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EURÓPSKA KOMISIA

GENERÁLNY SEKRETARIÁT

V Bruseli dňa 7.1.2016

SG-Greffe(2016) D/ 64

STÁLE ZASTÚPENIE  
SLOVENSKEJ REPUBLIKY  
PRI EURÓPSKEJ ÚNII  
Avenue de Cortenberg, 107  
1000 BRUXELLES  
BELGIQUE

**OZNAMENIE V ZMYSLE CLANKU 297 ZFEÚ**

**Vec: ROZHODNUTIE KOMISIE (6.1.2016)**

Generálny sekretariát si Vás dovoľuje požiadať, aby ste odovzdali pánovi ministrovi zahraničných vecí pripojené rozhodnutie.

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|-----------------------------------------------------------|------------------|
| Stále zastúpenie Slovenskej republiky<br>pri EÚ v Bruseli |                  |
| 07. 01. 2016                                              |                  |
| Poradové číslo: 44                                        | Číslo spisu:     |
| Prílohy:                                                  | Vybavuje: MŽP SR |

Za generálneho tajomníka

Robert ANDRECS

príloha : C(2015) 9455 final

SK





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## EUROPEAN COMMISSION

Brussels, 06.01.2016  
C(2015) 9455 final

**Subject: State Aid SA.42133 (2015/N) – Slovakia**  
**Scheme of State Aid for environmental protection to reduce air pollution and improve air quality for the 2014-2020 programming period**

Sir, /Madam,

### 1. PROCEDURE

- (1) Pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU), Slovakia notified the measure for the financing environmental protection projects aiming to reduce air pollution and improve air quality in Košice Region. The application was submitted electronically on 11 June 2015. Additional information was submitted on 14 August 2015 and on 6 November 2015.
- (2) By letter dated 2 December 2015, Slovakia agreed to waive the rights conferred upon it by Article 342 TFEU and Article 3 of the Regulation (EC)1/1958<sup>1</sup> and to have the present decision adopted and notified in English language.

### 2. DESCRIPTION OF THE MEASURE

#### 2.1. Background and objectives of the Scheme

- (3) The notified measure proposes supporting projects contributing to air pollution reduction. The aim of the measure is to enable operators of stationary sources of air pollution to move beyond the framework of Union standards or to increase the level of environmental protection in the absence of Union standards by supporting

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<sup>1</sup> 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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investment projects aimed at improving air quality beyond the scope of EU standards in accordance with paragraph 18(a) of the Guidelines on State aid for environmental protection and energy 2014-2020<sup>2</sup> (hereinafter EEAG).

- (4) The Slovak authorities mention that support will be tied to measures which will have the end result of delivering a reduction in pollutant emissions from a given source to an extent beyond the scope covered by Union standards. In particular, these measures are crafted to reduce emissions of particulate matter (PM<sub>10</sub>, including PM<sub>2.5</sub>). The concentration of these particles in the air is the most significant air quality problem in Slovakia. Further measures are designed to reduce emissions of other pollutants into the air, as monitored nationally in line with the requirements of the National Emission Ceilings Directive<sup>34</sup> and the forthcoming revision thereof.

## **2.2. Necessity of state intervention**

- (5) For the purposes of the notified measure a special analysis<sup>5</sup> was conducted and was submitted to the Commission as part of the notification illustrating the current situation in the Košice Region. The Košice Region, which is affected by the significantly deteriorated air quality, affects 365,706 inhabitants and an area of 951.72 square kilometres. The Košice Region represents, in terms of air quality, the most heavily polluted area in Slovakia. Inhabitants of Košice Region are exposed to PM emissions eight times higher, NO<sub>x</sub> emissions four times higher, and SO<sub>2</sub> emissions almost twice as high, than the Slovak national average. Emissions produced are reflected in the significantly impaired emission situation; it is manifested by limit values of pollutant concentrations that frequently and significantly exceed the relevant legislation.
- (6) There are several emission sources in the Košice Region; the industrial stationary sources of pollution contribute very significantly to the total emission production in the Region. The limit values concentrations of pollutants are being exceeded despite the fact that the operators of pollution sources, whose operations are located in the affected Region, comply with emission limits imposed on them by appropriate legislation.
- (7) The air quality in the Region can, therefore, be improved only by increasing the level of the air protection beyond that required by the applicable legislation. For this purpose, it is necessary to sufficiently motivate operators of pollution sources to implement effective measures to achieve a higher level of protection than that required by the relevant standards. Measures implemented this way will reduce the total amount of produced pollutant emissions. Strategic documents as well as regional instruments aimed at managing the air quality propose additional measures, which should lead to reducing air pollution. Implementation of

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<sup>2</sup> OJ C 200, 28.06.2014, p. 1.

<sup>3</sup> OJ L309, 27.11.2001, p.22.

<sup>4</sup> The National Emission Ceilings Directive 2001/81/EC (NECD) is currently being reviewed as part of The Clean Air Policy Package. The proposal repeals and replaces the current Union regime on the annual capping of national emissions of air pollutants, as defined in Directive 2001/81/EC. By doing so, it ensures that the national emission ceilings (NECs) set in the current Directive 2001/81/EC for 2010 onwards for SO<sub>2</sub>, NO<sub>x</sub>, NMVOC and NH<sub>3</sub> shall apply until 2020 and establishes new national emission reduction commitments ("reduction commitments") applicable from 2020 and 2030 for SO<sub>2</sub>, NO<sub>x</sub>, NMVOC, NH<sub>3</sub>, fine particulate matter (PM<sub>2.5</sub>) and methane (CH<sub>4</sub>).

<sup>5</sup> Analysis of the air quality conditions in The Kosice Region aimed at drafting measures to improve air quality, Bratislava, July 2014

measures beyond the obligations of the operators of pollution sources is largely dependent on the will and financial situation of the operators of these pollution sources, who comply with all the conditions imposed on them by the applicable legislation. No significant effect can be expected without additional support and motivation to take further actions.

- (8) The previous form and conditions of the support from the EU funds have not provided the operators with an adequate incentive enough, and were not utilized sufficiently.
- (9) It is very likely that, over the next few years, the air quality in the Košice Region will not be significantly improved without increasing support to individual operators of the air pollution sources in order to motivate them to implement additional measures to reduce emissions.

### **2.3. The Scheme**

- (10) The Scheme focuses on undertakings in the Košice Region, as this has long been one of the regions most afflicted by air pollution in Slovakia. The target area was determined on the basis of the results of a study carried out in preparation of the Operational Programme Environmental Quality<sup>6</sup>.
- (11) Projects funded under the Scheme will be selected in a competitive bidding process in order to support those projects which will make the largest contribution to the pursuit of objectives under the Operational Programme Environmental Quality<sup>7</sup>. The implementation of these projects will improve the emission situation in the target area.
- (12) Under the Scheme, the Slovak authorities intend to provide aid in the form of a grant for projects which fall within the State aid category of 'Aid for going beyond Union standards or increasing the level of environmental protection in the absence of Union standards (Section 1.2, paragraph 18(a) of the EEAG)<sup>8</sup>'. Such projects constitute eligible activities under the Operational Programme Environmental Quality, specific target 1.4.1 Reduction in air pollution and improvement in air quality, i.e.

A1. Technological and technical measures to reduce pollutants emitted into the air, implemented at sources of air pollution primarily with a view to complying with the requirements of the National Emission Ceilings Directive<sup>8</sup> and/or the Directive on ambient air quality and cleaner air for Europe<sup>9</sup>, the installation and upgrading of technology to reduce pollutant emissions from stationary sources of air pollution, in particular abatement equipment and other terminal technology (e.g. fabric filters, electrostatic separators, etc.);

A2. Measures relating to changes in technological processes with a view to reducing emissions of pollutants into the air.

