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**Subject: N 670/2007 -- Czech Republic  
Investment aid for the reduction of industrial emissions into water**

Sir,

## **1) PROCEDURE**

- 1) By electronic notification of 19 October 2007, the Czech authorities notified, pursuant to Article 88(3) EC, the measure at issue.
- 2) Additional information was provided by letters dated 23 January 2008 and 10 April 2008.

## **2) DESCRIPTION OF THE MEASURE**

### **Objective**

- 3) The objective of the scheme is to reduce emissions into water of dangerous substances below applicable Community standards. The Czech Republic intends to grant State aid towards investments carried out by industrial undertakings in order to improve the environmental performance of their industrial facilities.

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- 4) The Commission notes that this measure is expected to contribute to the compliance with the Council Directive 2006/11/EC of 15 February 2006<sup>1</sup> on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community. This Directive establishes environmental requirements for receiving water bodies, but does not set Community-wide standards in the form of emission limit values for individual undertakings.

### **Beneficiaries**

- 5) The scheme will be open to all undertakings in the Czech Republic irrespective of their size. The expected number of beneficiaries ranges between 100 and 500.

### **Aid intensity**

- 6) The maximum aid intensity will be 50% of the eligible costs. The aid amount is capped at 5,75 million CZK (€ 227 000).

### **Financing mechanism and cumulation**

- 7) The aid will take the form of direct grants. The measure will be co-financed by the Cohesion Fund in the framework of priority axis 1, sub-area 1.1.2 of the Environmental Operational Programme ("reduction of water pollution from industrial sources). An Operational Programme is a document submitted by a Member State and adopted by the Commission setting out a development strategy and a coherent set of priorities to be carried out with the support of a Structural Fund – in this case the Cohesion fund.
- 8) The mandatory 15% share of national co-financing will come from the State budget and the national Environmental Fund. The overall budget allocated to the measure (Cohesion Fund co-financing plus national resources) is CZK 1 130 million (€ 43.3 million). The annual budget is set at CZK 188 million (€ 7.2 million).
- 9) The aid can be cumulated with aid received from other sources (for example local authorities) to cover the same eligible costs, provided the 50% maximum aid intensity is not exceeded.

### **Duration and legality of the scheme**

- 10) The notified scheme will last from 1.10.2007 to 31.12.2013, in line with the programming period of the Environmental Operational Programme. Decisions to grant the aid will be issued up to 31 December 2013, while the individual projects, in compliance with the n+2 rule, will continue to receive funding for a further two years.
- 11) The aid will not be granted until it has been approved by the Commission.

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<sup>1</sup> Codified version of Directive 76/464/EEC.

## Investments concerned and eligible costs

12) The Czech Republic has laid down mandatory emission limits for the release into water of particularly dangerous substances<sup>2</sup>. These limits are in line with Community standards and apply to individual undertakings.

- The relevant Community standards in the form of emission limit values for the maximum allowable concentrations of a pollutant are currently laid down in the following pieces of legislation<sup>3</sup>:
- Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry<sup>4</sup>;
- Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges<sup>5</sup>;
- Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry<sup>6</sup>;
- Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane<sup>7</sup>;
- Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC<sup>8</sup>;
- Council Directive 88/347/EEC of 16 June 1988 amending Annex II to Directive 86/280/EEC on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC<sup>9</sup>;
- Council Directive 90/415/EEC of 27 July 1990 amending Annex II to Directive 86/280/EEC on limit values and quality objectives for discharges of certain dangerous substances included in list I of the Annex to Directive 76/464/EEC<sup>10</sup>;

13) This list is not exhaustive. The Czech Republic, following the evolution of Community environmental legislation, may grant aid enabling undertakings to go beyond new

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<sup>2</sup> Government order No 61/2003 Coll. On indicators and values for permitted levels of pollution of surface water and waste water, particulars to be included in permits for the discharge of waste water to surface water and the sewerage system and on sensitive areas, as amended).

<sup>3</sup> The Commission (COM(2006)397 of 17.7.2006) has proposed to repeal these Directives by 22.12.2012. In the new instrument, it is proposed to maintain environmental quality standards which are applicable at Member State level, whilst the Community standards applicable at the level of individual undertakings will not be maintained

<sup>4</sup> OJ L 81, 27.3.1982, p. 29–34

<sup>5</sup> OJ L 291, 24.10.1983, p. 1–8

<sup>6</sup> OJ L 74, 17.3.1984, p. 49–54

<sup>7</sup> OJ L 274, 17.10.1984, p. 11–17

<sup>8</sup> OJ L 181, 4.7.1986, p. 16–27

<sup>9</sup> OJ L 158, 25.6.1988, p. 35–41

<sup>10</sup> OJ L 219, 14.8.1990, p. 49–57

Community standards which become applicable throughout the duration of the scheme<sup>11</sup>, provided the criteria outlined in this decision are complied with. Where one of the standards enumerated above is updated or replaced, it is understood that for the purposes of granting State aid under this scheme, the reference will be the new applicable standard.

