

COMPLAINT REGARDING UNLAWFUL STATE AID

Concerning:

Aid provided by the Slovak Republic to Slovenské Elektrarne a.s. by means of a planned 'special nuclear levy' on general Slovakian electricity supply tariffs in order to increase the capital in the Slovak Republic's Nuclear Decommissioning Fund, which over time will contribute towards meeting Slovenské Elektrárne's post-closure nuclear liabilities.

Addressed to:

Commissioner for Competition Neelie Kroes
European Commission
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Submitted by:

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Date:

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I Information regarding the complainant

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Friends of the Earth Europe represents national Friends of the Earth member groups in 31 European countries including 23 European Union (EU) member states. Within the EU, FOEE groups have combined membership of around 650,000 individuals. Friends of the Earth International is the largest grassroots environmental network in the world.

Friends of the Earth Europe maintains that nuclear state aids are a matter of important public interest. In particular they are of interest:

- to taxpayers and/or certain classes of energy consumers in the particular territories with which aid measures are effected;
- to all energy consumers in the EU single market, which continues to be distorted and so made less economically efficient by nuclear state aids;
- to citizens generally, who are being forced to accept the hazards and risks associated with nuclear energy for longer than would otherwise be the case if such aids did not take place.

The European Union, in accordance with the treaties, is an important legislator and regulator in the commercial, environmental and nuclear fields. As currently a majority of EU member states have nuclear power plants, precedents set by individual cases may be applicable throughout the Union.

According to the European Commission's Secretary General; "Anyone may lodge a complaint with the Commission against a Member State about any measure (law, regulation or administrative action) or practice which they consider incompatible with a provision or a principle of Community law."

II Summary information regarding the Member State

This complaint is directed against the Slovak Republic (SK) for its proposed aid to Slovenské Elektrárne (SE), by way of a planned measure to make supplementary contributions to the state-controlled nuclear decommissioning fund (SNDF). This measure, via the SNDF, will over time help pay for SE's post-closure nuclear liabilities and, in addition, by way of the SNDF's role in underwriting the commercial risks of operating any and all of SE's nuclear plants, including potential new units not yet built.

SE is currently 100% state-owned, and operates (amongst other facilities) six nuclear reactors at two locations in Slovakia. The construction of two more SE units at one of these sites, Mochovce, was suspended in 1991, but maybe restarted. In recent years, SK has been preparing to partially privatise SE by way of a trade sale and, in recent months, the Italian utility ENEL (itself partly state-owned) was announced as the preferred buyer, it having bid 840M for 66% of the company. A condition placed on ENEL by SK is that it provides, prior to finalising the transaction (expected mid 2005) a feasibility study on completing the two part-built reactors referred to above.

Any state aid scheme which increases the amount of money in the SNDF will provide a competitive advantage to SE's trading position, and that of its potential new owner, by providing for at least some of the post-closure liabilities of SE's nuclear facilities, both those existing today and potentially any new ones which may exist in the future.

It is such an aid scheme, and the serious and substantial market distortions it would cause, that are the basis of this complaint.

In so far as is known, no notification of such an aid scheme by Slovakia has yet been made to the Commission.

III Information regarding the alleged aid measures complained of

A key characteristic of generating electricity using nuclear reactors is that, following the closure of a plant, typically after 30 years or so, the costs and time periods required to decommission it and manage the highly radioactive waste are very substantial. In many countries operating nuclear power plants, estimates of programmes lasting 100 years or more are not uncommon. Radioactive waste remains hazardous for even longer.

Nuclear operators, including sometimes host governments, have often (but not always) tackled the issue of financing such 'post-closure liabilities' by making provisions from electricity sales income that is available during the plant's period of operation. In the case of SE, which owns nuclear power plants as shown in the table, the company is already required to pay some specified amounts into the SNDF, which has been in existence since in 1995.

Table: Nuclear Plants owned by Slovenské Elektrárne

Name	Size & type	Operational	Status
Bohunice-A1	110MW HWGCR	1972	Closed in 1977 by serious accident.
Bohunice-1	440 MW VVER	1978	Operating. Under Accession Treaty, to close in 2006.
Bohunice-2	440 MW VVER	1980	Operating. Under Accession Treaty, to close in 2008.
Bohunice-3	440 MW VVER	1984	Operating.
Bohunice-4	440 MW VVER	1985	Operating.
Mochovce-1	440 MW VVER	1998	Operating.
Mochovce-2	440 MW VVER	1999	Operating.
Mochovce-3	~	~	Construction suspended in 1991.
Mochovce-4	~	~	Construction suspended in 1991.

Source: Slovenské Elektrárne, IAEA

However, according to various official reports and press reports, the SNDF does not and, on present projections, will not have adequate funds to fulfil in full its stated purpose over the years ahead. The table below indicates the official references that are known to us.

Table: Known references on the inadequacy of the State Nuclear Decommissioning Fund (SNDF)

<i>Date</i>	<i>Reference</i>	<i>Description</i>
August 1999	3452/1999-010	Ministry of Economy (MOE) report expressing a number of concerns about the inadequacy of the State Nuclear Decommissioning Fund, including” “[<i>unofficial translation</i>] the interest rate and contributions are too low”.
April 2000	1030/2000-010	Further MOE report on the Decommissioning Fund saying: “[<i>unofficial translation</i>] real risks exist that the Fund would not accumulate enough finances to cover post-closure costs.”
June 2004	14495/2004	MOE background papers to Government Decision 626/2004 of 23 June 2004. Statements included: “[<i>unofficial translation</i>] concerns exists that present contribution are still not sufficient; will decrease as plants are shut down; if contributions are not increased, there will be a lack of finances for decommissioning.”