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<sup>6</sup> See footnote 4.

<sup>7</sup> Commission Implementing Decision of 28th October 2014 no. CCI 2014SK16M1OP002 the Operational Programme Quality of Environment for the period 2014 – 2020 (OP QE).

<sup>8</sup> OJ L309, 27.11.2001, p.22.

<sup>9</sup> OJ L 152, 11.6.2008, p.1.

- (13) In line with Article 2(2)(b) of the Cohesion Fund Regulation<sup>10</sup>, support under this Scheme will not be open to investments aimed at achieving the abatement of greenhouse gas emissions in connection with the activities referred to in Annex I to Directive 2003/87/EC<sup>11</sup> of the European Parliament and of the Council of 13 October 2003 establishing a Scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC. In this light, as far as the measures set out in A.2 are concerned, projects geared towards changes in technological processes associated with the activities referred to in Annex I to Directive 2003/87/EC within the framework of which it is impossible, from a technological standpoint, to separate expenditure on pollutant emission reductions from expenditure on greenhouse gas emission abatement, will be treated as ineligible.
- (14) Under the Scheme only expenditure incurred to achieve emission levels extending beyond the framework of mandatory standards will be eligible. If this extra investment expenditure cannot be identified directly within the scope of an investment (e.g. as an add-on component to an existing facility), the beneficiary must determine the counterfactual scenario, which the Ministry of the Environment of the Slovak Republic<sup>12</sup> (the "provider", i.e. the granting authority) will verify in the application procedure.
- (15) The Managing Authority is responsible for applying principles of transparency, equal treatment, non-discrimination and horizontal principles in accordance with the Art. 7 and 8 of the Regulation (EU) No 1303/2013.

#### **2.4. Expected results of the Scheme**

- (16) Support for projects under this Scheme will result in investments in the installation of technology at industrial sources of air pollution in an industry-intensive region, where emissions from large sources continue to account for a major proportion of local pollution which has adverse effects on public health.
- (17) The implementation of these measures is expected to significantly reduce emissions of pollutants into the year, especially particulate matter (PM), the high concentrations of which (PM10 and PM2.5) amount to the most crucial air-quality problem in Slovakia.
- (18) More specifically the Slovak authorities estimate to achieve the total PM emission reduction of circa 2 000 tonnes per year, which is almost a third of total PM emissions generated in Slovakia by large and medium sized pollution sources.
- (19) As regards the reduction of other selected pollutants (SO<sub>2</sub>, NO<sub>x</sub>), it is worth to mention that such a reduction is expected to happen as side effect of the measure. The exact amounts of reduced emissions are therefore difficult to be estimated as production of these pollutants is mainly related to production technologies or combustion plants (especially SO<sub>2</sub> and NO<sub>x</sub>) where the support is quite limited. e.g. due to the side effect of greenhouse gas emissions reductions (see point (13) above). The estimated reduction is around 600 - 700 tonnes per year.

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<sup>10</sup> OJ L 347, 20.12.2013 p.281.

<sup>11</sup> OJ L 275, 25.10.2003, p.32.

<sup>12</sup> Cf. [www.minzp.sk](http://www.minzp.sk), [www.opzp.sk](http://www.opzp.sk)

(20) The table below shows the estimations<sup>13</sup> of the Slovak authorities:

| Project indicator                                      | Unit            | Value expected under this Scheme |
|--------------------------------------------------------|-----------------|----------------------------------|
| Reduction of PM <sub>10</sub> emissions <sup>14</sup>  | tonnes per year | 1 600                            |
| Reduction of PM <sub>2.5</sub> emissions <sup>15</sup> | tonnes per year | 920                              |
| Reduction of SO <sub>2</sub> emissions                 | tonnes per year | 300                              |
| Reduction of NO <sub>x</sub> emissions                 | tonnes per year | 400                              |

## 2.5. Nature of the supported investments, applicable standards

- (21) Under the Scheme aid is granted for investments enabling the beneficiaries to increase the level of environmental protection resulting from their activities by improving on the applicable Union standards, irrespective of the presence of mandatory national standards that are more stringent than the Union standard or investments enabling the beneficiaries to increase the level of environmental protection resulting from its activities in the absence of Union standards<sup>16</sup>.
- (22) By reference to the definition of Union standards in the EEAG, and further to the nature of eligible activities under the Operational Programme Environmental Quality focusing on reducing air pollution and improving air quality (a reduction in emissions of particulate matter, especially PM<sub>10</sub>, including PM<sub>2.5</sub>, as well as a reduction in emissions of other pollutants), which will be supported under the Scheme, the main Union standards are Directive 2010/75/EU<sup>17</sup> and decisions on BAT (Best Available Techniques) conclusions adopted on the basis of that Directive<sup>18</sup>.
- (23) The Slovak authorities confirmed that by implementing projects supported under the Scheme, a beneficiary will achieve reductions in the level of emissions at its

<sup>13</sup> The Slovak authorities state, that due to the demand-oriented nature of the call under OP QE, as well as due to the nature of potential beneficiaries (industrial air pollution operators mostly from private sector), the provided data are estimations.

<sup>14</sup> The reduction of PM<sub>10</sub> emissions are calculated as a proportion of total PM emissions (2 000 tonnes per year). The actual proportion of PM<sub>10</sub> emissions is determined by the type pollution source, type of industry generating PM emissions and the type of filtration technology used.

<sup>15</sup> PM<sub>2.5</sub> emissions are included in the amount of PM<sub>10</sub> emissions and the amount is calculated from the total amount of PM emissions using an index according to the expert methodology. The amounts of PM<sub>10</sub> and PM<sub>2.5</sub> are not combined or cumulated, i.e. there is no duplicity risk.

<sup>16</sup> According to the Guidelines on State aid for environmental protection and energy 2014-2020 (2014/C 200/01), 'Union standard' means:

- (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings (consequently, standards or targets set at Union level which are binding for Member States but not for individual undertakings are not deemed to be Union standards); or
- (b) the obligation under Directive 2010/75/EU to use the best available techniques ('BAT') and ensure that emission levels of pollutants are not higher than they would be when applying BAT. For the cases where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU, those levels will be applicable for the purpose of the Guidelines; where those levels are expressed as a range, the limit where the BAT is first achieved will be applicable.

<sup>17</sup> OJ L 334, 17.12.2010 p.17.

<sup>18</sup> In case of air pollution sources under the Directive 2010/75/EU, the EU standard is the emission level associated with BAT as defined in implementing acts adopted under Directive 2010/75/EU (Commission Implementing Decision establishing the best available techniques conclusions under Directive 2010/75/EU for the respective industry). Accordingly, if BAT conclusions have been adopted, the BAT conclusions will constitute the EU standard. If EU standards do not exist, national emission levels will apply.



stationary source of air pollution in the target area that extend beyond the mandatory emission limits under Directive 2010/75/EU and beyond the emission limits defined in decisions on BAT conclusions, if issued for a particular sector.

- (24) The Slovak authorities have confirmed that the beneficiaries meet the currently applicable EU standards and no aid will be granted for any costs necessary to meet those standards.

## **2.6. Monitor and achievement of the tighter standards**

- (25) As for the achievement of tighter standards, the achievement of emission levels going beyond EU standards will be monitored and checked after the realization of projects and in line with the Decree of the Ministry of Environment SR No 411/2012 Coll. on the Monitoring of Emissions from Stationary Sources of Air Pollution and Air Quality in Their Area.
- (26) The beneficiaries will have to provide authorized measurements in accordance with Decree 411/2012 in final and follow-up independent monitoring reports proving that the tighter emission level beyond the applicable standard has been achieved.

