



EUROPEAN COMMISSION

Brussels, 19.06.2013

C(2013) 3214 final

PUBLIC VERSION

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Subject: State aid case SA.35601 (2013/N) – Czech Republic

Třinecké železářny, a.s. – secondary de-dusting of basic oxygen furnace workshop

Dear Sir,

The Commission wishes to inform the Czech Republic that, having examined the information supplied by your authorities on the matter referred to above, it has decided to raise no objections to the aid measure.

1. PROCEDURE

1. Following pre-notification contacts, on 20 March 2013, the Czech authorities notified the above measure, according to Article 108 (3) of the Treaty on the Functioning of the European Union (hereinafter referred to as 'TFEU').

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2. Following a meeting with the Czech authorities on 19 April 2013, additional information was provided by the Czech authorities on 30 April 2013. The Commission requested additional information by letter dated 7 May 2013, to which the Czech authorities responded on 10 May 2013. The case was subject to conference calls between the Commission and the Czech authorities on 24 and 28 May 2013, following which additional information was provided on 27, 28 and 31 May 2013.

2. DESCRIPTION

2.1. Background

3. The Czech Republic intends to grant an amount of CZK 800.58 million (approx. EUR 31 million¹) from the Operational Programme Environment of the EU Structural Funds to Třinecké železářny a.s. (hereinafter referred to as 'Třinecké železářny ') to support the reconstruction of the existing secondary dust removal system in the basic oxygen furnaces, introducing extraction of the dust fraction from the upper part of the production hall and also the centralization and thus the replacement of certain existing separate and obsolete items of dust removal equipment in selected production units. The main objective of the project is to increase the efficiency of waste gas extraction and filtration. The project involves installing a completely new filtration station, including a filter, fan station, stack, extracting piping, the necessary media and dust removal.
4. The beneficiary is located in the Moravia-Silesia region which, according to the Czech authorities is one of the most air polluted regions in Europe. The implementation of the project is expected to result in a significant reduction in dust emissions, of around 154 tonnes annually.
5. Třinecké železářny has applied for the aid under the scheme for reduction of air pollution in the Moravia-Silesia Region, approved by the Commission by means of Decision of 23 November 2011 in case SA.33588 (2011/N)². According to the Decision in case SA.33588 and in line with point 160(b)(i) of the Community Guidelines on State Aid for Environmental Protection³ (hereinafter referred to as 'EAG'), investment aid exceeding EUR 7.5 million for one undertaking is subject to an individual notification for a detailed assessment in line with Chapter 5 EAG.

2.2. Project description

6. According to the Czech authorities, the notified project is a purely ecological construction focusing on reduction of fugitive dust emissions from the operation of the oxygen converter steelworks (hereinafter referred to as "OCS").
7. The technology of steel production in oxygen converters is based on refining pig iron using gaseous oxygen, by which means iron oxidation is brought about. These oxides react with the dissolved carbon to gaseous carbon monoxide CO and gaseous carbon dioxide CO₂. The high CO content in retreating burnt gases predetermines this product to

¹ Based on the ECB exchange rate on the notification date: 1 EUR = 25.67 CZK.

² OJ C 70 of 8.3.2012, p. 4.

³ OJ C 82 of 1.4.2008, p 1.

be utilized as fuel in energetic management of the company. It is advisable to retain converter gas containing at least 25% CO for energetic utilization.

