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SENSITIVE (*): *COMP Operations*

Subject: State Aid SA.107243 (2023/N) – Slovakia
Training support for employability in the Horná Nitra region

Excellency,

1. PROCEDURE

- (1) On 25 April 2023, the Slovak authorities, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”) notified to the European Commission (the “Commission”) their plan to provide State aid aimed at mitigating the effects of the termination of the mining activities of Hornonitrianske bane Prievidza (“HBP”) on the employees of HBP and of the power plant Elektrárne Nováky (“ENO”), which is owned by Slovenské Elektrárne (“SE”) (the “measures”). The Slovak authorities sent additional information on 13 July 2023, 13 September 2023 and 2 November 2023.
- (2) By letter of 6 April 2023, submitted with the notification, Slovakia exceptionally agreed to waive its right deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation No 1/1958 ⁽¹⁾, to have the decision adopted and notified in Slovak, and to have this decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. Background

- (3) Mining of and energy production from lignite (also referred to as “brown coal”) have been the main vector of economic activity and employment in the Horná

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⁽¹⁾ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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Nitra region (“Upper Nitra region”) since the early 20th century. Slovakia has committed to meeting the EU’s climate target to reduce emissions by at least 55% by 2030 to achieve climate neutrality by 2050. Concrete steps in this area include the phasing-out of the mining of and energy production from lignite in the Upper Nitra region. As a result, workers in those businesses will lose their jobs. Since these workers are not employable in other sectors with their current work experience and skills, it is necessary to retrain or upskill them.

- (4) HBP is a coal mining company whose main business is the extraction of brown coal in Slovakia. Following Slovakia’s decision to terminate coal mining in the country, HBP’s Handlová mine closed in 2021. While HBP currently continues to operate one mining site in Nováky, mining in this site is uncompetitive and is set to terminate by the end of the year 2023. The coal extracted by HBP is used for the production of electricity, the combined production of heat and electricity, the production of coke and the fuelling of blast furnaces in the steel industry, and this use takes place in the Union.
- (5) Almost the entire volume of HBP’s coal goes to the production of electricity and heat at ENO, which is a power plant commissioned in 1964 located in Zemianske Kostol’any, close to Nováky (Slovakia), and which is owned and controlled by SE.
- (6) The Commission previously adopted two State aid decisions to mitigate the effects of the closure of HBP’s mining activities:
 - (a) By decision SA.55038 (2019/N) of 28 November 2019⁽²⁾, the Commission approved State aid to cover exceptional costs related to the closure of HBP’s Handlová and Nováky coal mining units in the period 2019-27. As explained in recital 23 of that decision, the costs to be covered by the aid were considered to fall within the eligible categories of exceptional costs referred to in Article 4 and in the Annex of Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (“Council Decision 2010/787/EU”) ⁽³⁾, namely: other exceptional expenditure of workers who have lost or who lose their jobs (point 1(b) of the Annex to Council Decision 2010/787/EU); additional underground safety work resulting from the closure of coal production units (point 1(g) of the Annex to Council Decision 2010/787/EU); all properly reasoned costs in connection to former coal mining localities reclamation (point 1(i) of the Annex to Council Decision 2010/787/EU); costs of surface recultivation (point 1(m) of the Annex to Council Decision 2010/787/EU).
 - (b) By decision SA.56844 (2020/N) of 18 June 2020⁽⁴⁾, the Commission approved State aid to cover further exceptional costs regarding the closure of HBP’s Handlová and Nováky coal mining units, concerning specifically costs for the period 2020-23 related to the retraining of workers made

⁽²⁾ SA.55038 (2019/N) Slovakia – Aid to cover the exceptional costs of Hornonitrianske bane Prievidza (HBP) related to the closure of its mining operations.

⁽³⁾ OJ L 336, 21.12.2010, p. 24.

⁽⁴⁾ SA.56844 (2020/N) – Slovakia – Aid to cover the exceptional costs of Hornonitrianske bane Prievidza (HBP).

redundant by the closure of HBP's Handlová and Nováky coal mining units. As explained in recital 26 of that decision, the costs to be covered by the aid were considered to fall within the eligible categories of exceptional costs referred to in Article 4 and in the Annex of Council Decision 2010/787/EU, namely the costs covered by the undertakings for the readaptation of workers in order to help them find new jobs outside the coal industry, especially training costs (point 1(d) of the Annex to Council Decision 2010/787/EU).

- (7) As explained in both decision SA.55038 (2019/N) and decision SA.56844 (2020/N), Slovakia has decided to end coal mining in the Nováky I and Handlová extraction areas operated by HBP, which in turn calls for the closure of the mines by carrying out underground safety measures and decommissioning of the former mine workings and pithead structures. The termination of coal mining, respectively production from coal mining fields of mine Handlová and mine Nováky, has taken place, or will take place, by the following dates:
- a) Eastern shaft Handlová mine: 31 December 2018;
 - b) 12th mining field of the Handlová mine: 31 March 2021;
 - c) 7th mining field of the Nováky mine: 31 August 2020;
 - d) 11th mining field of the Nováky mine: 30 June 2022;
 - e) 1st horizon Nováky mine: 31 December 2023;
 - f) Extraction field 6 South Nováky mine: 31 December 2023.
- (8) In addition to the termination of coal mining, decision SA.55038 (2019/N) mentions the following time frames for the progressive closure works of the mine fields of mine Handlová and mine Nováky, including the permanent closure of each mining field:
- a) Eastern shaft Handlová mine: July 2019 - June 2021;
 - b) 12th mining field of the Handlová mine: January 2021 - June 2022;
 - c) 7th mining field of the Nováky mine: January 2020 - December 2022;
 - d) 11th mining field of the Nováky mine: January 2022 - February 2024;
 - e) Central factory of the Handlová mine: January 2022 - December 2024.
 - f) 1st horizon Nováky mine: January 2024 to April 2024;
 - g) Extraction field 6 South Nováky mine: January 2024 to December 2024;
 - h) Nováky mine central plant: January 2025 to December 2027.
- (9) Slovakia has confirmed in its notification that the timelines for the progressive closure works described in recital (8) points d) to h) remain unchanged and that meanwhile the coal mines Eastern shaft Handlová, 12th mining field of the

Handlová mine and 7th mining field of the Nováky mine (points a) to c) in recital (8)) have already closed.

