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**Subject:** SA.37432 (2015/NN) – Czech Republic

**Funding to public hospitals in the Hradec Králové Region**

Dear Sir,

**1. PROCEDURE**

- (1) On 30 September 2013, the Commission received a complaint concerning the granting of alleged State aid to public hospitals in the Hradec Králové Region (“the Region”).
- (2) By letters dated 9 December 2013, 27 March 2014 and 7 April 2014 the complainant submitted additional information concerning its complaint.
- (3) The Commission forwarded the non-confidential version of the complaint to the Czech authorities on 5 June 2014. The Czech authorities replied on 24 July 2014.
- (4) The Commission requested additional information on 2 September 2014, which was provided by the Czech authorities on 12 September 2014.

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## **2. DESCRIPTION OF THE MEASURES**

- (5) According to information provided by the Czech authorities, the public hospitals of the Region receive public funding as compensation for the provision of Services of General Economic Interest (“SGEI”). The purpose of the public funding is mainly to ensure emergency medical services and to allow the hospitals to obtain the equipment they need for the provision of their services.

### ***Beneficiaries***

- (6) The Czech authorities identified five public hospitals in the Region that are receiving public funding: Oblastní nemocnice Trutnov a.s., Oblastní nemocnice Jičín a.s., Městská nemocnice a.s., Oblastní nemocnice Náchod a.s., Oblastní nemocnice Rychnov nad. Those hospitals have been set up as joint-stock companies, which are wholly owned by the corporation Zdravotnický holding Královéhradeckého kraje a.s., which in turn is wholly owned by the Region, which means that control over the hospitals is exercised exclusively by the Region.
- (7) The five public hospitals' primary objective is not the generation of profits, but rather the provision of accessible medical care in all disciplines necessary for people living in the catchment area of each hospital. The provision of accessible medical care for the Region's inhabitants must be understood as a task deriving from the independent powers of the Region, which are conferred on all regions of the Czech Republic by the Constitution of the Czech Republic and further specified in the Act on Regions.

### ***Form of the financial support and amounts***

- (8) Public funding to the five public hospitals is granted through different forms (e.g. investment subsidies or non-investment subsidies). The amounts granted differ from hospital to hospital and from one year to another; between 2008 and 2013 the average public funding granted by the authorities of the Hradec Králové Region during the 2008-2013 period was around EUR 1.6 million per hospital per year.

## **3. ASSESSMENT OF THE MEASURES**

### **3.1 Existence of aid**

- (9) According to Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU), State aid is 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, in so far as it affects trade between Member States. The conditions laid down by that provision for a finding of State aid are cumulative. Only insofar as all these criteria of Article 107(1) TFEU are met could the alleged measures constitute State aid within the meaning of Article 107(1) TFEU.
- (10) Since the Czech authorities have argued that the measures do not affect trade between Member States, this issue is examined next in more detail.

### ***Effect on intra-Union trade***

- (11) Public support to undertakings is prohibited under Article 107(1) TFEU if it "distorts or threatens to distort competition" and only insofar as it "affects trade between Member States". In that respect, the Union courts have ruled that "where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid".<sup>1</sup>
- (12) Public support can be considered capable of having an effect on intra-Union trade even if the recipient is not directly involved in cross-border trade. For instance, the subsidy may make it more difficult for operators in other Member States to enter the market by maintaining or increasing local supply,<sup>2</sup> or to exercise their right of establishment.
- (13) It is settled case-law that the Commission is not required to carry out an economic analysis of the actual situation on the relevant markets, the market share of the undertakings in receipt of the aid, the position of competing undertakings or of trade flows between Member States.<sup>3</sup> In the case of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade.
- (14) Nevertheless, an effect on intra-Union trade cannot be merely hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and is liable to have an effect on trade between Member States, based on the foreseeable effects of the measure.<sup>4</sup>
- (15) In that respect, the Commission has in several cases<sup>5</sup> considered that certain activities, have a purely local impact and no such effect. It seems appropriate to check, in particular, whether the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States, and whether it can be foreseen that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.
- (16) In the present case, as regards the local zone within which the alleged beneficiaries' services compete, the Commission notes, first, that two basic areas

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<sup>1</sup> Case T-288/97 *Regione autonoma Friuli-Venezia Giulia v Commission* ECLI:EU:T:1999:125, paragraph 41.