8. In the course of the whole technological process during the steel production in the OCS, a great amount of burnt gases and emissions with high content of dust emissions is generated. Some of the critical hubs in the converter steelworks are supported by partial equipment focused on detention and cleaning of arising burnt gas and dust. Already the pig iron casting hall, chemical heating equipment IR-UP with the pig iron desulphurization workplace, casting furnaces No. 1 and No. 2, and the transport of metal and non-metal additives have their own filter stations.
9. Currently, the extraction of combustion gases emerging during the setting into converters is provided with the pipeline leading into the primary degree of extraction. There is no extraction from the upper part of the OCS hall, thus dust elements escaping from the individual places fall down onto the platforms and steel constructions, which results in aggravation of the workplace and increased costs for cleaning works. These are fugitive emissions escaping into the surrounding area. Currently, the primary and secondary extractions create one common circuit. By implementing the project, the two circuits will be separated, which will have the maximum possible effect on the reduction of emissions.
10. With the aim of significantly reducing the release of dust elements from the OCS hall, it has been decided to build a completely new filter station with the capacity of 1,941,000 Nm³/h, which will provide sufficient dedusting of those affected areas that are not dedusted now (the upper part of the OCS hall above the converters, emergency pig iron casting, tapping of the steel from the converters, fixing of wires to RH1), and which at the same time will replace some of the current less effective extraction and filter equipment (secondary extraction of the setting area of converters K1 and K2, the filter station from the pig iron casting hall and the filter station from the chemical heating IR-UT with the pig iron desulphurization workplace).
11. The current extraction of the combustion gases is not sufficient, particularly during the switching over between the primary and secondary grades of extraction, and also during various operation processes of the converter, when a great amount of dust is released into the hall, or in the surrounding area. The aim of the new extraction facility is based on the construction of a highly efficient aggregate, including the pipeline system with regulating gates. The new secondary de-dusting system will extract emissions from other technological areas, and it will be independent from the primary extraction.
12. In the best available techniques (hereinafter referred to as 'BAT') conclusions it is stated that absorption of emerging emissions during the setting and tapping with consequent cleaning is carried out by means of fabric filters or electrostatic separators. Wet filters were used for such cleaning of polluted air mass in the past, too. At the present time just the dry cleaning method is used. With the aim of achieving the highest possible efficiency of dust elements retention and reducing the dust in the released air mass to the values of 5 – 15 mg/Nm³, fabric filters are fitted into the extraction systems. This way of cleaning is also suggested for the secondary de-dusting of the oxygen convertor steelworks (OCS) in Třinec.
13. The technical solutions chosen for the notified project were selected on the basis of a comparison between two alternatives, both technically able to reduce the emission levels to a daily average of 20 mg/Nm³. Theoretically, the alternative to the notified project

would be the construction of a new oxygen convertor steelworks, but due to its financial implication such a solution is not acceptable for the beneficiary. According to the Czech authorities, in the absence of support, the beneficiary would maintain its current technology for de-dusting the oxygen convertor steelworks.

2.3. Objective of the measure in the form of environmental benefits

14. The objective of the measure is to achieve environmental benefits in the form of a significant reduction of emissions of particulate matter (PM), *i.e.* dust, from oxygen convertor steelworks operated by Třinecké železářny. The beneficiary is located in the north-eastern part of the Moravian-Silesian region, in the district Frýdek-Místek, which, according to the Czech authorities, is one of the most polluted areas in the Czech Republic and among the areas of the EU most affected by air pollution. The air pollution very frequently exceeds applicable EU and national standards.
15. In terms of negative effects on human health, the most important threat is coming from suspended particles of fractions PM_{2.5} and PM₁₀ and polycyclic aromatic hydrocarbons, specifically benzo(a)pyrene, whose presence in the air is monitored. Other problematic pollutants include benzene and carbon monoxide.
16. High shares of air pollution in the Moravia-Silesia can be attributed to industrial pollution sources operated in the districts of Ostrava, Karviná and Frýdek-Místek. Other sources are road transport, local heating (in particular small combustion sources in households) and remote transfer of pollution from the territory of Southern Poland. Dust emissions from stationary sources are in the districts concerned on average twice the values of the Czech Republic.
17. Dust emissions and emissions of other pollutants from generated by Třinecké železářny are shown in Table 1 below.

Table 1 – Total emissions released by Třinecké železářny from 2006 to 2011(in tonnes)

Pollutant	2006	2007	2008	2009	2010	2011
TZL	997	1,132	832	777	902	670
SO ₂	1,589	2,170	1,440	2,038	2,136	2,640
NO _x	1,370	1563	934	1,297	1,425	1,449
Production volume	2,516.4 Kt	2562.7 Kt	2448.0 Kt	2219.0 Kt	2498.0 Kt	2479.8 Kt

Source: Třinecké železářny

18. According to the Czech authorities, the dedusting technology currently used by the beneficiary is in compliance with all legally enforceable environmental values at the national and European level, in particular:
- a) Act No. 201/2012 Coll., on ambient air protection (which replaced Act No. 86/2002 Coll. As from 1 September 2012;
 - b) Act No. 415/2012 Coll., on the admissible level of pollution and identification thereof and on implementation of certain other provisions of the Air Protection Act;
 - c) Act No. 76/2002 Coll. on integrated pollution prevention and control, on integrated pollution register and on amendment to certain acts, as amended ;
 - d) The BAT conclusions issued by the European Commission pursuant to Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)⁴, *i.e.* Commission Implementing Decision of 28 February 2012 establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU for iron and steel production⁵;
 - e) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants;
 - f) Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste;
 - g) Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control.
19. The Czech authorities submitted that the aforementioned Act No. 415/2012 Coll. stipulates a specific emission limit amounting to 50 mg/m³ for particulate matter (dust) for basic oxygen furnaces. This emission limit is met by the existing plant. Furthermore, the Act stipulates a specific emission limit amounting to 20 mg/m³ for particulate matter for secondary de-dusting, to be met from 1 January 2020. This emission limit is already met by the existing plant in partial devices of secondary technology (such as reladling of hot metal, desulphurisation of hot metal, ladle vessel, steel processing out of the vessel), where de-dusting has already been fitted. The Act also stipulates two technical conditions for operation for the basic oxygen furnaces: “Converter gas should be collected, if possible with regard to the process, and re-used” (this technical condition for operation is met by the existing plant) and “The steelworks hall should be de-dusted with at least 90% efficiency” (this condition will come in force only from 1 January 2020).