- (10) According to Slovakia, the employees of HBP are being laid off gradually as the abovementioned closure works progress.
- (11) ENO is a power plant located in Zemianske Kostolany, close to Nováky (Slovakia). ENO produces electricity and heat by burning lignite extracted by HBP in the Nováky mining site referred to in recital (7) (which is uncompetitive and set to terminate by the end of the year 2023, as explained in recital (4)). ENO is owned by the company Slovenské Elektrárne (“SE”). SE, whose main activity is the production and sale of electricity in Slovakia and in Central Europe, operates other power plants besides the ENO power plant. Slovakia has confirmed that the operation of the ENO power plant is uncompetitive.
- (12) Slovakia has explained that the phasing-out of energy production from lignite in the Upper Nitra region includes the closure of the ENO power plant by no later than 31 December 2023. As a result of the closure of ENO by the end of 2023, the burning of coal in this power plant will terminate, as will its production of heat and electricity. Therefore, the SE employees working at the ENO power plant will be laid off. Slovakia has clarified that SE is the employer and has the legal obligation to pay the salaries of the workers that will be dismissed due to the closure of ENO.
- (13) Slovakia confirmed that SE is not an undertaking in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty⁽⁵⁾. In addition, the Commission has not adopted any decision declaring an aid to HBP or to SE illegal and incompatible with the internal market. Therefore, neither HBP nor SE are subject to an outstanding recovery order following any such Commission decision.

2.2. Objective of the aid

- (14) Slovakia submitted that the measures aim to allow the workers mentioned in recitals (10) and (12) to take part in a training programme while still being employed by HBP or SE, so as to minimise the risk of an interruption between employments.
- (15) The training will enable those workers to transition to other employment, in sectors other than the coal, peat and oil shale industry, in the Upper Nitra region. The workers will therefore not be trained for the purpose of employment at HBP or ENO, but for employment in sectors other than the coal, peat and oil shale industry. Moreover, while continuing to be salaried by HBP or SE, the workers will not discharge their usual work duties for respectively HBP or SE during their training period. In addition, they will not work for HBP or SE after that period, nor will the training be provided by HBP or SE⁽⁶⁾.

⁽⁵⁾ Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1)

⁽⁶⁾ Slovakia explained that the workers concerned will themselves select training activities. Each worker will receive a maximum grant of up to EUR 1 500 to attend publicly available courses offered by

- (16) Slovakia also points out that, since the measures relate to the closure of coal mines and to the termination of energy production from coal, they are in furtherance of the transition towards the Union's 2030 energy and climate targets and the achievement of a climate-neutral Union economy by 2050 under the Paris Agreement.

2.3. National legal basis

- (17) Slovakia notified the following national legal basis of the measures: Act no. 121/2022 Coll. on contributions from European Union funds and on amendments to certain laws; Act no. 358/2015 Coll. on the regulation of certain relations in the field of State aid and minimum aid and on amendments to certain acts ("State Aid Act"). The following constitutes the implementing legislation regarding the measures: Act No. 302/2001 on the self-government of upper-tier territorial units (the Act on self-governing regions) as amended by subsequent provisions; Resolution of the Government of the Slovak Republic no. 580/2018 of 12 December 2018 on the proposal of the transformation of the Upper Nitra region in connection with the proposal of general economic interest to ensure security of electricity supply (which imposes the obligation to create new jobs in the Upper Nitra region and prepare projects to ensure employment in the region); Resolution of the Government of the Slovak Republic no.336/2019 of 3 July 2019 to the Action Plan for the Transformation of the Upper Nitra Coal Region; Resolution of the Government of the Slovak Republic no. 19/2022 of 12 January 2022 to upgrade the Action Plan for the Transformation of the Upper Nitra Coal Region.

2.4. Form of aid and costs covered by the aid

2.4.1. Form of aid

- (18) Slovakia has indicated that the aid under the measures will be provided to HBP and SE in the form of a grant, to cover the expenditure corresponding to the average salary of the workers mentioned in recitals (10) and (12) during the period of the training and for a maximum of six months. The average salary includes the gross salary plus statutory duties imposed on the employer: leave, wage compensation when visiting a doctor, when accompanying a family member for treatment, etc.
- (19) Slovakia has estimated that the salaries of approximately 700 employees, circa 620 from HBP and circa 80 from SE, will be eligible under the measures, as this is the number of the workers mentioned in recitals (10) and (12) that are expected to participate in the training programme until the end of 2024. Most of them would join the training immediately following the closure of the Nováky mine, in January 2024.

training providers, with the choice from vocational/retraining courses, refresher courses, courses for the development of soft skills and personal competencies (communication skills, computer literacy, financial literacy, language courses, driver's license courses and other personal development skills).

