



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.05.1997

COM(97) 179 final

97/0125 (ACC)

Proposal for a Council and Commission Decision

On the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States of the one part, and the Slovak Republic, of the other part, signed on 4 October 1993, with regard to the adoption of the necessary rules for the implementation of Article 64 paragraph 1 (iii) and paragraph 2 of the Europe Agreement and Article 8 (1) (iii) and (3) of Protocol 2 to the said Agreement on ECSC products

(presented by the Commission)

EXPLANATORY MEMORANDUM

Article 64 (3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Slovak Republic, on the other part signed in Brussels on 4 October 1993, provides that the necessary rules for the implementation of paragraphs 1 and 2 of that Article (i.e. competition provisions and provisions on state aids) shall be adopted by the Association Council. The time-limit for these rules to be adopted is three years from the entry into force of the Agreement; in accordance with Article 124, the time-limit runs from 1 January 1992.

The provisions on state aids are one of the basic points of the Europe Agreement between the European Communities and the Slovak Republic. Their actual implementation, through the adoption of the attached rules by the Association Council is a prerequisite for the smooth development of trade between the two parties. Covering any aid granted by the State or through State resources in any form whatsoever which might affect trade between the European Community and the Slovak Republic, the proposed decision lays down cooperation between the two parties' monitoring authorities.

According to Article 2 (1) of the Decision of the Council and the Commission of 19 December 1994 on the conclusion of the Europe Agreement the position to be taken by the Community within the Association Council shall be laid down in accordance with the corresponding provisions of the Treaties establishing the three Communities. Article 113 and 228 of the EC Treaty as well as Article 95 of the ECSC Treaty are an appropriate legal basis for the position to be adopted by the Community in the Association Council with regard to the implementing rules for state aids. (The application of the conditions resulting from Article 92 of the EC Treaty to aids granted by the Slovak Republic requires, if their compatibility with the Europe Agreement is to be ensured, the introduction by the Association Council of specific arrangements which then come under the commercial policy). It is therefore desirable that the Council and the Commission adopt the attached decision.

The Commission therefore requests the Council to adopt the attached proposal for a Council and Commission Decision.

Proposal for a Council and Commission Decision

On the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States of the one part, and the Slovak Republic, of the other part, signed on 4 October 1993, with regard to the adoption of the necessary rules for the implementation of Article 64 paragraph 1 (iii) and paragraph 2 of the Europe Agreement and Article 8 (1) (iii) and (3) of Protocol 2 to the said Agreement on ECSC products

The Council of the European Union,

The Commission of the European Communities,

Having regard to the Treaty establishing the European Community, and in particular Article 113 in conjunction with the first sentence of Article 228 (2) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community and in particular Article 95 thereof,

Having regard to the proposal of the Commission of the European Communities,

Having regard to the opinion of the Consultative Committee,

Whereas the European Community and its Member States concluded the Europe Agreement with the Slovak Republic on 19 December 1994;

Whereas Article 64 (3) of the Europe Agreement lays down that the Association Council shall adopt the rules necessary for the implementation of paragraphs 1 and 2 of that Article;

Whereas Article 8 (3) of Protocol 2 to the Europe Agreement on products covered by the ECSC Treaty lays down that the Association Council shall adopt the necessary rules for the implementation of paragraph 1 and 2 of that Article;

Whereas the application of the conditions contained within Article 92 of the Treaty establishing the European Community to aids granted by the Slovak Republic requires that specific arrangements be drawn up to apply to trade between the European Community and the Slovak Republic,

HAVE DECIDED AS FOLLOWS:

The position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States, of the one part and the Slovak Republic of the other part, with regard to the rules implementing Article 64 (1) (iii) and (2) of the aforementioned Europe Agreement, and to the rules implementing Article 8 (1) (iii) and (3) of Protocol 2 on ECSC products to the Europe Agreement shall be based on the draft decision of the Association Council annexed to this Decision.

Done at Brussels on

For the Council

For the Commission

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Association between the European Union
and the Slovak Republic
The Association Council

***Draft decision n° .../... of the Association Council
between the European Communities and their Member States of the one part
and the Slovak Republic of the other part
of .../...***

adopting the necessary rules for the implementation of Article 64(1)(iii) and (2) of the Europe Agreement between the European Communities and their Member States of the one part and the Slovak Republic of the other part, and the rules for the implementation of Article 8(1)(iii) and (3) of Protocol 2 on ECSC products to the said agreement on ECSC products

The Association Council,

Having regard to the Europe Agreement establishing an association between the European Communities and the Member States of the one part, and the Slovak Republic of the other part, and in particular Article 64(3) thereof,

Having regard to Protocol 2 on ECSC products in the aforementioned Europe Agreement, and in particular Article 8(3) thereof,

Whereas Article 64(3) of the Europe Agreement lays down that the Association Council shall, within three years of the entry into force of the Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2 of that Article;

Whereas Article 8(3) of Protocol 2 to the Europe Agreement lays down that the Association Council shall, within three years of the entry into force of the Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2 of that Article;

HAS DECIDED AS FOLLOWS:

The necessary rules implementing Article 64(1)(iii) and para 2 of the Europe Agreement establishing as association between the European Communities and their Member States of the one part, and the Slovak Republic of the other part, and the rules implementing Article 8(1)(iii) and (3) of Protocol 2 on ECSC products to the aforementioned Europe Agreement, as set out in the Annex to this Decision, are hereby adopted.