⁴ OJ L 334 of 17.12.2010.

⁵ OJ L70 of 8.3.2012.

20. According to the Czech authorities, in line with the BAT Conclusions, as stated in Chapter 1.6 (BAT Conclusions For Basic Oxygen Steelmaking and Casting, Part Air Emissions), all sources of emissions leaking to the Oxygen Steelmaking Hall have already been de-dusted and the levels of dust emissions from the hall are up to 20 mg/Nm³ (the emission limit for particulate matter as stipulated in the integrated permit being 50 mg/Nm³ for the source Steelworks Hall). That is why, in the view of the Czech authorities, the condition “overall average dust collection efficiency associated with BAT (identical to the technical condition stated above) > 90%” can be considered as subsidiary in this case, since the plant is able to comply with the stipulated level of this parameter even without installation of a further central de-dusting device.
21. The BAT-associated emission level for dust, as a daily mean value, for all dedusted off-gases is < 1 – 15 mg/Nm³ in the case of bag filters and < 20 mg/Nm³ in the case of electrostatic precipitators. If the emissions from hot metal pretreatment and the secondary metallurgy are treated separately, the BAT-associated emission level for dust, as a daily mean value, is < 1 – 10 mg/Nm³ for bag filters and < 20 mg/Nm³ for electrostatic precipitators. According to information submitted by the Czech authorities, the current emission levels across all dedusted off-gases are at 11.4 mg/m³.
22. The project implementation – installation of bag filters – will result in reduction of emission concentrations of particulate matter to less than 10 mg/m³. It is expected to reduce dust emissions by around 154 tonnes annually as compared to the current situation.
23. Finally, the Czech authorities have submitted that the notified project will have positive environmental benefits beyond the districts of Frýdek-Místek.

2.4. Exemption from the fee for polluting

24. According to Act No 201/2012 Coll. on air protection, certain operators of stationary sources of pollution have an obligation to pay a fee for polluting. The basis for the calculation of the fee for polluting is the quantity of emissions from a stationary source or sources expressed in tons (cf. Section 15(1)-(3) of Act No 201/2012). In addition, a progressive scale is applicable for the rates of the fee between 1 January 2017 and 31 December 2021.

25. On the basis of Section 15(6) of Act No 201/2012, as of 1 January 2017, certain operators will be exempted from the obligation of the fee payment, in particular if they fulfil the following conditions:

"a) reconstruction or modernisation is carried out on the stationary source resulting in the reduction of the annual emissions of solid pollutants during the whole fee period by at least 30 %, sulphur oxides expressed as sulphur dioxide by at least 55 %, nitrate oxides expressed as nitrogen dioxide by at least 55 % or volatile organic compounds by at least 30 % in comparison with 2010,

b) the stationary source for which the best available technologies are specified reaches during the whole fee period lower emission concentration than 50 % of the upper limit of the emission level associated with the best available technologies according to information published by the European Commission, or

c) the stationary source for which the best available technologies are not specified reaches during the whole fee period lower emission concentration than 50 % of the value of the specific emission limit."

26. Once the notified project is successfully implemented, it cannot be excluded that Třinecké železářny might benefit from the exemption from the air pollution fee because it is likely to fulfil the above mentioned conditions for exemption. However, the Czech authorities have underlined that the exemption from the fee is not automatically granted, but is subject to a decision by the regional authorities as the administrator of the fee. The Commission notes that any such exemption or a scheme providing for such exemptions under the Act No 201/2012 are outside the scope of the present Decision. Should the respective changes involve any aid, such aid would be subject to a separate notification.