2.4.2. Costs covered by the aid

Costs covered by the aid in favour of HBP

- (20) The measure in favour of HBP will cover only one category of exceptional costs, namely the costs “*for the readaptation of workers in order to help them find new jobs outside the coal industry, especially training costs*” mentioned in point 1(d) of the Annex to Council Decision 2010/787/EU.
- (21) Slovakia has confirmed that HBP shall respect the rules on the separation of accounts laid down in Council Decision 2010/787/EU, namely that the aid received will be shown in the profit-and-loss accounts as a separate item of revenue distinct from turnover. In this regard, Slovakia explained that HBP shall keep separate accounts for each one of its coal production units and for its other economic activities not related to coal mining, and it confirmed that HBP will keep separate accounts for the aid received.
- (22) Slovakia indicates that the costs covered by the measure in favour of HBP are not the result of non-compliance with existing legislation in the field of environmental protection, and do not relate to current production.

Costs covered by the aid in favour of SE

- (23) The measure in favour of SE will cover only one category of exceptional costs, namely the costs “*for the re-adaptation of workers in order to help them find new jobs outside the coal, peat and oil shale industry, especially training costs*” mentioned in point 1(d) of Annex II to the Guidelines on State aid for climate, environmental protection, and energy (“CEEAG”) ⁽⁷⁾.
- (24) Slovakia has explained that the payment requests presented by SE under the measure will be subject to a financial control covering the related pay slips and bank statements, thereby ensuring that the aid amounts granted to SE will not exceed the exceptional costs actually incurred by the beneficiary.
- (25) Slovakia has also explained that SE (the company that operates the ENO power plant) shall keep central accounting and tax records for all its business activities and factories, including the ENO power plant. SE’s central accounting ensures the assignment of individual costs and revenues to individual factories and activities. This means that the cost and revenue items for the ENO power plant are captured and identifiably assigned in SE’s accounts separately from SE’s other power plants and their activities. SE can thus ensure that the measure concerning ENO will be shown in SE’s accounts as a separate income item distinct from turnover from other business activities.
- (26) Slovakia indicates that the costs covered by the measure in favour of SE are not the result of non-compliance with existing legislation in the field of environmental protection, and do not relate to current production.

⁽⁷⁾ Communication from the Commission “Guidelines on State aid for climate, environmental protection and energy 2022” (2022/C 80/01), OJ C 80, 18.2.2022, p. 1.

2.5. Duration of the support

- (27) Aid may be granted under the measures as from the notification of the Commission's decision approving the measure until no later than 31 December 2024.
- (28) Slovakia indicates that the national legal basis, in particular the State Aid Act, contains a stand-still clause pursuant to which the aid can only be granted after the notification of the Commission's decision authorising the measures. In their additional submission of 2 November 2023, the Slovak authorities have confirmed that the measures will only start to be implemented after the Commission's approval.

2.6. Cumulation

- (29) Slovakia has confirmed that the measures to respectively HBP and SE cannot be cumulated with other State aid in the sense of Article 107(1) TFEU or with other forms of Union funding to cover the same eligible costs.
- (30) In addition, according to the Slovak authorities, the measure in favour of HBP does not lead to cumulation with aid already approved by the Commission, in particular the aid approved in 2020 and covering costs related to the retraining of workers made redundant by the closure of HBP's Handlová and Nováky coal mining units⁽⁸⁾. In fact, as explained by Slovakia, the measure in favour of HBP does not cover the same costs already covered by the 2020 aid, which related to HBP workers who have already been dismissed and retrained and who, therefore, are not covered by the measure, which will only apply to other HBP workers who are still to be dismissed and retrained.

2.7. Budget and financing

- (31) The aid will consist of grants for an estimated maximum budget amount of EUR 10 750 047 and annual amount of EUR 5 375 023. According to the Slovak authorities, salary expenses in the budget for approximately 620 HBP employees amount to around EUR 8 915 340, whilst the expenses for some 80 employees of SE amount to EUR 1 834 708. The amounts will be funded from the general budget of the State, from local authorities' budgets and from the Just Transition Fund⁽⁹⁾ (co-financing). The Slovak authorities further explained that the budgetary amounts are indicative, as they will depend on the number of employees who will actually participate in the training courses.
- (32) The Slovak authorities confirm that the rules under the Just Transition Fund will be respected.

⁽⁸⁾ SA.56844 (2020/N), Slovakia – Aid to cover the exceptional costs of Hornonitrianske bane Prievidza (HBP).

⁽⁹⁾ Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund (OJ L 231, 30.6.2021, p. 1).

2.8. Transparency and monitoring

- (33) For both the measure in favour of HBP and the measure in favour of SE, Slovakia undertakes to publish, on the national websites <https://semp.kti2dc.sk/> and www.employment.gov.sk, the following information: the full text of the aid granting decision and its implementing provisions, or a link to it; the identity of the granting authority; the identity of the beneficiaries; the aid instrument and the amount of aid granted to each beneficiary; the objective of the aid, the date of granting, the type of undertaking (for example SME, large company); the Commission's aid measure reference number; the region where the beneficiaries are located (at NUTS level 2) and the principal economic sector of the beneficiaries (at NACE group level). In addition, the Slovak authorities confirmed that, for both the measure in favour of HBP and the measure in favour of SE, the aid grantor shall ensure compliance with the transparency requirements set forth in points 58 to 61 CEEAG; in particular, for both the measure in favour of HBP and the measure in favour of SE, Slovakia undertakes to publish, on the national website <https://semp.kti2dc.sk/>, information on each individual aid award granted to HBP and SE under the measures, within six months from the date of granting of the individual aid award. The aid grantor shall check that all the conditions for granting individual aid awards have been complied with and that the aid amount and cumulation rules have been respected. Finally, the aid grantor shall submit annual reports to the Commission on the individual aid awards granted.
- (34) In addition, for both the measure in favour of HBP and the measure in favour of SE, Slovakia undertakes to:
- a) annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589 ⁽¹⁰⁾;
 - b) maintain, for at least 10 years from the date of award of the aid, detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request.

