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**Subject: State Aid SA.61014 (2021/N) – Slovenia  
Aid to the Slovenian Press Agency (STA) - SI**

Excellency,

## 1. PROCEDURE

- (1) On 7 January 2021, Slovenia notified to the Commission its plans to grant State aid to the Slovenian Press Agency (STA) for the provision of services of general economic interest (SGEI). By letter of 13 January 2021, the Commission drew the attention of Slovenia to the fact that Member States are entitled under the SGEI Decision<sup>1</sup> to grant public service aid of up to EUR 15 million per year without prior notification to the Commission, when all the conditions set by this Decision are fulfilled. The Commission advised that in such a case the Member State can implement the aid without the Commission's prior approval. By letter of 14 January 2021, Slovenia replied that it wishes to maintain the notification and the Commission to assess the notification in accordance with the State aid rules applicable to SGEI.
- (2) By letter dated 12 February 2021, Slovenia provided additional information concerning the above-mentioned measure, in reply to a Commission letter dated 21 January 2021. On 3 March 2021, the Commission sent a further set of questions, to which the Slovenian authorities replied on 26 March 2021.

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<sup>1</sup> Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7, 11.01.2012, p. 3.

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- (3) Slovenia exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958<sup>2</sup> and to have this Decision adopted and notified in English.

## **2. DETAILED DESCRIPTION OF THE MEASURE**

### **2.1. Legal basis of the measure, budget and duration**

- (4) The legal basis for the funding of STA is the Slovenian Press Agency Act of 2011 (the “STA Act”)<sup>3</sup>. Usually, since 2011 and until 2020, this legal basis has been accompanied by an implementing contract between the State, represented by the Government Communication Office (UKOM), and STA, which specified the public service tasks of STA in more detail.
- (5) In December 2020, Slovenia introduced as further legal basis of the measure Article 66 of the “Intervention Measures to help mitigate the effects of the second wave of the COVID-19 epidemic” (the “Covid Act”)<sup>4</sup>.
- (6) The notification concerns compensation for SGEI for STA for the year 2021. The planned aid budget is EUR 2 522 499, coming from the general State budget.
- (7) Slovenia advises that Article 66 of the Covid-Act was not notified to the Commission in the context of its various notifications of Covid-related support measures and explained that it introduced the present notification for reasons of legal certainty.

### **2.2. The aid recipient**

- (8) STA was established by the State in 1991. The Republic of Slovenia is the sole shareholder of STA. The STA Act of 2011 governs its status, public service mission and financing. The State guarantees institutional autonomy and editorial independence of STA.
- (9) Under Article 4 of the the STA Act, STA has to provide to the public, free of charge, summary information in the Slovenian language on events in Slovenia and around the world on a permanent, comprehensive, accurate and objective basis for the needs of the public in Slovenia, Slovenians around the world and Slovenian national minorities in neighbouring countries.
- (10) In addition, Article 5 of the STA Act defines the task of STA to offer certain commercial services against payment. These services include in particular full text news and photo services to media and public institutions; this full access goes beyond the publicly available news summaries. Further commercial revenue generating services are, according to Article 5 of the STA Act, for example advertising, the provision of specialised services, the organisation of public events, or other publishing activities.

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<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>3</sup> UL RS (Official Gazette of the Republic of Slovenia) No 50/2011, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5868>.

<sup>4</sup> Official Gazette of the Republic of Slovenia No 203/2020), <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8304>.

- (11) During 2019, STA had a net turnover of EUR 1 994 414 from its market activities.

### **2.3. Objective of the aid**

- (12) According to the STA Act, the STA receives funding for a public service mission. That mission consists in providing summary information in the Slovenian language on events in Slovenia and around the world on a permanent, comprehensive, accurate and objective basis for the needs of the public in Slovenia, Slovenians around the world and Slovenian national minorities in neighbouring countries.
- (13) The service covers the daily production and transmission of summaries of such news in the following areas: politics; economy; culture; education; health; chronic; sports; events from the world; science; volunteering and non-governmental organisations; entertainment and other subject matter. STA has to provide content on the functioning of the indigenous Italian and Hungarian national communities and of the Roma ethnic community in Slovenia, on content for members of other national and ethnic communities, and a daily English service for the foreign public in Slovenia.
- (14) STA disseminates these summaries of information free of charge via its public website.