## **2.7. Implementing body / Beneficiaries**

- (27) The Scheme's implementing body is the Slovak Environmental Agency, which features as an intermediate body<sup>19</sup> in line with the implementation structure of the Operational Programme Environmental Quality.
- (28) Under this Scheme, undertakings operating a source of air pollution in the Košice Region are eligible to receive aid. The official National Emission Inventory System (NEIS) in Slovakia, operated by the Slovak Hydrometeorological Institute, counts 33 large-sized and 380 medium-sized air pollution sources located in the region in question – Košice Region<sup>20</sup>.
- (29) The estimated number of beneficiaries will be between 11 and 50.
- (30) Undertakings in difficulty, as defined by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty,<sup>21</sup> are not eligible for aid under the Scheme.
- (31) Under the Scheme, aid cannot be granted to an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring such aid illegal and incompatible with the internal market.

## **2.8. Financing: budget, aid intensity and duration**

- (32) The average annual amount of the planned budget is EUR 15,750,000.00 and the overall amount EUR 94,500,000.00.
- (33) The budget of the Scheme relates to the 2015-2020 period. The last date until which aid may be granted is the 31<sup>st</sup> of December 2020.

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<sup>19</sup> Slovak Environmental Agency: [www.sazp.sk](http://www.sazp.sk)

<sup>20</sup> The Slovak authorities submitted a list of potential beneficiaries on the basis of the available NEIS data of year 2013.

<sup>21</sup> OJ C 249, 31.7.2014, p. 1



- (34) The maximum aid intensity of the aid Scheme is 90% of the eligible costs as defined below.
- (35) Under the Scheme, aid is provided in the form of a grant by means of a pre-financing system or a refund system or a combination of the two systems on the basis of accounting documents submitted in accordance with the Financial Management System and the relevant call for the submission of grant applications. Grants are not provided in the form of an advance.
- (36) The Scheme will be co-financed from Cohesion Fund.

## **2.9. Eligible costs**

- (37) No project with total eligible costs exceeding EUR 50 million shall be supported under the Scheme.
- (38) The eligible costs for environmental aid are determined as the extra investment costs in tangible and/or intangible assets, which are directly linked to the achievement of the common objective, i.e. making it possible to go beyond applicable Union standards or to increase the level of environmental protection in the absence of Union standards.
- (39) The Slovak authorities provided a detailed calculation methodology for the aid Scheme, by reference to the counterfactual situation, which will be applied to all individual aid grants based on the notified Scheme as shown below.
- (40) Under part *H.3 Common provisions on determining extra investment expenditure* of the Scheme eligible costs are determined as follows:
  - a. where the expenditure on achieving the common interest objective can be identified in the total investment expenditure as a separate investment, for instance, because the green element is a readily identifiable ‘add-on component’ to a pre-existing facility, the expenditure on the separate investment constitutes the eligible expenditure;
  - b. in all other cases, the eligible expenditure is the extra investment expenditure established by comparing the aided investment with the counterfactual situation in the absence of State aid. In principle, reference can be made to expenditure on a technically comparable investment that would credibly be realised without aid and which would not achieve the common interest objective or that would only attain that objective to a lesser degree. A technically comparable (reference) investment is an investment with the same production capacity and all other technical characteristics (except those directly related to the extra investment for the targeted objective). A reference investment must, from a business point of view, be a credible alternative to the investment under assessment.
- (41) According to the Scheme for the calculation of eligible expenditure, the following procedure applies:
  - 1) The amount of investment expenditure on equipment (IN1) that will facilitate compliance with Union standards, i.e. the limits defined by Union standards in the field of air protection, is determined. The amount of investment expenditure thus determined is declared by means of current

prices offered by manufacturers of the relevant equipment, or by a budget confirmed by an authorised entity in accordance with the relevant call.

- 2) The amount of investment expenditure on equipment (IN2) that is the subject of the project, and hence facilitates compliance with emission limits stricter than the emission limits defined by Union standards in the field of air protection, is determined. The amount of investment expenditure thus determined is declared by means of current prices offered by manufacturers of the relevant equipment, or by a budget confirmed by an authorised entity in accordance with the relevant call.
- (42) The applicant calculates eligible expenditure (EE) according to the following equation:  $EE = (IN2 - IN1) - \text{ineligible expenditure}$ .

#### *2.9.1. Counterfactual Situation Reference Investment*

- (43) According to the measure to calculate the eligible costs for the investment project supported by the Scheme, applicants must specify a counterfactual situation. By reference to the EEAG the measure foresees that the calculation of the eligible costs on the basis of a counterfactual scenario is required for those projects, where the costs of achieving the common interest objective cannot be identified in the total investment costs. Reference investment is a comparable investment that would be realized without aid and which would achieve minimal limit of Union standards. The counterfactual situations will be defined in accordance with the provisions set out in Annex II of EEAG.
- (44) Regarding aid for going beyond Union standards, the extra investment costs are the costs of the additional investment necessary to go beyond the level of environmental protection required by the Union standards. It means that the costs of investment needed to reach the minimum level of protection required by the Union standards are not eligible. In case of absence of Union/national standards the extra investment costs consist of the investment costs necessary to achieve a higher level of environmental protection than that which the undertaking in question would achieve in the absence of any environmental aid.
- (45) Detailed information on the counterfactual situations setting is provided in the "Methodology for the elaboration of comparative analysis for applicants for a financial contribution under the Scheme under EEAG" which will be annexed to the relevant call for proposals.
- (46) The Slovak authorities provided three representative scenarios (P1, P2 and P3) where calculations of eligible costs were calculated on the basis of the above principles. The projects aim at a further reduction of PM emissions beyond current limits. P1 and P2 projects refer to the installation of a new complementary/add-on component in order to achieve increased air protection, beyond current/applicable limits. The investment is identifiable as a separate investment and represents the eligible costs of the project. In this case, there is no counterfactual scenario (i.e. the reference investment equals 0 EUR). In P3 scenario the eligible costs were calculated as the extra investment costs in comparison with the counterfactual situation, i.e. without State aid. The reference investment (IN1) equals 230 000 EUR and includes the capital cost of a technically comparable investment that would be realized without aid. The reference investment represents the capital expenses, which involves upgrade of the existing technology, modernization of the peripheral/non-production

equipment, modernization of the technological part of the existing filtration equipment to comply with BAT emission limit already adopted but not yet in force. Eligible costs are directly connected with the achievement of environmental performance going beyond applicable standards. Investment costs related to the achievement of existing standards (BAT emission limit already adopted but not yet in force) are deducted from total costs as reference investment.

