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**Subject: SA.35529 (2012/N) – Czech Republic  
Digitization of books in libraries**

Dear Sir/Madam,

**1. PROCEDURE**

- (1) By letter dated 4 October 2012, registered on the same day, the Czech authorities notified an amendment to an existing support scheme concerning subsidies for libraries.
- (2) The Commission requested additional information on 13 November 2012 and 1 March 2013. The Czech authorities replied on 3 January 2013 and 5 March 2013, respectively.
- (3) The amendment of the scheme at stake has been notified for reasons of legal security, as the Czech authorities consider that it does not involve State aid.

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Vážený pan  
Karel SCHWARZENBERG  
ministr zahraničních věcí  
Ministerstvo zahraničních věcí České republiky  
Loretánské náměstí 5  
118 00 Praha 1  
Česká Republika

## 2. DESCRIPTION OF THE MEASURES

- (4) **Objective:** The objective of the scheme is to promote culture and heritage conservation. The present amendment of an existing support scheme aims to support the digitization of books and the provision of other services in public libraries.
- (5) First, this amendment broadens the scope of digitization from historical library funds to any library funds and it introduces subsidies for digitization of and online access to catalogues of libraries including the creation of cooperation systems of libraries. The purpose of the funds that are to be provided for the digitization of library documents is to protect library funds; hence a particular library document (for example, a library document that is so damaged that it cannot be made accessible to library users in physical form) will be made available in digital form.
- (6) Digitization will almost only apply to those library documents which in terms of copyright are in the public domain - for which the period for exercising property rights of copyright has expired. According to the Czech Copyright Act 121/2000 this period is 70 years and commences on the first day of the year after the year in which the author (or the last of the co-authors) died. If the subject of the digitization were a work (book) still enjoying copyright protection, the library could only make the digitized work accessible through technical equipment located on the library's premises and would have to prevent copies being made of the digitized work.
- (7) Second, support will be available to finance community activities of libraries (such as lectures and similar educational events, e.g. meetings with writers or authors' readings, or exhibitions that are related to the library or a given region, perhaps to commemorate a local writer or poet) and provision of services to groups in risk of social exclusion (educational courses to local public such as courses on basics of computer literacy for seniors).
- (8) **Legal basis:** The relevant legal base for the measure is the Government Decree 463 of 26 June 2012 of the Government of the Czech Republic on the amendment of Government Regulation 288/2002 on the rules of granting subsidies for the support of libraries.
- (9) **Budget and form of support:** The notified measures have a total annual budget of CZK 10 million (approximately EUR 400,000). The support is in the form of direct grants.
- (10) **Intensity:** The maximum intensity of support is 70 % of budgeted costs.
- (11) **Cumulation:** The support cannot be cumulated with aid received from other local, regional, national or EU schemes for the same eligible costs.
- (12) **Beneficiaries:** The primary beneficiaries of the scheme will be local and regional libraries or other libraries (such as university libraries, or specialized libraries of the Czech Academy of Science) or local municipalities. Some libraries concerned by the measure have a legal personality separate from the local or regional authorities. Other libraries are operated by the local municipalities themselves without having a legal personality separate from that of the municipality.

### 3. ASSESSMENT OF THE MEASURES

#### Existence of aid within the meaning of Article 107(1) of the TFEU

- (13) According to Article 107(1) TFEU, “any aid granted by a Member 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market”.
- (14) The Commission will therefore examine whether the support can be considered as granted through State resources, whether it provides a selective advantage, whether public libraries can be considered undertakings performing an economic activity and whether the support is liable to affect trade between Member States. Only insofar as all these criteria of Article 107(1) TFEU are met could the public funding from the national budget of the Czech Republic constitute State aid within the meaning of Article 107(1) TFEU.
- (15) In this case, the Commission has gathered information from the Czech authorities. They have made substantial submissions regarding the operation of libraries in the Czech Republic, the non-economic character of their activities and on the lack of effective or potential trade between Member States. On the basis of this information, the Commission has found as follows.

#### *State resources*

- (16) There is no doubt that the resources in question are the financial resources of the Czech Republic, the aid donor is the Ministry of Culture of the Czech Republic and the grants are set out in the decisions to award a subsidy issued under Act 218/2000 on budgetary rules. Therefore, the aid is granted through State resources and it is imputable to the State.