### **2.4. Conditions for granting the aid**

- (15) Article 20(1) of the STA Act determines that STA's revenues from the State budget are subject to an annual contract between the State and STA.
- (16) Article 20(2) to (4) of the STA Act states that the amount of annual State funding must not exceed the net public service costs. If the State funding of the previous year exceeds the net public service costs of the previous year and does not exceed 10% per cent of the amount of the annual compensation, such overcompensation may be carried forward to the following annual period and deducted from the amount of compensation payable for that period. If the amount of overcompensation exceeds 10% of the amount of the annual compensation, the excess over 10% must be returned to the State budget.
- (17) In addition, Article 6 of the STA Act establishes a separation of public service tasks from the market activities, including a clear separation of accounts. All costs and revenues must be correctly allocated and accounted. STA must not finance market activities from the funds obtained for the provision of the public service. Article 6 states that for that purpose, the internal accounts for the public service and marketing activities must be kept separate. STA sets up a system of transparency of financial relations and separate recording of the various activities, in accordance with the rules governing the transparency of financial relations within undertakings which are commercially active and at the same time entrusted with an SGEI, as described in Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings<sup>5</sup>. The accounts must contain a detailed statement of the sources and

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<sup>5</sup> OJ L 318, 17.11.2006, p. 17.

amounts of all revenue derived from the pursuit of public service and market activities. STA is obliged to allocate the excess revenue over expenditure from all activities for the provision of the public service.

- (18) Article 21 of the STA Act provides for a supervision of STA's operations. It submits them to an annual internal and external audit carried out by an independent auditor. The audit reports are submitted to the Parliament for information.
- (19) Article 66 of the Covid Act repealed Article 20(1) of the STA Act, which requires that funding is provided based on annual contracts concluded between the Government and STA. It states that, notwithstanding Article 20 of the STA Act, the Covid Act regulates the financing of the provision of a public service by the Slovenian Press Agency in accordance with this law for 2021. Article 66 furthermore states that irrespective of whether the State has concluded a public service contract with STA under Article 20 of the STA Act, the State budget for 2021 shall provide funds for the performance of the public service in accordance with the STA business plan for 2021. Although Article 66 sets aside the requirement of a contract, it does not amend the provisions of Article 20(2) to (4) of the STA act according to which the amount of annual State funding must not exceed the total public service costs and the mechanism to deal with over-compensation.
- (20) Thereby, Article 66 of the Covid Act temporarily lifts the obligation under Article 20(1) of the STA Act to conclude a contract between UKOM and STA as the basis for the financing of the public services of STA in 2021. Article 66 removes the obligation to have a contract as direct basis of the legal obligation for the State to provide funding to STA. The Covid Act does not repeal, amend, or add any other provision on the conditions for the financing of STA.
- (21) As explained in recitals (15) to (17), the STA Act contains provisions on the review of the accounts of STA and the possibility to deal with overcompensation. It requires an annual internal and external audit and an information of the Parliament of that audit. Finally, STA is in full public ownership and the State as owner has means to get insight into the accounts of its entity.

### **3. ASSESSMENT OF THE MEASURE**

#### **3.1. Presence of aid**

- (22) Any financial support granted by a Member State may be qualified as State aid according to Article 107(1) TFEU, if it is granted by the State or through State resources in any form whatsoever, distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and is capable to affect trade between Member States.
- (23) The funding for the public services of STA, which it has to offer for free to the public, is granted from the general State budget and consequently comes from State resources. Its allocation is administered by the government's communication office (UKOM) and is thus imputable to the State. STA would not obtain these funds on the market. It also appears that the fourth Altmark

criterion is not fulfilled<sup>6</sup>. Therefore it enjoys an advantage. The funding is made available to a single undertaking and therefore selective. The provision of news wire services to media is a commercial activity which is pursued in most Member States on the national market by the respective national news agencies and on an international market by agencies like Agence France Press, Reuters, and, to a lesser extent, by the Spanish agency EFE or the German agency DPA. Accordingly, any State aid to a news agency is capable to affect competition and trade in the internal market. The notified measure consequently constitutes State aid.

### 3.2. Compatibility of the aid

- (24) Slovenia entrusted STA with the public service mission to offer a free news summaries service to the public in Slovenia. The basis for the assessment of aid to compensate for the costs of this service is therefore Article 106(2) TFEU, which concerns aid for services of general economic interest.
- (25) For SGEI with annual compensation not exceeding EUR 15 million, the Commission has laid down detailed compatibility criteria in the SGEI Decision. According to its Article 1, that Decision sets out the conditions under which State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest is compatible with the internal market and exempt from the requirement of notification laid down in Article 108(3) of the Treaty.
- (26) Only SGEIs can be compensated under the SGEI Decision. In Commission Decision SA.30481 (State Aid in favour of Agence France-Press (AFP))<sup>7</sup>, some of the tasks of the news agency examined were considered as an SGEI. Smaller States may also have a genuine interest to rely on the services of an independent news agency of their country and language which covers national news and which reports on international developments from the perspective of that country. In addition, the public service mission to provide summary information on events in Slovenia and around the world on a permanent and comprehensive basis to the public free of charge concerns an activity which would not be performed by a commercial media entity. Moreover, in such smaller Member States, a news agency does not have a commercial basis of media customers which is comparable to the one offered by large Member States' markets, in order to generate sufficient revenues to support the provision of these services of general interest.
- (27) Member States have a wide margin of discretion in defining a given service as an SGEI and in granting compensation to the service provider. The Commission's competence in this respect is limited to checking whether the Member State has made a manifest error when defining the service as an SGEI. The Commission considers that the qualification by Slovenia of the provision of independent news services to media and the public as a SGEI does not constitute a manifest error.