- 14) Where Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control<sup>12</sup> (the IPPC directive) is applicable, projects will be considered improving on Community standards if they go beyond the obligation to use the best available techniques as set out in the most recent relevant information published by the Commission pursuant to Article 17 (2) of that Directive.
- 15) The investments to be financed consist in the construction of technical installations at existing industrial sources of waste water in order to reduce emissions of the relevant dangerous substances into water bodies below existing Community standards, or in the absence of Community standards.
- 16) Eligible costs will be limited to the extra investment costs required to achieve a higher level of environmental protection than required by the Community standards, or in the absence of Community standards.
- 17) The calculation of eligible costs will be carried out on the basis of the overall investment cost of the project, minus the cost of a technical solution of similar capacity which, however, does not go beyond the mandatory Community standard (reference investment). In the case of projects covered by the IPPC Directive, the reference technical solution will be that referred to in the BREF. All the anticipated advantages arising from the investment over the first five years of operation (savings in operating costs, ancillary production, capacity increase) will be deducted from the eligible costs. The resulting amount will then serve as basis for the calculation of the aid amount. Applicants will have to submit substantiated figures on the cost of the reference investment (for example as a result of tendering). The Czech authorities have provided a practical example of eligible costs calculation.
- 18) A project that started to be implemented before the application is submitted to the Czech authorities will not be eligible for aid.

### **Awarding procedure**

- 19) There will be a transparent selection of eligible projects. Applications will be ranked on the basis of on the technical characteristics of the projects, their environmental effects and the applicants' financial standing.

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<sup>11</sup> For example, standards or measure adopted pursuant to Directive 2000/60/EC, in particular in accordance with articles 10, 11 and 16, which aims at establishing environmental quality standards and accompanying measures to control pollution of specific priority substances (as set out in annex X) as well as the emission control measures of point sources for other pollutants as set out in annex VIII of the same Directive.

<sup>12</sup> OJ L 24, 29.1.2008, p. 8–29

### 3. ASSESSMENT OF THE MEASURE

#### Presence of aid within the meaning of Article 87(1) of the EC Treaty

- 20) A measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty if the following conditions are cumulatively fulfilled: the measure (a) confers an economic advantage to the beneficiary; (b) is granted by the State or through State resources and is imputable to the State<sup>13</sup> (c) is selective; (d) has an impact on intra-community trade and is liable to distort competition within the EU.
- 21) The scheme will be financed through resources from the Cohesion fund and resources allocated from the general budget of the Czech Republic. It is obvious that the latter constitute State resources. However, the former also qualify as State resources for the reasons explained below.
- 22) The Court declared that Article 87 (1) of the EC Treaty "covers all the financial means by which a public sector may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. Consequently, even though the sums involved in the measure [...] are not permanently held by the Treasury, the fact that they constantly remain under public control, and are therefore available to the competent national authorities, is sufficient for them to be categorised as State aid."<sup>14</sup>
- 23) In the case at issue, the resources from the Cohesion Fund will be made available to the competent national authorities and constantly remain under their control<sup>15</sup>, with no possibility of direct transfer between the Community budget and the beneficiaries. Therefore, the Cohesion Fund monies also qualify as State resources.
- 24) The award of grants under the notified scheme is imputable to the State, since the Ministry of the Environment of the Czech Republic will have a large margin of discretion in the allocation of resources from the Structural Funds, and in particular will be responsible for project selection and funding.
- 25) The notified scheme will only benefit selected industrial undertakings in the Czech Republic.
- 26) The beneficiaries will be relieved of a part of the initial investment costs which they would normally have to bear themselves. Consequently, the aid will strengthen their financial position in relation to competitors in the Community and therefore have potentially distorting effects on competition. Since the scheme is multi-sectoral in nature, the beneficiaries' products will, in most cases, be subject to cross-border trade within the Community. Therefore, the scheme is likely to affect trade between Member States.

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<sup>13</sup> See, for example C-482/99, France v. Commission [2002] ECR I-4397, paragraph 24.

<sup>14</sup> Case C-83/98 France v Ladbroke Racing and Commission [2000] ECR I-3271, paragraph 50

<sup>15</sup> The financial framework of the Structural Funds as established by Regulation 1083/2006 is based on the allocation to each Member State of a global envelope, which is managed by the Member State.

