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**Subject: SA.33575 (2013/NN) – Czech Republic
Support from central government to non-profit sport facilities**

Dear Sir,

1. PROCEDURE

- (1) By letter dated 23 August 2011 a private company offering sports services in Prague lodged a complaint with the Commission against the public support granted by the Czech Republic or its municipalities for the construction, operation, maintenance, reconstruction or development of non-profit sport facilities.
- (2) On 23 September 2011, the Commission sent a letter to the complainant including a preliminary assessment stating that the measures objected to, a priori, do not constitute aid under Article 107(1) of the Treaty on the Functioning of the European Union (“TFEU”), and even if the measures were aid they would be, a priori, compatible with the internal market. As the complainant failed to react within the deadline set in the Commission's letter, the file of this complaint was closed on 4 November 2011.
- (3) By letter dated 6 August 2012, the complainant belatedly provided his reaction to the above letter of the Commission, alleging that the measures constitute State aid, and

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requested further investigation of his complaint. The Commission therefore reopened the file.

- (4) On 30 August 2012 the Commission sent a request for information to the Czech authorities along with a non-confidential copy of the complaint. The Czech Republic replied by letter dated 29 October 2012.
- (5) On 5 December 2012, the Commission sent a letter to the complainant, along with a non-confidential copy of the Czech authorities' reply, including a preliminary assessment stating that the measures in question, insofar as they constitute State aid, can be considered compatible with the internal market under Article 107(3)(c) TFEU.
- (6) By letter of 4 February 2013, the complainant provided his reaction, considering the measures as illegal aid.
- (7) Further information was submitted by the Czech authorities by letter of 8 April 2013, received on 16 April 2013, and by the complainant by letter of 24 April 2013. By emails of 28 May 2013, 29 May 2013, 10 June 2013, 24 June 2013 and 24 July 2013, the Czech Republic submitted additional information.
- (8) On 26 November 2013 and 14 April 2014, the Commission sent requests for information to the Czech authorities. The Czech Republic replied by letters dated 16 January 2014, 25 April 2014, 6 May 2014 and 14 May 2014.

2. FACTS

2.1 DESCRIPTION OF THE MEASURE

- (9) **Objective:** The objective of the scheme is to promote sports as educational and physical development with a focus on the sports performance level of talented young people. It is desirable to subsidise the costs for these activities because health of children and young people of the Czech Republic is an important aspect in relation to the future of young people, for active employment, and the consequent reduction in illness rates.
- (10) **Eligibility:** To be eligible for a subsidy under the current scheme, the non-profit organisations must have registered offices exclusively in the Czech Republic.
- (11) **Conditionality:** The aid is provided in the form of subsidies to non-profit organisations which must ensure the operation of sports activity for at least 10 years, otherwise the subsidy would be claimed back.
- (12) **Legal basis:** The relevant legal bases for the scheme are Act 115/2001 on support to sport¹, Act 218/2000 on budgetary rules, Resolution of the Government of the Czech Republic of 1 February 2010 No 92 on Government principles for the provision of aid from the state budget of the Czech Republic to NGOs through central state administration bodies and Resolution of the Government of the Czech Republic of 9 March 2011 No 167 on the Conception of state support to sport in the Czech Republic (“the Conception of state support to sport”).

¹ <http://www.msmt.cz/sport/zakon-o-podpore-sportu>

- (13) **Budget and form of support:** The aid is provided on an annual basis by the Ministry of Education, Youth and Sports of the Czech Republic (“MEYS”) in the form of operational or investment grants. The overall annual amount of aid varied from CZK 1,642 million (approximately EUR 61 million) in 2004 up to CZK 2,982 million (approximately EUR 110 million) in 2013.
- (14) **Intensity:** The maximum intensity of support is either 70% or 100% of budgeted costs.
- (15) **Beneficiaries:** The beneficiaries of the scheme are non-profit organisations that provide sport services to their members and the public, mainly to children, adolescents and young people. Because the subsidised organisations cannot earn profit, revenues from any activity must be used to the benefit of the sports activity of the organisation.