## 2.10. Bidding process

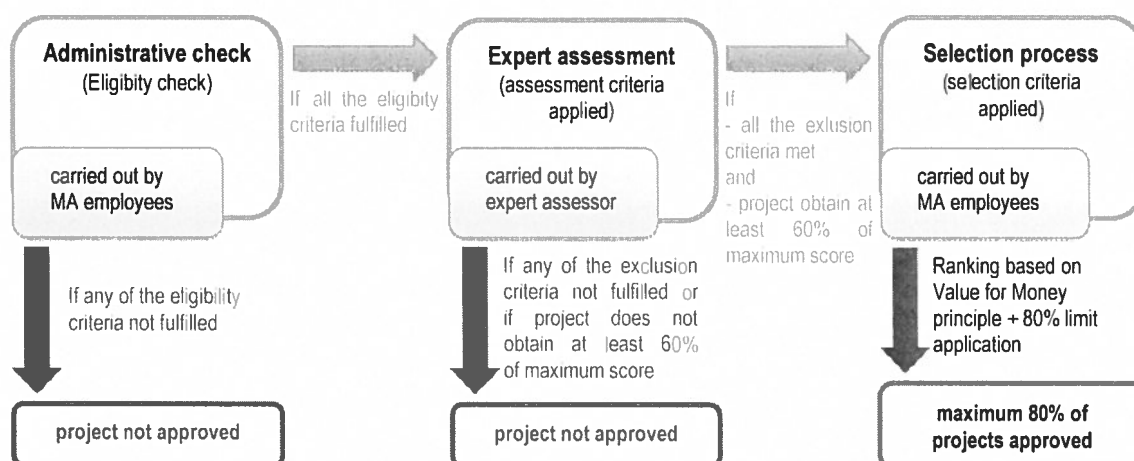
- (47) The Managing Authority (MA) for the Operational Programme Quality of Environment (OP QE) intends to launch one call for proposals under the Scheme in order to fully apply the bidding process.

### 2.10.1. Description of the bidding and selection process

- (48) The Slovak authorities mention that the selection and approval process of the projects to be financed from the Scheme will be in line with legislation and relevant managing documents regulating the ESIF<sup>22</sup> management on national level<sup>23</sup>.
- (49) According to the Slovak authorities the selection and approval process of the projects<sup>24</sup> to be financed from the Scheme consists, in accordance with the rules set out at the national level<sup>25</sup>, of the following 3 phases:

- (1) Administrative check (eligibility check)
- (2) Expert assessment (assessment criteria applied)
- (3) Selection process (selection criteria applied)

Table 1: Overview of the selection and approval process of the projects



<sup>22</sup> European Structural and Investment Funds Regulations 2014-2020

<sup>23</sup> i.e. Act No. 292/2014 Coll. on contributions provided from the European Structural and Investment Funds and on amendments to certain acts and the Management system of the European Structural and Investment Funds issued by the Central coordination authority (Government Office of the SR)

<sup>24</sup> The guiding principles for selection of operations under the OP QE, which are further described in reply to paragraph 2.1, were also taken into account in the process of preparation of assessment and selection criteria.

<sup>25</sup> The rules are set out in the document „Management System of the European Structural and Investment Funds for programming period 2014- 2020“ that is binding for all the managing authorities in the Slovak Republic.

- (50) The Slovak authorities provided detailed information on the abovementioned approval and selection process.
- (51) According to that process projects that meet the eligibility criteria are further subject to assessment by score (assessment) criteria. Table 2 contains overview of score criteria and their weight (i.e. percentage of total points, which can be assigned to a project).

Table 2: Score criteria

| Assessment areas                                                                        | Assessment criteria                                                                                                                                 | Score scale | Maximum score | % of total points |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------|---------------|-------------------|
| <b>1. Contribution of the project to objectives and results of OP and priority axis</b> | 1.1 Contribution of the project to the specific objective of the operational programme <sup>26</sup>                                                | 5;10;15     | 15            | 30 %              |
|                                                                                         | 1.2 Relevance of the project to RITS/SUDS/LCS <sup>27</sup>                                                                                         | 0;4         | 4             | 8 %               |
|                                                                                         | <b>Total</b>                                                                                                                                        |             | <b>19</b>     | <b>38 %</b>       |
| <b>2. The way of implementation of the programme</b>                                    | 2.1 Appropriateness and inter-relation of the proposed project activities in relation to baseline and to the set targets and results of the project | 0;3;6       | 6             | 12 %              |
|                                                                                         | 2.2 Realism of the project activities in terms of the proposed project time schedule                                                                | 0;2;3       | 3             | 6 %               |
|                                                                                         | 2.3 Appropriateness and feasibility of the project activities in terms of the proposed procedures                                                   | 0;3;6       | 6             | 12 %              |
|                                                                                         | <b>Total</b>                                                                                                                                        |             | <b>15</b>     | <b>30 %</b>       |
| <b>3. Administrative and operating capacity of the applicant</b>                        | 3.1 The applicant's capacities for management of the project                                                                                        | 0;1;3       | 3             | 6 %               |
|                                                                                         | 3.2 The applicant's capacity for project implementation                                                                                             | 0;4         | 4             | 8 %               |
|                                                                                         | 3.3 Operating capacity of the applicant                                                                                                             | 0;3         | 3             | 6 %               |
|                                                                                         | <b>Total</b>                                                                                                                                        |             | <b>10</b>     | <b>20 %</b>       |
| <b>4. Financial and economic aspects of the project</b>                                 | 4.1 Financial characteristics of the applicant                                                                                                      | 0;3;6       | 6             | 12 %              |
|                                                                                         | <b>Total</b>                                                                                                                                        |             | <b>6</b>      | <b>12 %</b>       |
| <b>Grand total score for all assessment areas</b>                                       |                                                                                                                                                     |             | <b>50</b>     | <b>100 %</b>      |

- (52) According to the Slovak authorities the most important criterion is criterion 1.1 Contribution of the project to the specific objective of the operational programme, which has 30% importance of the total score (50 points). This criterion enables to categorise the contribution of the project to the relevant OP's objective in an impartial and quantified manner through the application of Value for Money principle. Projects with higher contribution level achieve higher point assessment.
- (53) The "Value for Money" rate is calculated as *the ratio of total eligible costs (i.e. costs after reference investment deduction where applicable) of the main project*

<sup>26</sup> Value for money is evaluated under this assessment criterion.

<sup>27</sup> Regional Integrated Territorial Strategy (RITS), Sustainable Urban Development Strategy (SUDS), Low Carbon Strategy (LCS).

activities<sup>28</sup> (excl. VAT) to the set amount of reduction of PM and selected pollutants emission's production.

- (54) The set amount of reduction of PM and selected pollutants („X”) emission's production per annum is calculated as summary of amounts of emissions of individual air pollutants, of which their production is expected to be reduced by the implementation of the project, multiplied by the coefficient set for each of the selected pollutants individually, as follows:

$$X = 1 \times \text{PM}_{10} + 0,8 \times \text{NO}_x + 0,8 \times \text{NH}_3 + 0,6 \times \text{VOC} + 0,6 \times \text{SO}_2$$

- (55) The “Value for Money” rate is expressed in Euro to the reduction of production of 1 ton of emissions of PM and selected pollutants per annum.
- (56) Based on the “Value for Money” rate, the project falls into one of three categories:
- Low contribution level;
  - Medium contribution level;
  - High contribution level.

- (57) The following table contains the points the project can receive for the Value for Money criterion under the notified scheme:

*Table 3: Criterion 1.12 Contribution of the project to the relevant specific objective of the operational programme (Value for Money)*

| Amount of points | Level of project's contribution      | Values in EUR per reduced tonne of emissions |
|------------------|--------------------------------------|----------------------------------------------|
| 5                | Low contribution level <sup>29</sup> | > 180 000                                    |
| 10               | Medium contribution level            | 90 000 – 180 000                             |
| 15               | High contribution level              | < 90 000                                     |

- (58) This criterion allows that projects which address the environmental objectives using the least amount of aid or in the most cost – effective way, to be prioritized.
- (59) The aspects regarding production of emissions are also assessed within the assessment criterion 2.1 *Appropriateness and inter-relation of the proposed project activities in relation to baseline and to the set targets and results of the project*, taking into account the expected reduction of emissions production (calculated as a difference between situation after and before project implementation). That means that unlike the criterion 1.1, the contribution of the project to the reduction in production of PM and selected pollutants are not assessed against the amount of eligible expenditure. The share of this assessment criterion on the overall point assessment is 12 %.