<sup>2</sup> See for instance Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* ECLI:EU:C:2003:415, paragraph 78; Joined Cases C-197/11 and C-203/11 *Libert and Others* ECLI:EU:C:2013:288, paragraph 78; and Case C-518/13 *Eventech* ECLI:EU:C:2015:9, paragraph 67.

<sup>3</sup> See for instance Case C-279/08 P *Commission v Netherlands* ECLI:EU:C:2011:551, paragraph 131.

<sup>4</sup> See Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and others v Commission* ECLI:EU:T:1995:130, paragraph 141.

<sup>5</sup> See for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; C10/2003 *Netherlands – Non-profit harbours for recreational crafts*, OJ L 34, 06.02.2004, p. 63; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal de Madeira*, OJ C 131, 28.05.2005, p. 12; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.03.2013, p. 1; and N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

of hospital activities can be distinguished for the hospitals in question: (1) emergency services and (2) planned/scheduled healthcare services.

- (17) With regard to emergency services, the latter are those that are outside the control of the patients who must be treated in the shortest time possible (e.g. for acute injuries). The provision of emergency services is therefore the task of any public hospital, regardless of the quality of its personnel, technical or other facilities. In sum, a hospital cannot influence which group of patients will require its emergency services. Moreover, the patient cannot, in the vast majority of cases, influence which medical facility will perform these emergency services. Given the patient's condition, it will usually be the medical institution that is the nearest to the patient.
- (18) Concerning the provision of planned/scheduled healthcare services, they encompass the provision of any treatment that does not belong to the category of "emergency services". Therefore, for those services, the patient has a choice of the medical facility in which he will have such a treatment performed. When choosing a medical facility, the patient may take into account factors such as the quality of the staff, the quality of the technical facilities, the reputation, etc.
- (19) While the Commission has acknowledged in its previous decisions that aid to public hospitals may affect intra-EU trade where those hospitals provide highly specialised medical services which give them an international reputation or where those hospitals are located in border regions with frequent mobility of patients between Member States,<sup>6</sup> the Commission notes, first, that none of these five hospitals is a highly specialised hospital with any international reputation.
- (20) Second, according to the information provided by the Czech authorities, taking together the five public hospitals owned by the Region, the Commission could identify the total number of patients residing outside the Czech Republic that used the planned/scheduled healthcare services of the concerned public hospitals of the Region:
- i. In 2008: 1
  - ii. In 2009: 3
  - iii. In 2010: 0
  - iv. In 2011: 2
  - v. In 2012: 1
  - vi. In 2013: 3
- (21) Comparing the total number of patients residing outside the Czech Republic that used the planned/scheduled healthcare services of the five public hospitals concerned in 2013 (i.e. 3 patients) to the total number of patients admitted by those hospitals (i.e. 267 049 patients) the proportion of patients from other Member States that are using those hospitals' services is 0.001%. of the total number. In addition, in all of the five years preceding 2013 the number of patients from other Member States using those hospitals' services was never above 3 patients per year and, in most of those years, the number of patients was even below. Therefore, the proportion of patients residing in other Member States

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<sup>6</sup> Commission decision of 1 October 2014 in Case SA. 19864 – Belgium – Public Financing of Brussels public IRIS hospitals, OJ C 437, 5.12.2014, p.26, paragraph 67.

using the planned/scheduled healthcare services of the five public hospitals concerned is a negligible fraction of the total number of patients admitted by those hospitals.

- (22) Third, the Commission notes that the main objective of the hospitals owned by the Region is to provide accessible medical care in all disciplines necessary for people living in the catchment area of each hospital. All of those hospitals are located in small cities with a limited number of inhabitants (i.e. the city of Trutnov, the city of Náchod, the city of Jičín, the city of Dvůr Králové nad Labem and the city of Rychnov nad Kněžnou)<sup>7</sup>. For individual disciplines, the number and structure of beds in each hospital are based primarily on contractual stipulations between the hospitals and the health insurance funds. Generally, health insurance funds strive to ensure that the number of beds in medical facilities corresponds to the catchment area of the relevant medical facility and, therefore, it matches the needs of the inhabitants of the catchment area. Accordingly, since 2008 the public hospitals owned by the Region have reduced their bed count by 192 beds on the basis of an agreement with health insurance funds, which represents approximately 10 % of the bed capacity of those hospitals. Therefore, the catchment area of each of the five public hospitals appears to be purely local, since those hospitals primarily serve the purpose of satisfying the need of the inhabitants of their district.
- (23) Finally, with regard to the effect on the conditions of cross-border investments or establishment, the Commission notes that there is no indication of relevant cross-border investments in hospitals in the Region. Indeed, based on the available information, no foreign investors are based in the Region providing similar services to those offered by the alleged beneficiaries. Therefore, the Commission considers, in light of the available information, that the measures cannot reasonably be foreseen to have more than a marginal effect, if any, on the conditions of cross-border investment and establishment between Member States.
- (24) In light of the above, the Commission considers that the public grants to the public hospitals of the Region are not liable to affect trade between Member States. As a result, there is no need to examine the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU. The Commission has therefore reached the conclusion that the measures in question do not constitute State aid pursuant to Article 107(1) TFEU.

