



EUROPEAN COMMISSION

Brussels, 20.XI.2008  
C(2008) 7331 corr

**PUBLIC VERSION**

**WORKING LANGUAGE**

**This document is made available for  
information purposes only.**

**Subject: State aid No N 662/2007 – Czech Republic  
Research and development aid scheme - "TIP programme"**

Sir,

**1. PROCEDURE**

- (1) By letter of 15 November 2007, registered at the Commission on the same day, the Czech authorities notified, according to Article 88(3) of the EC Treaty, the above mentioned aid scheme. The measure was assessed on the basis of the Community Framework for State aid for research and development and innovation (hereinafter: R&D&I Framework)<sup>1</sup>.
- (2) By letters of 15 January 2008, 14 May 2008 and by letter of 31 July 2008 the Commission asked the Czech authorities for supplementary information. The Czech authorities responded by letter of 13 March 2008, 4 June 2008 and by letter of 19 September 2008, all registered at the Commission on the same day.

---

<sup>1</sup> OJ C 323, 30.12.2006, p. 1.

JUDr. Karel SCHWARZENBERG  
Ministr zahraničních věcí  
Ministerstvo zahraničních věcí České republiky  
Loretánské náměstí 5  
118 00 Praha 1  
Česká republika

## **2. DESCRIPTION OF THE AID SCHEME**

### **2.1. Objective of the Aid Scheme**

- (3) The measure provides aid for research and development projects carried out before entering into competition in the market. The general objective is to ensure research and development for future rational industrial production in order to ensure continuous and sustainable creation of research and development knowledge for industrial production and its rapid and effective exploitation.

### **2.2. Legal basis**

- (4) The legal basis of the measure is Act No 130/2002 Coll. on support to research and development granted from public resources and amending certain other acts (the Act on Support to Research and Development) and Government Order No 461/2002 Coll. on targeted support to research and development support from public resources and on public tenders in research and development.

### **2.3. Budget and duration**

- (5) The overall budget is CZK 11 035 million (around € 427 million).
- (6) The duration of the aid scheme is 9 years, until 31/12/2017, from the date of approval by the Commission. The aid scheme includes an obligation to carry out an interim evaluation in 2013. The Czech authorities have confirmed that they would adapt the scheme to the possible changes of the relevant EU legislation that may occur after the expiry of the R&D&I Framework.

### **2.4. Beneficiaries**

- (7) The beneficiaries of the aid scheme are all kind of companies from the industrial production sector, including research organisations. In order to avoid cross-subsidisation of the economic activities of universities and non-university research organisations, the economic and non-economic activities and their costs and funding must be separated.
- (8) Enterprises in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty<sup>2</sup> are excluded from the scope of the aid scheme.

### **2.5. Aid instrument**

- (9) The measure provides for aid in the form of direct grants.

### **2.6. Activities to receive public financing**

- (10) The following aid categories are covered by the aid scheme: aid for R&D projects and aid for industrial property rights costs for SMEs.

#### *2.6.1. R&D projects*

- (11) The R&D projects aided under the proposed measure fall under the R&D stages of industrial research and experimental development.

---

<sup>2</sup> OJ C 244, 1.10.2004, p. 2.

#### 2.6.1.1. Aid intensity

- (12) The aid intensity for industrial research is 50 % and for experimental development 25 %. Additional bonuses may be granted to the basic aid intensities: 20 % for small enterprises, 10 % for medium-sized enterprises. Moreover, 15 % may be granted for cooperative research, up to a maximum of 80 %, where the project involves at least two independent undertakings, at least one SME or the project involves cooperation across the border, and where no single undertaking bears more than 70 % of the eligible costs; or where the project involves an undertaking and a research organisation, and where the research organisation bears at least 10 % of the eligible project costs and it has the right to publish the results of the research projects insofar as they stem from research implemented by that organisation. Subcontracting is not considered to be effective collaboration.
- (13) In order to avoid indirect State aid to be granted to an undertaking through the research organisation due to the favourable conditions of the collaboration, a contract on granting aid will be concluded with the different beneficiaries simultaneously, whereby their reciprocal relations will be contractually arranged as an integral component of the contract. Such a contract either requires that the participating undertakings bear the full cost of the project *or* requires that the results which do not give rise to intellectual property rights (IPR) may be widely disseminated and any IPR which result from the activity of the research organisation are fully allocated to the research organisation.

#### 2.6.1.2. Eligible costs

- (14) The eligible costs accrued in relation to implementing the R&D project are:
- Personnel costs;
  - Costs or expenses related to the acquisition of intangible assets;
  - Other operating costs, like costs or expenses related to the operation and maintenance of long-term tangible assets, costs or expenses for services; costs or expenses related to publishing the results of the project, travel expenses;
  - Additional (overhead) costs or expenses incurred directly as a result of the research project.