<sup>28</sup> i.e. the calculation does not include cost of the supporting project activities (project management, information and communication activities).

<sup>29</sup> Project with zero contribution to the specific objective of the operational programme is not expected in the process of expert assessment (2nd phase), because this project would not have passed the administrative (eligibility) check.

- (60) A project which does not provide for achievement of emissions reduction at the minimum required level (<20% see table 4) is assessed by 0 points under this criterion.
- (61) Projects are also assessed by experts from the view, whether they can realistically meet the of declared values of indicators set by the applicant. The table below states the way of assessment of the criterion 2.1 for projects under the notified scheme.

*Table 4: Assessment criterion 2.1 Appropriateness and inter-relation of the proposed project activities in relation to baseline and to the set targets and results of the project*

| Amount of points (a) | Project contribution to addressing identified needs (problems) of target groups/territory expressed through the level of emissions reduction (b) | Target values of project indicators expressing project's contribution to the attainment of the relevant specific objective of OP are set realistically (c) | Target values of other indicators are set realistically (d) | Comment (e)                                                                                                      |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| 0                    | < 20%                                                                                                                                            | NO                                                                                                                                                         | N/A                                                         | 0 points shall be granted, when at least one of the conditions set in columns (b) and (c) applies to the project |
| 3                    | 20% - 40%                                                                                                                                        | YES                                                                                                                                                        | NO                                                          | 3 points shall be granted, when all conditions set in columns (b), (c) and (d) apply to the project              |
| 6                    | > 40%                                                                                                                                            | YES                                                                                                                                                        | YES                                                         | 6 points shall be granted, when all conditions set in columns (b), (c) and (d) apply to the project              |

- (62) The Slovak authorities confirmed that the expert assessment criteria are fulfilled when all of the eligibility criteria are met and the project obtains at least 60 % of the maximum score, i.e. 30 of the total 50 points.
- (63) Only projects that fulfil the expert assessment criteria are subject to the selection process, which is the final (the 3<sup>rd</sup>) phase of the selection and approval process.
- (64) In the selection process (the 3<sup>rd</sup> phase) the selection criteria approved by the Monitoring Committee for the OP QE under the document "*Criteria for project selection for the Operational Programme Quality of Environment*" are applied.
- (65) Based on application of selection criteria the projects are ranked and the list of the projects which could be supported up to the amount of the available allocation for the call is created. Subsequently, the bidding procedure condition is applied and

maximum of 80 % of the projects meeting the criteria applied within the selection and approval process will be supported under the Scheme.

- (66) The following table contains the selection criteria defined for specific objective 1.4.1 of the OP QE, which are applied for projects under the notified Scheme:

*Table 5: Selection criteria and the way they are applied*

| Selection criterion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | How to apply the selection criterion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Selection criterion 1:</b><br>Relevance of the project to air quality management                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Firstly, the projects are organised into two groups according to the project location and its relation to the areas of air quality management by their priority, as follows:<br>1. Projects implemented in the area of air quality management;<br>2. Projects implemented outside the area of air quality management.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Selection criterion 2:</b><br>The overall contribution of the project to reducing the emissions of PM pollutants and of selected pollutants in relation to total eligible expenditure of the project (Value for Money as EUR/ton/year).<br>The contribution is assessed against the set target value of the indicator:<br><u>Reduced production of PM<sub>10</sub> emissions</u><br><u>Reduced production of SO<sub>2</sub> emissions</u><br><u>Reduced production of NO<sub>x</sub> emissions</u><br><u>Reduced production of VOC emissions</u><br><u>Reduced production of NH<sub>3</sub> emissions</u> | Subsequently the projects in both groups are ranked according to the contribution of the project to the relevant specific objective of OP QE (Value for Money principle), from the project with the highest contribution down to the project with the least contribution.<br>Project with the highest contribution means project, in which the lowest amount of funds (EUR) is spent for reduction of 1 tonne of emission of PM and selected pollutants.<br>Selection criteria are applied in order to draw up a ranking list of the projects. Projects are approved according to this ranking list up to the amount of the available allocation for the call.<br>Projects within the first group (i.e. projects implemented in the area of air quality management) are approved at first. Subsequently the projects from the second group are approved. |

- (67) The application of selection criteria ensures that the projects selected will be those that contribute to the achievement of the environmental objectives in the most cost-effective way.
- (68) In case that the ranking of grant applications that resulted from application of the selection criteria includes several grant applications having an identical ranking position at the threshold given by the allocation amount for the concerned call, following differentiation selection criteria are applied:



| Differentiation selection criterion                                                       | How the differentiation selection criterion is applied                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Differentiation selection criterion 1:</b> The score from expert assessment            | Projects which attained an identical ranking position after application of the selection criteria are then ranked by the score achieved in expert assessment in the following way: the project which earned a higher score takes a higher position in the ranking (that means it gets preference).                                                                                                   |
| <b>Differentiation selection criterion 2:</b> Earlier acceptance of the grant application | In the event that the application of the differentiation selection criterion 1 has not resulted in a clear ranking of projects, the final ranking of the projects that still have an identical ranking position is done as follows: the higher position goes to the project whose electronic grant application version has the earlier sending date and time under IT monitoring system (ITMS 2014+) |

- (69) According to the Slovak authorities the crucial selection criterion is the Value for Money principle. By application of this criterion the projects are ranked based on the ratio of total project eligible expenditure and contribution to the reduction of PM emissions and other selected pollutants. Subsequently, the list of the projects, which could be supported up to the amount of the available allocation for the call, is created. Accordingly the aid amount is limited to the minimum necessary by using the Value for Money principle in the bidding process.
- (70) The selection criteria are applied in order to draw up a ranking list of the projects and to select the projects with the highest contribution to the OP's objectives based on the Value for Money principle. Finally, the bidding procedure condition is applied and only a maximum of 80% of the projects meeting all the criteria applied within the selection and approval process will be supported under the Scheme.

## 2.11. Incentive effect / Necessity

- (71) The Slovak authorities confirmed that no supported project(s) started prior to the submission of the application for the aid by the beneficiary/beneficiaries to the national authorities. In fact no application has yet been submitted by beneficiaries.
- (72) In accordance with the Scheme, the existence of an incentive effect is assessed against the following background:
- the nature of project activities – the aid must not be used to cover expenditure that an undertaking would anyhow incur and must not compensate for the normal business risk associated with the beneficiary's economic activity;
  - the moment when project implementation commences – the grant application, including mandatory annexes, together with the project (the 'application') must be submitted prior to the start of works on the project. The Slovak authorities confirmed that if works started before the above conditions have been met, the project is not eligible for aid under this Scheme.
- (73) In line with paragraph 51 of the Guidelines, the applicant demonstrates that there is an incentive effect by providing a description of the project, including a

description of the situation which would occur in the absence of aid, i.e. the counterfactual scenario. To this end, the beneficiary discloses information to the provider of aid proving that:

- the counterfactual scenario is credible;
- the eligible expenditure has been correctly calculated in accordance with article H of the Scheme at hand as at the date on which the application is submitted;
- the investment would not have been sufficiently profitable without the aid.

- (74) Aid under this Scheme may be granted only if it is demonstrated that such aid is necessary to achieve the objectives set out in the project, i.e. there must be a clear link between the aid granted and the project's eligible expenditure.