Done at Brussels on

The Secretaries

For the Association Council
The President

Implementing Rules for State Aids

Rules for the implementation of the provisions on state aid provided for in Article 64 (1)(iii) and (2) pursuant to Article 64 (3) of the Europe Agreement between the European Communities and their Member States, of the one part, and the Slovak Republic of the other part,

Having regard to Article 64 (1)(iii), (2) and (3) of the Europe Agreement between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part,

Whereas it is recalled that in accordance with Article 64 (2) of the Europe Agreement, the notion of "public aid" as contained in Article 64 (1)(iii) of the Europe Agreement shall be assessed on the basis of the criteria arising from the application of the rules of Article 92 of the Treaty establishing the European Community, and thus covers any aid granted by the 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, insofar as it may affect trade between the European Community (EC) and the Slovak Republic (state aid),

Whereas it is recognised that the Slovak Republic is an economy in transition and faces specific problems as a consequence. For the present rules account must be taken of this particular situation,

Whereas account is to be taken of the approximation of legislation as foreseen in the Europe Agreement,

Whereas the Slovak Republic will appoint a national institution or administration to become a monitoring authority with responsibility for state aid matters,

Whereas this monitoring authority will be responsible for the analysis of existing and future individual aid awards and programmes in the Slovak Republic, and shall give an opinion as to their compatibility with Article 64 (1) (iii), (2) of the Europe Agreement,

Whereas the Slovak Republic will, when providing for the necessary rules to ensure effective supervision, ensure in particular that the monitoring authority receives in due time all the relevant information from the other government departments at central, regional and local level,

Whereas the EC Commission will under the relevant Community programmes, assist the monitoring authority by providing for documentation, training, study tours and other relevant technical assistance,

The following rules have been adopted for the implementation of Article 64 (1)(iii) and (2) of the Europe Agreement:

SURVEILLANCE OF STATE AID AND MONITORING AUTHORITIES

ARTICLE 1: SURVEILLANCE OF STATE AID AND MONITORING AUTHORITIES

Subject to the procedural rules in force in the EC and the Slovak Republic, the granting of state aid shall be surveyed and assessed as to its compatibility with the Europe Agreement by the responsible monitoring authorities in the EC and the Slovak Republic, respectively. The monitoring authority in the EC shall be the EC Commission, and in the Slovak Republic the Ministry of Finance.

CONCRETE GUIDANCE FOR DEALING WITH CASES

ARTICLE 2: CRITERIA FOR COMPATIBILITY

Regarding the assessment of compatibility of individual aid awards and programmes with the Europe Agreement as provided for in Article 1 of the present implementing rules, they shall be assessed on the basis of the criteria arising from the application of the rules of Article 92 of the Treaty establishing the European Community, including the present and future secondary legislation, frameworks, guidelines and other relevant administrative acts in force in the EC, the case law of the Court of First Instance and the Court of Justice, and the special guidance to be developed pursuant to Article 4 (3).

Where changes in the secondary EC legislation and other acts as well as the case law as provided for in the first paragraph of this Article do not encounter objections on the Slovak side within three months, they shall become the criteria of compatibility as provided for in the same first paragraph of this Article.

Where such changes encounter objections on the Slovak side, consultations shall take place in the Association Committee, in accordance with the provisions contained in Articles 7 and 8 of the present implementing rules.

The same principles shall apply regarding other significant changes in the EC state aid policy.

The monitoring authority of the Slovak Republic shall be informed of any acts related to the adoption, abolition or modification of the criteria of compatibility referred to in the first paragraph of this Article as far as these are not published but are specifically brought to the attention of all Member States.

ARTICLE 3: DE MINIMIS AID

Aid programmes or individual aid awards which do not involve export aid and which are limited to a total amount of aid per firm over a three year period of ECU 100,000 shall be considered as having only a negligible effect on competition and trade between the Parties and are therefore not to be treated under the present implementing rules¹. This rule does not apply in sectors covered by specific state aid rules.

¹ Amount subject to upward revision by the Sub-Committee in line with internal developments of the European Union

ARTICLE 4: DEROGATIONS

In accordance with Article 64 (4) (a) of the Europe Agreement, the Slovak Republic shall be regarded as an area identical to those areas of the Community referred to in Article 92 (3) (a) of the EC Treaty.

The monitoring authorities shall jointly evaluate the maximum aid intensities and specific regional coverage of areas eligible for regional assistance.

The EC Commission and the monitoring authority shall also work out, in addition to the types of aid allowed in the Union, special guidance on the compatibility of aid designed to combat the specific problems of the Slovak Republic as it undergoes transition to a market economy.

PROCEDURES FOR CONSULTATION AND PROBLEM SOLVING

ARTICLE 5: EXAMINATION OF CERTAIN AID

Aid programmes or individual aid awards - whether covered by frameworks and guidelines in the Community or not - where the amount of the aid concerns amounts over 3 million ECU may be referred by the relevant monitoring authority to the Sub-committee for Competition for examination. The Sub-Committee may formulate appropriate draft decisions or recommendations concerning the compatibility of the aid programme or aid award with the Europe Agreement and these implementing rules for the Association Committee.

The principal purpose of such decisions or recommendations should be to avoid resort to commercial defence measures as a consequence of the aid in question.

The Association Committee may decide, upon the joint proposal of the Parties in the framework of the Sub-Committee for Competition, to further extend the possibility of examination as provided for in this Article.

ARTICLE 6: REQUEST FOR INFORMATION

Whenever the monitoring authority of a Party becomes aware of the fact that an aid programme or individual aid award appears to substantially affect important interests of that Party, it may request information about this from the authority responsible. In any event, both authorities shall endeavour to keep each other informed of important developments that may be of practical interest for the other.

ARTICLE 7: CONSULTATION AND COMITY

Whenever the EC Commission and the Slovak monitoring authority consider that the award of state aid on the territory for which the other authority is responsible is substantially affecting important interests of the respective Party, it may request consultation with the other authority, and consequently it may request that the other Party's monitoring authority initiate any appropriate procedures with a view to take remedial action. This is without prejudice to any action under the respective Parties' relevant legislation and does not hamper the full freedom of ultimate decision of the

authority so addressed, within the framework set by the provisions of the Europe Agreement.

The monitoring authority so addressed shall give full and sympathetic consideration to such views and factual material as may be presented by the requesting authority and in particular to the alleged harmful effects on the important interests of the requesting Party.

Without prejudice to any of their rights and obligations, the monitoring authorities involved in consultations under this Article shall endeavour to find, within three months, a mutually acceptable solution in the light of the respective important interests involved.

ARTICLE 8: PROBLEM SOLVING

Where consultations under Article 7 do not lead to a mutually acceptable solution, an exchange of views shall take place within the Sub-Committee for Competition established in the framework of the Europe Agreement at the request of one Party within three months following the request.

Following this exchange of views, or after the expiration of the delay stated above, the matter may be submitted to the Association Committee which may make appropriate recommendations for the settlement of these cases.

These procedures are without prejudice to any action under the relevant respective legislation in force in the territories of the Parties, and without prejudice to Article 64(6) of the Europe Agreement. Commercial defence measures should however only be used as a last resort.

ARTICLE 9: SECRECY AND CONFIDENTIALITY OF INFORMATION

Having regard to Article 64 (7) of the Europe Agreement, neither monitoring authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by the law of the authority possessing the information.

Each monitoring authority agrees to maintain the confidentiality of any information provided to it in confidence by the other authority.

TRANSPARENCY

ARTICLE 10: INVENTORY

Under the relevant Community programmes, the EC Commission shall assist the Slovak Republic to implement these rules, and draw up and thereafter update an inventory of its aid programmes and individual aid award, established on the same basis as in the Community, in order to ensure and continuously improve transparency.

The EC Commission shall provide the Slovak Republic with regular information on the documentation it produces with a similar aim in relation to the EC Member States.

ARTICLE 11: MUTUAL INFORMATION

Both Parties shall ensure transparency in the domain of state aid by providing for appropriate publications and the exchange of information on state aid policy on a regular and reciprocal basis.

ECSC PRODUCTS

ARTICLE 12: TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY (ECSC)

The provisions contained in Articles 1,2,4(3) and 5 to 11 above shall apply mutatis mutandis with respect to the coal and steel sector as referred to in Protocol 2 to the Europe Agreement.

MISCELLANEOUS

ARTICLE 13: ADMINISTRATIVE ASSISTANCE (LANGUAGES)

The EC Commission and the Slovak monitoring authority will provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

Director General for
Competition of the Commission
of the European Communities

The Slovak Republic

Alexander Schaub
The Director-General

Jozef Magula
State Secretary
Ministry of Finance

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