Subject: State aid SA.49153 (2017/N) – Czech Republic – Aid for intermodal transport units

Sir,

1. PROCEDURE

(1) By electronic notification dated 20 September 2017, the Czech authorities notified to the European Commission a measure concerning aid for intermodal transport units. By letters of 20 November 2017, 26 January 2018 and of 27 February 2018, the Commission requested further information. The requested information was provided by the Czech authorities by letters of 14 December 2017, 8 March 2018 and 13 March 2018, respectively.

2. DESCRIPTION OF THE MEASURE

(2) The measure provides for the purchase of transport units dedicated for continental combined transport. According to the Czech authorities, these transport units will be used exclusively for the provision of intermodal transport.

2.1. Objective of the aid scheme

(3) The aim of the notified measure is to shift consignments from direct road transport to continental combined transport and to improve the competitiveness of intermodal transport services in the Czech Republic.

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The Czech authorities submit that the objective of the aid scheme is in line with objectives enshrined in both the EU and national policies.2

2.2. **The previously authorised scheme concerning intermodal transport units**

The Czech authorities explained that the notified scheme largely corresponds to sub-programme 2, "Aid for the acquisition of combined transport equipment investment grants", of the previous combined transport aid scheme for the years 2006-2010.3 The Czech authorities informed the Commission that due to a lack of budget resources, the sub-programme 2 has been implemented only to a limited extent.

2.3. **Arguments supporting the introduction of a new aid scheme provided by the Czech authorities**

The Czech authorities established that, despite the fact that the previous scheme was implemented only partially, the aid provided for transport units in 2009, totalling CZK 19.154 million, helped to increase the volume of continental journeys using intermodal road trailers. However, as explained further, the share of combined transport in overall freight transport in the Czech Republic still remains very low.

The aid is intended to eliminate the difference in investment costs for transport equipment for combined transport compared to the costs for conventional road trailers for direct road transport.

According to the Czech authorities, the development of continental combined transport is hindered by the greater costs compared to road transport. These costs include, i.e. the charge for using the rails and for assigning rail capacity, the costs for transport units, for transfer and handling at the terminals, for collection and distribution of transport units using road transport to and from the terminal, the charge for using the terminal and the charge for services of the operator.

The Czech authorities explained that the cost of purchasing transport units for continental combined transport and associated technical equipment is higher than for conventional road transport. For intermodal road trailers the average is 41.92 % and for swap bodies the average is 46.3 % where the units are used in a continental combined transport system. These transport units are more technically complex and they must fulfil the technical requirements of both road and rail transport.

Moreover, the costs of combined transport are increased by the time it takes compared to road transport, due to the fact that, on most routes, the transport distance is greater by rail than by road and by the fact that the combined transport services operate only at certain times on certain days depending on the rail timetable, even when the trains used for the combined transport are not full.

The Czech authorities explain that entities involved in continental combined transport cannot pass on the higher price of intermodal transport units in the transport services carried out by combined transport, because they would not be able to compete with direct road transport. Therefore, these entities have no motivation to purchase the more costly intermodal transport units. This factor hinders the further transferring of freight transport from roads, despite the parallel

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3 Commission decision of 12 September 2007 in case N 132/05, Czech Republic – Aid scheme to support combined transport (OJ L 68, 13.3.2009).
investments made in improving rail infrastructure and combined transport, for example, in terminals. State intervention is thus necessary in relation to the aforementioned objectives.

2.4. National legal basis

(12) The aid scheme is based on:

(a) The Act No 218/2000 on Budgetary Rules and Amendments of Certain Relating Acts (Budget Rules), as amended;
(b) Implementing Decree No 560/2006 on contributions from the State budget to the funding of property replacement programmes, as amended;
(c) Government Resolution No 558 of 9 July 2014 conferring government approval on the proposal for Operational Programme "Transport" 2014-2020 (the operational programme proposal was approved by the Commission in Commission Implementing Decision (EU) 2015/3297 of 11 May 2015 approving certain elements of the Operational Programme "Transport" for support from the European Regional Development Fund and the Cohesion Fund under the Investment for growth and jobs goal in the Czech Republic);
(d) Transport policy of the Czech Republic for 2014-2020 with a view to 2050, approved under Resolution No 449 of the Government of the Czech Republic of 12 June 2013; and

2.5. Budget and duration

(13) The estimated overall budget of the proposed scheme amounts to CZK 400 million (approximately EUR 15.8 million\(^4\)) which will be financed from the State budget. Part of the money earmarked for this scheme in the State budget will come from the Cohesion Fund\(^5\).