2.2 THE COMPLAINT

- (16) The complainant claims that the Czech authorities grant subsidies to non-profit legal entities that provide free time sport services in the Czech Republic. The aid is provided for the construction, operation, maintenance, repair and development of the sport facilities including sport grounds. Due to the subsidies these entities, when setting prices for their customers, do not have to include in their price the real costs and a reasonable profit. As the vast majority of players on the market of free time sport activities receive subsidies, whereas commercial entities in the same market have to include in their prices all their costs, the latter entities cannot compete efficiently and the market in terms of free setting of prices is thus distorted. In order to substantiate these allegations, the complainant presented price lists of six non-profit sport clubs as well as the expert opinion containing an analysis of price calculation for rental of his sport facility and a general assessment of the impact of State support to competing entities of 17 August 2011. That expert opinion refers to a high number of entities offering sport services in Prague.
- (17) The complainant operates three sport facilities in Prague, in particular in the area of the rental of sports grounds for recreational purposes to the greater public. It also operates other supplementary services (sales of sport equipment, services of professional trainers and restaurant services). The complainant claims that his clients are natural persons (citizens of the Czech Republic as well as of other EU Member States) and also firms (Czech firms as well as subsidiaries of European firms) that purchase the services of the complainant for their employees.
- (18) According to the complainant, in the market of rental of sport facilities (tennis, squash and volleyball courts, floorball surfaces, etc.), there are three categories of competitors: a) private companies, b) sport associations, and c) State and municipalities. Of the above three categories of competitors, only private companies operate as full commercial entities. Private companies cannot obtain the public funds at issue, due to national legislation. This inequality leads to the long-term financial damage of the private companies.
- (19) The complainant further alleges that the non-profit and public sport facilities entities (categories b) and c) of the competitors described in the previous paragraph) are dominant (approximately 83% market share) in the market of rental of sports facilities. Allegedly, the beneficiaries of the aid offer their services not only to their members, but also to third parties. As a result, private companies in the relevant market (the complainant among them), cannot compete with the subsidised entities (as it can never

match their price level) and accordingly, this deprives the latter companies from the ability to make reasonable profit.

- (20) The public support is granted either by the MEYS or by regions and municipalities. The complainant is however challenging only support granted by the MEYS, not support distributed by the city of Prague as the competent regional/local granting authority.²
- (21) With reference to the Court judgments in case Altmark of 6 April 2000 and in case C-78/08 to C-80/08 of 8 September 2011, the complainant claims that the measure in question has an effect on trade between Member States. Referring to the above Altmark judgment, the complainant also refutes that the measure can be considered services of general economic interest. He also claims that aid compatible under Article 107(3)(c) TFEU must comply with the rules set for services of general economic interest.
- (22) For the above reasons, the complainant alleges that the measure constitutes unlawful aid.

2.3. COMMENTS OF THE CZECH REPUBLIC

- (23) There are approximately 17 300 sports facilities of the non-profit organisations in the Czech Republic. In view of the state budget limitations, only limited aid is provided. Moreover, in the majority of cases, State support is granted at lower amounts than requested.
- (24) Support for sport is primarily intended for amateur sport organised by non-governmental non-profit organisations for their membership base and the public. According to the Czech authorities, such support does not constitute State aid within the meaning of Article 107 TFEU. This assessment applies to support for sports activities, support for investments into sports infrastructure, maintenance and operation of sports grounds.
- (25) The Czech Republic support for sports activity is one of the priorities within the framework of the government-approved strategy “Health 21” for promising future of the young people and citizens, for active employment, and for reducing illness rates.
- (26) The following table illustrates the overall support of the MEYS to sport (other public funding such as support from municipalities is not included):

STATE BUDGET FUNDS through chapter 333 of MEYS

	CZK millions		CZK millions		CZK millions		CZK millions	
	Representation	%	Physical Training	%	Investment	%	TOTAL	%
2004	870	106.5	272	122.5	500	111.1	1642	110.3
2005	885	108.3	277	124.8	771	171.3	1933	129.8

² The complainant received from the City of Prague a public subsidy of CZK 5 185 000 (approximately EUR 207 400) in 2010. This grant was implemented under the Operational Programme Prague - Competitiveness from the European Union funds.