3. ASSESSMENT OF THE MEASURES

3.1. State aid in the sense of Article 107(1) TFEU

- (35) Article 107(1) TFEU states that *'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 common market'*. Therefore, in order for a measure to constitute State aid within the meaning of Article 107(1) TFEU, it has to fulfil four cumulative conditions. First, the aid must be imputable to the State and financed through State resources. Second, the measure must confer a selective advantage to certain undertakings or the production of certain goods. Third, the measure must be liable

⁽¹⁰⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

to affect trade between Member States. Fourth, the measure must distort or threaten to distort competition in the internal market.

- (36) The support under the measures is financed from the general budget of the State, regional and local budgets, and will therefore be financed through State resources (recital (31)). The measures are based on national law (recital (17)). Therefore, the measures are imputable to the State.
- (37) The aid beneficiaries, HBP and SE, will receive an advantage in the form of non-refundable grants as compensation for the cost of employees' salaries during the trainings of the employees concerned, and for a maximum period of six months. Those grants are provided only to HBP and SE and relieve them of the salary costs they would normally have to bear. As such the measures confer a selective advantage on those undertakings.
- (38) Coal and electricity are widely traded between Member States. Moreover, both markets feature a cross-border dimension within the EEA. Therefore, the financial support to a mining company that will cease coal mining operations by the end of 2023 (HBP) and the financial support to a company that will use coal to produce heat and electricity until the end of 2023 (SE) may affect trade between Member States and distort competition.
- (39) Therefore, the Commission concludes that the measures in favour of HBP and SE constitute State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (40) By notifying the measures before putting them into effect (recital (28)), the Slovak authorities have respected the stand-still obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Compatibility of the aid in favour of HBP

- (41) The Commission has assessed the compatibility of the measure in favour of HBP based on Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines, as HBP carries out coal production activities and the measure in its favour is aimed at enabling it to cover costs arising from the closure of coal production units and which are not related to current production, in line with Article 4 of Council Decision 2010/787/EU.
- (42) Firstly, in accordance with Article 2(1) of Council Decision 2010/787/EU, in the context of closure (i.e. the permanent cessation of production and sale of coal) of uncompetitive mines, aid to the coal industry may be considered compatible with the proper functioning of the internal market if it complies with the provisions of Council Decision 2010/787/EU. In the present case, the aid to HBP relates to the closure of an uncompetitive coal mine (recitals (4) and (6)). In this regard, the Slovak authorities have confirmed that the schedule stated in Decision SA.55038 (2019/N) for the closure of HBP's Handlová and Nováky coal mining units is still valid to date (see recital (9)).

- (43) Secondly, Article 2(2) of Council Decision 2010/787/EU provides that, to comply with this Decision, “*Aid shall cover only costs in connection with coal for the production of electricity, the combined production of heat and electricity, the production of coke and the fuelling of blast furnaces in the steel industry, where such use takes place in the Union*”. In the present case, the coal extracted by HBP is used for the production of electricity, the combined production of heat and electricity, the production of coke and the fuelling of blast furnaces in the steel industry, and this use takes place in the Union (recital (4)).
- (44) Thirdly, with regard specifically to “*aid to cover exceptional costs*”, Article 4(1) of Council Decision 2010/787/EU provides that State aid granted to undertakings which carry out or have carried out an activity in connection with coal production to enable them to cover the costs arising from or having arisen from the closure of coal production units and which are not related to current production, may be considered compatible with the internal market provided that the amount paid does not exceed such costs, and that such aid may be used to cover (a) the costs incurred and cost provisions made only by undertakings which are closing or have closed coal production units, including undertakings benefiting from closure aid; and (b) the costs incurred by several undertakings. Article 4(2) of Council Decision 2010/787/EU specifies that the categories of costs covered by Article 4(1) are defined in the Annex to that decision, and that Article 4(1) of Council Decision 2010/787/EU shall not apply to costs resulting from non-compliance with environmental regulations.
- (45) In the present case, the aid exclusively covers costs incurred by HBP arising from the closure of those mining units in line with Article 4 of Council Decision 2010/787/EU. More in particular, the aid will cover HBP’s costs related to the retraining of workers who will be laid off as a consequence of the closure of the mine, to help them find new employment outside the coal, peat and oil shale industry (see recital (15)). These costs fall within the eligible cost categories set forth in point 1(d) of the Annex to Council Decision 2010/787/EU (“*the cost covered by the undertakings for the readaptation of workers in order to help them find new jobs outside the coal industry, especially training costs*”) to which its Article 4 refers.
- (46) In addition, the Slovak authorities have confirmed that the aid to HBP only serves to cover eligible costs which are unrelated to HBP’s current production within the meaning of Article 3(1) of Council Decision 2010/787/EU (see recital (22)). Moreover, the Slovak authorities also confirmed that the costs covered by the aid do not result from non-compliance with environmental legislation (see recital(22)).
- (47) Therefore, the Commission concludes that the aid to HBP complies with Article 4 of Council Decision 2010/787/EU.
- (48) Article 5 of Council Decision 2010/787/EU, which deals with cumulation, provides that “[*t]he maximum amount of aid authorised under this Decision shall apply regardless of whether the aid is financed entirely by Member States or is partly financed by the Union*” and that “[*a]id authorised under this Decision shall not be combined with other State aid within the meaning of Article 107(1) of the Treaty or with other forms of Union financing for the same eligible costs if such overlapping results in an aid amount higher than that authorised under this*

Decision". In the present case, the Slovak authorities confirmed that the measure granted to HBP cannot be combined with any other aid within the meaning of Article 107(1) TFEU or with other forms of Union financing for the same eligible costs (see recital (29)). Slovakia has also confirmed that the measure in favour of HBP would not lead to cumulation with aid already approved by the Commission, in particular the aid approved in 2020 and covering costs related to the retraining of workers made redundant by the closure of HBP's coal mining units ⁽¹¹⁾ (see recital (30)). Therefore, the Commission concludes that the aid in favour of HBP complies with Article 5 of Council Decision 2010/787/EU.