(14) The scheme will be implemented following adoption of this decision and will last until 31 December 2023.

2.6. Type of aid and intensity

(15) The aid will take the form of a direct grant.
(16) The maximum aid intensity is 30% of the eligible costs.

2.7. Eligible costs

(17) The eligible costs under the aid scheme correspond to the purchase of transport units approved for combined transport in the following breakdowns:

(a) intermodal road trailers;
(b) swap bodies;
(c) inland containers (not ISO shipping containers);
(d) special transport units, including new equipment, for continental combined transport not included under (a) to (c).

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\(^4\) Exchange rate used: EUR 1 = CZK 25.4.
\(^5\) The Cohesion Fund funding is provided as a part of the Operational Program "Transport" for the period 2014-2020 to promote sustainable transport modes and remove bottlenecks on key network infrastructures in order to enable a competitive economy and adequate transport services.
Eligible costs may also include costs for the planning and administration of the relevant project applications for the Operational Programme "Transport" and costs for project publicity in relation to the provision of public aid from the Operational Programme "Transport". These costs will be covered from the aid programme up to a maximum of 1% of the overall eligible costs of a project. The value added tax or other taxes constitute ineligible expenditure.

Aid may be granted only in respect of newly acquired combined transport units bearing the intermodal loading unit (ILU) code marking of the aid beneficiary (owner) entered in the register of the International Union for Road-Rail Combined Transport (UIRR), and intermodal road trailers must also be entered in the register of road vehicles in the Czech Republic or in a similar register of another Member State. The costs directly linked to procurement and installation of the ILU code marking labels on the transport unit are eligible costs.

The aid beneficiary will be required to use the supported transport units on combined transport routes which start, end or are reconfigured (transhipment) with cargo handling within the territory of the Czech Republic.

The aid beneficiary must be the owner of the acquired transport units.

2.8. **Beneficiaries**

The aid beneficiary must be:

(a) the holder of a trading licence in the field of forwarding and representation in the customs procedure (see Annex 4 to Act No 455/1991 on trade licensing, as amended);
(b) the holder of a licence for the operation of road vehicle transport - freight (see Annex 3 to Act No 455/1991 on trade licensing, as amended); or

An aid beneficiary may only be an entity which has its registered office, a branch or an organisational division in the Czech Republic.

Aid may not be made available to entities that have not settled all outstanding liabilities owed to the State budget or health insurance companies (as at 31 December of the previous year). Liabilities to the tax office, the social security administration and the customs administration are considered to be liabilities owed to the State budget.

Aid cannot be granted to undertakings in financial difficulties and undertakings from which the Commission has ordered the recovery of aid, so long as the aid has not been fully recovered.

2.9. **Procedure**

The granting authority is the Ministry of Transport.

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The aid will be granted following a two-step procedure. In the first step an evaluation will be made as to whether the applications meet all the conditions in the call documents (i.e. the eligibility criteria). In addition to the eligibility criteria for beneficiaries set out in recital (22), this evaluation will cover also other eligibility criteria, such evidence that the business plan for the investment is viable and profitable in the long term and that the investment would not be made without the aid.

In the second step, the applications will be ranked according to the following criteria:

- The proportion of the number of the transport units to be supported by the scheme to the overall road transport vehicles of the applicant. If the applicant does not own any road transport vehicles at the moment of the application, the proportion will be calculated as a proportion of the number of transport units applied for to the overall transport units of the applicant; the latter will include also the newly acquired transport units to be acquired under this scheme. The higher the proportion, the higher the number of points awarded.

- The annual number of future shipments to be made by combined transport by a single transport unit acquired under the scheme - the larger the number of shipments, the higher the evaluation score of an application.