2006	917	112.2	311	140.1	551	122.4	1779	119.5
2007	970	118.7	325	146.4	804	178.7	2099	141.0
2008	987	120.8	321	144.6	900	200.0	2208	148.3
2009	987	120.8	292	131.5	620	137.8	1899	127.5
2010	987	120.8	292	131.5	620	137.8	1899	127.5
2011	1061	129.9	218	98.2	620	137.8	1899	127.5
2012	1065	130.4	1297	584.2	620	137.8	2982	200.3
2013	1065	130.4	1297	584.2	620	137.8	2982	200.3

- (27) According to the Czech Republic, there is a difference between non-profit organisations and commercial entities. As from 1 January 2014, an association (*spolek*) – as the most common type of a non-profit organisation - is set up on the basis of Act No 89/2012, Civil Code.³ A non-profit organisation performs its activities for its membership base in line with its statutes. The basic objective of sports associations is to create conditions for sports activities of their own members, including the maintenance of the sports facilities they own or have on long-term leases, from resources obtained from members (through the collection of membership contributions), from the relevant town and municipality councils, state institutions or from secondary economic activities that are taxed pursuant to the laws of the Czech Republic. In the event of free capacity the sport facilities of the non-profit organisations can be used by the public. A natural person who is a professional sportsperson is either a member of a non-profit organisation or of the general public.
- (28) Non-profit organisations differ from commercial entities in that they are active in the sports sector by the regular, year-round care for children, adolescents and young people aiming at educational and physical development, with focus on the sports performance level of talented young people. Non-profit organisations are considered to be the pillars of the system for raising talented people, which culminates in the preparation of representatives of the Czech Republic for international sports events. According to the Czech authorities, it is desirable to subsidise the costs for these activities because the health of children and young people is an important aspect in relation to the future of young people, for active employment, and the consequent reduction in illness rates. These activities are not profit-generating and therefore commercial entities have no interest in them.
- (29) A commercial entity does not have its own membership base. It therefore does not have an obligation to provide regular, year-round sports activities for children, adolescents and young people.
- (30) Sports facilities operated by non-profit organisations are used primarily for the sports activities of their own members. When holding open sports events, a non-profit association charges any potential entry fees at the same amount as for its own members. These funds are generally reused for the organisation of sports activity stipulated in the statutes of the non-profit organizations.

³ Until 31 December 2013, a civic association (*občanské sdružení*) was set up on the basis of Act No 83/1990, on the association of citizens, as amended.

- (31) A member of a non-profit organisation is an active participant in the sports process of the sports club in question throughout the calendar year, while a commercial entity (in the form of a legal or natural person) does not guarantee regular organised sports activity, or a regular support of the membership base's activities focusing on amateur sport.
- (32) The assets of a subsidised non-profit organisation must not generate profit (pursuant to Act No 218/2000, on budgetary rules), and the revenues from an economic activity must be used for the support of sport. Pursuant to the Czech legislation it is possible to provide state support in the area of sport only to non-profit organisations.
- (33) Aid is only provided for the sports activities of the association's own members. The beneficiary can transfer the subsidy to its members if they are non-profit organisations. Therefore, support provided by the MEYS is provided neither to commercial entities, nor to clubs or natural persons providing services or infrastructure for professional (team or individual) sport such as the participation in the highest national competitions, the construction and operation of ski lifts, restaurant services or promotional activities.
- (34) Since 2011, the Czech Republic State support of sports includes five categories⁴: a) State sports representatives of the Czech Republic (aid intensity 100%), b) Young people with sports talent (aid intensity 100%), c) General sporting activity (aid intensity 100%), d) Support for the maintenance and operation of sports facilities in the area of sport (maximum aid intensity 70%), e) Investment support for the development and renewal of the material/technical foundation of sports organisations (maximum aid intensity 70%). In 2012, a new aid programme entitled "Organisation of sports" (maximum aid intensity 100%) was introduced.

2.4. ASSESSMENT OF THE CASE BY THE CZECH AUTHORITIES

- (35) On 8 November 2012, the Municipal Court in Prague dismissed an application of the complainant to oblige the Czech Republic – the MEYS to avoid granting subsidies from the state budget only to non-profit organisations for the purpose of financing sport and the construction, maintenance and operation of sport facilities (case number 19Cm 114/2011). The ground for this dismissal was the lack of distortion of competition by the limitation of subsidies to non-profit organisations, motivated by the lack of unlawful intention of the Czech Republic regarding the said limitation, the non-profit character of the activities of non-profit organisations and the dependence of the type of beneficiaries on the type of subsidy programmes (some programmes are open only to municipalities, others only to non-profit organisations and others only to businesses). On 8 October 2013, the High Court in Prague confirmed the judgment of the Municipal Court in Prague (case number 3Cmo 92/2013).

3. ASSESSMENT OF THE MEASURE

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

- (36) 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*

⁴ <http://www.msmt.cz/sport/odkazy>

shall, in so far as it affects trade between Member States, be incompatible with the internal market”.

- (37) The Commission will therefore examine whether the support of the central government of the Czech Republic in favour of non-profit sport organisations can be considered as granted through State resources, whether non-profit sport organisations can be considered undertakings performing an economic activity, whether the support provides a selective advantage and whether it 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.
- (38) In this case, the Commission has gathered information from the Czech authorities and the complainant. The Czech authorities have made substantial submissions regarding the operation of the non-profit organisations in the Czech Republic, the non-economic character of their activities and the lack of effective or potential trade between Member States. On the basis of this information, the Commission has found as follows.

3.1.1 State resources

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

3.1.2 Economic activity and undertaking

- (40) According to the information submitted by the Czech Republic, only regular sports activities of members of non-profit associations, such as sports clubs and sports federations are eligible to receive subsidies from the State budget.
- (41) The complainant states that the subsidised non-profit organisations provide their services to the public, in other words non-members, thus being actual competitors of the complainant on the relevant market.
- (42) The Czech authorities have confirmed that, although the non-profit organisations provide their services mainly to their members, they provide their services also to the public as far as spare capacity allows. They claim that the impact of the subsidies on the general public activities is of a secondary nature and is not an objective of the MEYS subsidy scheme. The secondary-nature benefits for general public only comes as a side effect of subsidies provided for the activities of sports organisations such as youth care and the organisation of competitions.
- (43) In the present case, the Czech Republic has not provided any proof that access to sport facilities of non-profit organisations is strictly limited to their members or recognised candidates for membership in these organisations. Making the capacity of these sport facilities available to the general public against remuneration is comparable to commercial gyms that make fitness equipment available. The proportion of non-members differs from one non-profit sport facility to another and no reliable statistical data seem to be available. For this reason, the Commission cannot exclude that the use of non-profit sport facilities by the general public against a fee is covered by the

notion of an economic activity, although the extent of this activity is likely to be limited. If a beneficiary is not a local sport association operating a local sport installation, but a group with branches which operate sport facilities across a Member State and which are active on several markets (such as sport facilities and courses, hotel and restaurant services), and the group performs considerable activities (such as hotel and restaurant services in refuges) in other Member States, that beneficiary can be considered an undertaking subject to State aid control.⁵

- (44) On the basis of the available information, the Commission cannot exclude that a national association in the Czech Republic and its regional or local clubs⁶ have to be regarded as one single group for the purpose of State aid control.
- (45) Moreover, the Czech Union of Sport (CUS)⁷, the union of the national sport associations, has secondary activities (with revenues that must be used to the benefit of the main sports activity of the organisation) on several markets: sport facilities such as a skiing resort⁸, stadiums⁹ and swimming pools¹⁰, as well as accommodation, catering and congress services¹¹.
- (46) Therefore, such a national sport association or union is not one local sport association or one local sport installation, but a group with clubs which operate sport facilities across the Czech Republic, and may have ancillary commercial activities.
- (47) In light of the above, the Commission therefore cannot exclude that the non-profit organisations should be considered as undertakings subject to State aid control to the extent that they provide sports services to the general public against remuneration.

3.1.3 Economic advantage and selectivity

- (48) The scheme confers to the beneficiaries, who are non-profit organizations, an economic advantage compared with operators of sport facilities who have to bear costs by themselves without public support. The scheme confers a material advantage that the beneficiary would not obtain in the course of its normal business, thereby improving its financial situation. Although the measure in question is selective in that it favours a group of beneficiaries (non-profit organizations), it does not establish differentiated treatment among non-profit organisations.

3.1.4 Distortion of competition

- (49) There is a distortion of competition or at least a potential distortion of competition in so far as the publicly-funded sport facilities of non-profit organisations compete with other sport facilities to attract customers. Moreover, it has to be noted that a complaint was received from a competing operator of sport facilities.

⁵ See, e.g., Commission decision of 5 December 2012 in case SA.33952 Climbing centres of Deutscher Alpenverein.

⁶ One of the non-profit organizations, and the largest one (578 000 members), with the highest amount of public support, is the Football Association of the Czech Republic (<http://nv.fotbal.cz/en-index.php>).

⁷ Previously the Czech Association of Physical Education (ČSTV), <http://www.cuscz.cz/uvod.html>

⁸ See <http://www.lazadov.cz/la/stredisko-kontakty.asp>

⁹ <http://www.cuscz.cz/o-nas/sa-strahov.html>

¹⁰ See <http://www.pspodoli.cz/>, <http://www.cuscz.cz/o-nas/sa-strahov.html>

¹¹ See <http://www.scnb.cz/sport-centre-nymburk>

- (50) Fair and just competition is one of the objectives of Article 107 TFEU. The presence on a market of a competitor with access to public funds amounts to a distortion of such competition. It should be noted that, without access to these funds, it would be difficult for the sport facilities of the non-profit organisations to remain in operation or, at the very least, for them to provide services with all the features - and the corresponding expenses - of a sport facility.

3.1.5 Effect on intra-EU trade

- (51) In order to be considered as State aid under Article 107(1) TFEU, the use of State resources to support an undertaking must also affect trade between Member States.
- (52) According to settled case-law, it is not necessary to demonstrate that the aid has a real effect on trade between Member States and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition.¹² It is also settled case-law that, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-EU trade, the latter must be regarded as influenced by that aid.¹³
- (53) Based on the information gathered from both the complainant and the Czech authorities, the Commission has considered the potential effect of the measure on intra-EU trade in the following services markets: rental of sports grounds for recreational purposes, sale of sport equipment, services of professional trainers and restaurant services.
- (54) The Commission notes that tourists from other Member States make their decision to travel to the Czech Republic irrespective of the existence of the supported facilities. The support is not expected to lead to an increased inflow of foreign tourists as the scheme focuses on the support of domestic sportswomen and sportsmen. The projects supported under the measure are not capable of deviating flows of foreign visitors of sport facilities.
- (55) The Commission also considers that the measure is a scheme which benefits many sports associations which are active only on a local, regional or, at most, national level.
- (56) The complainant pursues its sport services (rental of sport grounds, sale of sport equipment and services of professional trainers) and restaurant business operations exclusively in the region of Prague. The expert opinion submitted by the complainant analyses competition only in Prague as the region of complainant's activity in the market of sport and leisure activities and it refers to a high number of players in the market of Prague.
- (57) Furthermore, out of seven competitors of the complainant mentioned in the aforementioned expert opinion, six have websites solely in Czech¹⁴ and one in Czech and English¹⁵. Out of six sport clubs, for which the complainant has submitted price lists,

¹² Case C-372/97 Italy v Commission, paragraph 44 and case C-66/02 Italy v Commission, paragraph 111.

¹³ Case C-66/02 Italy v Commission, paragraphs 115 and 117.

¹⁴ <http://www.halasterboholy.cz/>, <http://www.scradotin.cz/>, <http://www.hristenafrantisku.cz/>, <http://www.sporthanspaulka.cz/>, http://www.cakovice.cz/525_Viceucelove-sportovni-hriste, http://www.cakovice.cz/540_Sportovni-hala.

¹⁵ <http://www.sport-areal-satalice.cz/en/>.

five have websites solely in Czech¹⁶ and one in Czech, English and German¹⁷. All the above websites seem to target predominantly the Czech public. Their content is focussed on sport offer and matters of local interest.

- (58) In view of the specialised offer of the beneficiaries and their competitors, the fact that a majority of their websites is published only in Czech and that its perimeter of attraction is limited to the municipality or region concerned, the Commission considers that the financial support granted to the local or regional beneficiaries is not liable to enhance their ability to compete with sport organisations in other Member States, in particular in view of the fact that any revenue has to be used for the activity of the club. The same goes for the beneficiaries' potential to compete with sport organisations in other Member States: although there is in principle nothing barring the access to the beneficiaries' facilities by residents of other Member States, the fact that their activities are organised in Czech and targeted at a local population means that their natural catchment areas are limited to the municipality or region concerned or, at most, to the Czech Republic (for linguistic reasons, possibly with the exception of the border areas to the Slovak Republic).
- (59) Moreover, given the traditional sport-club-type organisation of the beneficiaries, it is not plausible that the financial support provided by the Czech Republic will be used by the beneficiaries to expand their activities outside the market of the municipality or region concerned.
- (60) In view of the beneficiaries' local or regional profile, any advantage granted to them by the Czech Republic is also not liable to have an appreciable effect on the ability of their facilities to attract advertising revenue that would otherwise have been available to competitors (sport clubs) in other Member States.
- (61) There is also no significant risk of spill-overs into other markets considering the exclusion of certain purely commercial activities (accommodation, catering) from the public support and the type of beneficiaries.
- (62) Therefore, even if the measure of the central government of the Czech Republic in favour of local and regional non-profit sport organisations is liable to strengthen the position of the non-profit operators on the local or regional markets, based on the information provided, it is likely not liable to affect trade between Member States within the meaning of Article 107(1) TFEU or such effect is very limited.
- (63) However, as explained above, the Commission takes the view that groups operating at national level are not one local sport association or one local sport installation, but a group with branches which operate sport facilities across the Czech Republic, and they may have other commercial activities as well. Nonetheless, these groups do not perform considerable activities in other Member States (apart from participation in competitions).
- (64) The Commission notes that the measure is a general scheme which also benefits many other sports associations, many of which will be active only on a local or regional level. In these cases, aid may not be present if the beneficiaries do not exercise

¹⁶ <http://www.michle.tenisklub.cz/>, <http://www.skaritma.cz/>, <http://www.tjastra.cz/>, <http://www.solidarita.cz/>, <http://www.startpraha.cz/>.

¹⁷ <http://www.tkspartapraha.cz/en>.

commercial activities or there is no effect on competition or trade as explained above. However, as described above, it cannot be excluded that the scheme is liable to affect trade between Member States, at least as far as some beneficiaries are concerned.

- (65) Therefore, the Commission concludes that it cannot be excluded that the measure qualifies as State aid within the meaning of Article 107 (1) TFEU.

3.2 Compatibility of the aid

- (66) To the extent that the scheme under assessment constitutes State aid, the Commission has analysed its compatibility with the internal market.

- (67) The relevant legal bases foresee subsidies for sport facilities operated by non-governmental non-profit organisations, particularly associations.

- (68) Article 107 (3) (c) TFEU states that "aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest" may be considered to be compatible with the internal market. According to the case-law, the Commission may declare State aid compatible with the internal market if the aid contributes to the attainment of an objective of common interest¹⁸, is necessary for the attainment of this objective¹⁹, and does not adversely affect trading conditions to an extent contrary to the common interest.

- (69) Accordingly, it is established Commission practice that measures may be declared compatible directly under Article 107 (3) (c) TFEU if they are necessary and proportionate and if the positive effects for the common objective outweigh the negative effects on competition and trade²⁰. The Commission considers it appropriate here to ask the following questions:

1. Is the aid measure aimed at a well-defined objective of common interest?

2. Is the aid well designed to deliver the objective of common interest? In particular:

(a) is the aid measure an appropriate and necessary instrument, or are there other, more suitable instruments?

(b) is there an incentive effect, or in other words does the aid change the behaviour of undertakings?

(c) is the aid measure proportional, or in other words could the same change in behaviour be obtained with less aid?

3. Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

¹⁸ Case T-162/06 *Kronoply v Commission* [2009] ECR II-1, especially paragraphs 65, 66, 74 and 75.

¹⁹ Case T-187/99 *Agrana Zucker und Stärke v Commission* [2001] ECR II-1587, paragraph 74; Case T-126/99 *Graphischer Maschinenbau v Commission* [2002] ECR II-2427, paragraphs 41-43; Case C-390/06 *Nuova Agricast* [2008] ECR I-2577, paragraphs 68-69.

²⁰ Community framework for State aid for research and development and innovation, point 1.3 (OJ C 323, 30.12.2006, p. 1); Community guidelines on State aid for environmental protection, point 1.3 (OJ C 82, 1.4.2008, p. 1).