27) Therefore, the notified scheme constitutes State aid within the meaning of Article 87 (1) of the EC Treaty and can only be considered compatible with the common market if it can benefit from one of the derogations laid down in the Treaty.

### **Legality of the aid**

28) By notifying the scheme before its implementation, the Czech authorities have fulfilled their obligation pursuant to Article 88(3) of the EC Treaty.

### **Compatibility of the aid**

29) The Commission has assessed the compatibility of the notified scheme according to Article 87 (3) (c) of the EC Treaty and in the light of the new Community Guidelines on State Aid for Environmental Protection (hereinafter referred to as "the guidelines"), adopted on 23 January 2008<sup>16</sup>. Point 204 of the guidelines foresees that the Commission will apply them to all notified aid measures in respect of which it is called upon to take a decision after the guidelines are published in the *Official Journal*, even where the projects were notified prior to their publication. This provision is therefore applicable to the scheme at issue.

30) Investment aid enabling undertakings to go beyond Community standards or to increase the level of environmental protection in the absence of Community standards can be found compatible with the common market, provided that the substantive conditions set out in points 74 to 84 and the provisions of Section 3.2 on incentive effect and necessity of the aid are fulfilled.

31) The notified scheme fulfils the condition set out in point 74 (a) as it is limited to investment aid enabling undertakings to improve on Community standards, or improve environmental protection in the absence of Community standards, as far as emissions into water are concerned.

32) As regards the eligible costs, they will be limited to the extra investment costs necessary to achieve a higher level of environmental protection than required by the relevant Community standards. In line with point 81 of the Environmental guidelines, the eligible costs will be calculated as the difference between the costs of the project and the costs of a "reference investment". This "reference investment" will correspond to the relevant mandatory Community standards and to the same production capacity as the one contemplated in the project. The rules of the notified scheme guarantee the reliability of the estimates of the costs of the reference investment, as those estimates must be based on offers from suppliers of the technologies and equipment corresponding to the "reference investment". In line with point 82 of the Environmental guidelines, eligible costs will be calculated net of any operating benefits arising during the of the first five years of the life of the investment. The theoretical example provided by the Czech authorities to calculate the eligible costs and the amount of aid confirmed that the proposed methodology is in line with the Environmental guidelines.

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<sup>16</sup> OJ C 82, 1 April 2008, p. 1-33.

- 33) The aid intensity applied to the eligible costs will in any event be no more than 50% of the eligible costs. Therefore, the condition set out in point 76 of the Environmental guidelines is fulfilled.
- 34) The Commission notes that, in case of cumulation of aid from different sources, the maximum aid intensity of 50% will not be exceeded.
- 35) In line with point 71 of the Environmental guidelines, the duration of the notified scheme is reasonable since it corresponds to that of the Environmental Operational Programme and will be limited to approximately 6 years.
- 36) As regards the rules laid down in Section 3.2, the Commission notes that they are also fulfilled, and, in particular, that the existence of an incentive effect is demonstrated. No project will be considered eligible for aid if it starts to be implemented before an application is submitted to the Czech authorities (point 143 of the Environmental guidelines). Generally, the rules of the scheme ensure that the aid granted under the notified scheme will have an incentive effect for all supported projects. The amount of aid will be determined on the basis of a counterfactual scenario which is credible, in particular due to the fact that the costs of the reference investment will be certified by a qualified expert and to the extent necessary, be based on consultation with suppliers of the concerned technologies. Furthermore, the Commission has verified that the eligible costs will be calculated in accordance with the methodology set out in point 81, 82 and 83 of the Environmental guidelines. This ensures that the investment would not be profitable without aid since operating benefits will be taken into account in the calculation of the eligible costs.
- 37) In addition, the Commission considers it a positive element that the financial situation of the applicants will be taken into consideration in the awarding procedure, as it limits the risk that aid is granted to a company in financial difficulty.
- 38) In view of the above, the Commission has come to the conclusion that the notified scheme complies with the Environmental guidelines and is therefore compatible with the common market in accordance with Article 87 (3) (c) of the EC Treaty.

#### 4. CONCLUSION

- 39) The Commission finds that the aid granted on the basis of the scheme "Investment aid scheme for the reduction of industrial emissions into water" is compatible with the common market in accordance with Article 87 (3) (c) of the EC Treaty and has therefore decided not to raise objections to the notified measure.
- 40) The Commission reminds the Czech authorities that, in accordance with Article 88 (3) of the EC Treaty, plans to refinance, alter or change this scheme have to be notified to the Commission pursuant to provisions of Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 [*now 88*] of the EC Treaty (OJ L 140, 30.4. 2004, p.1).
- 41) If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within 15 working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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European Commission  
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B-1049 Brussels  
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For the Commission

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