The Czech authorities confirmed that the number of shipments by combined transport unit per year as indicated in the application will be included as a binding indicator in the decision to grant aid. The minimum annual number will be 48 shipments for one transport unit, which will be the average in relation to the total number of transport units acquired with the public aid made available to the beneficiary in question over the duration of the project. The decision to grant the aid will also require the beneficiary to demonstrate achievement of the defined indicator by appropriate documents concerning shipments by combined transport made each calendar year over the duration of the project. The compliance with the aid requirements (including the indicator above) will be monitored by the Ministry of Transport. In case of non-compliance, the Ministry of Transport will require a repayment of the aid. The repayment will be either in full or partial, depending on the extent of the non-compliance.

2.10. Cumulation

The aid cannot be cumulated with aid or de minimis aid received from other local, regional or national authorities to cover the same eligible costs.

3. Assessment of the Aid Scheme

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


8 Union funding centrally managed by the Commission that is not directly or indirectly under the control of the Member State does not constitute State aid. Where such Union funding is combined with other public funding, only the latter will be considered for determining whether notification thresholds and maximum aid intensities are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the maximum funding rates laid down in the applicable Union legislation.
Article 107(1) of the Treaty of European Union Functioning ("TFEU") states that "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 internal market".

The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the measure constitutes State aid within the meaning of Article 107(1) TFEU, all of the following conditions need to be fulfilled. Specifically, the financial support should:

a) be granted by the State or through State resources;

b) confer an advantage on the beneficiary undertakings;

c) favour certain undertakings or the production of certain goods (the selectivity criterion);

d) distort or threatens to distort competition, and affect trade between Member States.

The examined measure:

- involves State resources given that it is financed directly from the State budget and the resources of the Cohesion Fund which are transferred to the national budget before being paid to beneficiaries and are considered to be at the disposal of the Czech Republic;

- confers an economic advantage as it relieves the direct beneficiaries of a part of the investment costs which they would normally have to bear;

- is selective in nature because it is confined to a certain segment of the transportation services market, i.e. combined freight transport; and

- can potentially distort competition and affect trade between Member States since it concerns freight markets which have been liberalised.

Therefore, the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the measure

The Commission notes that, in compliance with the requirements of Article 108(3) TFEU, the measure will be put into effect only after the Commission will have authorised it. Therefore, the Czech Republic has complied with the obligation laid down in Article 108(3) TFEU.

3.3. Legal basis for compatibility assessment

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. It also refers to the need for governmental intervention arising in the absence of competitive market or in the presence of market failures.

As described in recital (3) above, the objective of the aid scheme is to shift consignments from road transport to combined transport. Specifically, the measure will reduce the costs of transport units used in intermodal transport. These costs are much higher than the same type of costs for road transport.
The reduction of the difference in costs between road transport and intermodal transport, which cannot be achieved by the market forces themselves, aims at improving the competitiveness of the latter mode of transport (recitals (6) to (11)).

For the reasons outlined above, the Commission considers that these public actions fall within the concept of measures aimed at coordination of transport.

Since the entry into force of Regulation (EC) No 1370/2007, 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. The Commission therefore concludes that Article 93 TFEU, rather than Article 107(3)(c) TFEU, is the appropriate legal basis to analyse the compatibility with the common market of the notified measure.

Hence, the Commission will assess the compatibility of the notified aid scheme with the internal market on the basis Article 93 of the TFEU.

According to an established decisional practice, aid for the coordination of transport will be deemed compatible with the internal market under Article 93 TFEU if the following conditions are met:

a) the aid must contribute to a well-defined objective of common interest;
b) the aid must be necessary and provide an incentive effect;
c) the aid must be proportionate;
d) access to the aid in question must be open to all users on a non-discriminatory basis;
e) the aid must not lead to distortions of competition contrary to the common interest.

The Commission will therefore assess whether these five criteria are met in the present case, for the aid to be considered compatible with the internal market on the basis of Article 93 TFEU.

### 3.4. Compatibility of the aid scheme with the internal market

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

The European Union has for some time pursued a policy of achieving a balanced intermodal transport system and the fostering of the competitiveness of intermodal transport vis-à-vis road usage is part of this policy. The aim of the Union's intermodal transport policy is to achieve a modal shift from road freight to other more environmentally-friendly modes of transport.

Directive 92/106/EEC aim explicitly at fostering the development of combined transport will be deemed compatible with the internal market under Article 93 TFEU if the following conditions are met:


In addition, the White Paper on Transport Policy 2011 encourages the use of rail and other environmentally-friendly modes of transport in order to become competitive alternatives to road haulage.\footnote{Roadmap to a Single European Transport Area—Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.11.}

The Commission recognises that it is in the first place the task of market operators to improve intermodal transport within markets, to which access is free and where the rules of free competition and supply and demand prevail. However, in order to fully unleash the potential of intermodal transport, the willingness to take risks inherent in switching from road to the alternative modes may need to be stimulated.

The reduction of cost difference existing between road and intermodal transport is directed at attaining an objective of common interest in that it contributes to enhancing the competitiveness of combined transport and encouraging a modal shift from road to rail and inland-waterway transport. This shift results in decreasing congestion, accident rates, emissions, noise and the negative impact on the climate stemming from road transport.

The Commission thus concludes that the notified measure contributes to the development of intermodal transport which contributes to reduce air pollution and road congestion and is considered to constitute an objective of common interest.

3.4.2. Necessity and incentive effect of the aid

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 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.

The Commission notes that operating intermodal transport is more costly than operating conventional road transport. The higher costs, that have to be borne by the intermodal transport operators, are linked, among others, to the cost of transhipment, usually longer routes to go by rail or inland waterways than by road and the higher costs of intermodal transport units (recitals (7) to (10)).

The Commission considers that the aid that aims at reducing the cost difference between the intermodal transport and the conventional road transport contributes to a modal shift.

The Commission also considers that in this specific case there is a need for State intervention, since market forces are not able to cover the observed cost difference. In particular, reflecting the higher costs of intermodal transport in prices charged to its users would have a negative impact on a modal shift towards the intermodal transport (recitals (6) to (11)).

The Commission therefore concludes that aid under the scheme will be necessary to foster a modal shift away from road transport to intermodal transport, and will provide an incentive to beneficiaries to make additional investment which they would not have made in the absence of aid.
3.4.3. Proportionality of the aid

(54) As indicated in recital (16), the aid intensity under the scheme shall not exceed 30% of eligible costs.

(55) The Commission considers the maximum aid intensity of the notified measure to be in line with its previous case practice.\(^{13}\)

(56) As described in recital (27), each beneficiary of the scheme when applying for the aid has to submit the evidence that the investment would not be made without the aid.

(57) Consequently, the proposed aid intensity of 30% of eligible costs under the scheme can be considered proportionate to the intended objective of encouraging a modal shift.

3.4.4. Non-discriminatory access

(58) The Commission observes that the conditions for the grant of the aid are based on objective, transparent and non-discriminatory criteria, so that it is open to all eligible transport undertakings (recital (23)).

(59) The Commission therefore concludes that the access to aid is open to all potential users on non-discriminatory terms.

3.4.5. Distortions of competition

(60) The scheme allows granting of aid for intermodal transport units. Taking into account that all operators of intermodal transport can benefit from the scheme (recitals (22) to (25)), a distortion of competition between intermodal transport operators is not expected. The Commission notes that the aid will be awarded following an open selection procedure with clearly defined and publicly available assessment criteria (recitals (27) to (29)).

(61) Concerning competition between modes of transports, the reduction of intermodal transport costs linked to costs of transport units should result in a shift from road transport to more environmentally friendly modes of transport and thereby to a reduction in traffic, accidents, exhaust emissions, noise emissions and the negative impact of road transport on the climate, which is of common interest within the meaning of Article 93 TFEU.

(62) The limitation of the planned aid's intensity to 30% of eligible costs (recital (16)) will ensure that trading conditions are not affected contrary to the common interest. The intermodal transport operators will still have to make a substantial

contribution from their own resources or find external financing at market conditions.

Since intermodal transport in Czech Republic is less developed, and therefore less competitive, than in most EU countries, the scheme is unlikely to distort competition to an extent contrary to the common interest under Article 93 TFEU.

3.5. Evaluation

The Commission notes that this aid scheme largely corresponds to the previous aid scheme for intermodal transport (recital (6)). Should the Czech authorities decide to prolong the scheme again in the future, the Commission would invite the Czech Republic to evaluate the aid scheme subject to this decision prior to any such prolongation.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid scheme for purchase of intermodal transport units under the Operational Program "Transport" for the years 2014-2020 on the grounds that it is compatible with the internal market pursuant to Article 93 of the Treaty on the Functioning of the European Union.

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Yours faithfully
For the Commission

Margrethe VESTAGER
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