- (49) Article 6 of Council Decision 2010/787/EU provides that “[a]ll aid received by undertakings shall be shown in the profit-and-loss accounts as a separate item of revenue distinct from turnover. Where undertakings benefiting from aid under this Decision continue trading or operating after closing down some or all of their coal production units they shall keep precise and separate accounts for each of their coal production units and for other economic activities which are not related to coal mining. The aid granted under this Decision shall be managed in such a way that there is no possibility of it being transferred to other coal production units which are not part of the closure plan or to other economic activities of the same undertaking.” Slovakia confirmed that HBP will respect the rules on the separation of accounts laid down in Council Decision 2010/787/EU (recital (21)). In particular, HBP shall keep separate accounts for each one of its coal production units and for its other economic activities not related to coal mining, and will keep separate accounts for the aid received (see recital (21)). The Commission therefore considers that the aid in favour of HBP complies with Article 6 of Council Decision 2010/787/EU.
- (50) It follows from the above recitals (41) to (49) that the notified aid in favour of HBP complies with the relevant conditions laid down in Council Decision 2010/787/EU.
- (51) Finally, decisions adopted by the Commission in State aid matters must ensure compliance with Union law ⁽¹²⁾. In this case, the Commission has no indications of any possible breach of Union law that would prevent the measure in favour of HBP from being declared compatible with the internal market. In this context, it notably does not result from the notification that the aid to HBP or the conditions attached to it, or the economic activities facilitated by the aid, could entail a violation of a relevant provision of Union law. Moreover, the Commission has not sent a reasoned opinion to Slovakia on a possible infringement of Union law that would bear a relation to this case, and the Commission has not received any complaints or information that might suggest that the State aid, the conditions attached to it, or the economic activities facilitated by the aid might be contrary to relevant provisions of Union law.

⁽¹¹⁾ SA.56844 (2020/N), Slovakia – Aid to cover the exceptional costs of Hornonitrianske bane Prievidza (HBP).

⁽¹²⁾ Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 18 to 20.

3.3.2. Compatibility of the aid in favour of SE

3.3.1.1. Applicable rules

- (52) Based on Article 107(3)(c) TFEU, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the Union (positive condition), where such aid does not adversely affect trading conditions to an extent contrary to the common interest (negative condition). The CEEAG provide guidance on how the Commission assesses the compatibility of aid measures in furtherance of environmental protection, including climate protection and energy aid measures, which are subject to the notification requirement under Article 108 TFEU.
- (53) Section 4.12.2 CEEAG contains specific provisions regarding aid for coverage of exceptional costs due to the closure of uncompetitive coal, peat, and oil shale activities. More specifically, point 439 CEEAG provides that Section 4.12.2 applies to the extent that the measure is not covered by Council Decision 2010/787/EU.
- (54) In the present case, Slovakia has confirmed that the operation of the ENO power plant (owned by SE) is uncompetitive (recital (11)). The Commission observes that the uncompetitiveness of the ENO power plant's production, which ceases by the end of 2023, is a consequence of the termination of lignite mining by HBP: in fact, since ENO produces electricity and heat by burning lignite extracted by HBP in the Nováky mining site referred to in recital (7) and since this mining activity is being discontinued, ENO will not have any more the lignite type necessary for it to keep producing electricity and heat with the current configuration of the power plant. In addition, modifying the ENO power plant's burners to make it able to produce electricity and heat from other types of lignite or fuels other than lignite from HBP, would require considerable investments. These investments in a nearly 60 years old power plant would be cost-ineffective due to high operating costs of CO₂ allowances necessary to operate lignite or other fossil fuel power generation.
- (55) In addition, the notified aid in favour of SE is not covered by Council Decision 2010/787/EU because, contrary to HBP, SE does not mine coal, but is an operator of an electricity production plant that uses coal as an input to generate power and heat (recital (11)).
- (56) The Commission has therefore assessed the measure in favour of SE under the general compatibility provisions in Section 3 CEEAG, as well as the specific compatibility criteria for coverage of exceptional costs due to the closure of uncompetitive coal, peat, and oil shale activities set out in Section 4.12.2 CEEAG.

3.3.1.2. Positive condition: the aid facilitates the development of an economic activity

Contribution to the development of an economic activity

- (57) Article 107(3)(c) TFEU provides that the Commission may declare compatible aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an

extent contrary to the common interest. Therefore, compatible aid under that provision of the Treaty must contribute to the development of an economic activity. In accordance with this, point 23 CEEAG states that, when notifying aid, Member States must identify the economic activities that will be facilitated because of the aid and how the development of those activities is supported. Point 24 CEEAG states that aid to prevent or reduce the negative effects of economic activities on climate or the environment can facilitate the development of economic activities by increasing the sustainability of the economic activity concerned. Point 25 CEEAG requires Member States to describe how the aid will contribute to the objectives of Union climate policy.

