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**Subject: NN 63/2009 (ex N 83/2008) – Slovak Republic
Tax advantage applied on electricity, coal and natural gas**

Sir,

1. PROCEDURE

1. By letter of 13 February 2008, registered on the same day (A/2779), the Slovak authorities notified the Commission of the above mentioned aid scheme in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (thereinafter "TFEU")¹.
2. The Commission asked for additional information by letters of 14 March 2008 (D/51128), 11 July 2007 (D/52762), 1 December 2008 (D/54772) and of 20 April 2009 (D/51599). The Slovak authorities submitted the requested information by letters of 15 May 2008 (A/9057), 28 August 2008 (A/17599), 2 October 2008 (A/20273), 26 February 2009 (A/4637), 2 July 2009 (A/15821), 28 August 2009 (A/18643) and of 19 October 2009 (A/22203), all letters registered by the Commission on the same day. The

¹ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU; the two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

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Slovak authorities supplemented their last reply by letter of 20 November 2009 (A/24399) and by email of 10 December 2009 (A/25987).

3. The relevant parts of the legislation providing a legal basis for the measure under assessment, i.e. Act No 609/2007 Coll., on excise duty on electricity, coal and natural gas entered into force on 1 July 2008. Since the aid scheme had been implemented before the Commission approval, the file was transferred to the Commission's NN register on 26 November 2009.

2. DESCRIPTION OF THE MEASURE

2.1 Objective

4. The primary objective of the aid scheme under assessment is the increase of the share of electricity generated from renewable sources and of more efficient generation of electricity in co-generation units. The measure shall contribute to the compliance of the Slovak Republic with obligations arising from the EU membership.
5. Based on Directive 2001/77/EC² the indicative target for the share of electricity generated from renewable sources on gross electricity consumption in the Slovak Republic was set by the Act of Accession at the level of 31% (by 2010). The share of renewable sources on gross energy consumption is currently only around 5.7%. As regards the production of electricity, the share of renewable sources is approximately 15.8%. The 2020 mandatory national target for the Slovak Republic under Directive 2009/28/EC³ is 14% share of energy from renewable energy sources on gross final consumption of energy. The biggest potential was identified for geothermal energy, biomass and hydropower.
6. As regards cogeneration, there are currently 150 co-generation installations of small scale in Slovakia and their share on the total electricity production is minimal.
7. The excise duty exemption for electricity generated from renewable energy sources and consumed on site or supplied directly to the final customer covers approximately 1 % of the electricity market in Slovakia.

2.2 Legal basis, structure, organisation

8. The operating aid measure under assessment shall implement the provisions of Article 15 (1) (b) and (c) of Directive 2003/96/EC restructuring the Community framework for the energy taxation⁴ (hereinafter 'the Energy taxation directive'). The national legal basis transposing into the Slovak legal order certain provisions of Directive 2003/96/EC is Act No 609/2007 Coll., on excise duty on electricity, coal and natural gas⁵.
9. The relevant provisions of Act No 609/2007 Coll. entered into force on 1 July 2008.

² Directive 2001/77/EC on the promotion of electricity from renewable energy sources in the internal electricity market, OJ L 283, 27.10. 2001, p. 33.

³ Directive 2009/28/EC 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.

⁴ OJ L 283, 31.10.2003, p. 51.

⁵ In particular: Article 7 (1) (e) for electricity from renewable sources, Articles 7 (1) (g), 19 (d), 31 (1) (d) for electricity, coal and natural gas used for combined production of electricity and heat.

10. The customs offices act as granting authorities. The granting of aid is automatic, if the beneficiaries (entities using tax exempted electricity, gas or coal) comply with the conditions laid down in Act No. 609/2007 Coll. and are registered as 'entitled users'. The compliance with these conditions is continuously verified by the locally competent customs offices which act as tax administrator for excise duty on electricity, coal and gas.

2.3 Beneficiaries

11. Beneficiaries are SMEs as well as large companies. The sector concerned is 'supply of electricity, gas and water'.
12. The number of beneficiaries will exceed 1000.