#### 2.6.2. *Industrial property rights costs for SMEs*

- (15) The aid for industrial property rights costs for SMEs comprise the stages of industrial research and experimental development.

#### 2.6.2.1. Aid intensity

- (16) The aid intensity may not exceed the same level of basic aid intensities, i.e. 50 % for industrial research and 25 % for experimental development, calculated on the basis of the eligible costs, up to the same level of aid as would have qualified as R&D aid in respect of the research activities which first led to the industrial property rights concerned.

#### 2.6.2.2. Eligible costs

- (17) The eligible costs are all costs preceding the grant of the right in the first legal jurisdiction, including costs relating to the preparation, filing and prosecution of the

application as well as costs incurred in renewing the application before the right has been granted.

## **2.7. Incentive effect**

- (18) The application for funding must provide a description of the incentive effect for each project, to enable its ex ante evaluation. This will consider whether the project has already commenced prior to the aid application and could have been carried out without State support or whether it would have been carried out in a more restricted manner. Furthermore, how the recipient of aid changes its behaviour, or how it increases its research and development activities in size, scope, amount spent or speed.
- (19) Only those projects that have not commenced prior to the aid application *and* that would not have taken place without State support or would only have been carried out in a more restricted manner or over a longer period or with restricted funds will receive support.
- (20) Aid for large undertakings and for SMEs exceeding € 7.5 million for a project per SME under the aid scheme may only be granted after verifying that aid has an incentive effect.
- (21) The Czech authorities will submit annual reports on the implementation of the aid scheme, where the assessment of incentive effect will be demonstrated using the above quantitative and qualitative indicators.

## **2.8. Cumulation of aid**

- (22) The beneficiaries must prove their ability to co-finance the project from their own or from other private resources. The cumulation of public support is restricted.

## **2.9. Further commitments**

- (23) The Czech authorities will notify all projects where the aid amount exceeds those set under point 7.1 of the R&D&I Framework.
- (24) The Czech authorities have confirmed to submit the annual reports in compliance with the requirements of the R&D&I Framework.
- (25) The Czech authorities will publish the full text of the aid scheme on this website: [www.mpo.cz](http://www.mpo.cz).
- (26) When the aid amount granted under the scheme exceeds € 3 million, the Czech authorities will provide the Commission within 20 days starting from the granting of the aid with the information requested in the standard form laid down in the Annex to the R&D&I Framework.
- (27) The Czech authorities undertook to maintain detailed records regarding the granting of aid under the scheme for 10 years.

# **3. ASSESSMENT**

## **3.1. Legality**

- (28) By notifying this measure before implementing it, the Czech authorities have fulfilled their obligations under Article 88 (3) of the EC Treaty. Given the scope of the notified

measure, the Commission has analysed the presence of aid and its compatibility in accordance with the rules established in the R&D&I Framework.

### **3.2. Existence of aid within the meaning of Article 87 (1) of the EC Treaty**

#### *3.2.1. Direct State aid to undertakings*

- (29) The notified scheme allows a limited number of enterprises to be relieved, by means of State resources, of a part of the R&D costs which they would normally have to bear themselves. Consequently, the financial aid from the State strengthens the position of the enterprises in relation to their competitors in the Community and therefore has potentially distorting effects on competition. Products of benefiting enterprises are or might be subject to intra-Community trade and therefore the aid is likely to affect trade between Member States.
- (30) The Commission comes therefore to the conclusion that the notified scheme constitutes State aid within the meaning of Article 87 (1) of the EC Treaty to the undertakings.

#### *3.2.2. State aid to research organisations*

- (31) Public financing of R&D&I activities by research organisations will qualify as State aid, if all conditions of Article 87(1) of the EC Treaty are fulfilled. This requires, inter alia, that the research organization qualifies as an undertaking within the meaning of Article 87(1) of the EC Treaty. Decisive for its qualification as an undertaking is whether the research organization carries out an economic activity, which is an activity consisting of offering goods and/or services on a given market. Accordingly, any public funding of economic activities falls under Article 87(1) of the EC Treaty, should all other conditions be fulfilled.
- (32) If the same entity carries out activities of both economic and non-economic nature, in order to avoid cross-subsidisation of the economic activity, the public funding of the non-economic activities will not fall under Article 87(1) of the EC Treaty, if the two kinds of activities and their costs and funding can be clearly separated. Evidence that the costs have been allocated correctly can consist of annual financial statements of the universities and research organizations.
- (33) In the case at issue, public contribution is granted towards the non-economic activities of research organisations complying with the definition set out in point 2.2 (d) of the R&D&I Framework and clearly separating their accounts. Therefore such contribution does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

#### *3.2.3. Indirect State aid to undertakings through collaboration with publicly funded research organisations*

- (34) According to point 3.2.2 of the R&D&I Framework, in case of collaboration projects carried out jointly by enterprises and publicly funded research organisations, the Commission considers that no indirect State aid is granted to the enterprises through the research organisation due to the favourable conditions of the collaboration if one of the following conditions is fulfilled: i) the participating undertakings bear the full cost of the project, or ii) the results which do not give rise to intellectual property rights may be widely disseminated and any intellectual property rights to the R&D&I results which result from the activity of the research organisation are fully allocated to the research organisation, or iii) the research organisation receives from the participating

undertakings compensation equivalent to the market price for the intellectual property rights which result from the activity of the research organisation carried out in the project and which are transferred to the participating undertakings. Any contribution of the participating undertakings to the costs of the research organisation shall be deducted from such compensation.

- (35) As stated above in point 2.6.1.1, the aid scheme complies either with the first or the second condition of point 3.2.2 of the R&D&I Framework. The Commission can therefore conclude that the enterprises directly benefiting from the scheme do not receive any additional indirect State aid within the meaning of Article 87(1) of the EC Treaty through the participation in collaboration projects with publicly funded research organisations.

### **3.3. Compatibility criteria**

#### *3.3.1. R&D projects*

- (36) The Commission finds that, as stated above in point 2.6.1, the provisions defined by the scheme for aid for R&D projects meet the conditions laid down in points 5.1.2, 5.1.3 and 5.1.4 of the R&D&I Framework. The Commission can therefore conclude the scheme for R&D projects is in line with the provisions of the R&D&I Framework.

#### *3.3.2. Industrial property rights costs for SMEs*

- (37) The Commission finds that, as stated above in point 2.6.2, the provisions defined by the scheme for aid for industrial property rights costs for SMEs meet the conditions laid down in point 5.3 of the R&D&I Framework. The Commission can therefore conclude that the scheme for industrial property rights costs for SMEs is in line with the provisions of the R&D&I Framework.

### **3.4. Incentive effect**

- (38) Concerning the incentive effect, in accordance with point 6 of the R&D&I Framework, the Commission considers that the aid does not present an incentive for the beneficiary in all cases in which the R&D&I activity has already commenced prior to the aid application by the beneficiary to the granting authorities. In the present case, the Czech authorities confirmed that only those projects that have not commenced prior to the aid application *and* that would not have taken place without State support or would only have been carried out in a more restricted manner or over a longer period or with restricted funds will receive support.
- (39) If the aided R&D&I-project has not started before the application, the Commission considers that the incentive effect is automatically met for R&D project aid where the aid beneficiary is an SME and where the aid amount is below € 7.5 million for a project per SME and aid for industrial property rights costs for SMEs.
- (40) The Czech authorities have committed to grant aid under the aid scheme only after they have, where it is relevant, verified that an incentive effect is present and to submit annual reports on the implementation of the approved aid scheme.
- (41) The Commission finds that the provisions defined by the scheme, as stated in point 2.7 above, for incentive effect meet the conditions laid down in point 6 of the R&D&I

Framework. Therefore, the conditions related to the incentive effect are satisfied and the measure complies with the requirements of the R&D&I Framework.

### **3.5. Cumulation**

- (42) The Czech authorities have indicated that the notified aid scheme is not combined with other aid. Therefore the rules on cumulation established in the R&D&I Framework do not apply.

### **3.6. Annual reports, access to the full text of the scheme, information sheets**

- (43) The Czech authorities have committed, as stated in point 2.9 above, to fulfil the requirements for reporting and monitoring set out in section 10.1 of the R&D&I Framework.
- (44) The Czech authorities have also committed to notify all projects where the aid amount exceeds those set under point 7.1 of the R&D&I Framework. They will also ensure full co-operation and the provision of adequate information in a timely manner. The Commission therefore considers the conditions related to reporting and monitoring to be satisfied.

## **4. CONCLUSION**

- (45) In consequence, the Commission considers that the aid measure is compatible with the EC Treaty in application of its Article 87 (3) (c).
- (46) The Commission reminds the Czech authorities that all plans to alter or modify this aid scheme have to be notified to the Commission.

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:

[http://ec.europa.eu/community\\_law/state\\_aids/index.htm](http://ec.europa.eu/community_law/state_aids/index.htm)

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

European Commission  
Directorate-General for Competition  
Directorate for State Aid  
State Aid Greffe  
**B – 1049 Brussels**  
Fax No.: +32 2 296 12 42

Yours faithfully,  
For the Commission

*Neelie KROES*  
Member of the Commission