State aid and its beneficiaries. Notably the Slovak authorities will ensure that on the national State aid websites sufficient information is published on the aid scheme and its beneficiaries, including:
- the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it;
 - the identity of the granting authority/(ies);
 - the identity of the individual beneficiaries,
 - the sum of fiscal advantages granted under the scheme to each beneficiary each year.

4. CONCLUSION

- (54) The Commission regrets that Slovakia put the above mentioned measures into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.
- (55) However, it has decided, on the basis of the foregoing assessment, not to raise objections to the aid on the grounds that it is compatible with the internal market as it meets the needs of coordination of transport pursuant to Article 93 of the Treaty on the Functioning of the European Union.
- (56) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic languages on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

Your request should be sent by registered letter or fax to:

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

²⁰ In 2015, railway represented 24,1% and inland waterways 0.9%. Road represented 75% in the same year.

Yours faithfully,

For the Commission

Margrethe Vestager

Member of the Commission