2.4 Form of aid

13. The aid is granted in the form of a tax advantage, namely an excise duty exemption for:
 - electricity generated from renewable energy sources if it is supplied directly to the final consumer or consumed by the entity which generated it;
 - electricity, coal and natural gas used for combined production of electricity and heat.
14. The Slovak authorities confirm that the excise duty exemption is granted only for renewable energy sources (solar energy, wind energy, geothermal energy, hydropower and biomass)⁶ and biomass within the meaning of points 70 (5) and (6) of the Community guidelines on State aid for environmental protection (thereinafter 'the Environmental aid guidelines')⁷ and for high efficiency cogeneration within the meaning of point 70 (11) of the Environmental aid guidelines⁸. Furthermore, the existing cogeneration installations supported on the basis of the measure under assessment comply with the primary energy savings requirement of point 113 of the Environmental aid guidelines.

2.5 Aid amount and aid intensity

15. The operating aid is granted in order to cover the difference between costs of producing energy from renewable sources or in co-generation units and the market price of the form of energy concerned.
16. As regards specifically the operating aid for high efficiency co-generation installations, the aid is granted:
 - a) to undertakings distributing electric power and heat to the public where the costs of producing such electric power or heat exceed its market price. The decision as to whether the aid is necessary will take account of the costs and revenue resulting from the production and sale of the electric power or heat;

⁶ Methane and fuel cells are not included in the measure under assessment.

⁷ OJ C 82, 1.4. 2008, p. 1.

⁸ Within Slovak legal order the compliance with these definitions will be ensured by Act No. 309/2009 Coll. on support of renewable energy sources and high efficiency co-generation.

- b) for the industrial use of the combined production of electric power and heat where it can be shown that the production cost of one unit of energy using that technique exceeds the market price of one unit of conventional energy.
17. As the measure consists in full exemption from the normally applicable excise duty rates, the aid amounts are equal to the normally applicable rates, which are the following:
- electricity: 0.66 EUR/ MWh for the period from 1 July 2008 until 31 December 2009 and 1.32 EUR/ MWh as from 1 January 2010;
 - natural gas: 0.66 EUR/ MWh from 1 July 2008 until 31 December 2009 and 1.32 EUR/ MWh as from 1 January 2010;
 - hard coal: 1.42 EUR/ MWh from 1 July 2008 until 31 December 2009 and the same level is applied as from 1 January 2010⁹;
 - brown coal: 2.39 EUR/ MWh from 1 July 2008 until 31 December 2009 and the same level is applied as from 1 January 2010¹⁰;
18. The production costs include also the depreciation costs. No internal rate of return is applied in their calculation.
19. The Slovak authorities submitted the following comparison of production costs of electricity generated from renewable sources¹¹:

Table 1: Operating aid for renewable energy sources

	EUR/ MWh		
	Production costs	Guaranteed purchase price ¹²	Tax exemption applicable until 31.12.2009/ as from 1.1.2010
Solar energy	440	424	0.66/1.32
Wind energy	97	93	0.66/1.32
Geothermal energy	204	196	0.66/1.32
Hydropower	112	107	0.66/1.32
Combustion of biomass	122	117	0.66/1.32

⁹ The level of excise duty recalculated from EUR/ t to EUR/ MWh, considering the maximum calorific value of hard coal at the level of 28 GJ/t.

¹⁰ The level of excise duty recalculated from EUR/ t to EUR/ MWh, considering the average calorific value of brown coal at the level of 16 GJ/t.

¹¹ Considering the expected pay-back period of 12 years.

¹² Operating support granted in the Slovak Republic in the form of a guaranteed purchase price for electricity generated from renewable energy sources and in co-generation installations on the basis of Act No 276/2001 Coll. on regulation in network industries as amended (details in points 28 and 44 below). This "price" is part of a support system and is thus different from the market price referred to in point 21 below.

20. With respect to the support of high efficiency cogeneration of heat and electricity, the Slovak authorities provided the following comparison of production costs of electricity generated in installations using different cogeneration technologies:

Table 2: Operating aid for high efficiency cogeneration

	EUR/ MWh		
	Production costs ¹³	Guaranteed purchase price	Tax exemption applicable until 31.12.2009/ as from 1.1.2010
Combustion turbine with combined cycle and electric generator output up to 50 MW ¹⁴	91	87	0.66/1.32
Combustion turbine with heat regeneration	88	84	0.66/1.32
Combustion motor	97	93	0.66/1.32
Back-pressure steam turbine and condensation steam turbine with take-off of heat	97	93	0.66/1.32
Back-pressure steam turbine and condensation steam turbine with take-off of heat (hard coal)	86	81	1.42/1.42
Back-pressure steam turbine and condensation steam turbine with take-off of heat (brown coal)	95	90	2.39/2.39
Microturbine	143	137	0.66/1.32
Stirling motor	143	137	0.66/1.32

21. The market price of electricity applied in the subsequent calculations is EUR/MWh 49.44¹⁵.
22. The aid intensity is granted in order to compensate for the difference between the costs of producing energy from renewable sources and in high efficiency co-generation installation and the market price of the form of energy concerned.
23. The aid is granted until supported plants are fully depreciated pursuant to normal accounting rules. The depreciation period for the new installations is 12 years. The Slovak authorities undertook to modify the respective excise duty legislation in this sense.
24. The potential investment aid is deducted from support.

¹³ The Slovak authorities explained that the proceeds from heat sale are already deducted from the production costs.

¹⁴ All technologies use the natural gas with the exception of those where other energy source is explicitly mentioned.

¹⁵ The market price based on data from the Energy Exchange Leipzig is used as reference as there is no energy exchange in the Slovak Republic (average market price for base load electricity covering the period January 2009 – September 2009).

25. The Slovak authorities confirm that they monitor on a yearly basis the tax measure under assessment in relation to production costs of energy and market prices. In case it is necessary the Slovak authorities will adapt the tax exemption in order to ensure that there is no overcompensation.

2.6 Budget and duration

26. The Slovak authorities estimate the forgone State resources at the level of EUR 50.4 million¹⁶ (SKK 1.518 billion) p.a.
27. The measure under assessment will be implemented for the period of 10 years following the entry into force of the legal basis of the measure under assessment, i.e. as from 1 July 2008.

2.7 Cumulation

28. The measure under assessment interacts with the operating support granted in the Slovak Republic in the form of a guaranteed purchase price for electricity generated from renewable energy sources and in co-generation installations based on Act No 276/2001 Coll. on regulation in network industries as amended¹⁷.

2.8 Other information

29. The Slovak authorities confirm that any aid exceeding the thresholds laid down in point 160 of the Environmental aid guidelines will be notified individually to the Commission for detailed assessment.
30. Furthermore, the Slovak authorities confirm that they will submit annual reports in line with Section 7.1 of the Environmental aid guidelines and, in accordance with Section 7.3 of the Environmental aid guidelines, comply with monitoring and evaluation rules.

3. ASSESSMENT

3.1 Presence of State aid under Article 107(1) of the TFEU

31. Under Article 107(1) of the 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.
32. The tax exemptions, as those under assessment, although under certain circumstances permissible, are not mandatory under EU law. Their introduction is subject to the discretion of the Member States and the exemptions under assessment are thus imputable to the State. They result in State revenue foregone and are thus granted by a Member State through State resources within the meaning of Article 107 of the TFEU. Furthermore, the exemptions have potential to distort competition by favouring certain undertakings, since the exemptions favour high-efficiency cogeneration over other heat

¹⁶ Based on conversion rate: EUR 1 = SKK 30.126.

¹⁷ For details see points 44 and 45 below.

production techniques and electricity production from renewable energy sources over electricity production from non renewable energy sources, precisely in conformity with their objective. As the measure at hand concerns liberalised energy markets on which the energy companies can operate all over the EU, the exemptions have the potential to affect the trade between Member States.

33. In conclusion, the Commission finds that the tax exemptions under assessment constitute State aid within the meaning of Article 107(1) of the TFEU.

3.2 Lawfulness of the aid

34. The Commission regrets that the Slovak authorities put the notified aid measure into effect before obtaining the approval of the Commission, in breach of Article 108(3) of the TFEU.

3.3 Compatibility of the aid

35. Under Article 107(3)(c) of the TFEU, aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. In the field of aid for environmental protection, the Commission has interpreted this provision in the Environmental aid guidelines. Given its set-up, the Commission assessed the measure at hand pursuant to points 107-109 and 119 of the Environmental aid guidelines which lay down operating aid rules for renewable energy sources and for high efficiency co-generation.

3.3.1 Excise duty exemption for electricity generated from renewable energy sources

36. The Slovak authorities confirm that the supported energy sources (solar energy, wind energy, geothermal energy, hydropower and biomass¹⁸) comply with the definition of renewable energy sources within the meaning of point 70(5) and the definition of biomass laid down in point 70(6) of the Environmental aid guidelines.
37. In line with points 107 and 109 of the Environmental aid guidelines, the operating aid is granted in order to cover the difference between the cost of producing energy from renewable energy sources and the market price of the form of energy concerned. Details are described in points 44 -46.