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<sup>6</sup> There is no indication that it is fulfilled, and it is not alleged either by the national authorities that this criterion is fulfilled.

<sup>7</sup> [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_30481](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_30481).

- (28) The aid amount does not exceed EUR 15 million (see recital (6)); therefore, the notified measure could be examined in the light of the SGEI Decision, of which the scope is defined in its Article 2(1) (a).
- (29) According to Article 4 of the SGEI Decision, in order to be compatible, the operation of the service of general economic interest should be entrusted to the undertaking concerned by way of one or more acts, the form of which may be determined by each Member State. The act or acts should include, in particular:
- the content and duration of the public service obligations;
  - the undertaking and territory concerned;
  - a description of the compensation mechanism and the parameters for calculating, controlling and reviewing the compensation;
  - the arrangements for avoiding and recovering any overcompensation.
- (30) The preceding elements concern the compatibility of the aid. To ensure the legality of non-notified aid under the SGEI Decision, Article 4 also demands that the entrusting act or acts include a reference to this Decision. However, as recital (14) of the SGEI Decision explains, that reference in the entrustment act serves the purpose to ensure transparency in relation to the application of that Decision in the absence of a notification and an assessment by the Commission. In a comparable situation concerning State aid granted under the former General Block Exemption Regulation 800/2008<sup>8</sup>, the Court of Justice found that the obligation to include in the scheme an express reference to that Regulation served to increase transparency and legal certainty and ensure an efficient monitoring of aid in the absence of a notification. The express reference to Regulation 800/2008 enables the recipients and their competitors to understand the reasons why that measure may be implemented even though it was not notified to the Commission or authorised by it. Such a reference thereby enables not only the Commission to review, but also third parties, to be informed of the proposed aid measures, so that they may exercise their procedural rights<sup>9</sup>.
- (31) In the case of notified aid, which is subject to a Commission assessment, like in the present case, Commission review is assured, as well as transparency, through the publication of the Commission Decision. The fact that a reference to the SGEI Decision is missing, is therefore not affecting the compatibility of the notified aid measure.

### *3.2.1. Acts of entrustment, content and duration*

- (32) Slovenia entrusted the public service mission to STA by the STA Act in 2011. The STA Act describes the undertaking concerned and the detailed content of the services of general interest entrusted to STA.

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<sup>8</sup> Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (OJ L 214, 9.8.2008, p. 3).

<sup>9</sup> Judgment of 21 July 2016 in case C-493/14, Dilly's Wellnesshotel GmbH v Finanzamt Linz, paragraphs 48-50.

- (33) It appears that this entrustment was not limited in time, even if it was implemented by annual contracts concluded between the State and STA.
- (34) It should be noted that the SGEI Decision only applies where the period for which the undertaking is entrusted with the operation of the service of general economic interest does not exceed 10 years<sup>10</sup>.
- (35) Nevertheless, in the framework of the notification of the measure here examined, the Decision is not used as an instrument of exemption of the aid, but as an instrument for the assessment of the compatibility of the aid measure, and the Commission could still declare the aid compatible with the internal market, even if one of the conditions of compatibility set by the Decision is not fulfilled, when there are particular reasons, which justify this assessment.
- (36) In the specific circumstances of this case, the national legislator has, to a certain extent, revisited in December 2020 the opportunity of the entrustment of a SGEI to STA by adopting the Covid Act. The notification is limited to one year and takes place in the very specific context of a major sanitary crisis. The state of play of the market and the public service needs, which had justified the entrustment of an SGEI to STA in 2011, have not substantially changed since that entrustment. Taking into account the combination of these factors, it can be concluded that the authorisation of the measure for one year would not entail an excessive distortion of competition or affectation of intra-EU trade.