2.5. National legal basis

27. The Czech authorities have indicated as legal basis for the notified measure the following:

- Act No 201/2012 on protection of the air and its implementing regulations;
- Act No 76/2002 on integrated pollution prevention and control, on an integrated pollution register and amending certain acts ('the Integrated Prevention Act');
- Environment Operational Programme: programming document and implementation document;
- Ministry of the Environment Guidelines for the submission of applications and the granting of financial contributions for projects in the Environment Operational Programme, including co-financing from the State Environment Fund of the Czech Republic and the state budget of the Czech Republic – chapter 315 (environment)

2.6. Selection procedure

28. The selection of the notified project has been done in accordance with the awarding procedure, the conditions of which have been specified in the scheme for reduction of air pollution in the Moravia-Silesia Region, as laid down in state aid Decision in case SA.33588. The basic criteria of such a call for projects are the following:
- a) Supported projects must be selected using a transparent selection procedure: The basic condition for the possibility of providing aid in the required amount is the transparent selection of projects to be supported; it is not permissible that a sufficient amount of funds available in the relevant call is used to support all projects. Each call can support 80 % of the highest quality projects eligible for support within the respective call. This limit must be applied only to projects relevant for this notification – i.e. projects belonging to the area of intervention 2.2.b), where sources are located in Ostrava-city, Karviná and Frýdek-Místek districts, requesting for a subsidy of 90 % of costs.
 - b) There is a sufficient number of projects in each call: For each subsequent call, if declared, at least 50 % of new projects must be submitted to avoid the situation when, due to frequent re-declaration of calls, all the projects submitted in the first of the relevant challenges will be eventually supported. If the sufficient number of projects shall not be submitted within a call, the aid may only be granted up to 50 % with regard to increased net operating costs and benefits.
29. Accordingly, a call for proposals was announced. Out of the 33 submitted applications, 26 projects were selected. Among these, 5 exceeded the individual notification threshold set out in the EAG for individual notification, and were therefore notified to the Commission for the purpose of a detailed assessment⁶.

2.7. Beneficiary

30. The beneficiary of the measure, Třinecké železářny, was established in 1839 and is a metallurgical company with one of the longest production histories in the Czech Republic. Within the closed metal production cycle the company produces approximately 2.5 million tonnes of steel annually, which is more than one-third of the total steel production in the Czech Republic. The main product portfolio consists of long steel products: wire rods, reinforcing bars and structural shapes, special steel bars, rails, universal steel plate, and semi-finished metal products.

⁶ These 5 projects concern the current notification and the State aid cases SA.35597 - Reduction of emissions by up-grading dedusting system of sinter plant south of ArcelorMittal Ostrava a.s., SA.35598 - Reduction of fugitive emissions from sinter handling and cooling at sinter plant south of ArcelorMittal Ostrava a.s., SA.35599 - Arcelor Mittal Ostrava a.s. Reduction of fugitive emissions from VP3 foundries, and SA.35600 - Třinecké železářny, a.s. De-dusting of waste gases and de-dusting of junctions at sintering plant 2.

2.8. Budget and cost calculations

31. The total costs of the investment are estimated at about CZK 1.118 billion, out of which CZK 889.5 million represent eligible expenses for financing under the Environment Operational Program. In addition, the implementation of the project will increase the operating costs of the beneficiary by approx. CZK 42.1 million annually⁷, *i.e.* CZK 210.5 million during the first five years of the operation. As from 2017 the beneficiary might benefit of an exemption from the fee for polluting, as a result of implementing the project. The savings realised from this exemption would amount to CZK 10.9 million over the first five years of operation.
32. Therefore, total investment costs of the project, net of operating costs and benefits over the first five years of operation, *i.e.* the eligible costs calculated according to EAG, amount to CZK 1 089.1 million. The table below provides a calculation of eligible costs.

Table 2: Net eligible costs for the first five years of operation and aid intensity

	Without operating benefits (CZK million)	With operating benefits (CZK million)
Investment costs	889.5	889.5
Operating costs over the first 5 years	210.5	210.5
Operating benefits over the first 5 years	0.00	-10.9
Net eligible costs	1100.00	1089.1
Aid amount	800.58	800.58
Aid intensity	72.78%	73.5%

33. The support of CZK 800.58 million, calculated as 90% of the eligible expenses for financing under the Environment Operational Program will be provided in the form of a direct grant. They represent only 73.5% of the amount that could be considered as eligible cost according to EAG. This is due to the fact that no aid will be granted to cover the increased five-year net operating costs of the project.

2.9. Duration and cumulation

34. The implementation of the notified project has been foreseen to start in 2014. The equipment will be put into operation by the end of 2015. According to the feasibility study provided by the Czech authorities, the lifetime of the building structures resulting from the project is expected to be 50 years of operation, while the lifetime of the technological parts is expected to be 20 years.

⁷ The estimates of the operating costs are based on current experience of the beneficiary with a similar technology that has already been installed and is in operation in Agglomeration North.

35. The Czech authorities have indicated that the aid granted under the notified measure cannot be cumulated with other aid, for the same eligible expenses⁸.