3.3.2 Excise duty exemption for electricity, coal and natural gas used for electricity and heat generation in high efficiency cogeneration installations

38. The objective of the excise duty exemption for electricity, natural gas and coal used as fuel in CHP installations is to promote cogeneration. Pursuant to points 112 and 113 of the Environmental aid guidelines, the operating aid for cogeneration can be considered compatible with the internal market only provided that: *firstly*, all cogeneration units comply with the definition of high efficiency laid down in point 70(11) of the Environmental aid guidelines and *secondly*, that the existing cogeneration units satisfy

¹⁸ Methane and fuel cells are not included in the measure under assessment.

the requirement of overall primary energy savings compared to the separate production as defined by Directive 2004/8/EC¹⁹ and Decision 2007/74/EC²⁰. The Slovak authorities confirm that the benefiting installations will comply with both conditions.

39. The Slovak authorities confirmed in compliance with point 119 of the Environmental aid guidelines that the operating aid for high-efficiency cogeneration is granted to undertakings distributing electric power and heat to the public, where the costs of producing such electric power or heat exceed its market price; or for the industrial use of the combined production of electric power and heat, where it can be shown that the production costs of one unit of energy using that technique exceed the market price of one unit of conventional energy. Details are described in points 44 - 46 below.

3.3.3 Common parts of the assessment

40. In accordance with point 109 a) of the Environmental aid guidelines the production costs include depreciation costs. No internal rate of return is applied.
41. The market price is based on Energy Exchange Leipzig given that there is no energy exchange in the Slovak Republic.
42. In line with point 109 a) of the Environmental aid guidelines the aid is granted until the supported plants are fully depreciated according to normal accounting rules. The Commission notes in this context that the Slovak authorities undertook to modify the respective excise duty legislation in this sense.
43. Any potential investment aid to be granted to the beneficiaries of the measure under assessment will be deducted from the support. The Slovak authorities submitted data and explanations demonstrating that when determining the aid the rules of the Environmental aid guidelines will be respected. The conditions of point 109 b) of the Environmental aid guidelines can be thus considered as complied with.
44. As regards the absence of overcompensation, the Commission notes that the measure under assessment interacts with the system of guaranteed purchase prices for electricity generated from renewable energy sources and in the high efficiency co-generation installations. Considering the fact that the Commission has never issued any formal decision concerning the presence of State aid within the meaning of Article 107(1) of the TFEU in the interacting guaranteed purchase price system, the Commission, exclusively for the purposes of its assessment of the tax measure at hand, took into account the "most restrictive scenario", i.e. direct cumulation of these two support systems. This is without prejudice to any Commission decision concerning the system of guaranteed purchase prices in the Slovak Republic.
45. The absence of overcompensation is demonstrated in the Tables 3 and 4 below, where the calculations are based on data submitted by the Slovak authorities as presented in Tables 1 and 2 above. The tables show that in the "most restrictive scenario", the total support is still lower than the extra production costs.

¹⁹ Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC, OJ L 52, 21.2. 2004, p. 50.

²⁰ Commission Decision 2007/74/EC of 21 December 2006 establishing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2004/8/EC, OJ L 32, 6.2. 2007, p. 183.

Table 3: Absence of overcompensation - operating aid for renewable energy sources

	EUR/ MWh			
	Extra production costs ²¹	Support element in guaranteed purchase price ²²	Tax exemption applicable until 31.12.2009/ as from 1.1.2010	Total support applicable until 31.12.2009/ as from 1.1.2010
Solar energy	390.56	374.56	0.66/1.32	375.22/375.88
Wind energy	47.56	43.56	0.66/1.32	44.22/44.88
Geothermal energy	154.56	146.56	0.66/1.32	147.22/147.88
Hydropower	62.56	57.56	0.66/1.32	58.22/58.88
Combustion of biomass	72.56	67.56	0.66/1.32	68.22/68.88

Table 4: Absence of overcompensation - operating aid for high efficiency cogeneration