- (58) The Commission notes that, while as explained in point 420 CEEAG the shift away from power generation based on coal, peat and oil shale is one of the most important drivers of decarbonisation in the power sector in the Union, the closure of uncompetitive coal, peat and oil shale activities can generate significant social and environmental costs at the level of the power plants and the mining operations, and that Member States may decide to cover such exceptional costs to mitigate the social and regional consequences of the closure, as explained by point 436 CEEAG.
- (59) Moreover, points 437 and 438 CEEAG respectively provide that measures covered by Section 4.12.2 (Aid for exceptional costs in relation to the closure of uncompetitive coal, peat and oil shale activities) can facilitate the social, environmental and safety transition of the area concerned.
- (60) The Commission further notes that, as shown in recital (3), Slovakia explained that mining of and energy production from lignite have been the main sector of economic activity and employment in the Upper Nitra region since the early 20th century; Slovakia has committed to meeting the EU's climate target to reduce emissions by at least 55% by 2030 to achieve climate neutrality by 2050; concrete steps in this area include the phasing-out of mining of and energy production from lignite in the Upper Nitra region. As shown in recital (12), Slovakia explained that the phasing-out of energy production from lignite in the region includes the closure of the ENO power plant by the end of 2023 at the latest.
- (61) In light of the foregoing (recital (60)), the Commission considers that the aid to SE will contribute to the objectives of Union climate policy, in line with point 25 CEEAG. Moreover, the closure of the ENO power plant (owned by SE) allows for a shift away from coal-fired power production to a more sustainable form of energy generation. Therefore, the proposed measure is also compliant with point 24 CEEAG.
- (62) As explained in recital (3), as a result of the gradual phasing-out of the mining of and energy production from lignite in the Upper Nitra region, workers in those businesses will lose their jobs; and since these workers are not employable in other sectors with their current work experience and skills, it is necessary to retrain or upskill them. In this context, as explained by Slovakia, the notified aid in favour of SE is meant to cover exceptional costs resulting from ENO's closure and is aimed at helping the transition of the workers concerned to a new employment in the Upper Nitra region as they will be trained in sectors other than the coal, peat and oil shale industry (recitals (11) to (15)).

(63) Therefore, the Commission finds that the notified aid in favour of SE facilitates the social, environmental and safety transition of the Upper Nitra region, in line with points 437 and 438 CEEAG.

(64) The Commission hence considers that the scheme facilitates the development of certain economic activities as required by Article 107(3)(c) TFEU and Section 3.1.1 CEEAG.

Incentive effect

(65) The aid will provide incentives to SE to pay the salaries of the laid-off employees referred to in recital (10) ,during their training, despite the fact that such employees will not discharge their usual work duties during this period (recital (15)). The aid does not support the costs of an activity that the aid beneficiary would anyhow carry out and does not compensate for the normal business risk of an economic activity. In addition, the Commission finds that, while absent the aid SE would not pay its employees for participating in trainings in sectors other than the coal, peat and oil shale industry, with the aid, SE will pay its employees for participating in such trainings.

(66) Moreover, according to point 441 CEEAG, State aid for exceptional costs may only be used to cover the costs resulting from the closure of uncompetitive coal, peat and oil shale activities. As indicated in point 442 CEEAG, the categories of eligible costs are listed in Annex II and costs resulting from non-compliance with environmental legislations and costs related to current production are not eligible.

(67) The Commission notes that the aid in favour of SE covers costs related to the training of workers who will lose their jobs due to the closure of the ENO power plant (see recitals (11) to (15)). These costs result from the closure of uncompetitive coal activities and are listed among the exceptional costs included in Annex II, point 1(d), CEEAG⁽¹³⁾. The Commission further notes that, as confirmed by the Slovak authorities (recital (26)), the costs covered by the aid in favour of SE do not result from non-compliance with environmental legislation and are not related to current production. The Commission therefore concludes that the measure in favour of SE complies with points 441 and 442 CEEAG.

(68) The measure in favour of SE is aimed at supporting the transition of dismissed workers to employment in sectors other than the coal, peat and oil shale industry. Since this measure is not aimed to cover exceptional environmental costs, points 443 and 444 CEEAG are not applicable to it.

(69) Therefore, the Commission concludes that the notified aid in favour of SE has an incentive effect.

⁽¹³⁾ Point 1(d) of Annex II CEEAG mentions “*the cost covered by the undertakings for the re-adaptation of workers in order to help them find new jobs outside the coal, peat and oil shale industry, especially training costs*”.

Absence of breach of any relevant provision of Union law

- (70) State aid cannot be declared compatible with the internal market if the supported activity, the aid measure, or the conditions attached to it entail a non-severable violation of relevant Union law ⁽¹⁴⁾.
- (71) In this case, the Commission has no indications of any possible breach of Union law that would prevent the measure in favour of SE from being declared compatible with the internal market. In particular, the notification and additional clarifications from Slovakia do not show that the aid to SE or the conditions attached to it, or the economic activities facilitated by the aid, entail a violation of a provision of Union law. Moreover, the Commission has not sent any reasoned opinion to Slovakia on a possible infringement of Union law that would bear a relation to this case nor has the Commission received any complaints or information that might suggest that the State aid, the conditions attached to it or the economic activities facilitated by the aid might be contrary to provisions of Union law. Therefore, the Commission concludes that the aid to SE complies with point 33 CEEAG.
- (72) It follows that the notified aid in favour of SE does not breach any relevant provision of Union law.

Conclusion

- (73) The Commission therefore concludes that the measure fulfils the first (positive) condition of the compatibility assessment, i.e. that the aid facilitates the development of an economic activity.

3.3.1.3. Negative condition: the aid does not unduly affect trading conditions to an extent contrary to the common interest

Necessity and appropriateness

- (74) According to point 440 CEEAG, the Commission will consider aid to cover exceptional costs necessary and appropriate to the extent that it can help mitigate the social and environmental impact of the closure of uncompetitive coal, peat and oil shale activities in the region and the Member State concerned.
- (75) The Commission observes that the aid in favour of SE can help mitigate the social impact of the closure of the ENO power plant in the Upper Nitra region. Indeed, SE's employees, who will lose their job due to the ENO power plant's closure, will be able to participate in training courses aimed at upgrading their qualifications, retraining them, and developing their personal competencies and soft skills, so that they can find a new job in another sector in the same region once they are laid off by SE, thereby helping mitigate the social impact of discontinuing coal mining and the related power generation in that region (see recitals (14) and (15)).

⁽¹⁴⁾ Point 33 CEEAG, and judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

- (76) Therefore, the Commission concludes that the aid in favour of SE complies with point 440 CEEAG and is thus necessary and appropriate.

Proportionality

- (77) As indicated above, point 441 CEEAG states that State aid for exceptional costs may only be used to cover the costs resulting from the closure of uncompetitive coal, peat and oil shale activities. Point 442 CEEAG provides that the categories of eligible costs are listed in Annex II and costs resulting from non-compliance with environmental legislations and costs related to current production are not eligible. As explained in recital (67), the Commission concludes that the measure in favour of SE complies with points 441 and 442 CEEAG.
- (78) Moreover, point 445 CEEAG states that, concerning aid for exceptional costs in relation to the closure of uncompetitive coal, peat and oil shale activities, the aid amount must be limited to the coverage of exceptional costs of the beneficiary and must not exceed the costs actually incurred. Point 445 CEEAG also foresees that the Commission will require the Member State to clearly and separately identify the aid amount for each category of eligible costs, as detailed in Annex II CEEAG. Finally, point 445 CEEAG provides that, where the Member State covers such costs on the basis of estimations, before they are actually incurred by the beneficiary, it must carry out an ex post verification of the costs incurred on the basis of detailed statements provided by the beneficiary to the granting authority, including invoices or certificates showing the exceptional costs incurred, and adjust the amounts granted accordingly.
- (79) The Commission observes that the aid in favour of SE covers only one category of exceptional costs as detailed in Annex II CEEAG, namely the costs “*for the re-adaptation of workers in order to help them find new jobs outside the coal, peat and oil shale industry, especially training costs*” mentioned in point 1(d) of Annex II CEEAG (recital (23)). The Commission further observes that, as explained by Slovakia, the payment requests presented by SE under the measure will be subject to a financial control covering the related pay slips and bank statements, thereby ensuring that the aid amounts granted to SE will not exceed the exceptional costs actually incurred by the beneficiary (recital (24)).
- (80) Therefore, the Commission concludes that the aid in favour of SE complies with point 445 CEEAG.
- (81) With regard to cumulation, point 56 CEEAG provides that “[a]id may be awarded concurrently under several aid schemes or cumulated with ad hoc or de minimis aid in relation to the same eligible costs, provided that the total amount of aid for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under these guidelines. If the Member State allows aid under one measure to be cumulated with aid under other measures, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point”. Moreover, point 57 CEEAG explains that “[c]entrally managed Union funding that is not directly or indirectly under the control of the Member State, does not constitute State aid. Where such Union funding is combined with State aid, it has to be ensured that the total amount of public funding granted in relation to the same eligible costs does not lead to overcompensation”.

- (82) As the aid to SE cannot be cumulated with other State aid in the sense of Article 107(1) TFEU or with other forms of Union funding to cover the same eligible costs (see recital (29)), the measure in favour of SE complies with points 56 and 57 CEEAG.
- (83) Therefore, the Commission considers that aid granted under the measure is proportionate.

Transparency

- (84) According to point 58 CEEAG, the Member State concerned must ensure the publication, in the Commission's transparency award module or on a comprehensive State aid website, at national or regional level, of: (a) the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it; (b) information on each individual aid award granted ad hoc or under an aid scheme approved on the basis of these guidelines and exceeding EUR 100 000. According to point 59 CEEAG, "*Member States must organise their comprehensive State aid websites, on which the information required by this Section is to be published, in such a way as to allow easy access to the information. Information must be published in a non-proprietary spreadsheet data format, which allows data to be effectively searched, extracted, downloaded and easily shared on the internet, for instance in CSV or XML format. The general public must have access to the website without restrictions. No prior user registration must be required to access the website*". According to point 61 CEEAG, the information referred to in point 58(b) must be published within 6 months from the date the aid was granted.
- (85) As mentioned in recital (33), Slovakia has committed to publish, on the national websites <https://semp.kti2dc.sk/> and www.employment.gov.sk, the full text of the aid granting decision and its implementing provisions, or a link to it. In addition, as mentioned in the same recital (33), Slovakia has committed to comply with all the transparency requirements set forth in points 58 to 61 CEEAG; in particular, Slovakia has committed to publish, on the national website <https://semp.kti2dc.sk/>, information on each individual aid award granted to SE under the measure, within six months from the date of granting of the individual aid award.
- (86) Therefore, the Commission concludes that the aid in favour of SE complies with points 58, 59 and 61 CEEAG.

Avoidance of undue negative effects on competition and trade

- (87) According to point 446 CEEAG, provided that the aid for exceptional costs in relation to the closure of uncompetitive coal, peat and oil shale activities is limited to the coverage of exceptional costs incurred by the beneficiary, the Commission considers that it has limited distortive effects on competition and trade. The Commission observes that the aid in favour of SE is limited to the coverage of exceptional costs to be incurred by the beneficiary, namely the costs "*for the re-adaptation of workers in order to help them find new jobs outside the coal, peat and oil shale industry, especially training costs*" mentioned in point 1(d) of Annex II CEEAG. Therefore, the Commission concludes that the aid in favour of SE complies with point 446 CEEAG.

