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**Subject: State Aid SA.43080 – Czech Republic  
State aid scheme for modernisation of inland waterway freight  
transport vessels**

Sir, /Madam,

#### **1. PROCEDURE**

- (1) By letter of 11 September 2015 the Czech authorities notified the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU"), of their intention to put in place a State aid scheme to operators for the modernisation of inland waterway freight transport vessels (hereinafter "Vessel modernisation programme"). The notification was registered under the reference SA.43080 (2015/N).
- (2) The notification introduces several changes to a scheme that the Czech Republic previously implemented based on a Commission decision (N 358/2007), which was prolonged by Commission decision SA.38003 (2013/N) until 31/12/2015. The notified scheme, however, is not a prolongation of the previously implemented scheme.
- (3) By letters of 10 November 2015, 15 January 2016 and 4 March 2016, the Commission asked the Czech authorities for additional information concerning the aid scheme. The requested information was received by letters of 9 December 2015, 12 February 2016 and 10 March 2016. Additional information was also provided by e-mail, registered on 28 April 2016.

Lubomír ZAORÁLEK  
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**

- (4) The vessel modernisation programme has 3 subprogrammes: Subprogramme 1 - Reduction of the environmental impacts of waterway transport; Subprogramme 2 - Modernisation of vessels to increase the multimodality of freight transport; Subprogramme 3 - Modernisation of vessels leading to the increased safety of inland waterway transport.
- (5) Subprogramme 1 is aimed at reducing the environmental impacts of waterway transport by reducing emissions of gaseous and particulate pollutants from internal combustion engines and auxiliary motors installed on vessels and by implementing other measures with direct environmental benefits.
- (6) Subprogramme 2 and Subprogramme 3 are aimed at increasing the involvement of waterway transport in the multimodal transport chain by making the vessels more competitive, operationally flexible and secure in the context of multimodal transport chain by modernizing them.

### **2.2. Legal basis**

- (7) The legal basis of the vessel modernisation programme is:
  - Czech Government Resolution N° 449 of 12 June 2013 *approving the Transport policy for 2014-2020, looking ahead to 2050*;
  - Czech Government Resolution N° 558 of 9 July 2014 *approving the draft Operational Programme Transport 2014-2020 (draft approved by the European Commission on 11 May 2015)*;
  - Czech Government Resolution N° 37 of 11 January 2010 *approving the Strategic Framework for the Sustainable Development of the Czech Republic*;
  - Regulation N° 560/2006 Coll. *on the participation of the State budget in financing asset renewal programmes, as amended*;
  - Act N° 218/2000 Coll. *on budgetary rules, as amended*.

### **2.3. Form of aid**

- (8) The aid will be granted in the form of non-reimbursable direct grant.

### **2.4. Beneficiaries**

- (9) The potential beneficiaries will be all owners or operators of fleets of inland waterway vessels whose vessels are recorded in the Waterways Register of the Czech Republic, regardless of the nationality of the operator. Only small and medium-sized enterprises (SMEs)<sup>1</sup> are eligible under the scheme.
- (10) The estimated number of beneficiaries will be between 11 and 50.

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<sup>1</sup> As defined in Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20/05/2003, p. 36 – 41.

## **2.5. Budget, aid intensity and cumulation rules**

- (11) The overall financial volume of aid to be made available during 2016 - 2021 is CZK 420<sup>2</sup> million. It will be financed from the Cohesion fund. Each subprogramme will be allocated CZK 140 million for this period. However, the actual budget can change based on the number of chosen projects and aid amount to be granted to these.
- (12) The maximum aid intensity will amount to 85% of the eligible costs for Subprogramme 1 and 85% for small enterprises and 75% for medium-sized enterprises for Subprogrammes 2 and 3.
- (13) The Czech authorities have introduced a limit whereby all modernizations on a vessel under the aid scheme must not exceed 30% of the price of a new reference vessel (CZK 80 mil).
- (14) The aid granted under this scheme cannot be cumulated with other aid for the same eligible costs.

## **2.6. Duration**

- (15) The vessel modernisation programme is envisaged to be put in place after the Commission State aid clearance. The grants will be provided to applicants until 31 December 2021.

## **2.7. Aid scheme conditions**

- (16) Investment projects must not have started prior to the aid application by the beneficiary to the granting authority.
- (17) Aid will be granted under a competitive bidding process.
- (18) All projects applications have to contain:
  - a description of the current situation,
  - a justification for the need for investment and proof that without the aid the investment would not be realized,
  - an assessment of the effectiveness of and economic return on such investment,
  - a technical description of the purchased asset and assessment of its expected use,
  - the input data referred to in Annex 2 to Implementing Decree No 560/2006 (for more details see <https://portal.gov.cz/app/zakony/zakon.jsp?page=0&nr=560~2F2006&rpp=15#seznam>),
  - the submission of technical documentation approved by an entity duly authorised to carry out technical inspections of vessels, or by a classification society recognised under EU legislation,

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<sup>2</sup> EUR 15.56 million (exchange rate 1 EUR = 27 CZK).

- if an engine is to be replaced (the purchase of low-emission propulsion systems or auxiliary power units) or converted to run on new fuel (LNG), proof of the positive environmental impact, including documentation showing the age of the existing engine installed in the vessel, and the submission of certification of the new/converted engine, guaranteeing compliance with the maximum permissible limits of gaseous and particular pollutants under applicable legislation; proof that the new engines (which may have a higher capacity, measured in kW, than the existing engines) will not consume more fuel than the existing engines (installed in the vessels) or will not consume more fuel per tonne of cargo carried; if a vessel's stern is to be remodelled or the propulsion equipment is to be modernised, a calculation of the reduction in fuel consumption once the vessel has been modernised,
  - where a vessel is to be modernised in order to enhance the multimodality of freight transport, a demonstrable assessment of the benefits of modernising the vessel by comparing existing volumes transported with volumes projected after modernisation (in tonnes and tonne-kilometres);
  - where a vessel is to be modernised in order to improve the safety of inland waterway transport, justification for and an assessment of the aspects that will increase safety and have a positive impact on the environment; where the service life of the submerged parts (plating) of a vessel is to be extended, an evaluation of the extended service life of those submerged parts (plating).
- (19) Applications will be submitted on the basis of a call; the conditions, duration, and funds available for distribution (broken down by sub-programme) will be duly published on the Ministry of Transport website. The call will include detailed specifications of the required content of applications. Applications will be submitted to the Ministry of Transport within the announced time limit. They will include the counterfactual scenario.
- (20) Project applications for grants will be subject to detailed assessment. The initial stage will evaluate whether these applications meet all the conditions arising from the programme documentation and the call that has been published.
- (21) Applications that meet all of the requirements (i.e. eligible project applications) will proceed to the next stage of assessment and will be evaluated on the basis of predetermined criteria by an evaluation committee. The evaluation of applications will take place in such way that the quality of all of the projects submitted can be mutually assessed. This will be in keeping with the requirement of the equal treatment of applicants/projects.
- (22) A significant factor in the system for the evaluation of the applications submitted will be the aid intensity sought. Applicants seeking a lower aid intensity than the maximum permitted will score higher than those applying for the maximum aid intensity.
- (23) The evaluation criteria will be detailed in the programme documentation.
- (24) A ranking of eligible project applications will be compiled on this basis. The published call will only satisfy 80 % of eligible project applications from the perspective of financial volume, broken down by sub-programme (and determined by the ranking of eligible project applications).

- (25) All these conditions for the granting of State aid will be detailed in the published call, thus ensuring that the public grants are awarded transparently.
- (26) The aid will be granted by the Ministry of Transport on the basis of a Grant Award Decision, indicating the beneficiary, the purpose of the grant, and the conditions of use. A grant may be awarded only on the basis of the original application submitted by the applicant; subsequent negotiations modifying the applicant's original application, affecting significant content-related particulars, are not permitted.

## **2.8. Eligible costs**

- (27) Reasonable costs of drawing up technical documentation approved by an entity duly authorised to carry out technical inspections of vessels, or by a classification society recognised under EU legislation, constitute eligible costs under all subprogrammes.

### *2.8.1. Subprogramme 1 – Reduction of the environmental impacts of waterway transport*

- (28) The following costs will be eligible:
- in the case of replacing vessels' engines: the acquisition of low-emission boat engines<sup>3</sup>; the acquisition of low-emission auxiliary motors; directly related subsequent components (e.g. gearbox), and installation costs;
  - in the case of converting vessels to a new fuel: converting vessels to a new fuel (LNG), including the acquisition of associated technology, whether mono-fuel or dual-fuel technology;
  - in the case of remodelling the stern of vessels: acquiring technology for adjusting the shape of a vessel's stern, including its installation and the adjustment of the vessel's stern, including the acquisition of materials;
  - in the case of modernising propulsion equipment: acquiring propulsion equipment components (propeller, nozzle, shaft), including installation costs;
- (29) In case of replacement of vessels' engines, the market price of the existing engine of the vessel will be deducted from the eligible costs (the estimate of the market price will be supported by a court-sworn expert's opinion).

### *2.8.2. Subprogramme 2 - Modernisation of vessels to increase the multimodality of freight transport*

- (30) The following costs will be eligible:

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<sup>3</sup> While new engines have to conform to Directive 2004/26/EC of the European Parliament and of the Council amending Directive 97/68/EC *on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery*, such directive does not oblige the owners of vessels operating with old engines to replace them. Therefore, the aid is granted in order to incentivise such owners to go beyond their environmental obligations. This directive was transposed into Czech law by Decree No 6/2006 Coll. on the suitability of vessels for use on inland waterways.

- purchasing lightweight stacking covers for the hold, including installation in the vessel;
  - raising the hatchways, including the purchase of materials;
  - horizontally extending the hatchways, including the purchase of materials.
  - purchasing transportation frames for cars;
  - broadening a vessel (lighters) or elongating a vessel, including the purchase of materials.
- (31) In addition to increasing intermodality, the investment will make the vessels more competitive and operationally flexible:
- the lighter stacking covers for the hold speeds up loading and unloading and ensures flexibility in respect not only of general freight but also of bulk freight transport. The aid will result in efficient use of the cargo hold areas of the vessels.
  - raising the hold hatchways will increase the capacity of the vessels when transporting agricultural commodities which have a low relative density. The increase in volumes carried by one vessel when transporting agricultural commodities with low relative densities will lead to the more efficient use of the vessel's hold.
  - expanding the hatchways allows for the more flexible loading and unloading of goods because there is easier access to the hold and, ultimately, loading and unloading operations are accelerated. This modernisation also means that new commodities can be shipped that, prior to modernisation, would have been impossible to load into the vessel (e.g. oversized items).
  - transportation frames for passenger cars, which will be fixed to the vessels, will result in the integration, in the Czech Republic, of waterway freight transport into the split transportation of cars, especially for cross-border shipments. The vessels can transport cars even under low water conditions, given their low densities.
  - broadening a vessel (lighters) or elongating a vessel will increase the loading capacity or flexibility/usability of the vessel, ultimately allowing for the transportation of larger volumes of goods on waterways and increasing shipping opportunities to include additional commodities.

2.8.3. *Subprogramme 3 - Modernisation of vessels leading to the increased safety of inland waterway transport*

- (32) The following costs will be eligible:
- fitting vessels with bow steering equipment, including installation in the vessel;
  - purchasing and replacing plating, including the replacement of parts of the vessel affected by the replacement of the plating;
  - adding radar equipment, including installation in the vessel;

- replacing the coating of submerged parts (plating) or providing a new surface finish/protection for the submerged parts (plating);
  - reconstructing the electrical wiring on board, including the purchase of electrical wiring;
- (33) According to the Czech authorities, the introduction of the above mentioned measures will have the following effects:
- the provision of the vessels with bow steering equipment will help the vessels to maintain the required course of navigation and thus improve manoeuvrability during adverse navigating conditions<sup>4</sup>.
  - the replacement of plating will improve the quality of the watertightness and strength of the submerged part of the vessel<sup>5</sup>.
  - the equipment of the vessels with radar will contribute to navigation safety, especially under conditions of low visibility.
  - the replacement of the coating of submerged parts (plating) or the provision of a new surface finish/protection for the submerged parts (plating) of a vessel will improve the protection of the hull, thereby reducing the risk that the hull will be punctured in a shipping accident.
  - the reconstruction of the electrical wiring reduces the likelihood of faults in the vessel's electrical system which could otherwise cause a fire on board or result in the outage of the control systems.

## **2.9. Transparency**

- (34) The transparency rules as provided in Section 3.2.7 of the EEAG will be complied with.

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<sup>4</sup> The Czech authorities mention that the significance of the bow steering equipment lies not only in terms of manoeuvring (when entering locks and harbours, when turning the vessel, etc.), but also in the economics of operating the power unit (principal engine), since without the bow steering equipment, complicated manoeuvres can only be achieved using the principal engine repeatedly to add and reduce turns forward and back, which places a repeated burden on the whole system and increases the consumption of fuel, in addition with poor rudder efficiency due to the low speed. The bow steering equipment not only eliminates the above manoeuvring problems, it also eases the burden on the vessel's power unit since there are no abrupt increases in turning activity and therefore no increases in consumption or excessive emissions of exhaust gases. Fitting the vessels with such equipment improves the safety of inland navigation.

<sup>5</sup> Corroded and thinned plating leads to two potential risks, in terms of safety of operation (underwater corrosion can lead to reduced longitudinal hull strength) and in terms of a negative impact on the environment (leaks, to which corroded areas of plating are most susceptible, may lead to a discharge of the load being carried or of oil products directly into the waterway/infrastructure). Plating may already be so corroded that the longitudinal hull strength becomes degraded, resulting in extensive damage to the hull and, consequently, to an ecological damage.

## **2.10. Main differences between the current and the previous scheme**

### *2.10.1. Eligible costs*

- (35) In Subprogramme 1, the following eligible costs were added: i) converting vessels to a new fuel (LNG); ii) remodelling the stern of vessels; iii) modernising the propulsion equipment (for more details see paragraph (28)).
- (36) In Subprogramme 2, the following eligible costs were added: i) horizontally extending the hatchways, ii) broadening a vessel or elongating a vessel (for more details see paragraph (30)).
- (37) In Subprogramme 3, the following eligible costs were added: i) replacing the coating of submerged parts, ii) reconstructing the electrical wiring on board. At the same time, the following costs are not eligible any more: i) installing steel flooring in holds; ii) fitting autopilot.

### *2.10.2. Aid intensity*

- (38) The aid intensity increased from 49% to 75-85% (for more details see paragraph (12)).

### *2.10.3. Other changes*

- (39) The current scheme only applies to SMEs, whereas the previous scheme applied to companies of all sizes.
- (40) In the current scheme the beneficiaries are chosen in a competitive bidding process.
- (41) A limit has been introduced whereby all modernizations on a vessel during the aid scheme must not exceed 30% of the price of a new reference.

## **3. ASSESSMENT OF THE AID SCHEME**

### **3.1. Existence of aid**

- (42) Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU) states: "*Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.*"
- (43) Therefore, in order to determine whether the notified measure contains State aid elements within the meaning of Article 107 (1) TFEU, it must be established 1) whether the measure confers a selective economic advantage to the undertakings concerned, 2) whether this advantage has been financed through State resources, 3) whether this advantage distorts or threatens to distort competition and, finally, 4) whether the measure affects trade between Member State.
- (44) The Commission considers that the notified aid implies the use of State resources as it is financed from the Cohesion fund and the State has a discretionary power in awarding the aid. It conveys an advantage to the beneficiaries, by allowing



them to be relieved of a part of the costs which they would normally have to bear themselves. The measure is selective since aid will be granted only to certain undertakings carrying out investments in inland waterways vessels and not in other transport sectors which may compete with the beneficiaries of the scheme. The aid has the potential to affect trade between Member States because the supported undertakings may have customers in Germany.

- (45) The Commission therefore concludes that the notified scheme constitutes State aid within the meaning of Article 107 (1) TFEU.