### **3.2 Applicability of a block exemption**

- (25) As explained above, the measures at stake do not qualify as State aid within the meaning of Article 107 (1) TFEU.

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<sup>7</sup> Population of the cities in which the hospitals are located:

- i. City of Trutnov: around 30 000 inhabitants.
- ii. City of Náchod: around 20 000 inhabitants.
- iii. City of Jičín: around 16 000 inhabitants.
- iv. City of Dvůr Králové nad Labem: around 16 000 inhabitants.
- v. City of Rychnov nad Kněžnou: around 11 000 inhabitants.

- (26) Nevertheless, for the sake of completeness, the Commission observes that those measures would in any event be block exempted and therefore compatible with the internal market by virtue of Article 3 of the 2012 SGEI Decision.<sup>8</sup>
- (27) The Commission's 2012 SGEI Decision sets out the conditions under which State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of a service of general economic interest ("SGEI") is compatible with the internal market and exempt from the requirement of notification laid down in Article 108 (3) TFEU.
- (28) The Czech authorities have provided to the Commission the relevant entrustment acts ("agreements") on the basis of which the Region grants the compensation to its public hospitals for the fulfilment of their SGEI obligations. The Commission has analysed the entrustment acts and found that they are fully compliant with the requirements of the Commission's 2012 SGEI Decision. The Commission comes to this conclusion since:
- i. Scope: The 2012 SGEI Decision applies to State aid in the form of public service compensation, granted to undertakings entrusted with the operation of SGEI as referred to in Article 106(2) TFEU which falls within one of the different categories included in Article 2(1) of the 2012 SGEI Decision. According to Article 2(1)(b) of the 2012 SGEI Decision, one of these categories includes "*compensation for the provision of services of general economic interest by hospitals providing medical care, including, where applicable, emergency services*". Therefore, the measures at issue comply with the requirements of Article 2(1) of the 2012 SGEI Decision.
  - ii. Time limitation: The entrustment acts ("agreements") are concluded for a period of one year, and, therefore, do not exceed the limitation of 10 years established in Article 2(2) of the 2012 SGEI Decision.
  - iii. Content of the entrustment acts:
    - a. *Content and duration of the public service obligations*: In the entrustment acts, the specific departments whose operations constitute a public service obligation are always defined and each public service obligation is limited to a period of one year, thus complying with Article 4 (a) of the 2012 SGEI Decision.
    - b. *The undertaking, and, where applicable, the territory concerned*: The recipients of the SGEI compensation are specified clearly in each entrustment act, as well as their commitment to provide a public service in the relevant catchment area, thus complying with Article 4 (b) of the 2012 SGEI Decision.

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<sup>8</sup> Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest. Official Journal L7, 11.01.2012, p. 3-10.