- (88) According to point 447 CEEAG, aid received for exceptional costs should be shown in the profit-and-loss accounts of the beneficiary as a separate item of revenue distinct from turnover. Where the beneficiary continues trading or operating after closing down the relevant coal, peat and oil shale activities, it must keep precise and separate accounts for those activities. The aid granted must be managed in such a way that there is no possibility of it being transferred to other economic activities of the same undertaking. In the present case, as explained by Slovakia (recital (25)), while continuing its other business activities, SE shall keep central accounting and tax records for all its business activities and factories, including the ENO power plant. The cost and revenue items for the ENO power plant are identifiably assigned in the central accounting of SE, separately from SE's other power plants and their activities. SE's central accounting ensures that the aid in favour of SE will be shown in SE's profit-and-loss accounts as a separate income item distinct from SE's turnover from other business activities (recital (25)). Against this background, the Commission considers that there will be no possibility for the aid being transferred to other economic activities of the same undertaking. Therefore, the Commission concludes that the aid in favour of SE complies with point 447 CEEAG.
- (89) Therefore, the Commission considers that the aid to SE does not have undue negative effects on competition and trade.

3.3.1.4. Weighing up the positive and negative effects of the aid

- (90) According to point 71 CEEAG, as a final step, the Commission will balance the identified negative effects on competition and trading conditions of the aid measure with the positive effects of the planned aid on the supported economic activities, including its contribution to environmental protection and objectives of energy policy and, more particularly, to transition towards environmentally-sustainable activities and to the achievement of the legally binding targets under the European Climate Law and the Union's 2030 targets for energy and climate. The Commission observes that the aid in favour of SE contributes to the Union's 2030 energy and climate targets because it is related to the closure of a plant that produces energy and heat by burning coal (recitals (3), (16)).
- (91) According to point 72 CEEAG, in that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852 ⁽¹⁵⁾, including the 'do no significant harm' principle, or other comparable methodologies. Furthermore, as part of the assessment of the negative effects on competition and trade, the Commission will take into account, where relevant, negative externalities of the aided activity where such externalities adversely affect competition and trade between Member States to an extent contrary to the common interest by creating or aggravating market inefficiencies including in particular those externalities that may hinder the achievement of climate objectives set under Union law. The Commission finds that there are no indications that the aid in favour of SE would (i) not comply with the 'do no significant harm' principle foreseen by Article 3 of Regulation (EU) 2020/852;

⁽¹⁵⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

and/or (ii) create or aggravate market inefficiencies including in particular externalities that may hinder the achievement of climate objectives set under Union law. In fact, the aid in favour of SE contributes to the Union's 2030 energy and climate targets because it is related to the closure of a plant that produces energy and heat by burning coal (recitals (3), (16) and (61)).

- (92) According to point 73 CEEAG, the Commission will consider an aid measure compatible with the internal market only where the positive effects outweigh the negative effects. In cases where the proposed aid measure does not address a well-identified market failure in an appropriate and proportionate way, for example due to the transitory nature of the benefit and the long term distortions it entails as set out in point 67 CEEAG, the negative distortive effects on competition will tend to outweigh the positive effects of the measure. The Commission will therefore be likely to conclude that the proposed aid measure is incompatible. Firstly, the Commission observes that, as shown in recitals (87) to (89), the aid in favour of SE has limited distortive effects on competition and trade. Secondly, the Commission observes that, as shown in recitals (57) to (61), the aid in favour of SE will contribute to the objectives of Union climate policy, in line with point 25 CEAAG, and the closure of the ENO power plant allows for a shift away from coal-fired power production to a more sustainable form of energy generation, in line with point 24 CEAAG. Thirdly, the Commission observes that, as shown in recital (62), the aid in favour of SE facilitates the social transition of the Upper Nitra region, in line with points 437 and 438 CEEAG.
- (93) According to point 74 CEEAG, measures that directly or indirectly involve support to fossil fuels, in particular the most polluting fossil fuels, are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. The same applies for measures involving new investments in natural gas, unless it is demonstrated that there is no lock-in effect. This will in principle render a positive balancing for such measures unlikely, as further explained in Chapter 4 CEEAG. The Commission observes that the aid in favour of SE does not directly or indirectly involve support to fossil fuels, nor does it involve new investments in natural gas.
- (94) Therefore, the Commission concludes that the positive effects of the measure in favour of SE outweigh its negative effects on the internal market.

3.3.1.5. Companies in difficulty or subject to outstanding recovery orders

- (95) As explained in recital (13), Slovakia confirmed that SE is not an undertaking in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. In addition, neither HBP nor SE are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.
- (96) Therefore, the Commission concludes that the measure complies with points 14 and 15 CEAAG.

3.3.1.6. Conclusion on the compatibility of the measure

- (97) In light of the foregoing in recitals (52) to (96), the Commission concludes that the aid to SE facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers the measure compatible with the internal market based on Article 107(3)(c) TFEU, as interpreted under the relevant points of the CEEAG.

4. CONCLUSION

4.1. Conclusion regarding the aid in favour of HBP

- (98) The Commission has accordingly decided not to raise objections to the notified aid to HBP on the grounds that it is compatible with the internal market pursuant to Article 107(3)(e) TFEU, in conjunction with Council Decision 2010/787/EU.
- (99) The Commission reminds the Slovak authorities that, in accordance with Council Decision 2010/787/EU, they shall notify to the Commission:
- any amendments related to the closure plans;
 - all the aid, which they intend to grant to the coal industry under Council Decision 2010/787/EU during a coal year.
- (100) The Commission also reminds the Slovak authorities that, in accordance with Article 7(5) of Council Decision 2010/787/EU, they shall inform the Commission of the amount and of the calculation of the aid actually paid during a coal year no later than six months after the end of that year. Where any corrections are made to the amounts originally paid during a given coal year, the Slovak authorities shall inform the Commission before the end of the following coal year.

4.2. Conclusion regarding the aid in favour of SE

- (101) The Commission has accordingly decided not to raise objections to the notified aid in favour of SE on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

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

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission
Didier REYNDERS
Member of the Commission