3.2.1. Objective of common interest

- (70) According to Article 165 TFEU the promotion of sport is an objective of the Union which shall take account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.
- (71) The measure clearly aims at supporting amateur sport for masses and to improve access to it. The purpose of the funding at stake is indeed to promote sport, related education and social life of amateurs including youth in associations based on voluntary activity of their members. Act 115/2001 on support to sport and the Conception of state support to sport define the support to sport as an activity benefitting the public. The system of support to non-profit organisations is thus a tool for improving the civic society.
- (72) The support is an instrument to the achievement of objectives such as sport representation of the Czech Republic, care about youth talented in sport, common sport activity of the citizens of the Czech Republic, leisure activities of children, youth and adults, prevention of civilisation illnesses, social integration, support to voluntary activity, support to the fight against drugs and sport of disabled citizens.
- (73) The measure can therefore be considered to aim at promoting sport as well as physical and mental integrity at a local, regional or national level as a common interest.

3.2.2. Design of the aid measure

- (74) The support is designed in a way that allows the achievement of the common interest as demonstrated by the following points.

3.2.2.1. Necessity and appropriateness

- (75) Despite the commitment, both in terms of financial contributions and contributions in kind, of their members, non-profit sport organizations are normally not capable of financing the costs for sport on their own. According to the Commission, the public co-financing of the construction and operation of the facilities of non-profit organisations addresses a market failure (i.e. the project would not be realised in the absence of public funding and investments in the sport facilities may bring about positive externalities in particular when they allow complementary activities to develop). Moreover, there is a long tradition in the Czech Republic of governmental funding of sport infrastructure.
- (76) The funding scheme has contributed to ensuring an adequate level of amateur sport activities in the Czech Republic in sport facilities, which are used by sports associations.
- (77) The Commission therefore concludes that the aid measure is a necessary and appropriate instrument.

3.2.2.2 Incentive effect

- (78) The support to sport has an incentive effect, especially for the education of children and youth for sports activities. Without the aid the beneficiary would not carry out the activity at all, or the activity would be carried out in a reduced extent and/or quality,

and he would thus not be able to achieve the objectives of the State policy in the field of sport and health.

- (79) Aid is only available for sports infrastructure which would not have been constructed, modernised or operated absent the aid.
- (80) Therefore, the aid ensures an incentive effect.

3.2.2.3. Proportionality

- (81) Over time, the MEYS in charge of administering the scheme has acquired detailed knowledge of the local funding needs and capabilities of the various sports associations. The MEYS collaborates with the Czech Olympic Committee for the set-up of the strategy of support to sport infrastructure for ensuring the sport representation.
- (82) In the view of the Commission, the following elements ensure that the aid is proportionate:
 - (a) First of all, the 2009 Analysis of the financing of sport in the Czech Republic shows that the support to sport is not sufficient in view of the objectives set. Lower aid would put the existence of sports activity at risk.
 - (b) In general, the public support is granted after an individual assessment only in 20% of applications.
 - (c) The MEYS applies the co-financing by the applicant for support as a criterion relevant for the award of aid. For the investment aid, the maximum aid intensity is set at 70% of budgeted costs. For the operational aid, the maximum aid intensity is either 70% or 100% of budgeted costs, depending on the category of support concerned (see paragraph 34 above).
 - (d) In order to obtain the status of association serving to a public interest, an association has to prove that it contributes to the promotion of amateur sport for masses.
 - (e) In addition, the legal bases foresee an exclusion of commercial activities from the public support.
 - (f) Furthermore, the non-profit organisations are non-profit making, and any profit is to be reinvested in their sport activities.
 - (g) The subsidized sport infrastructure is not dedicated to professional sport clubs.
 - (h) The subsidized sport infrastructure can be used by several non-profit sport clubs. The use by other users does not exceed 20% of time capacity of the sport infrastructure.
 - (i) The access to the subsidized sport infrastructures is open to several users if they are members or have other relationship with the beneficiary of aid. That access is granted on a transparent and non-discriminatory basis.
 - (j) The pricing conditions for the use of the subsidized infrastructure are comparable and made publicly available.
 - (k) The subsidised sport infrastructure is used by non-profit organisations who are its owners or long-term tenants (minimum duration of the lease is ten years).