- c. *The nature of any exclusive or special rights assigned to the undertaking by the granting authority:* Since no exclusive or special rights were granted to the public hospitals of the Region, Article 4 (c) of the 2012 SGEI Decision does not apply to the case at hand.
  - d. *A description of the compensation mechanism and the parameters for calculating, controlling and reviewing the compensation:* the compensation is provided on the basis of the entrustment acts as concluded. According to those entrustment acts, the basis used to determine the amount of compensation follows an analysis based, above all, on the recipient's annual report for the previous year, the auditor's report for the previous year, the financial statement for the previous year, and other documents submitted by the recipient. The calculation is made prior to the decision determining the compensation amount. In light of the above, the entrustment acts comply with Article 4 (d) of the 2012 SGEI Decision.
  - e. *The arrangements for avoiding and recovering any overcompensation:* According to the entrustment acts, each recipient is obliged to maintain separate records of the revenues and costs related to the performance of its SGEI obligations, and the overall amount of revenues and costs in the separate records must correspond, following the addition of other costs and revenues, to the costs and revenues reported in an annual financial statement. If the Region authorities discover that an excessive compensation payment has been provided, it will ask the recipient concerned to refund the excess compensation payment. The entrustment acts thus comply with Article 4 (e) of the 2012 SGEI Decision.
  - f. *A reference to the 2012 SGEI Decision:* Each entrustment act refers to the 2012 SGEI Decision in line with Article 4 (f) of the 2012 SGEI Decision.
- iv. Compensation: According to Article 5(1) of the 2012 SGEI Decision, "*the amount of compensation shall not exceed what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit*". On the basis of the entrustment acts, the Region provides public funding to the concerned public hospitals in the form of compensation for their SGEI obligations. According to the entrustment acts, the maximum amount of such compensation may not exceed the amount required for discharging the SGEI obligation. The amount of compensation granted to each hospital depends on the available capacity of the budget of the Region. Given the limited possibilities of that budget, no hospital has ever received compensation amounting to 100 % of its net costs incurred in the performance of its public service obligations. The Region's decision determining the amount of compensation for a given year is based on an analysis of the recipient's annual report for the previous year, an external auditor's report for the previous year, the financial statement for the previous year, and on other supporting documents submitted by the recipient. The Region's authorities will then analyse all those documents and use them to determine the amount of compensation to be granted for the coming year. The

Commission therefore considers that the compensation mechanism complies with Article 5 of the 2012 SGEI Decision.

- v. Separation of Accounts: According to Article 5(9) of the 2012 SGEI Decision, "*where an undertaking carries out activities falling both inside and outside the scope of the service of general economic interest, the internal accounts shall show separately the costs and receipts associated with the service of general economic interest and those of other services*". According to the entrustment acts, each hospital is obliged to maintain separate records of the revenues and costs related to the performance of their public service obligations in line with the Transparency Directive (Directive 2006/111/EC<sup>9</sup>) and Article 5 (9) of the 2012 SGEI Decision.
  
  - vi. Control of overcompensation and possible recovery of overcompensation: According to Article 6(1) of the 2012 SGEI Decision, "*Member States shall ensure that the compensation granted for the operation of the service of general economic interest meets the requirements set out in this Decision and in particular that the undertaking does not receive compensation in excess of the amount determined in accordance with Article 5*". Furthermore, according to Article 6(2), "*where an undertaking has received compensation in excess of the amount determined in accordance with Article 5, the Member State shall require the undertaking concerned to repay any overcompensation received*". According to the entrustment acts, every hospital entrusted with SGEI obligations must enable the Region's authorities to control and check on whether the separation of accounts is effectively complied and the compensation correctly allocated. If the Czech authorities discover that a hospital has been granted overcompensation they will order the hospital to refund the part of the compensation contrary to the entrustment act. Therefore, there are both a preliminary control to check if there is overcompensation performed when calculating the amount of compensation and a follow-up check to confirm that no overcompensation was granted. The follow-up check takes place every year at the end of the entrustment period. It is performed by analysing the reports from the previous year that the hospitals submit for the calculation of the compensation for the next year (see point iv above). By doing so, they are in a position to check that the compensation granted for the previous year does not exceed the actual costs of their SGEI obligations for the same year. These elements are in line with Article 6 (1) and Article 6 (2) of the 2012 SGEI Decision.
  
  - vii. Transparency: Finally, none of the compensation amounts granted to the hospitals exceeds the EUR 15 million threshold of Article 7 of the 2012 SGEI Decision. Therefore, the transparency requirements of the Decision do not apply to the measures at hand.
- (29) As a result, insofar the measures at stake were considered to constitute State aid within the meaning of Article 107(1) TFEU, they would meet all the requirements of the 2012 SGEI Decision and therefore by virtue of that Decision be compatible with the internal market and exempt from notification to the Commission.

#### **4. DECISION**

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<sup>9</sup> Commission Directive 2006/111/EC of 16 November 2006, Official Journal L318, 17.11.2006, p. 17.



- (30) In light of the foregoing assessment, the Commission has accordingly decided that the measures described in the complaint do not constitute State aid pursuant to Article 107(1) TFEU. However, even if one assumed that the measures constituted State aid, they would be compatible with the internal market and exempt from notification to the Commission by virtue of the 2012 SGEI Decision.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen 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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<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission