DECISION No 6/2001 OF THE EU-SLOVAK REPUBLIC ASSOCIATION COUNCIL

of 22 November 2001

adopting the implementing rules for the application of the provisions on State aid referred to in Article 64(1)(iii) and (2), pursuant to 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, of the other part, and in Article 8(1)(iii) and (2), pursuant to Article 8(3), of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement

(2002/137/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an Association between the European Communities and their 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 European Coal and Steel Community (ECSC) products to the Europe Agreement, and in particular Article 8(3) thereof,

Whereas:

(1) Article 64(3) of the Europe Agreement lays down that the Association Council is, within three years of the entry into force of the Agreement, to adopt the necessary rules for the implementation of paragraphs 1 and 2 of that Article.

(2) It is recalled that, in accordance with Article 64(2) of the Europe Agreement, the concept of 'public aid' as contained in Article 64(1)(iii) of the Europe Agreement is to be assessed on the basis of criteria arising from the application of the rules of Article 87 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, in so far as it may affect trade between the European Community and the Slovak Republic (State aid).

(3) The Slovak Republic will appoint a national institution or administration to become a monitoring authority with responsibility for State aid matters.

(4) This monitoring authority will be responsible for the analysis of existing and future individual aid awards and aid programmes in the Slovak Republic and will give an opinion as to their compatibility with Article 64(1)(iii) and (2) of the Europe Agreement, and Article 8(1)(iii), (2) and (4) of Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement.

(5) 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.

(6) The Commission of the European Communities will, under the relevant Community programmes, assist the monitoring authority by providing for documentation, training, study tours and other relevant technical assistance,

HAS DECIDED AS FOLLOWS:

Article 1

The implementing rules for the application of the provisions on State aid referred to in Article 64(1)(iii) and (2) pursuant to 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, of the other part, and in Article 8(1)(iii) and (2) pursuant to Article 8(3) of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement, as attached to this Decision, are hereby adopted.

Article 2

These implementing rules shall enter into force on the first day of the month following their adoption.

Done at Brussels, 22 November 2001.

For the Association Council

The President

L. MICHEL

IMPLEMENTING RULES

for the application of the provisions on State aid referred to in Article 64(1)(iii) and (2), pursuant to 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, of the other part, and in Article 8(1)(iii) and (2), pursuant to Article 8(3), of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement

SURVEILLANCE OF STATE AID BY MONITORING AUTHORITIES

Article 1

Surveillance of State aid by monitoring authorities

Subject to the procedural rules in force in the European Community ('the Community') 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 Community and the Slovak Republic, respectively. The monitoring authority in the Community shall be the Commission of the European Communities ('the Commission'), and in the Slovak Republic the Public Aid Office.

GUIDANCE FOR DEALING WITH CASES

Article 2

Criteria for compatibility

1. The assessment of compatibility of individual aid awards and aid programmes with the Europe Agreement, as provided for in Article 1 of these rules, shall be made on the basis of the criteria arising from the application of the rules of Article 87 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 Community, as well as the case-law of the Court of First Instance and the Court of Justice of the European Communities and any decision taken by the Association Council pursuant to Article 4(3).

Insofar as the aid awards or aid programmes are destined for products covered by Protocol 2 to the Europe Agreement, the first subparagraph of this paragraph shall apply in full with the exception that the assessment shall not be made on the basis of the criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community but on the basis of the criteria arising from the application of the rules on State aid of the Treaty establishing the European Coal and Steel Community.

2. The monitoring authority of the Slovak Republic shall be informed of any acts relating to the adoption, abolition or modification of the Community criteria of compatibility referred to in paragraph 1, in so far as these are not published but are specifically brought to the attention of all Member States.

3. Where such changes do not encounter objections from the Slovak Republic within three months from the date of receiving the official information about them, they shall become criteria of compatibility as provided for in paragraph 1 of this Article. Where such changes encounter objections from the Slovak Republic and having regard to the approximation of legislation as provided for in the Europe Agreement, consultations shall take place, in accordance with Articles 7 and 8 of these rules.

4. The same principles shall apply in respect of other significant changes in Community policy on State aids.

Article 3

De minimis aid

Aid programmes or individual aid awards which do not involve export aid and which fall below the threshold applicable in the Community for *de minimis* aid [1] shall be considered as having only a negligible effect on competition and trade between the Parties and shall therefore not be treated under these rules. This Article does not apply to the industries covered by the Treaty establishing the European Coal and Steel Community, to shipbuilding, to transport nor to aid towards expenditure in connection with agriculture or fisheries.

Article 4

Derogations

1. In accordance with and within the limits of 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 87(3)(a) of the Treaty establishing the European Community.

2. The monitoring authorities shall jointly evaluate the maximum aid intensities and specific regional coverage of areas in the Slovak Republic eligible for national regional aid. They shall submit a joint proposal to the Association Committee which shall establish a decision to this effect.

[1] Currently the Community *de minimis* aid ceiling, according to Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30), is a total of EUR 100 000 per firm over any three-year period.

3. The monitoring authorities may, if necessary and at the request of the Slovak Republic, jointly evaluate problems raised by the implementation of the Community *acquis* in the field of State aids awarded by the Slovak Republic as it completes transition to a market economy. The evaluation of such problems shall not relate to the agricultural sector, fisheries, coal and steel, nor to sensitive sectors (automobiles, man-made fibres and shipbuilding) for which specific Community arrangements exist. Where appropriate, the monitoring authorities shall submit a joint proposal to the Association Council, which may adopt a decision.

PROCEDURES FOR CONSULTATION AND PROBLEM-SOLVING

Article 5

Examination of certain aid

1. Where the amount of the aid in question amounts to over EUR 3 million, aid programmes or individual aid awards, whether or not covered by frameworks and guidelines in the Community, may be referred by the relevant monitoring authority to the subcommittee dealing with competition policy and State aids for examination. The subcommittee may submit a report to the Association Committee which may adopt appropriate decisions or recommendations concerning the compatibility of the aid programme or aid award with the Europe Agreement and these rules.

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

3. The Association Committee may decide to extend further 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 affect important interests of that Party, it may request information about this from the authority responsible. In any event, both monitoring 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

1. Whenever the Commission or the monitoring authority of the Slovak Republic considers that the award of State aid on the territory for which the other authority is responsible substantially affects its important interests, 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 taking 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 of the Europe Agreement.

2. 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.

3. Without prejudice to 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

1. Where consultations under Article 7 do not lead to a mutually acceptable solution, an exchange of views shall take place within the subcommittee dealing with competition policy and State aids established in the framework of the Europe Agreement at the request of one Party within three months following the request.

2. Where this exchange of views does not lead to a mutually acceptable solution, or after the expiration of the period referred to in paragraph 1, the matter may be submitted to the Association Committee which may make appropriate recommendations for the settlement of these cases.

3. These procedures shall be without prejudice to any action under Article 64(6) of the Europe Agreement and Article 8(6) of Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement. Trade instruments should however only be used as a last resort.

Article 9

Secrecy and confidentiality of information

1. With respect 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.

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

TRANSPARENCY

Article 10

Inventory

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

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

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.

MISCELLANEOUS

Article 12

Administrative assistance (languages)

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