- (l) The subsidies cannot be transferred by the beneficiary to a third party except to its members who are non-profit organisations.
 - (m) The beneficiary is obliged to comply with Act 137/2006, on public procurement, as amended.
- (83) For these reasons, the Commission considers that the measures are proportionate.

3.2.3. Effect on trading conditions not contrary to the common interest

- (84) Usually, the financing of amateur sport infrastructure owned and operated by sports associations serving to a public interest is very unlikely to adversely affect trading conditions to an extent that would be contrary to the common interest, as they serve a local market: most sports, in particular team sports, are not offered on the market by private competitors.

3.2.3.1. Effect on trading conditions

- (85) The public support to sport is dedicated to non-profit sport organisations active in the Czech Republic. The vast majority of the supported non-profit organizations are active at municipal, regional or local level. The sport infrastructure in the Czech Republic is only occasionally used for international sports events organised by the international sport federations (e.g. World Biathlon Championship in Vysočina arena in Nové Město na Moravě in 2013).
- (86) No sport facility of a Czech non-profit organisation is located outside the territory of the Czech Republic. According to the information available to the Commission, the measure is targeted only at local or regional sport activities. Non-profit organisations develop their activities in their local area or region and also their advertising activities, if any, can be considered local or regional. Operators of commercial sport facilities in the Czech Republic are mostly smaller, local limited liability companies. The competitors of the sport facilities of non-profit organisations are generally limited to entities operating sport facilities in the respective municipality and the local or regional surroundings. The MEYS is not aware of any marketing of Czech non-profit sport organisations abroad. Websites of non-profit organisations are published mostly in Czech, with national, regional or local content. In principle, no demand arises for the services of sport facilities of non-profit organisations abroad. Moreover, the catchment area of the sport facilities is limited to local level.
- (87) It can be therefore concluded that the sport facilities of the non-profit organisations do not compete with sport facilities in another Member State. Even in the border regions, the amount of visitors from other Member States in the affected sport facilities seems to be limited. None of the sport facilities of the non-profit organisations has transnational character.
- (88) The Commission concludes that the effect of the measure on trade is limited. Therefore, it takes the view that trading conditions are not adversely affected to an extent contrary to the common interest.

3.2.3.2. Impact on competition

- (89) While defining the size of their facilities and their offer, non-profit organisations take account in the first place of their members. In such circumstances, the distortion of competition is limited.
- (90) Considering the geographic areas concerned (municipalities or regions in the Czech Republic), the possible impact of the measures on competition is further reduced.
- (91) The majority of the activities of the non-profit organisations (particularly activities of members and socially disadvantaged persons) has no potential to affect competition to an extent contrary to the common interest. What is more, the Commission considers that the activities performed in the sport facilities of the non-profit organisations is not a professional sport, but a non-profit making amateur sport for masses, schools or socially disadvantaged persons.²¹ The distortion of competition with commercial sport is also reduced by the fact that these sport facilities are in the first place used by their members.
- (92) The Commission acknowledges that the operation of a sport facility of a non-profit organisation may lead to a loss of revenue for an existing private operator. However, private operators are unlikely to meet the public interest in the provision of affordable sport facilities. They have the possibility to offer more sophisticated services.
- (93) For these reasons, the Commission takes the view that the impact on competition is also limited. Therefore, it takes the view that trading conditions are not adversely affected to an extent contrary to the common interest.

3.3. Conclusion

- (94) The Commission considers that the measure, insofar as it constitutes State aid, can be declared compatible with the internal market on the basis of Article 107 (3) (c) TFEU.

4. CONCLUSION

- (95) The Commission regrets that the Czech Republic put the aid in question into effect, in breach of Article 108 (3) TFEU.
- (96) On the basis of the foregoing assessment, the Commission has decided to consider the measure as compatible with the internal market under Article 107 (3) (c) TFEU.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of receipt. If the Commission does not receive a reasoned request within that deadline, it will be deemed that you agree to the disclosure to third parties and to the publication of the full text of the letter in the binding language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

²¹ Cf. N 118/00 *Subventions publiques aux clubs sportifs professionnels*, 25 April 2001; N555/2004 *Individual measures in favour of Omniworld*, 6 April 2005; SA.31722 *Aid to sport in Hungary*, 9 November 2011.

Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

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