3. ASSESSMENT

3.1. Existence of state aid

36. A measure constitutes State aid under Article 107(1) TFEU if it fulfils four conditions. Firstly, the funding comes from the state or from State resources. Secondly, the measure confers an advantage to certain undertakings or economic activities. Thirdly, the measure is selective. Fourthly, the measure has the potential to affect trade between Member States and distorts competition in the common market.
37. The measure in the form of co-financing the investment under assessment in favour of the beneficiary fulfils all the conditions mentioned above. The measure is funded from the EU Structural Funds, and resources of national origin. As already indicated in the assessment of the aid scheme in the case SA.33588 (recital 44), all these resources qualify as State resources for the purpose of the assessment under Article 107(1) TFEU. Further, the measure confers an advantage to the beneficiary by providing funds which the beneficiary would not have obtained under normal market conditions. The measure is selective, since it is granted only to the beneficiary, and it has the potential to affect trade between Member States and to distort competition, since the beneficiary is active in a sector where trade between Member States takes place. The aid granted to the beneficiary thus constitutes state aid pursuant to Article 107(1) TFEU.

3.2. Lawfulness of the aid

38. The Czech authorities have confirmed that the aid will not be granted under the notified measure before the approval by the Commission. Therefore the Czech Republic has fulfilled its obligation according to Article 108(3) TFEU by notifying the aid measure before its implementation.

3.3. Compatibility assessment

3.3.1. Framework for compatibility assessment

39. The objective of the measure is environmental protection since it aims at reducing air emissions from oxygen convertor steelworks operated by Třinecké železárny beyond applicable Community standards.
40. Investment aid enabling undertakings to go beyond Community standards for environmental protection or to increase the level of environmental protection in the absence of Community standards can be considered compatible with the common market within the meaning of Article 107(3)(c) TFEU provided that the conditions set out in points 74 to 84 and section 3.2. EAG are fulfilled (cf. point 73 EAG).

⁸ The beneficiary will probably benefit from an exemption from the air pollution fee. Should the assessment of the exemption lead to the conclusion that it involves aid, there will be cumulation with the aid granted under the notified measure. The effect of such cumulation would then have to be assessed in the analysis of compatibility of the exemption. However, at the request of the Commission the Czech authorities have included the estimated benefit resulting from the tax exemption in the calculations provided (see table 3 above).

41. According to the definition provided in point 70(3) EAG, Community standard means inter alia the obligation under Directive 2008/1/EC⁹ to use BAT as set out in the most recent information published by the Commission pursuant to Article 17(2) of that Directive.
42. In addition, investment aid exceeding EUR 7.5 million for one undertaking, as in the case at hand, is subject to a detailed assessment under section 5.2 of the EAG (cf. point 160(b)(i) EAG). As indicated in point 165 of the EAG, the detailed assessment will be conducted on the basis of the positive and negative elements of the measure in question. As regards the positive effect, the environmental aid must address a clearly identified market failure, have an incentive effect and be proportionate. The negative impact of the measure on competition and trade must be limited. The Commission must balance the positive and negative elements of the measure.

3.3.2. Common objective and market failure

43. Environmental protection is recognized as an objective of common interest as foreseen in Article 107(2) and (3) TFEU. According to point 167 EAG, the Commission verifies whether "*State aid is targeted at [a] market failure by having a substantial impact on environmental protection*". In this context, the Commission pays particular attention to the expected contribution of the measure to environmental protection.
44. The notified project will result in a significant reduction of air emission levels stemming from the activities of the beneficiary, in particular a reduction of dust emissions. As submitted by the Czech authorities, the annual emissions of dust from oxygen convertor steelworks operated by Třinecké železárny will be reduced by more than 50 % compared to the current situation.
45. As indicated above, the currently applicable limit set in the permit is 50 mg/m³. The limit will be 20 mg/m³ as from 2020, but the Czech authorities explain that the beneficiary is able to meet this level even in the absence of the notified project, which is confirmed by the reported emission levels for 2012 across all dedusted off-gases. The notified project is expected to reduce the emission level to less than 10 mg/m³. This provides evidence that the investment will enable Třinecké železárny to increase the level of environmental protection by going beyond the mandatory obligation that can be imposed on the beneficiary based on applicable Community standards. The Commission performed a technical assessment based on data provided by the Czech authorities and concluded that for the notified project the current dust emissions are already within the range of BAT-associated emission levels (BAT-AEL) established in the most recently published BAT conclusions for iron and steel production and will be improved further through the project implementation. The Commission considers this in line with point 74 EAG.
46. In this context, the Czech authorities have also confirmed that the measure does not aim at compliance with Community standards already in force, since all applicable European and national (stricter) standards are already fulfilled.
47. The measure also responds to a market failure because the beneficiary has no economic interest to further reduce the emissions resulting from its activities as it entails high investment costs and increased operating costs without providing any particular

⁹ OJ L 24 of 29.01.2008.

advantages to the beneficiary. At the same time, the reduced emissions will have a number of positive effects in the region concerned.

48. Therefore, the Commission considers that there are clear indications of a market failure justifying State aid to improve environmental protection by means of the notified project.

3.3.3. Appropriate instrument

49. In line with points 169 and 170, the Commission has assessed whether State aid is the appropriate instrument to achieve the objective of increased environmental protection.
50. The Czech authorities have explored alternative ways of achieving the same objective, for instance, higher national standards and the fee on air pollution, but these have proved to be insufficient because they could not tackle the particular situation of the region concerned where there is a concentration of heavy polluters.
51. In terms of available solutions for reducing the air pollution of the beneficiary to the desired level, the Czech authorities have submitted that notified project is the only solution, as the other alternative technological solution considered (constructing a new oxygen convertor steelwork altogether) is unacceptable to the beneficiary due to financial reasons.
52. Based on the above the Commission concludes that investment aid constitutes an appropriate instrument to reach the objective of environmental protection.

3.3.4. Incentive effect and necessity of aid

53. On the basis of the information submitted, the beneficiary applied for aid to the Czech authorities before the start-up of the project. Therefore, according to point 143 EAG, the aid may provide an incentive for a more environmentally friendly behaviour, if all other conditions mentioned below are met.
54. According to point 171 of the EAG, "*State aid must result in the recipient changing its behaviour to increase the level of environmental protection*".
55. Taking into account points 146(a) and 172(a) EAG, the Member State must prove that without the aid, in the counterfactual situation, the more environmentally friendly alternative would not have been retained¹⁰. For this purpose, it must provide information demonstrating that the counterfactual situation is credible.

¹⁰ Point 81(b) of the EAG reads: 'The correct counterfactual is the cost of a technically comparable investment that provides a lower degree of environmental protection (corresponding to mandatory Community standards, if they exist) and that would credibly be realised without aid ('reference investment'). Technically comparable investment means an investment with the same production capacity and all other technical characteristics (except those directly related to the extra investment for environmental protection). In addition, such a reference investment must, from a business point of view, be a credible alternative to the investment under assessment'.

Point 146(a) of the EAG reads: '[the Member State concerned must provide information demonstrating] a) that the counterfactual situation is credible'.

56. The Czech authorities have indicated that, in absence of aid, the beneficiary would not undertake the investment, since it already complies with the current environmental standards. In addition, the investment into the extra dedusting equipment translates into additional operating costs over the life-time of the installation. In view of that, the Commission considers that the counterfactual situation of a non-investment is credible.
57. The notified project is certain to fulfil point 172(b)(i) EAG by increasing the level of environmental protection as compared to the counterfactual scenario since the measure will indeed reduce the air emission levels.
58. In this context, the Commission has considered that the project does not generate any operating revenues, thus, the rate of profitability of the project is negative, even with the public co-financing. This also applies even taking into account the possible reduction/exemption from the fee on air pollution, given that the Czech authorities have presented calculations, according to which a potential estimated fee reduction/exemption - as a result of the notified project - will be fully offset by the increased operating costs of the new installation at least during the first five years of operation. Therefore, even taking into account the potential benefits from the reduction and exemption from the fee on air pollution, the rate of profitability of the project is expected to remain negative.
59. There are no production advantages for the beneficiary resulting from the notified project, as the investment into secondary de-dusting of basic oxygen furnace workshop is realised independently of the production process of Třinecké železářny. Therefore the incentive effect is not lowered by potential production advantages (point 172(c) of the EAG) and the level of risk and the profitability of the beneficiary are not positively influenced by the measure (cf. points 172(f) and (g) EAG).
60. Based on the above, the Commission concludes that public co-financing of the notified project provides for the necessary incentive to invest into the fabric filters equipment to achieve increased environmental protection. Therefore, the measure has an incentive effect.

3.3.5. Proportionality of aid

61. In order to declare the aid proportional the Commission first conducts the analysis of eligible extra investment costs necessary to achieve a higher level of environmental protection and calculated for the first five years of operating of the plant, net of all operating benefits and of all operating savings related to the extra investment as described in points 80 to 82 of chapter 3 EAG.
62. For the purpose of calculating eligible costs, operating benefits include *"in particular cost savings or additional ancillary production directly linked to the extra investment for environmental protection and, where applicable, benefits accruing from other support measures whether or not they constitute State aid (operating aid granted for the same eligible costs, feed-in tariffs, or other support measures)"* (cf. point 70(20) EAG).

Point 172(a) of the EAG reads: 'counterfactual situation: evidence must be provided about the specific action(s) that would not have been taken by the undertaking without the aid, for instance, a new investment, a more environmentally friendly production process and/or a new product that is more environmentally friendly'.

63. According to point 77 EAG, aid intensity may amount up to 100% of the eligible investment costs, if the investment aid is granted in a genuinely competitive bidding process on the basis of clear, transparent and non-discriminatory criteria. For the aid scheme SA. 33588 the Commission approved an aid intensity of 90%.
64. In addition, the aid amount needs to be re-assessed in respect to its accuracy as required by the detailed assessment of point 174, chapter 5 EAG.
65. In the case at hand, the investment into the extra dedusting equipment of Třinecké železářny is being undertaken independent of the production process of the steelworks. The fabric filters will be installed as a stand-alone investment, not involving any other business activities of the beneficiary. Therefore, the costs of investing in environmental protection can be easily identified (cf. point 81(a) EAG) and constitute the total investment costs of the notified project.
66. As presented above in table 2, the net eligible costs of the notified project, calculated on the basis of points 80 to 82 EAG, amount to CZK 1 089.1 million. To further conclude that the aid is proportional, the aid amount of CZK 800.58 million needs to be examined in a detailed assessment to analyse if the eligible costs have been accurately calculated and the aid is limited to the minimum (point 174 of the EAG). The calculation of the eligible costs seems accurate on the basis of the information available, as the Czech authorities provided detailed evidence about the costs and their calculations (cf. point 174(a) EAG).
67. The Czech authorities have demonstrated that the notified investment project has been selected in a genuinely competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, under the conditions of the scheme SA.33588, and have provided the list of all the application received, ranked according to the points each application received. On the basis of the information available, the selection procedure seems to have led to the selection of projects that can address the environmental objective using the least amount of aid or in the most cost-effective way (cf. point 174(b) EAG).
68. Whereas under the scheme SA. 33588 the aid intensity for these projects may be up to 90%, the envisaged aid amount of CZK 800.58 million equals 73.5 % of the net extra costs of CZK 1 089.1 million. Consequently the aid appears to be proportional in view of the thresholds set in point 77 EAG and the aid intensity approved by the Commission in the scheme SA.33588.
69. In addition, given that, in the first five years of operation and over the life-time of the investment, operating extra cost resulting from the installation of fabric filters in agglomeration south exceed by far the possible benefits from the exemption from the air pollution fee, to which the beneficiary might be entitled as of 2017 (see above in recital 31 and table 2), the Commission considers that the aid is limited to the minimum in line with point 174(c) EAG.

70. Accordingly, the Commission considers that the aid is proportional.

3.3.6. Effects on competition and trade

3.3.6.1. Market definition

71. As regards the relevant product market, in the case at hand this can be defined as the steel market.
72. As for the relevant geographic market, the Commission could either consider the worldwide steel market since steel sales take place on a worldwide basis, or the EU steel market in order to assess the effects on intra Community trade. However, it has been submitted by the Czech authorities that the beneficiary's activities focus on the Czech market, with limited export activities, mainly to the EU Member States¹¹. The Commission assessed therefore the competition distortions for the steel market in the Czech Republic and in the EU.
73. As for the likelihood that the beneficiary will increase or maintain sales as a result of the aid (cf. point 177 EAG), the Commission notes that the investment is carried out independently of the production process or any other business activities of the beneficiary. Implementation of the proposed measure will not result in any increase of the volume of steel production of the beneficiary.
74. The project will not result in costs savings that might allow the beneficiary to increase its sales (cf. point 177(a) EAG). On the contrary, it is expected to lead to additional net operating costs. Steel consumers do not seem to have a strong preference for a more environmentally-friendly production process, as their purchase decisions seem to be determined by the price of the products (see point 177(b) of the EAG). Finally, by installing the fabric filters with a sole purpose of an increased environmental protection in the region concerned, the beneficiary does not develop any new products (cf. point 177(c) EAG).
75. Thus, considering the points 177(a), (b) and (c) of EAG it seems that the notified aid will lead to very limited distortions of competition.

3.3.6.2. Dynamic incentives/crowding out

76. When assessing the aid in line with point 178 EAG, the Commission considers whether the aid would crowd out investments in other Member States or distort dynamic incentives. For this purpose, the Commission has considered all the elements indicated in points 179(a) to 179(i) EAG.
77. The Commission notes that the aid amount is about EUR 31 million, an amount that is not very high, when compared to the size of the general activity of the beneficiary. It is a one-off investment aid, granted for a project that allows the beneficiary to go beyond the mandatory obligation that can be imposed on him based on existing Community standards, after having complied with rather strict mandatory requirements. There is no mandatory requirement concerning this production technology. The project is not directly related to the production and is unlikely to favour any cross-subsidisation.

¹¹ The Czech Republic currently exports excessive scrap iron, amounting approx. to 1.5 million ton/year, to EU market.

Considering the above, the Commission considers that the aid is unlikely to significantly distort the dynamic incentives or to crowd out investments in other Member States.

3.3.6.3. Maintaining inefficient firms afloat

78. During the selection process the Czech authorities have also performed an economic evaluation of each applicant. Based on the information provided by the Czech authorities, the economic evaluation of the applicants had no influence on the project ranking, but allowed them to verify that no aid is granted under the scheme SA.33588 for companies in difficulty. According to the information available, Třinecké železářny does not operate with a low level of efficiency, and is not in poor financial health. In any case, the notified aid is not meant to allow the beneficiary to adapt to mandatory standards (cf. point 180 of the EAG).

3.3.6.4. Market power/exclusionary behaviour

79. According to point 181 EAG, it is unlikely that competition concerns related to market power arise in markets where the aid beneficiary has a market share below 25%.
80. The steel industry in the Czech Republic amounts approximately up to 3.3% of the total volume of raw steel in the European Union.
81. As regards the Czech domestic market, the Czech authorities provided information showing that in 2012 Třinecké železářny had a market share of 23.73% in the long rolled products market and of 0.15% in the flat rolled products market (in the context of the imports accounting for 52.93% of the long rolled products market and 87.81% of the flat rolled products market). Since Třinecké železářny only manufactures its products in the Czech Rep (and to a limited extent in Poland and Hungary), their market share at the EEA level is likely to be even lower. In the light of the above, the Commission considers that the beneficiary does not benefit from a dominant position in the Czech Republic and EEA-wide (cf. point 182(a) EAG). In any event, the aid is unlikely to allow the beneficiary to increase its production or to reduce its operational costs, and is therefore unlikely to contribute to maintaining or strengthening the beneficiary's position on the market.
82. Furthermore, the aid is not likely to prevent new entry on the market in the Czech Republic or in other Member States of the EU and Contracting Parties to the EEA Agreement (cf. point 182(b) EAG), given that similar measures may in principle be available to competitors of Třinecké železářny, including new entrants on the basis of the scheme SA.33588 (the Commission notes that this was one of the 26 projects selected by the Czech authorities and which will receive financing under this scheme).
83. The aid will not lead to product differentiation as it will not affect the product but only the pollution level resulting from the production process. Therefore the aid is also unlikely to allow any price discrimination. (point 182(c) EAG)
84. Finally, on the steel market there are strong buyers and the aid is highly unlikely to allow the beneficiary to increase its prices to the detriment of the consumers (point 182(d) EAG).

3.3.6.5. Effects on trade and location

85. The Commission notes that aid is only granted to one beneficiary and will not result in the Třinecké železářny's territory benefitting from more favourable production conditions, thus incentivizing other companies to relocate in the same territory (cf. point 183 EAG).
86. In addition, there is no evidence that the beneficiary considered other locations for its investment, as the project is of very small size when compared to the beneficiary's production activities, thus having limited effects on trade and competition (cf. points 184 and 185 EAG).

3.3.7. *Balancing and conclusion*

87. The Commission considers that the aided project has clearly demonstrated environmental benefits. The distortion of competition is expected to be limited and the aid has an incentive effect. Furthermore, the aid is proportional. The aid intensity of 73.5% is below the maximum aid intensity allowed under the EAG and under the scheme SA.33588. The project will increase the operational costs and is highly unlikely to provide any advantage to the beneficiaries in the form of additional profits or additional production..
88. On the basis of the information available, the effects on trade and location seem limited, since in the counterfactual scenario the beneficiary would have not invested at all into the equipment (Section 5.2.2.4 EAG). Regarding the distortive effects of the aid, the Commission finds that the negative effects of the measure on competition and trade are clearly outbalanced by the positive effects of the aid so that the overall balance of the measure is positive.
89. Accordingly, the Commission considers that the notified aid to Třinecké železářny for secondary de-dusting of basic oxygen furnace workshop, aimed at increasing the level of environmental protection, is compatible with Article 107(3)(c) TFEU.

4. DECISION

90. The Commission has accordingly decided to consider the aid to be compatible with the Treaty on the Functioning of the European Union.
91. The Commission reminds the Czech Authorities that, in accordance with article 108(3) TFEU, any plans to refinance, alter or change this aid have to be notified to the Commission pursuant to provisions of the Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 108 TFEU).¹²

¹² OJ L 140, 30.4.2004, p.1.

92. 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/competition/elojade/isef/index.cfm>

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

European Commission
Directorate-General of Competition
State Aid Registry
1049 BRUSSELS
Belgium

Telefax n°: + 32-2-296.12.42

Please mention the name and number of the case in all the correspondence.

Yours faithfully,

For the Commission

Joaquín ALMUNIA

Vice-President