*3.2.2. Compensation mechanism and the parameters for calculating, controlling and reviewing the compensation*

- (37) Article 5 of the SGEI Decision states that the amount of compensation shall not exceed what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit. The costs to be taken into consideration comprise all the costs incurred in operating the service of general economic interest. The revenue to be taken into consideration includes the entire revenue earned from the service of general economic interest. In the case of STA, the SGEI imposed on it has to be offered for free. STA does not earn revenues from the SGEI. The revenues accruing from other activities outside the scope of the service of general economic interest in question are used to finance these services, and any surplus is assigned in whole to the financing of the service of general economic interest. A profit is not foreseen.
- (38) According to Article 5, paragraph 3 b) of the SGEI Decision “where the undertaking also carries out activities falling outside the scope of the service of general economic interest, only the costs related to the service of general economic interest shall be taken into consideration.” Furthermore, according to paragraph 3 c) of that Article, in that case “the costs allocated to the service of general economic interest may cover all the direct costs incurred in operating the service of general economic interest and an appropriate contribution to costs common to both the service of general economic interest and other activities.” For that purpose, Article 6 of the STA Act establishes a separation of public service

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<sup>10</sup> See Article 2, paragraph 2 of the SGEI Decision: Where the period of entrustment exceeds 10 years, this Decision only applies to the extent that a significant investment is required from the service provider that needs to be amortised over a longer period in accordance with generally accepted accounting principles.

tasks from the market activities. All costs and revenues must be correctly allocated and accounted. STA must not finance market activities from the funds obtained by the State for the provision of the public service. Therefore, Article 6 of the STA Act provides that the internal accounts for the public service and market activities must be kept separate. The accounts, which are audited annually, must contain a detailed statement of the sources and amounts of all revenue derived from the pursuit of public service and market activities. For the production of the public service news summaries and the commercial full text service, offices and journalistic and technical staff are shared. Costs are allocated according to the proportion which the commercial activities are requiring from these overall resources. Revenues from selling services are only obtained from the commercial activities, not from the services subject to STA's public service mission, which have to be offered free.

- (39) Article 66 of the Covid Act determines that the amount of compensation in form of a direct grant is estimated, in a first step, based on the business plan of STA for 2021. Article 20(2) of the STA Act further states that the amount of annual State funding must not exceed the net public service costs. As described in recital 16, any State funding exceeding the net public service costs has either to be carried forward to be deducted from future funding or to be returned to the State budget.
- (40) Article 21 of the STA Act submits the operations of STA to an annual external audit carried out by an independent auditor. The audit reports are submitted to the Parliament for information. Furthermore, the State, as the owner of STA, has access to the accounts of STA under national corporation law. This allows an ex post verification of the costs incurred.
- (41) The combination of an upfront estimate of the costs for the public service tasks for the coming year and an ex post control and verification mechanism can ensure that the final aid amount is limited only to what is necessary to achieve the public service mission.

### 3.2.3. *Arrangements for avoiding and recovering any overcompensation*

- (42) According to Article 6(1) of the SGEI Decision, the Member State shall ensure that the entrusted undertaking does not receive compensation in excess of the necessary amount to cover the costs of the public service mission. The Member State shall carry out regular checks, or ensure that such checks are carried out at least every 3 years during the period of entrustment.
- (43) Article 6(2) of the SGEI Decision further states that, where an undertaking has received compensation in excess of the necessary amount, the Member State shall require the undertaking concerned to repay any overcompensation received. Where the amount of overcompensation does not exceed 10 % of the amount of the average annual compensation, such overcompensation may be carried forward to the next period and deducted from the amount of compensation payable in respect of that period.
- (44) In line with these provisions, Article 20(2) to (4) of the STA Act states that the amount of annual State funding must not exceed the net public service costs. As already stated in recital (18), STA is subject to an annual external audit.



- (45) Furthermore, according to the same provisions, if the State funding of the previous year exceeds the total public service costs of the previous year and does not exceed 10% of the amount of the annual compensation, such overcompensation may be carried forward to the following annual period and deducted from the amount of compensation payable for that period. If the amount of overcompensation exceeds 10% of the amount of the annual compensation, the excess over 10% must be returned to the State budget. This is in line with Article 6(2) of the SGEI Decision.

3.2.4. *Conclusion on compatibility*

- (46) Accordingly, based on the elements of law described in the notification, the notified aid measure in favour of STA meets the compatibility conditions set in the SGEI decision for aid to SGEI not exceeding EUR 15 million, except for the duration of the entrustment of the SGEI decision. Nevertheless a deviation from the rules concerning the duration of the entrustment does not undermine the compatibility of this individual aid measure in this specific case for the reasons explained above.
- (47) Aid granted under the notified legal provisions is compatible with Article 106(2) TFEU, if those conditions are observed.

#### 4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid because it is compatible with the internal market pursuant to Article 106(2) of the Treaty on the Functioning of the European Union.

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 language on the Internet site:

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

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Yours faithfully,

For the Commission  
Margrethe VESTAGER  
Executive Vice-President