The April 2000 report cited above includes an estimate that the total post-closure nuclear liabilities that SNDF will be required to deliver is around 126.5 billion SKK (3276M). By contrast, the actual provisions in the SNDF at 30 June 2004 is understood to total around 11.045 billion SKK (286M), which is approximately only 8.7% of the total requirement. Whilst we accept that any fund would normally continue to grow over the remaining operating lives of reactors, and that a full analysis would also take into account the effect of discounting of capital over time, nevertheless this very low level of provisioning to date is of significant concern.

The Slovak government has concluded, in its Decision 2004/626 on 23 June 2004, that additional action therefore needs to be taken in order to speed-up the growth of the SNDF, and (subsequent to this Decision) is preparing a scheme to implement this. A copy of this Decision is submitted in Annex 1. It is this ‘in principle’ decision, and the measure that are expect in due course to flow from, which FOEE alleges is the primary measure by which aid will be given to SE over coming years.

The Decision also indicates that certain measures were to be implemented by 1 January 2005. This includes, we understand, the scheme for additional contributions into the SNDF. However, according to information received from the SK Ministry of Economy in December 2004, the draft laws enacting these measure(s) had not yet been fully prepared and so would not be completed on time. This, we understand, remains the situation today (January 2005).

IV Grounds for complaint

State aid that distorts competition within European Community borders is according to the EC treaty prohibited. According to the European Commission, “by giving certain firms or products favoured treatment to the detriment of other firms or products, state aid seriously disrupts normal competitive forces.”

The state aid scheme described in this complaint will distort competition and give Slovenské Elektrárne a.s. (a.s. means joint stock company), and in particular its nuclear generation activities, favoured treatment that is not available to its competitors in the provision of electricity, both now and long into the future. This includes competitors and potential competitors who may be considering constructing new and more efficient generating plant inside Slovakia, or others who

may be based in neighbouring territories who may consider trading power into or through Slovakia. Such a pattern of electricity trading is in accordance with the European Union's aspirations to create a single market in goods and services including in the field of energy.

In accordance with commonly understood market principles, any undertaking should ensure that, at least over the long run, the price charges for a good or service reflects all the costs incurred in creating that good or service plus a margin of profit as appropriate.

The operation of the SNDF in Slovakia, and in particular the planned state scheme to make additional contributions to it from general Slovak electricity sales, is contrary to these market principles and so is therefore unlawful under the EU treaties. The European Commission is therefore called upon to investigate and to determine an appropriate remedy.

V Information on other procedures

Early closure dates in Accession agreement

During the negotiations leading to the 2003 Accession Treaty (Protocol No. 9), in the light of concerns regarding basic safety flaws in the older Soviet-era reactors, Slovakia committed to close Units 1 and 2 at Bohunice in 2006 and 2008 respectively. This agreement with the EU included financial compensation up to the year 2013, which is set out in the table:

Period	Amount (M)
Up to 2003	150
2004-2006	90
2006-2013 (<i>proposal</i>)	237
Total	477

Source: European Commission, COM 2004/624

In investigating the overall state aid arrangement to SE, the Commission is also requested to demonstrate publicly that this special compensation is only for its declared purpose, and that it is not used for any other activities, for example the decommissioning of other units and/or an increase the SNDF.

Potential completion of Mochovce 3 & 4

In the event that the construction of Mochovce unit 3 and 4 were to recommence, it is possible the SNDF, including any additional public contributions, could be used to help finance and underwrite the operation and/or decommissioning of these new units. This would in our view also be unlawful state aid for the same reasons stated above. The Commission, therefore, is also requested to ensure that any aid of this kind this does not occur.

Furthermore, in the event Mochovce 3 & 4 construction does re-started, the Commission will, in accordance with Chapter 4 of the Euratom treaty, also have to consider and give an Opinion on the planned investment. It is recommended that the Commission should, under the same procedure, satisfy itself and show publicly that any such projects do not receive state aid, either from the State Decommissioning Fund, or from any other scheme. This should include the capital expenditure to date, which is understood to be around 487M.

VI Supporting documents

Press reports

A number press reports from the **Slovak Spectator**, an English language newspaper in Slovakia, are including in Annex 2. Key passages referring to the inadequacy of the SNDF and the potential affect this is having on the sale plan for SE are highlighted.

Other documents

COM 2004/624 is a proposal by the Commission on further financial support to Slovakia (and Lithuania) for the decommissioning of reactors covered by the accession agreement. This includes, on page 3, the line: “**It is important to emphasize that the Slovak authorities have committed to topping up the funding needed for decommissioning.**” It is not clear if this statement refers only to Bohunice 1 and 2, or to all the nuclear facilities in the country. The Commission is also requested to demonstrate that no unlawful state aid exists or is planned in relation to the above statement.

IAEA Summary Document. A one-page ‘poster’, dated 2003, prepared by the International Atomic Energy Agency (IAEA) is also submitted as Annex 3. This document contains a useful summary of the arrangements in Slovakia for dealing with decommissioning and radioactive waste, including several legal references. It indicates, for example, that under current plans the post-closure liabilities will last until the year 2102.

Finally, as the Commission will already be ware, the recent **UK nuclear state aid cases** concerning the effective bankruptcy British Energy plc (Decision C/2004/3474) and British Nuclear Fuels plc (Aid Case 2004/39) are likely to have some bearing on this new complaint, as the issues in all the cases overlap considerably.

VII Confidentiality etc

This complaint may be fully disclosed. As issues related to nuclear finance are often kept deliberately opaque by governments and the nuclear industry, Friends of the Earth Europe reserves its right to make further submissions on this matter in due course, and in parallel to make statements to the press and public generally.

Mark Johnston
Friends of the Earth Europe
Brussels, 31 January 2005

Also on behalf of the other organisations indicated on page 1.