## **2.12. Cumulation**

- (75) According to the Scheme the maximum aid amount and intensity as set in section 2.8 (i.e. 90%) applies to the full amount of State aid granted for the projects supported, irrespective of whether such aid is financed by municipal, regional, national or Union resources.
- (76) Furthermore aid under this Scheme, in connection with the same eligible expenditure or the same investment project, cannot be cumulated with any other State aid if such cumulation would exceed the aid intensity established of the Scheme.
- (77) Aid is not to be cumulated with de minimis aid in respect of the same eligible expenditure if such cumulation would result in an aid intensity exceeding that of this Scheme.
- (78) In addition, the Slovak authorities confirmed that the beneficiary's application includes a solemn declaration used by the provider to verify the prohibition of cumulation. The beneficiary is also required to notify the provider of all aid granted to the beneficiary over the period from the date on which the application is submitted until the end of the project sustainability period. The beneficiary is also required to refund any part of the aid by which the maximum aid intensity is exceeded. These provisions are included in the Scheme, in a call for applications, and in the contract under which the beneficiary receives the grant.

## **2.13. National Legal Basis**

- (79) Below is the list the national legal basis including the implementing provisions and their respective sources of references:
- (a) Act No 292/2014 on the contribution received from the European Structural and Investment Funds and amending certain acts<sup>30</sup>;
  - (b) Act No 39/2013 on integrated pollution prevention and control and amending and supplementing certain acts, as amended<sup>31</sup>;

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<sup>30</sup> Act No 292/2014 on the contribution received from the European Structural and Investment Funds and amending certain acts - <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2014/292/20150101>

- (c) Act No 137/2010 on air, as amended<sup>32</sup>;
- (d) Act No 231/1999 on state aid, as amended<sup>33</sup>;
- (e) Act No 523/2004 on the budgetary rules of public administration and amending and supplementing certain acts, as amended;
- (f) Act No 575/2001 on the organisation of government activities and the organisation of central public administration, as amended;
- (g) Act No 25/2006 on public procurement and amending and supplementing certain acts, as amended;
- (h) Act No 431/2002 on accounting, as amended;
- (i) Act No 278/1993 on the administration of State assets, as amended;
- (j) Act No 502/2001 on financial control and internal auditing and amending and supplementing certain acts, as amended (hereinafter 'the Financial Control and Internal Auditing Act');
- (k) System for the management of the European Structural and Investment Funds for the programming period 2014–2020 (hereinafter 'the Management System');
- (l) System for the financial management of the Structural Funds, the Cohesion Fund and the European Maritime and Fisheries Fund for the programming period 2014–2020 (hereinafter 'the Financial Management System').

## 2.14. Transparency

- (80) The Slovak authorities confirmed that :
  - (a) when the Scheme, or an amendment hereto, takes effect, it will be published and made available, unabridged, on the provider's website for a minimum duration of the effect of the Scheme.
  - (b) to publish all approved grant applications in accordance with paragraph 104 of the Guidelines.
- (81) Furthermore they confirmed that :
  - (a) the provider of the aid will publish the following information on its website:
    - the full wording of this Scheme, including amendments;
    - information identifying the provider;
    - the company names or given names and surnames of all beneficiaries;
    - the form and amount of aid granted to each beneficiary;
    - the date of granting of the aid:

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<sup>31</sup> Act No 39/2013 on integrated pollution prevention and control and amending and supplementing certain acts, as amended - <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2013/39/20140601>;

<sup>32</sup> Act No 137/2010 on air, as amended - <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2010/137/20131001>;

<sup>33</sup> Act No 231/1999 on state aid, as amended - <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1999/231/20150101>.

- the type of undertaking (SME/large enterprise);
  - the region (NUTS II) where the beneficiary is located;
  - the principal economic sector in which the beneficiary has its activities (at NACE group level).
- (b) The provider keeps a central record of aid, containing full information about each aid granted under the Scheme, which is reflected in the IT monitoring system.
- (c) The provider is responsible for the collection, monitoring and evaluation of all project-level data required to monitor the aid, including data necessary to monitor the pursuit of the target values of measurable indicators at the level of the operational programme.
- (d) The provider is responsible for project monitoring in accordance with rules on the granting of ESIF contributions.
- (e) The provider is responsible for drawing up an annual monitoring report on the State aid granted under the Scheme for every calendar year, which is to be submitted to the Ministry of Finance of the Slovak Republic by the end of February of the following calendar year.
- (f) The provider runs checks on compliance with all conditions laid down in this Scheme.
- (g) The provider retains documents regarding each individual aid for 10 years from the date on which it is granted and documents regarding the Scheme for 10 years from the date on which the last individual aid is granted under the Scheme.

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

#### **3.1. Existence of aid**

- (82) A measure constitutes State aid in the meaning of Article 107 (1) TFEU if it is *"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 [...] in so far as it affects trade between Member States."*
- (83) The aid will be granted by Slovakia and through State resources within the meaning of Article 107(1) of the TFEU because the Scheme will be financed through resources from the Cohesion Fund and resources of national origin. All these resources qualify as State resources, as the transfer of Cohesion Fund resources is subject to the discretion of the Slovak Republic.
- (84) The notified Scheme will only benefit selected undertakings in the Kosice Region in the Slovak Republic. It follows that the planned aid is selective. Furthermore, the notified Scheme will allow the beneficiaries to be relieved of a part of the initial investment costs which they would normally have to bear themselves. Consequently, it will strengthen their financial position in relation to their competitors in the Union and therefore have potentially distorting effects on competition. Products of the beneficiaries concerned might be subject to cross-border trade within the Union. It follows that the planned aid is likely to distort or

threaten to distort competition and affect the patterns of trade between Member States.

- (85) Taking the above into consideration the Commission concludes that the measure involves State aid within the meaning of Article 107 (1) of the TFEU.

### **3.2. Lawfulness of the aid**

- (86) By notifying the Scheme before starting to implement it, the Slovak authorities have fulfilled their obligation according to Article 108(3) of the TFEU.

### **3.3. Compatibility under the Guidelines on State aid for environmental protection and energy 2014-2020**

- (87) The Commission has assessed the compatibility of the notified Scheme on the basis of Article 107(3)(c) TFEU. The Commission notes that the notified measure aims at increasing the level of environmental protection by giving aid for going beyond Union standards or increasing the level of environmental protection in the absence of Union standards as regards air pollution. As it regards support for environmental objectives, the notified measure falls within the scope of the Guidelines on State aid for environmental protection and energy 2014-2020 (hereinafter EEAG or Guidelines)<sup>34</sup>.
- (88) The notified Scheme fulfils the condition set out in point 25c of the EEAG as it is limited to the granting of investment aid to undertakings which go beyond the applicable Union standards or to undertakings which reduce their emissions in the absence of Union standards.
- (89) According to point 27 of the EEAG the Commission will consider a State aid measure compatible with the internal market only if it satisfies each of the following criteria:
- a) contribution to a well-defined objective of common interest;
  - b) need for State intervention;
  - c) appropriateness of the aid measure;
  - d) incentive effect
  - e) proportionality of the aid (aid kept to the minimum);
  - f) avoidance of undue negative effects on competition and trade between Member States;
  - g) transparency of aid.

#### *3.3.1. Contribution to a well-defined objective of common interest*

- (90) According to point 31 of the EEAG Member States when introducing a measure co-financed by the European Structural and Investments Funds, Member States may rely on the reasoning in the relevant Operational Programmes in indicating the environmental or energy objectives pursued.
- (91) The measure is co-financed by the Cohesion Fund and from the Slovak State budget. The measure is included in the Operational Programme Environmental Quality under the specific target 1.4.1 Reduction in air pollution and

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<sup>34</sup> OJ C 200 of 28.06.2014.

improvement in air quality, Priority Axis 1 – Sustainable use of natural resources by developing the environmental infrastructure.