### **3.2. Lawfulness of the aid**

- (46) By notifying the scheme before starting to implement it, the Czech authorities have fulfilled their obligation according to Article 108(3) of the TFEU.

### **3.3. Compatibility assessment**

#### *3.3.1. Subprogramme 1 - Reduction of the environmental impacts of waterway transport*

##### 3.3.1.1. Legal basis for assessment

- (47) The Commission notes that Subprogramme 1 of the notified measure aims at increasing the level of environmental protection by giving aid for increasing the level of environmental protection in the absence of Union standards as regards air pollution. Therefore, the compatibility of Subprogramme 1 has to be assessed on the basis of Article 107(3)(c) TFEU and the Guidelines on State aid for environmental protection and energy 2014-2020 (hereinafter EEAG or Guidelines)<sup>6</sup>.
- (48) While new engines have to conform to EU legislation on low emission power units for inland waterway vessels (Directive 2004/26/EC), such directive does not oblige the owners of vessels operating with old engines to replace them. Therefore, the aid is granted in order to incentivise such owners to carry out investments designed to change their existing engines with new engines ensuring lower emissions than the limits applicable to the supported vessels or otherwise achieve similar outcome through structural improvements of the vessel, thereby making them increase environmental protection in the absence of EU standards applicable to them. At the same time, no national legislation imposes more stringent rules than the EU legislation.
- (49) The notified aid scheme fulfils the condition set out in point 25c of the EEAG as it is limited to the granting of investment aid to undertakings which increase environmental protection in the absence of Union standards.
- (50) According to point 27 of the EEAG the Commission will consider a State aid measure compatible with the internal market only if it satisfies each of the following criteria:
- a) contribution to a well-defined objective of common interest;
  - b) need for State intervention;

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<sup>6</sup> OJ C 200 of 28.06.2014.

- c) appropriateness of the aid measure;
- d) incentive effect
- e) proportionality of the aid (aid kept to the minimum);
- f) avoidance of undue negative effects on competition and trade between Member States;
- g) transparency of aid.

3.3.1.2. Contribution to a well-defined objective of common interest

- (51) According to point 31 of the EEAG, when introducing a measure co-financed by the European Structural and Investments Funds, Member States may rely on the reasoning in the relevant Operational Programmes in indicating the environmental or energy objectives pursued.
- (52) The measure is financed by the Cohesion Fund. The measure falls within the following areas (activities) of the Operational Programme Transport 2014-2020 supported under the specific target 1.5 Creation of conditions for broader use of rail and waterway transport through modernization.
- (53) The Operational Programme Transport and, within this framework, the Modernisation of Inland Waterway Freight Vessels Aid Programme will promote the pursuit of the Union's environmental policy, articulated, among other places, in the Seventh Environment Action Programme to 2020 'Living well, within the limits of our planet', which was approved by Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013, in particular the attainment of its priority objectives 7 (to improve environmental integration and policy coherence) and 8 (to enhance the sustainability of the Union's cities).
- (54) Subprogramme 1 of the notified measure will also contribute to the quality improvement programmes drawn up by the Czech Republic in accordance with Directive 2008/50/EC on ambient air quality and cleaner air for Europe.<sup>7</sup> Subprogramme 1 respects the conclusions of air quality improvement programmes while supporting and integrating the implementation of relevant measures proposed in those programmes. The Programme is also consistent with the National Emission Abatement Programme of the Czech Republic and the Medium-term Strategy (up to 2020) of Air Quality Improvement in the Czech Republic.
- (55) By backing investment projects defined in the scheme, the aid aims to improve the quality of the environment by reducing emissions of gaseous and particulate pollutants from internal combustion engines and auxiliary motors installed on vessels and other measures with direct environmental benefits.
- (56) Accordingly, the measure contributes to a well-defined objective of common interest.

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<sup>7</sup> This directive aims at improving air quality and sets standards and target dates for reducing concentrations of fine particles but it does not impose any emission limits on inland waterway vessels in particular.

### 3.3.1.3. Need for State intervention (market failure)

- (57) According to point 27 (b) of the EEAG, State intervention has to be necessary.
- (58) The Czech authorities explain that the achievement of the objective of Sub-programme 1 (reduction of the environmental impact of waterway transport) would not be possible if purely commercial interests were to be pursued. The vessels on which the said sub-programme focuses are fully technically fit, even without the modernisation under this sub-programme and, given the high financial cost of the modernisation, waterway transport operators are not motivated to carry out the said modernisation and thereby contribute to environmental improvements, without state aid.
- (59) The need of state intervention flows from the fact that the operators of inland waterway transport in the Czech Republic do not have sufficient own resources for modernising the vessels without the aid, due to the additional structural costs which this mode of transport entails, including those related to limited navigability on a critical river segments.<sup>8</sup>
- (60) Accordingly, the Commission notes that the measure is necessary to overcome a market failure preventing the achievement of the above-mentioned objective of common interest.

### 3.3.1.4. Appropriateness of the aid

- (61) According to point 40 of the EEAG the proposed aid measure must be an appropriate instrument to address the policy objective concerned.
- (62) According to point 46 of the EEAG the choice of the aid instrument should be coherent with the market failure that the aid measure aims at addressing. For aid schemes implementing the objectives and priorities of operational programmes, the financing instrument chosen in this programme is in principle presumed to be an appropriate instrument.
- (63) The Commission notes that the Czech authorities intend to provide aid under the scheme solely in the form of a grant (non-repayable financial contribution) under the Operational Programme Transport. Direct grant is the financing instrument chosen in this programme. Accordingly, the measure is appropriate.

### 3.3.1.5. Incentive effect

- (64) According to point 49 of the EEAG an incentive effect occurs when the aid induces the beneficiary to change its behaviour to increase the level of environmental protection and the aid must not subsidise the costs of an activity that an undertaking would anyhow incur. The scheme at hand aims to support investments that lead to a higher level environmental protection as it supports the realization of investments that go beyond the applicable Union standards (e.g. for

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<sup>8</sup> This fact was accepted by the European Commission when it approved the Operational Programme Transport 2014 – 2020, when it stated in Specific Objective 1.5 that the “The waterway transport fleet has been underinvested for a long time. The renewal of that fleet is insufficient, not only due to the high costs of the investments, but above all due to the insufficient navigability of the waterways in the Czech Republic (as concerns freight transport)”.

air emissions) and contributes positively to the environmental objective set out in point 55 of the EEAG. Such investments are not mandatory and the investor would not undertake them without the aid for the reasons already mentioned in paragraphs (58) and (59) above.

- (65) The Commission notes that the aid is awarded on the basis of a competitive bidding process and only 80 % of eligible project applications will be satisfied, taking into account the available budget of the measure (see paragraphs (17) and (24)). Accordingly it is not required to meet the conditions of paragraphs (50) and (51) of the EEAG. Firstly, the Czech authorities confirmed that the application for aid must be submitted prior to the start of works on the project. Secondly, the Commission further notes that a standardized application form will be used for deciding upon the grant of the aid, which includes the presentation of a counterfactual.
- (66) Accordingly, the Commission notes that measure has an incentive effect.

#### 3.3.1.6. Proportionality of the aid

- (67) According to point 69 of the EEAG environmental and energy aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection or energy objective aimed for.
- (68) The Commission notes that the aid is awarded through a transparent, non-discriminatory competitive procedure as described in Section 2.7.
- (69) According to point 70 of the EEAG as a general principle, aid will be considered to be limited to the minimum necessary if the aid corresponds to the net extra cost necessary to meet the objective, compared to the counterfactual scenario in the absence of aid. According to point 71 of the EEAG, for measures that are not subject to an individual assessment, a simplified method that would focus on calculating the extra investment costs, that is to say not taking into account the operating benefits and costs, may be used.
- (70) The Commission notes that the Czech authorities apply the latter calculation method for the scheme at hand. They accept zero investment in the counterfactual scenario, for reasons explained in Section 2.8.1. Therefore, the extra cost method applies to the full investment cost, limited by the aid intensity ceiling.
- (71) The aid intensity applied for aid for undertakings going beyond Union standards or increasing the level of environmental protection in the absence of Union standards is according to Annex 1 of the EEAG 100% if a bidding process is used. The Commission notes that the Czech authorities use a bidding process and apply 85% aid intensity cap. In addition, there is a limit whereby all modernizations on a vessel during the aid scheme cannot exceed 30% of the price of a new reference vessel (see Section 2.5).
- (72) The Czech authorities also explained that aid granted under this scheme cannot be cumulated with other aid for the same eligible costs.
- (73) The Commission notes that this ensures that the maximum aid intensity under the scheme is not exceeded, and the scheme is in line with section 3.2.5.2 of the EEAG.
- (74) Accordingly, the Commission concludes that the measure is proportionate.

### 3.3.1.7. Avoidance of undue negative effects on competition and trade

- (75) According to point (97) of the EEAG in assessing the negative effects of the aid measure, the Commission focuses on the distortions resulting from the foreseeable impact of the environmental aid has on competition between undertakings in the product markets affected and the location of economic activity. If State aid measures are well targeted to the market failure they aim to address, the risk that the aid will unduly distort competition is more limited.
- (76) The Commission notes that as stated in Section 3.3.1.1, the aid is granted for investments enabling the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Union standards<sup>9</sup>.
- (77) According to point (99) of the EEAG in order to keep the distortions of competition and trade to a minimum, the Commission will place great emphasis on the selection process. The Commission notes that aid under the scheme is awarded through a non-discriminatory, transparent and open selection process for all SME owners or operators of fleets of inland waterway vessels whose vessels are recorded in the Waterways Register of the Czech Republic, regardless of the nationality of the operator.
- (78) The Commission also notes that the Vessel modernisation programme has a limited budget of EUR 15.6 million which will be disbursed over a six-year period to a relatively large number of potential recipients which, according to the Czech authorities, could be as many as 50.
- (79) Furthermore, the Czech authorities explain that, due to the depth of the river Elbe on the Czech territory, on the one hand there is limited presence of foreign vessels in the Czech Republic, and on the other hand Czech vessels are not able to compete with foreign vessels that have greater capacity as they operate on deeper parts of the river. Therefore, competition and trade are unlikely to be negatively affected to any significant extent. On balance, the information at the Commission disposals suggests that the positive effects of the aid are such as to offset any potential distortion of competition.

### 3.3.1.8. Transparency

- (80) The Commission notes that the Czech Authorities apply transparency conditions that meet the EEAG requirements (see paragraph (34)).

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<sup>9</sup> According to the Guidelines on State aid for environmental protection and energy 2014-2020 (2014/C 200/01), 'Union standard' means:

- (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings (consequently, standards or targets set at Union level which are binding for Member States but not for individual undertakings are not deemed to be Union standards); or
- (b) the obligation under Directive 2010/75/EU to use the best available techniques ('BAT') and ensure that emission levels of pollutants are not higher than they would be when applying BAT. For the cases where emission levels associated with the BAT have been defined in implementing acts adopted under Directive 2010/75/EU, those levels will be applicable for the purpose of the Guidelines; where those levels are expressed as a range, the limit where the BAT is first achieved will be applicable.

### 3.3.1.9. Conclusion with regard to the compatibility of the measure

- (81) In light of the above, the Commission considers that Subprogramme 1 of the notified aid measure is compatible with the internal market on the basis of the EEAG.

### 3.3.2. *Subprogramme 2 - Modernisation of vessels to increase the multimodality of freight transport and Subprogramme 3 - Modernisation of vessels leading to the increased safety of inland waterway transport*

#### 3.3.2.1. Legal basis for assessment

- (82) The Commission considers that Subprogramme 2 and Subprogramme 3 of the notified measure contribute to a shift of freight transport from road to inland waterways. Therefore, the compatibility of Subprogramme 2 and Subprogramme 3 has to be assessed on the basis of Article 93 TFEU.
- (83) Subprogramme 2 and Subprogramme 3 of the previous scheme were assessed directly under the Treaty and were found compatible with the common market. Elements of these subprogrammes that have changed will now be assessed under Article 93 of the TFEU.
- (84) Article 93 of the TFEU provides that “*aids shall be compatible with the Treaties if they meet the needs of coordination of transport [...]*”. The concept of ‘coordination of transport’ used in that provision has a significance which goes beyond the simple fact of facilitating the development of an economic activity. It implies an intervention by public authorities which is aimed at guiding the development of the transport sector in the common interest.
- (85) Since the entry into force of Regulation (EC) No 1370/2007<sup>10</sup>, Article 93 of the TFEU has become directly applicable as the legal basis for establishing the compatibility of aid not covered by that regulation and, in particular, of aid for the coordination of freight transport.
- (86) According to a constant decisional practice,<sup>11</sup> aid for the coordination of transport will be deemed compatible with the internal market under Article 93 TFEU if the following conditions are met:
- the aid must contribute to a well-defined objective of common interest;
  - the aid must be necessary and provide an incentive effect;
  - the aid must be proportionate;
  - access to the aid measure in question must be open to all potential beneficiaries on a non-discriminatory basis;

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<sup>10</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315, 3.12.2007, p. 1.

<sup>11</sup> Commission Decision of 7 July 2015, SA.42388, Belgium, *Measure of support to waterway intermodal transport in the Brussels-capital region for the period 2016-2020*, JO C 343 of 16.10.2015; Commission Decision of 22 September 2015, SA.39962, Czech Republic, *Aid scheme for the modernisation and construction of combined transport terminals*, JO C 325 of 2.10.2015.

- the aid must not lead to distortions of competition contrary to the common interest.

(87) It is therefore appropriate to assess whether Subprogramme 2 and Subprogramme 3 of the notified aid scheme meet these five criteria, so that the Commission can authorise it on the basis of Article 93 TFEU.

#### 3.3.2.2. Contribution to a well-defined objective of common interest

(88) As regards elements that have not changed in the current scheme compared to the previous one, the Commission recalls its previous finding<sup>12</sup> that the aid measure contributes to a well-defined objective of common interest. Concerning the changes in eligible costs, which are of technical nature, these do not alter this conclusion for the following reasons.

(89) For several years now the European Union has been pursuing a policy of promoting a balanced multimodal transport system. One of the aims of this policy is to achieve a modal shift from road freight to other modes of transport and in particular to waterways. The development of inland waterway transport and its integration into a multi-modal transport chain is part of this policy. Since 2007, there have been new policy developments in this area.

(90) The Integrated European Action Programme for Inland Waterway Transport – NAIADES<sup>13</sup> (Navigation and Inland Waterway Action and Development in Europe) was followed by the NAIADES II programme to promote inland shipping, published by the European Commission on 10 September 2013<sup>14</sup> in the form of a communication for 2014-2020. The implementation of this programme should see the market potential of inland shipping harnessed to the full, make the use of such transport more attractive, and expand inland waterways for the new growth of markets and the creation of multimodal services.

(91) According to NAIADES II, inland navigation transport is energy efficient and contributes to the goals of the low-carbon economy, set out in the EU's Transport Policy White Paper. However, inland navigation stands to lose its comparative environmental advantage if no action is taken to further reduce air pollutant emissions, in particular in view of the progress the road transport sector is making due to stringent emissions limits. NAIADES II aims to achieve the targets set out in the EU Transport White Paper on shifting freight transport to rail and waterborne transport and reducing emissions by inland waterway transport. Implementation of NAIADES II requires financing for policy support actions (coordination, governance and preparatory actions), research and innovation, infrastructure and the greening of the fleet. Member States should include inland waterways in their integrated territorial investment strategies and projects, and plan for support from the European Regional Development Fund, the European Social Fund and the Cohesion Funds.

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<sup>12</sup> Paragraphs 44 and 72 of Commission decision in N 358/2007.

<sup>13</sup> Communication from the Commission on the promotion of Inland Waterway Transport (COM(2006) 6).

<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Towards quality inland waterway transport, NAIADES II (COM(2013) 623 final).

- (92) The NAIADES II action programme incorporates specific intervention linked to the vessel modernisation aid programme, such as Environmental quality through low emissions, Quality through innovation and Integration of inland waterway transport into the multimodal logistics chain.
- (93) The Commission's White Paper on Roadmap to a Single European Transport Area – Towards a competitive and efficient transport system, COM(2011) 144 final – has introduced the new European transport policy for 2012-2020, with an outlook up to 2050. The prime and new objectives include a fundamental reduction in Europe's dependence on oil imports and a 60 % cut in carbon emissions by 2050. The White Paper also specifies the target of switching 30 % of road freight over 300 km to other modes of transport, such as rail or inland water transport, rising to more than 50 % by 2050.
- (94) Annex I to the White Paper provides a list of initiatives that set out the following aims under paragraph 35: support multimodal transport and single wagon load business, stimulate the integration of inland waterways into the transport system, promote eco-innovation in freight transport and support the deployment of new vehicles and vessels and retrofitting. Paragraph 22 specifies the need for multimodal solutions employing shipping over long distances.
- (95) Europe 2020 – A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final is particularly relevant to the transport sector under the 'Resource-efficient Europe' initiative, the plans for which include targets such as a 20 % greenhouse gas emission reduction, a 20 % increase in the share of renewable sources in the structure of final energy consumption in the EU, and a 20 % improvement in energy efficiency.
- (96) The document 'Europe 2020 Integrated Guidelines' establishes a framework for the implementation of the Europe 2020 strategy and reforms by Member States. Transport objectives are included in Guideline 5 'Improving resource efficiency and reducing greenhouse gases' and Guideline 6 'Improving the business and consumer environment and modernising the industrial base in order to ensure the full functioning of the internal market'. These objectives are closely aligned to the flagship initiative 'An industrial policy for the globalisation era', which requires the transport and logistics network to provide industry throughout the Union with efficient access to the single market and the international market beyond the Union's borders.
- (97) The above mentioned policy documents stress the importance of promoting modal shift from road to rail and waterway transport, promoting inland waterway shipping, increasing energy efficiency and lowering emissions.
- (98) The Commission notes that the aim of Subprogramme 2 and Subprogramme 3 of the notified scheme is to implement EU objectives in the inland waterways sector, by promoting the adaptation of the existing fleet. As regards Subprogramme 2, it directly contributes to achieving a modal shift. Subprogramme 3, by increasing safety in inland waterway transport, also contributes to achieving a modal shift.<sup>15</sup>

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<sup>15</sup> This is in line with the Commission's previous decisional practice, see Commission Decision of 20 May 2008, N358/2007 - *Czech Republic* - State aid scheme to operators for the modernisation of inland waterway freight transport vessels, Commission Decision of 2 July 2008, N651/2007 - *France* - Prolongation et actualisation du Plan d'aide aux transporteurs de marchandises par voies navigables (Aide d'Etat N 38/2004) pour la période 2008-2012, or Commission Decision of 5 June 2013, SA.35139 (2012/N) – *France* – Prolongation et actualisation du Plan d'Aides à la Modernisation et à l'Innovation de la flotte fluviale (N 651/2007) pour la période 2013-2017.



- (99) Therefore, the Commission concludes that the aid measures under review will help to achieve the clearly defined common-interest objective of meeting the needs of coordination of transport.

#### 3.3.2.3. Necessity (market failure) and incentive effect of the aid

- (100) Aid must be necessary to achieve the objective of common interest, and must have an incentive effect, i.e. aid must change the behaviour of the beneficiary undertaking in such a way that it engages in additional activity, which it would not carry out without the aid or would carry out in a restricted or different manner, so that the objective of common interest would not be achieved.
- (101) As regards elements that have not changed in the current scheme compared to the previous one, the Commission recalls its previous finding<sup>16</sup> that the aid measure is necessary. Concerning the changes in eligible costs, which are of technical nature, these do not change this conclusion and can be regarded as fulfilling the necessity and incentive effect requirements for the following reasons.
- (102) The Commission recalls that intermodal competition in the transport sector is suffering from market failure due to the fact that different modes do not pay the real costs of negative externalities they impose on society.
- (103) Given the limited modal share of inland waterways in the Czech Republic and, conversely, the potential of the Czech waterway network, the measure taken by the Czech Republic under the vessel modernization programme is designed to overcome a market failure resulting from structural constraints, as the depth of the Elbe depends on the amount of rainfall, that impose capacity constraints on the vessels, which undermines the vessels' operators possibilities to modernize their fleet. The Commission notes that, without State aid, the necessary investment could thus not be induced by market forces alone. The measures under review are designed to enable inland waterway transport operators to overcome these obstacles.
- (104) The technical adaptation of vessels allows inland waterway vessels to have holds which are sufficient, in good condition and modernised so as to make this mode of transport attractive to customers. These measures are therefore necessary to develop the inland waterway freight market. More specifically, continuous investments in modernisation and innovation are still needed to maintain inland waterway transport's head start as an efficient, safe and environmentally friendly mode of transport.
- (105) The Commission notes that Article 8 of Council Regulation (EC) No 546/2014 of 15 May 2014 on a Community-fleet capacity policy to promote inland waterway transport<sup>17</sup>, as implemented by Commission Regulation (EC) No 181/2008 of 28 February 2008<sup>18</sup>, urges the Member States to take measures, in particular to

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<sup>16</sup> Paragraphs 59 and 67 of Commission decision in N 358/2007.

<sup>17</sup> OJ L 163, 29.5.2014, p. 15.

<sup>18</sup> Text laying down certain measures for implementing Council Regulation (EC) No 718/1999 on a Community fleet capacity policy to promote inland waterway transport, OJ L 56 of 29 February 2008, p. 8.

encourage adaptation of vessels to technical progress in order to improve working conditions and promote technical safety requirements.

- (106) The Commission also notes that the cost of the transformations under Subprogrammes 2 and 3 is high relative to the size of the beneficiaries, as well as the cost of training of staff that has not used such equipment before. Concerning Subprogramme 3, the Commission takes the view, in line with its decision practice,<sup>19</sup> that the acquisition of equipment to increase transport safety is compatible with Article 93 TFEU.
- (107) Accordingly, the Commission finds that there is a need for State intervention in the inland navigation sector, especially when taking into account the objective of the aid scheme to enable inland waterway transport operators to overcome structural obstacles in the sector.
- (108) Finally, investment projects must not have started prior to the aid application by the beneficiary to the national authorities (paragraph (16)) so that the aid can be considered to have an incentive effect.
- (109) The Commission therefore concludes that aid under the scheme will be necessary to meeting the needs of coordination of transport, and will provide an incentive to beneficiaries to make additional investment which they would not have made in the absence of aid.

#### 3.3.2.4. Proportionality of the aid

- (110) The amount of aid available within each sub-programme of this scheme is approximately EUR 870 000 annually on average (see Section 2.5), which is very limited, taking into account the relatively large number of potential beneficiaries and the fact that the aid is awarded on the basis of a bidding process. The eligible costs are clearly defined and are in line with the objective of the scheme. Furthermore, individual aid is only granted after its necessity has been demonstrated in a detailed counterfactual analysis.
- (111) Compared to the previous scheme, in the current one the aid intensity has increased. The aid intensity foreseen for Subprogrammes 2 and 3 is maximum 85% for small enterprises and maximum 75% for medium-sized enterprises. It reflects the fact that in the previous period, when the maximum aid intensity was set at 49%, only a small share of the budget allocated to these two subprogrammes was drawn, many successful applications being withdrawn due to lack of financing.
- (112) The higher aid intensities are compensated by the fact that i) the aid that a vessel can obtain for all modernizations during the aid scheme is limited to 30% of the price of a new reference vessel (see Section 2.5) and ii) successful applicants will be chosen in a competitive bidding process. This selection process rewards aid applicants seeking lower aid intensities (see Section 2.7). Therefore, it can be

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<sup>19</sup> Commission Decision of 20 May 2008, N358/2007 - *Czech Republic* - State aid scheme to operators for the modernisation of inland waterway freight transport vessels, Commission Decision of 2 July 2008, N651/2007 - *France* - Prolongation et actualisation du Plan d'aide aux transporteurs de marchandises par voies navigables (Aide d'Etat N 38/2004) pour la période 2008-2012, or Commission Decision of 5 June 2013, SA.35139 (2012/N) - *France* - Prolongation et actualisation du Plan d'Aides à la Modernisation et à l'Innovation de la flotte fluviale (N 651/2007) pour la période 2013-2017.

concluded that there are sufficient safeguards and that the aid is thus kept to the minimum and therefore is proportionate. Indeed, given the limited available amount under the scheme, the aid applicants will have an incentive to keep their request for aid within the lowest possible intensities in order to increase their chances to be selected as successful bidders.

- (113) Consequently, the proposed aid intensity under the scheme can be considered proportionate to the intended objective of the scheme.

#### 3.3.2.5. Open and non-discriminatory access to the aid measure

- (114) The scheme relates to all SME operators whose vessels are recorded in the Waterways Register of the Czech Republic regardless of the nationality of the operator (recital (9)).
- (115) The aid will be granted provided that the applicant fulfils the conditions foreseen. The procedure of granting the aid imposes the same obligations on all potential beneficiaries and envisages objective rules for calculating the costs and amount of aid.
- (116) Therefore, the Commission concludes that the aid will be granted on an open and non discriminatory basis.

#### 3.3.2.6. Distortions of competition

- (117) The Vessel modernisation programme aims to limit to a certain extent the competitive imbalance between inland waterway transport and road transport resulting in part from the age of the transport equipment, which in turn is due to the market's failure to ensure the renewal and modernisation of the Czech inland waterway fleet.
- (118) The Commission notes that the Vessel modernisation programme has a limited budget of EUR 15.6 million which will be disbursed over a six-year period to a relatively large number of potential recipients which, according to the Czech authorities, could be as many as 50.
- (119) Furthermore, the Czech authorities explain that, due to the depth of the river Elbe on the Czech territory, on the one hand there is limited presence of foreign vessels in the Czech Republic, and on the other hand Czech vessels are not able to compete with foreign vessels that have greater capacity as they operate on deeper parts of the river. On balance, the information at the Commission disposal shows that the positive effects of the aid are such as to offset any potential distortion of competition.
- (120) It follows that the scheme is in line with EU transport policy and does not lead to a distortion of competition contrary to the common interest.

#### 3.3.2.7. Conclusion with regard to the compatibility of the measure

- (121) In light of the above, the Commission considers that Subprogramme 2 and Subprogramme 3 of the notified aid measure are compatible with the internal market on the basis of Article 93 TFEU.

#### 4. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 93 and Article 107(3)(c) TFEU

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Margrethe VESTAGER  
Member of the Commission

