Commission Decision (EU) 2019/2140 of 21 October 2019 on State aid SA.52194 - 2019/C (ex 2018/FC) – Slovak Republic - Slovak Retail Turnover Tax (notified under document C(2019) 7474) (Only the Slovak text is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2019/2140

of 21 October 2019

on State aid SA.52194 - 2019/C (ex 2018/FC) – Slovak Republic - Slovak Retail Turnover Tax

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Whereas:

1. PROCEDURE

(1) On 13 December 2018, the Slovak Parliament adopted the Act on the Special Levy on Retail Chains (the 'Retail Tax Act')[(1)], which introduced a tax on the turnover of retailers selling food to end consumers (the 'retail tax'). The Retail Tax Act entered into force on 1 January 2019. The first period by which the tax accrued was January to March 2019, with the payment of the tax due by the end of April 2019.

(2) The Commission became aware of the retail tax based on market information it received from October 2018 onwards. On 21 December 2018, the Commission received a complaint alleging that exemptions from the tax under the Retail Tax Act amount to State aid to certain retailers.

(3) On 11 January 2019, the Commission services sent a letter to the Slovak Republic by which they requested information on the retail tax. On 22 January 2019, the Commission services forwarded the complaint to the Slovak Republic for possible comments.

(4) On 7 February 2019, the Commission received the reply of the Slovak Republic to the Commission's letter of 11 January 2019, as well as its comments on the complaint.

(5) On 13 February 2019, the Commission services sent a letter to the Slovak Republic setting out their preliminary views on the matter, informing the Slovak Republic that the Commission considered issuing a suspension injunction in accordance

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2019/2140. (See end of Document for details)*

with Article 13(1) of Council Regulation (EU) 2015/1589[(2)] and giving it the opportunity to submit comments.

(6) On 5 March 2019, the Slovak Republic submitted its reply to the Commission letter of 13 February 2019.

(7) By letter of 2 April 2019, the Commission informed the Slovak Republic that it had decided to initiate the procedure provided for in Article 108(2) of the Treaty on the Functioning of the European Union (the 'TFEU') in respect of the measure introduced by the Retail Tax Act (the 'Opening Decision'). The Commission also required the immediate suspension of the measure in accordance with Article 13(1) of Regulation (EU) 2015/1589.

(8) The Opening Decision was published in the *Official Journal of the European Union*[(3)]. The Commission invited interested parties to submit their comments on the aid measure.

(9) The Slovak Republic submitted observations to the Opening Decision by letter of 13 May 2019 and informed the Commission that the Retail Tax Act had been repealed.

(10) On 29 May 2019, following the information submitted by the Slovak Republic on 13 May 2019, the Commission services sent a letter to the Slovak Republic by which they requested additional information on the legal status of the Retail Tax Act. The Slovak Republic submitted its reply to the Commission on 10 June 2019.

(11) The Commission did not receive comments on the Opening Decision from interested parties.

2. DESCRIPTION OF THE MEASURE

(12) The Retail Tax Act introduced a tax with the following main features:

(a) a 2,5 % tax applies on the entire turnover of retailers selling food (including turnover derived from non-food sales);

(b) if at least 25 % of their turnover is generated by the sale of food to end consumers;

(c) if they operate in at least 15 % of all Slovak administrative districts;

(d) the members/affiliates of franchises and trading alliances are treated as distinct taxpayers for the fulfilment of the conditions for the application of the retail tax;

(e) the following retailers are exempted from the tax:

(1) small and medium-sized enterprises as defined in Commission Regulation (EU) No 651/2014[(4)],

(2) mass catering facilities,

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(3) retailers that are food producers (or affiliated to food producers) with at least 80 % of their net turnover coming from the sale to end consumers of food they produce,

(4) retailers where at least 80 % of their turnover originates from the sale of food of one class,

(5) retailers for which the tax due does not exceed EUR 5 000 per quarter;

(f) the tax base does not include the net turnover of the retail outlets located in:

(1) the least developed districts in Slovakia and having a maximum of 10 employees,

(2) municipalities where there are not more than three commercial establishments selling food to end consumers.

(13) According to the Retail Tax Act, the Ministry of Agriculture shall use the net proceeds from the retail tax, in particular, to support the agriculture and food sectors. The net proceeds are the difference between (a) the retail tax revenue and (b) the amount of corporate income tax reduction due to the deduction of the retail tax.

3. REPEAL OF THE MEASURE

(14) By letter of 13 May 2019, the Slovak Republic informed the Commission that the Retail Tax Act had been repealed by Act No 88/2019 of 9 April 2019 (the 'Repeal Act') (see recital 9 above). Therefore, the Slovak Republic expressed its position that the formal investigation carried out by the Commission was no longer relevant.

(15) In reply to a request for more detailed information, by letter of 10 June 2019, the Slovak Republic informed the Commission that the Retail Tax Act was not repealed with retroactive effect, since a basic principle of the rule of law in the Slovak Republic prohibits that tax legislation has retroactive effect. The Repeal Act entered into effect on 9 April 2019, and the Retail Tax Act was repealed from that date.

(16) In addition, on the request of the Commission services, the Slovak Republic submitted that entities to which the repealed Retail Tax Act applied during the period when it was in force bore no obligation to pay the retail tax and that the Slovak Republic was not legally entitled to enforce payment of the retail tax. Lastly, the Slovak Republic confirmed that no entity had made a payment of the retail tax.

(17) Thus, according to the information submitted by the Slovak Republic, the Retail Tax Act has been repealed and did not result in any tax payment or tax liability for the period during which it was in force.

(18) In view of the repeal of the Retail Tax Act by the Slovak Republic, the formal investigation procedure initiated in respect of the aid measure under that act has become without object.