- (92) By backing investment projects defined in the Scheme, the aid aims to play a role in making the EU's air quality directives more effective, with a particular focus on Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants and Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe. The purpose of the aid is in line with measures under the Clean Air for Europe Programme and with national air quality priorities defined in the PM10 Reduction Strategy.
- (93) Accordingly the measure contributes to a well-defined objective of common interest.

### *3.3.2. Need for State intervention*

- (94) The Commission notes that environmental goals in the area of air protection cannot be achieved under normal market conditions, as undertakings do not have sufficient incentive to reduce the level of pollution beyond obligatory standards set by legislation since such reductions increase their costs without corresponding benefits.
- (95) More specifically it is noted that implementation of projects requiring investment going beyond applicable standards does not lead to economic benefit; the investment does not enhance the productivity of beneficiary and does not decrease operational costs<sup>35</sup>. The projects are not economically viable and no return of investment can be expected unless non-refundable co-financing from external sources is provided.
- (96) Since the main objective of an undertaking is profit maximization, the companies limit their investment in environmental measures only at the level of necessary investment to ensure obligatory compliance with the Union standards. Undertakings naturally consider any investment above the Union standards as undesirable, because the additional costs of such investment will increase their production costs and weaken their competitive positions compared to other companies that would not carry out these investments.
- (97) The Commission notes that due to the abovementioned negative externalities, the market alone is not able to achieve the aimed environmental objectives, and accordingly concludes that the measure is necessary.

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<sup>35</sup> With regard to the cost savings it is necessary to admit that on one hand, providing state aid results in the decrease of the total amount of emissions and hence in the decrease of the total amount of fees related to emissions generation. The decrease in fees is reflected in the decrease of operational costs of the proposed investment. But on the other hand, it is necessary to note, that end-of pipe filtration technologies are primarily based on the enhancement of the efficiency of de-dusting of the production process. Enhanced efficiency usually requires an increase in volume of air which needs to be de-dusted/filtered by the technology, increasing electricity consumption of the end of pipe filtration technology and thus results in an increase of operational costs which are not coupled by an increase of production benefits.

### 3.3.3. *Appropriateness of the aid*

#### 3.3.3.1. Appropriateness among alternative policy instruments

- (98) The Slovak authorities provided information showing that there is no possibility to use any alternative policy instrument (e.g. further regulation), to support investment, which goes beyond obligatory applicable EU standards.
- (99) More specifically, as regards stringent national regulation in the area of air protection, point 55 of the EEAG states that such positive contribution of the aid, that enables the undertaking to go beyond the EU standards, exists irrespective of the presence of mandatory national standards that are more stringent than the Union standards. Moreover, the more stringent national standards which are to be met by an operator of a specific source of air pollution in comparison to an operator of the same type in other Member State shall ultimately affect its status on the Common market in adverse manner and diminish its competitiveness, since such operator must include the costs of meeting higher standard on air protection in the production costs of a good.
- (100) Indeed, an operator would have to include the costs of the investment in environmental technologies going beyond his legal obligation into the price of his products, thus making his product less competitive in the Single market. An operator in other Member States who only complies with obligatory EU standards had to invest less, the price of his product can be lower/ margin bigger compared to the one investing more in environmental technologies (which do not bring other benefits). Thus imposing more stringent national standards on operators (which are more stringent than EU standards) would put the local operator into an unfavourable position compared to operators in other Member states who do not need to invest in enhancement of environmental aspect of their production.
- (101) Furthermore, more stringent national standards may result in operators moving from Slovakia to other EU countries or to third countries which do not impose such stringent emission limits in the area of air protection. In case of EU countries which are on the outer eastern border of the EU, which is the case of Slovakia, it is sufficient just to move the industrial production outside the EU border. As air quality does not recognize boundaries of states, such a case might result in air quality of Kosice region which might be further deteriorated due to cross-border transmission of emissions. Consequently the region would suffer from an increase in unemployment and decrease in economic activity.
- (102) The Commission notes that based on the abovementioned facts environmental goals of the Scheme cannot be achieved by further national regulation.
- (103) As for the market based tools, the Slovak authorities noted that they would not have the same effect with the proposed measure mainly because of the special character of projects aimed at environmental protection going beyond applicable standards:
  - (a) the project is particularly aimed at the installation of emission control technologies to reduce emissions of pollutants, so the project itself does not increase ability of a company to produce or sell products or provide services;
  - (b) the investment is not coupled with direct or indirect economic benefit;



- (c) the investment leads very often to increased operational costs due to increased energy consumption which have to be fully borne by the operator of the pollution source;
  - (d) the investment as such does not enhance the competitiveness of the beneficiary;
  - (e) beneficiary's costs aimed at achieving compliance with applicable EU standards or at replacing obsolete equipment cannot be supported by the aid provided under the Scheme.
- (104) According to the Slovak authorities, repayable assistance could be suitable for projects, that have an internal rate of return that is not sufficiently positive to attract financiers because of long maturities or other barriers. This is not the case of investment in environmental protection going beyond applicable standards as the projects' repayment capacity cannot be achieved.
- (105) Regarding less distortive types of aid instruments it also has to be added, that financial instruments are primarily viewed as the instruments replacing market debt or venture financing where the associated project risks are excluding the project from market tools (risk capital instruments or insufficiency of the relevant collateral). It is expected, that the financed project should be creating the positive cash flow and return on investment (ROI) that would allow the beneficiary to repay the funding provided under this instrument. The environmental projects that the Scheme is aiming to support have in fact the negative cash flow impact and consequently negative impact on the ROI.
- (106) According to point 44 of the EEAG, "respect for the 'polluter pays principle' ('PPP') through environmental legislation ensures in principle that the market failure linked to negative externalities will be rectified. Therefore, State aid is not an appropriate instrument and cannot be granted insofar as the beneficiary of the aid could be held liable for the pollution under existing Union or national law".
- (107) The Commission notes that the measure supports projects go beyond the EU standards. Accordingly, the "polluter pays principle", as perceived in the context of the rules on appropriateness of aid laid down in point 44 of the EEAG, is not applicable due to the nature of the measure.
- (108) On the basis of the above the Commission concludes that the notified Scheme is the adequate instrument to address the aforesaid environmental goals in regard to the nature of the to-be-supported projects, since the same positive contribution cannot be achieved through other less distortive policy instruments or other less distortive types of aid instruments.

### 3.3.3.2. Appropriateness among different aid instruments

- (109) According to point 46 of the EEAG the choice of the aid instrument should be coherent with the market failure that the aid measure aims at addressing. For Schemes implementing the objectives and priorities of operational programmes, the financing instrument chosen in this programme is in principle presumed to be an appropriate instrument.

- (110) The Commission notes that the Slovak authorities intend to provide aid under the Scheme solely in the form of a grant (non-repayable financial contribution) under the Operational Programme Environmental Quality. Chapter 2.1.6 of the Categories of intervention, table 19 "Form of finance" specifies that support will be granted as primarily in the form of grant as regards activities aimed at improving air quality beyond the Union standards.
- (111) Accordingly the measure is appropriate among different aid instruments.

#### *3.3.4. Incentive effect*

- (112) According to point 49 of the EEAG an incentive effect occurs when the aid induces the beneficiary to change its behaviour to increase the level of environmental protection and the aid must not subsidise the costs of an activity that an undertaking would anyhow incur. The Scheme at hand aims to support investments that lead to a higher level environmental protection as it supports the realization of investments that go beyond the applicable Union standards i.e. for air emissions (in particular PM10 and PM2.5) and contributes positively to the environmental or energy objective in line with point 55 of the EEAG. Such investments are not mandatory and the investor would not undertake them without the aid.
- (113) The Commission notes that under the Scheme aid is awarded on the basis of a competitive bidding process (as described in point 2.10). Accordingly it is not required to meet the conditions of paragraphs (50) and (51) of the EEAG. Nevertheless, the Slovak authorities confirmed that the grant application; together with the project application must be submitted prior to the start of works on the project. The Commission further notes that an application form will be used for aid<sup>36</sup>.
- (114) Accordingly the Commission considers that measure has an incentive effect.