	EUR/ MWh			
	Extra production costs	Support element in guaranteed purchase price	Tax exemption applicable until 31.12.2009/ as from 1.1.2010	Total support applicable until 31.12.2009/ as from 1.1.2010
Combustion turbine with combined cycle and electric generator output up to 50 MW ²³	41.56	37.56	0.66/1.32	38.22/38.88
Combustion turbine with heat regeneration	38.56	34.56	0.66/1.32	35.22/35.88
Combustion motor	47.56	43.56	0.66/1.32	44.22/44.88
Back-pressure steam turbine and condensation steam turbine with take-off of heat	47.56	43.56	0.66/1.32	44.22/44.88
Back-pressure steam turbine and condensation steam turbine with take-off of heat (hard coal)	36.56	31.56	1.42/1.42	32.98/32.98
Back-pressure steam turbine and condensation steam turbine with take-off of heat (brown coal)	45.56	40.56	2.39/2.39	42.95/42.95
Microturbine	93.56	87.56	0.66/1.32	88.22/88.88

²¹ Production costs as described in Table 1 and 2 (point 19 and 20 above) minus market price at the level of EUR/MWh 49.44 (point 21 above).

²² Guaranteed purchase price minus market price.

²³ All technologies use the natural gas with the exception of those where other energy source is explicitly mentioned.

Stirling motor	93.56	87.56	0.66/1.32	88.22/88.88
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46. In order to avoid overcompensation in time, the aid granted on the basis of the measure under assessment will be monitored annually in relation to production costs of energy and market prices. In case it is necessary the Slovak authorities will adapt the tax exemption in order to ensure that there is no overcompensation.
47. Based on the information submitted by the Slovak authorities, the Commission thus comes to the conclusion that the aid granted on the basis of the measure under assessment does not lead to overcompensation.
48. In accordance with the Commission decision making practice, the measure under assessment will be implemented for the period of 10 years following the entry into force of the legal basis of the measure under assessment, i.e. until 30 June 2018.
49. As regards the incentive effect as required by point 142 of the Environmental aid guidelines, the Commission notes that the information provided by the Slovak authorities shows that the production costs of electricity from renewable energy sources and in high efficiency co-generation installations are higher than the expected electricity market price. Hence, without the aid granted on the basis of the measure under assessment, there might be insufficient incentive to undertake or carry on generation of electricity from renewable energy sources or in high efficiency co-generation installations as such activity might not be economically viable.
50. Furthermore, with respect to both types of operating aid to be granted on the basis of the measure under assessment, i.e. operating aid for renewable energy sources and high efficiency cogeneration, the Commission notes that in compliance with point 160 of the Environmental aid guidelines, the Slovak authorities will notify individually each aid grant exceeding the thresholds laid down in this point for purposes of a detailed assessment pursuant to Chapter 5 of the Environmental aid guidelines.
51. Finally, the Slovak authorities confirm that they will submit annual reports in pursuant to Section 7.1. of the Environmental aid guidelines and comply with the monitoring and evaluation provisions of Section 7.3. of the Environmental aid guidelines.
52. Accordingly, the Commission comes to the conclusion that the measure under assessment complies with the Environmental aid guidelines and is therefore compatible with the internal market in accordance with Article 107(3)(c) the TFEU.

3.3.4 *Compatibility with EU tax law*

53. The Commission notes that the exemptions for electricity, natural gas and coal used for high efficiency cogeneration are also compatible with Article 15(1)(c) of the Energy taxation directive, under which energy products used for combined heat and power generation may be exempted from energy tax. The exemption for electricity is compatible with Article 15(1)(b) of the Energy taxation directive, which allows the application of energy tax exemptions to electricity of solar, wind or geothermal origin; of hydraulic origin produced in hydroelectric installations; generated from biomass or from products produced from biomass..

4. CONCLUSION

54. The Commission finds that the aid scheme "Tax advantage applied on electricity, coal and natural gas" is compatible with the internal market in accordance with Article 107 (3)(c) of the TFEU and has therefore decided not to raise objections to the measure concerned.
55. The Commission reminds the Slovak authorities that, in accordance with Article 108(3) of the TFEU, plans to refinance, alter or change this scheme have to be notified to the Commission pursuant to the provisions of Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4. 2004, p.1).
56. If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within 15 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/community_law/state_aids/state_aids_texts_sk.htm

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

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax No: + 32-2-296 12 42

Please accept, Sir, the assurance of my highest consideration.

For the Commission

Jacques BARROT
Vice-president of the Commission