#### *Selective advantage*

- (17) The measures can be considered as conferring to the beneficiaries an economic advantage compared with libraries that do not receive such assistance and have to bear costs by themselves without public support. The measures confer a material advantage that the beneficiary would not obtain in the course of its normal business, and thereby improves its financial situation.

#### *Economic activity*

- (18) It has further to be examined whether the advantage accrues to an undertaking, i.e. an entity which carries out an economic activity. The notion of an economic activity has been defined as meaning any activity consisting in offering goods and services on a given market<sup>1</sup>. The notion of an undertaking is hereby understood in a functional manner. The concept of an undertaking covers any entity engaged in an economic activity, regardless of the legal status of the entity or the way in which it is financed.
- (19) It therefore has to be decided whether the activities of the Czech public libraries, including digitization of books and their catalogues, the provision of online access to

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<sup>1</sup> Joined Cases C-180/98 to C 184/98, Pavlov [2000] ECR I-6451, paragraph 75.

such catalogues including the creation of their cooperation systems as well as community activities of libraries and provision of services to groups in risk of social exclusion, can be considered economic within the meaning of Article 107(1) TFEU .

- (20) According to the Czech Libraries Act 257/2001 (hereafter "the Libraries Act"), a library is a facility that provides legally defined public library and information services and is entered in the libraries register kept by the Ministry of Culture. Only a library entered in the library register can receive the notified aid.
- (21) Czech law does not differentiate between "public" and "private" libraries as such; the only category foreseen is the libraries on the Ministry of Culture's libraries register according to the Libraries Act. There are currently 6 110 registered libraries included in the libraries register.
- (22) According to the Libraries Act, the libraries must provide legally defined services to all users without distinction free of charge.<sup>2</sup> Indeed, a library cannot demand any fee from its users for making library documents in its funds available (or for lending a book to a user) and its activities cannot be profit oriented. The libraries are thus, for all practical purposes, publicly funded.
- (23) According to the Czech authorities, the activities of the public libraries governed by the Czech Libraries Act cannot be considered economic in view of the following features.
- (24) One of the main criteria for deciding whether a given activity is economic in nature, should be whether such activity may be carried out at least in principle by a private enterprise for profit.<sup>3</sup> The activities of the libraries governed by Czech law, i.e. activities consisting in the provision of legally identified services which have to be, according to the applicable law, provided free of charge to all interested parties, would not therefore be undertaken by any private entity seeking profit.<sup>4</sup>
- (25) By maintaining a publicly funded network of public libraries, the Czech Republic is not seeking to provide goods or services on a market but to fulfil the essential public function of providing access to culture and information to its population.
- (26) Libraries provide information and cultural goods to inhabitants of the municipality or region concerned and therefore support the educative and cultural needs of the public. Ensuring the existence of libraries and the related support relates to basic functions of a State and its authorities. Libraries are institutions that serve both to preserve the cultural heritage (written documents), and to provide it to all interested parties, on an equal basis, without distinction. The State has an interest in ensuring that its cultural heritage is preserved and made accessible; it has an interest in ensuring that libraries fulfil educational and similar functions. Through their activities, libraries contribute to the fulfilment of certain fundamental rights contained in the Charter of Fundamental

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<sup>2</sup> Only in certain cases, such as international inter-library borrowing services, can a library demand payment of the costs incurred from a user. A library can also demand from users payment of the costs incurred in registering users, for example an annual registration fee. Fees, for example, for registering users or for an international borrowing service are set at a symbolic amount and only represent a fraction of the actual costs. A library cannot demand an amount from users that would lead to any profit being created.

<sup>3</sup> Case C24/2005, *Laboratoire national de métrologie et d'essais*, OJ L 95, 5.4.2007.

<sup>4</sup> The fact that an amount up to the real cost is paid by the user for certain services is not relevant, as any remuneration is not in itself sufficient for the activity carried out to be an economic activity. See C-138/11 *Compass v. Austria (Compass Datenbank)*, paragraph 39 with further reference.

Rights of the European Union as well as the Charter of Fundamental Rights and Freedoms, which is part of the constitutional order of the Czech Republic. Specifically, libraries contribute to the fulfilment of the right to information, right to education, the right to freedom of thought, freedom of scientific research and the right of access to cultural heritage. The State is the guarantor that these basic human rights are respected and that people will be given an effective opportunity to use these fundamental rights.

- (27) In this context, the Commission notes that by ensuring the operation of public libraries the Czech State has no interest in engaging in economic activities, as is clear from the above described conditions under which the Czech public libraries operate (in particular the obligation to provide services free of charge). Taking into account the functions that these public libraries perform it can be concluded that these entities help to fulfil the mission of the State in relation to its citizens in the educational, cultural and social areas. This can be illustrated with the examples of links of public libraries with the national education system provided by the Czech authorities: by organizing expert meetings for schools, public libraries try to arouse pupils' interest in reading and studying and in general, to promote reading of books. Irreplaceable function of the public library for school education is also apparent in connection with the compulsory school reading, in which already at the lowest levels of education students perform assigned tasks in principle using the services offered by public libraries (as the titles given at school as required reading are often not accessible elsewhere in the public domain). Public libraries are also an invaluable source of generally inaccessible information needed for students studying at higher levels of education.
- (28) The educational function of public libraries is also intertwined with the areas of cultural and social activities which have a strong attachment to the main activities of a public library and which cannot be compared with an offer of commercial character - both in terms of content and purpose, and in terms of scale, means and methods used (see point 7 above). These activities provided by the Czech public libraries are also characterized by an attachment to the place where the library operates. In this respect, they can be described as locally oriented (organizing meetings with local celebrities, photo exhibitions on the history of the city / municipality, etc.). Moreover, the Czech authorities stressed that the Czech Ministry of Culture will provide subsidies only for those activities that somehow relate to the fundamental mission of the library to store and provide access to cultural heritage and to fulfil an educational function (such as meetings with writers or authors' readings, or exhibitions that are related to the library or a given region, perhaps to commemorate a local writer or poet, and educational courses to groups in risk of social exclusion, e.g. such as courses on basics of computer literacy for seniors). It does not intend to provide support for e.g. organisation of cycles of symphonic concerts or big exhibitions of famous painters, as there are other institutions responsible for such projects.
- (29) In view of the above characteristics and nature of the services offered by the Czech public libraries, it can be considered that the relevant support is necessary to ensure one of the basic functions of a State in the educational, cultural and social areas. The whole set up has similarities with public education that was, due to its nature, not considered as an economic activity.<sup>5</sup>

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<sup>5</sup> Point 26 and following of the Commission Communication on the application of the EU State aid rules to compensation granted for the provision of services of general economic interest OJ C 8, 11.1.2012, p. 4.

- (30) The objective of the measure is also fully in line with the Commission's endeavours (and justification) addressed by the revision of the Directive on the re-use of public sector information. In December 2011, the Commission proposed extending the scope of the Directive on the re-use of public sector information to cover libraries (including university libraries), museums and archives<sup>6</sup>. Moreover, the Commission proposed that "to facilitate re-use, public sector bodies should make documents available through machine readable formats and together with their metadata where possible and appropriate, in a format that ensures interoperability."
- (31) In view of the above, the Commission considers that the Czech public libraries cannot be considered as undertakings within the meaning of Article 107(1) TFEU. The amendment notified by the Czech Republic (introducing digitization of books and their catalogues as well as community activities of libraries and provision of services to groups in risk of social exclusion) does not change this qualification. The purpose of digitization is not universal access to digitized books, but protection of the library funds as libraries are required by the Library Act to protect their library collections. The digitization is adjusting the essential (non-economic) activity of public libraries to keep pace with technological development and there is no substantive difference between making cultural goods available in physical and digital formats.
- (32) In conclusion, by distributing relevant information in their possession, the Czech public libraries are vehicles for the State authorities in fulfilling a genuine public task and responsibility. The provision of such public library services does not constitute an economic activity and therefore aid granted from the State budget for this activity does not constitute State aid within the meaning of Article 107(1) TFEU. In view of the above findings, there is no need to examine the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU.

#### **4. CONCLUSION ON THE ASSESSMENT OF AID**

- (33) In light of the foregoing assessment, the Commission accordingly finds that the measures described in the notification do not constitute State aid within the meaning of Article 107(1) TFEU.

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Your request should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
1 Place Madou / Madouplein 1  
MADO 12/59  
B-1210 Brussels  
Fax No: +32 2 29 61242

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<sup>6</sup> Commission proposal for a Directive of the European Parliament and Council amending Directive 2003/98/EC on re-use of public sector information, 12.12.2011 {SEC(2011) 1551 final, SEC(2011) 1552 final}.

Yours faithfully,  
For the Commission

Joaquín ALMUNIA  
Vice-President