#### *3.3.5. Proportionality of the aid*

- (115) Environmental and energy aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection or energy objective aimed for.
- (116) The Commission notes that the aid is awarded through a transparent, non-discriminatory competitive procedure as described in section 2.10.
- (117) According to point 70 of the EEAG, as a general principle, aid will be considered to be limited to the minimum necessary if the aid corresponds to the net extra cost necessary to meet the objective, compared to the counterfactual scenario in the absence of aid. According to point 71 of the EEAG for measures, which are not subject to an individual assessment, a simplified method that would focus on calculating the extra investment costs, that is to say not taking into account the operating benefits and costs may be used.
- (118) The Commission notes that the Slovak authorities apply the above-mentioned calculation method for the Scheme at hand.

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<sup>36</sup> The Slovak authorities submitted application forms for examples of projects including description of the counterfactual situation where applicable.

- (119) The Commission notes that as stated in recital (14) aid is provided only for expenditure incurred to achieve emission levels extending beyond the framework of mandatory standards. Indeed as stipulated in recital (24) undertakings eligible for support under the scheme will have to meet the currently applicable EU standards and no aid will be granted for any costs necessary to meet those standards.

#### *Eligible costs*

- (120) The Slovak authorities provided a methodology to calculate the eligible costs as mentioned in section 2.9. Furthermore they provided three representative scenarios presented in recital (46) and the respective eligible cost calculations. The Commission notes that those are calculated in line with the provisions of point 73 of the EEAG.

#### *Aid Intensity*

- (121) The aid intensity applied for aid for undertakings going beyond Union standards or increasing the level of environmental protection in the absence of Union standards is according to Annex 1 of the EEAG 100% if bidding process is used. The Commission notes that the Slovak authorities use a bidding process and apply a 90% aid intensity cap.
- (122) The Commission notes that the Managing Authority (MA) verifies maximum aid amount as well as aid intensity in the process of administrative check. If the project exceeds the maximum aid intensity or maximum aid amount set under the Scheme the MA reduces the aid intensity in accordance with the Scheme and subsequently reduces the amount of non-repayable contribution.
- (123) The Commission notes that aid intensity is calculated from the total eligible costs, which are determined in line with paragraph 72 of the EEAG as extra investment costs.
- (124) Accordingly, the Commission concludes that the measure is proportionate.

#### *3.3.6. Cumulation*

- (125) The Slovak authorities provided the cumulation rules they apply at the measure at hand as stated in section 2.12
- (126) The Commission notes that those rules ensure that project does not exceed the maximum aid intensity under the Scheme and are in line with section 3.2.5.2 of the EEAG.

#### *3.3.7. Avoidance of undue negative effects on competition and trade*

- (127) According to point (97) of the EEAG in assessing the negative effects of the aid measure, the Commission focuses on the distortions resulting from the foreseeable impact of the environmental and energy aid has on competition between undertakings in the product markets affected and the location of economic activity. If State aid measures are well targeted to the market failure they aim to address, the risk that the aid will unduly distort competition is more limited.

- (128) The Commission notes that as stated in section 2.5 under the Scheme aid is granted for investments enabling the beneficiary to increase the level of environmental protection resulting from its activities by improving on the applicable Union standards, or investments enabling the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards<sup>37</sup>.
- (129) As for potential beneficiaries, according to the information on web site <http://www.statistics.sk/pls/wregis/dotaz> and [www.orsr.sk](http://www.orsr.sk) the list of potential beneficiaries is miscellaneous. Potential beneficiaries are active in various, mainly industrial sectors.
- (130) According to point (99) of the EEAG in order to keep the distortions of competition and trade to a minimum, the Commission will place great emphasis on the selection process.
- (131) The Commission notes that aid under the Scheme is awarded through a non-discriminatory, transparent and open selection process for all undertakings active in Kosice area that may compete with projects to address the same environmental or energy objective.
- (132) The Commission notes that the selection process applied in the Scheme lead to the selection of beneficiaries that can address the environmental or energy objectives using the least amount of aid or in the most cost-effective way.

*Manifest negative effects*

- (133) According to point (100) of the EEAG the Commission will in particular assess the negative effects of the aid by considering the following elements: a) reduction in or compensation for production unit costs b) new product.
- (134) As it was mentioned before, the Scheme is aimed at achieving the aforementioned environmental objectives, which due to the specific character of supported activities, the market alone is not able to achieve because of the following reasons:
- (135) Since the main objective of an undertaking is profit maximization, companies tend to limit their investment in environmental measures only to the level of investment needed to ensure compliance with obligatory EU standards. Enterprises naturally consider any investment above Union standards as undesirable, because, in order to preserve positive economic results, they would be forced to pass at least part of the costs on final consumer (or purchaser) and

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<sup>37</sup> According to the Guidelines on State aid for environmental protection and energy 2014-2020 (2014/C 200/01), 'Union standard' means:

- (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings (consequently, standards or targets set at Union level which are binding for Member States but not for individual undertakings are not deemed to be Union standards); or
- (b) the obligation under Directive 2010/75/EU to use the best available techniques ('BAT') and ensure that emission levels of pollutants are not higher than they would be when applying BAT. For the cases where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU, those levels will be applicable for the purpose of the Guidelines; where those levels are expressed as a range, the limit where the BAT is first achieved will be applicable.

thus reflect increased investment costs (above standard investment costs) in price policy. As a result, the competitiveness of such a company would be weakened compared to any other companies in the market which would not bear any extra investment costs ensuring higher level of environmental protection and which would not plan this kind of investment in the future, either.

- (136) At the same time, regarding the possibility of funding the investment above standards from external sources, the above-mentioned facts make it more difficult, even impossible, to fund projects from external sources. Financial institutions consider these projects as highly risky (with high risk margin) because of aforementioned low and long return on investment.
- (137) Moreover, based on above-mentioned complexity of technical solutions, it is in many cases possible to expect failure of coordination of preparation and implementation of individual investments, too.
- (138) In comparison, in case of providing state aid for the project aiming at a higher environmental protection, a beneficiary would not pass the grant to its production costs, respectively on the unit costs of a product or a service, because under the Scheme, the eligible costs are solely extra investments costs needed for achieving higher standards of environmental protection. Given the fact that such investments do not improve the competitiveness of the companies concerned, it is difficult for them to attract funding from external sources to finance such investments. This difficulty is further compounded by the fact that, in many cases, these investment projects are technically very complex and carry a significant risk of failure.

#### *3.3.8. Transparency*

- (139) The Commission notes that the Slovak Authorities apply transparency conditions described in section 2.14 that meet the EEAG requirements.

#### *3.3.9. Conclusion with regard to the compatibility of the measure*

- (140) In light of the above, the Commission considers that the notified aid measure is compatible with the internal market on the basis of the EEAG.

### **4. CONCLUSION**

The Commission has accordingly decided:

not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union

Finally, the Commission notes that Slovakia agreed to have the present decision adopted in the English language.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline Slovakia will be

deemed to agree to the publication of the full text of this letter. If Slovakia wishes certain information to be covered by the obligation of professional secrecy please indicate the parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004,

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission

