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**Subject: State Aid SA.55861 (2019/N) – Czech Republic – CZ ERTMS
Prolongation**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 2 December 2019 (the "Notification"), the Czech authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), a prolongation of the sub-program 1 of an existing authorized aid scheme (SA.44621 – Individual subprograms for ensuring interoperability in railway transport) (the "Existing Scheme"), with an increase in the budget. The Notification was registered under case number SA.55861.
- (2) The Existing Scheme was approved by the Commission on 7 April 2017 with a corrigendum of 4 September 2017 (jointly the "2017 Decision") for the period 2017 – 2021.
- (3) The Commission requested a confirmation regarding business secrets and confidential information on 10 December 2019 and additional information on 13 December 2019. The Czech authorities responded to the latter request on 9 January 2020.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Background

- (4) The Existing Scheme consisted of five sub-programmes. This Notification concerns the prolongation with an increase in the budget of the Sub-programme 1:

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Implementation of the European Rail Transport Management System (ERTMS) and security subsystem for three years (the "Measure").

- (5) The general objective of the Existing Scheme is to ensure technical and operational interconnection of the railway systems in the Czech Republic and the neighbouring railway systems (interoperability), as well as among the individual entities involved in railway transport.
- (6) The objective of the Measure remains the same as the objective of Sub-programme 1 of the Existing Scheme: Implementation of the European Rail Transport Management System (ERTMS) and security subsystem. In particular, the support aims at equipping railway vehicles with on-board ETCS and GSM-R units or upgrading already installed ETCS units to a newer version.
- (7) In the Notification, the Czech authorities informed the Commission that there were approximately 80 vehicles already equipped with an ETCS on-board units. Furthermore, based on a plan implemented under the 2017 Decision and the Connecting Europe Facility program, the on-board equipment has been approved for more than 300 additional rolling stock units, of which for 230 units there are already contracts with suppliers in place. This, however, still falls short of some 1 000 rolling stock which needs to be equipped by 2025. According to the Czech authorities, if the rail vehicles would not be equipped with on-board ETCS, billions of investments in railway infrastructure would be lost. At the same time, the equipment of these vehicles is necessary to maintain passenger and freight traffic on the Czech rail network as only rolling stock fitted with ETCS on-board units will be permitted to operate on the network as of 2025.

2.2. Duration

- (8) The duration of the Measure is three years (1 January 2020 – 31 December 2022). The Czech authorities have committed not to put the program in place before the Commission had adopted a decision.

2.3. Budget increase

- (9) The Czech authorities also notified an increase in the budget of CZK 3.4 billion (approximately EUR 134 million), and annually CZK 500 million (approximately EUR 20 million).
- (10) The State Fund for Transport Infrastructure will provide the financing of CZK 400 million (EUR 16 million) in 2020, CZK 500 million (EUR 20 million) in 2021 and CZK 500 million (EUR 20 million) in 2022, which amounts to CZK 1.4 billion (approximately EUR 56 million) in total. The Czech authorities noted that the rest of the aid would be financed from the Cohesion Fund as a part of the 2014-2020 Operational Programme for Transport in the Czech Republic, subject to the conditions listed therein.¹

2.4. Beneficiaries

- (11) The beneficiaries of the Measure are the licensed railway transport undertakings (passenger and freight) that own or operate the rolling stock and owners of the

¹ See: http://ec.europa.eu/transport/infrastructure/tentec/tentec-portal/site/index_en.htm

rolling stock that are not railway undertakings. The details on the conditions of the beneficiaries set in recitals (7) – (9) of the 2017 Decision remain valid.

- (12) Public financing to Správa železniční dopravní cesty ("SŽDC"), the railways infrastructure manager, was not included in the present Notification. The present decision, therefore, does not cover the public financing to SŽDC.

2.5. National legal basis

- (13) In the Notification, the Czech authorities added Act No 104/2000 on the State Fund for Transport Infrastructure, as amended, as an additional legal basis for financing the Measure. The other legal basis remained the same as in the 2017 Decision. The individual aid paid out to beneficiaries under the newly added legal basis will be done in the legal form of a framework contract.

2.6. Form of aid and eligible costs

- (14) The proposed aid takes the form of direct grants to eligible undertakings from the Ministry of Transport or, where relevant, the State Fund for Transport Infrastructure.
- (15) Eligible expenditure must be applied to the pre-determined purposes as stipulated in the aid granting decisions or framework contracts, as relevant. The details on the form and eligible costs as set in recitals (13)-(15) of the 2017 Decision remain valid.

2.7. Other conditions

- (16) Apart from the extension of the duration, the budget increase and the amendments related to the State Fund for Transport Infrastructure, the Measure does not introduce any other changes to the Existing Scheme approved by the Commission in the 2017 Decision. All other conditions listed in the 2017 remain the same.

3. ASSESSMENT OF THE MEASURE

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

- (17) According to Article 107(1) TFEU, 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 provision of certain goods shall be incompatible with the common market, in so far as it affects trade between Member States, save as otherwise provided for in the TFEU.
- (18) ***Economic activity***: the beneficiaries of the aid are the licensed railway transport undertakings that own or operate the rolling stock and owners of the rolling stock that are not railway undertakings (recital (11)). Both types of companies supply services on the market. Therefore, they carry out an economic activity.
- (19) ***State resources and imputability***: the Measure will be partly financed from the State Fund for Transport Infrastructure. This fund is a legal entity within the competence of the Ministry of Transport and the assets managed by the fund are State-owned.² The rest of the financing will be covered from the Cohesion Fund.

² Article 1 of the Act No 104/2000 on the State Fund for Transport Infrastructure, as amended.

The resources of the Cohesion Fund which are transferred to the national budget and the budget of the regions before being paid to beneficiaries are considered to be at the disposal of the Czech Republic. The financing paid out to the beneficiaries under the Measure constitutes a transfer of State resources. The Commission therefore concludes that the measure implies the use of state resources and is imputable to the State.

- (20) **Selectivity and economic advantage**: the measure reduces the costs that the beneficiaries would normally have to bear. In addition, the measure only concerns the railway sector and only certain undertakings within that sector. The Commission therefore concludes that the measure favours certain undertakings, i.e. provides the economic advantage in a selective manner.
- (21) **Distortion of competition and affectation of trade between Member States**. When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.³ It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.⁴ In the present case, the notified measure strengthens the position of the beneficiary undertaking in relation to other undertakings active in intra-Union trade.
- (22) In that regard, the fact that an economic sector has been liberalised at Union level is an element which may serve to determine that the aid has a real or potential effect on competition and on trade between Member States.⁵ Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways⁶ has liberalised the international rail freight transport as from 1 January 2006 and all other rail freight transport services as from 1 January 2007.
- (23) In addition, it is not necessary that the beneficiary undertaking itself be involved in intra-Union trade. Aid granted by a Member State to an undertaking may help to maintain or increase domestic activity, with the result that undertakings established in other Member States have less chance of penetrating the market of the Member State concerned.⁷ Furthermore, the strengthening of an undertaking which, until then, was not involved in intra-Union trade may place that undertaking in a position which enables it to penetrate the market of another Member State.

³ See, in particular Judgment of 17 September 1980, *Philip Morris Holland BV v Commission*, Case 730/79, EU:C:1980:209, paragraph 11; Judgment of 22 November 2001, *Ferring v ACOSS*, Case C-53/00, EU:C:2001:627, paragraph 21 and Judgment of 29 April 2004, *Italy v Commission*, Case C-372/97, EU:C:2004:234, paragraph 44.

⁴ Judgment of 30 April 1998, *Het Vlaamse Gewest (Flemish Region) v Commission*, Case T-214/95, EU:T:1998:77.

⁵ Judgment of 13 February 2003, *Spain v Commission*, Case C-409/00, EU:C:2003:92, paragraph 75.

⁶ OJ L 164 of 30.4.2004, p.164.

⁷ See, to that effect, in particular Judgment of 7 March 2002, *Italy v Commission*, Case C-310/99, EU:C:2002:143, paragraph 84.

- (24) The Commission therefore concludes that the measure at stake affects trade between Member States and distorts competition as regards railway transport undertakings and owners of the rolling stock that are not railway undertakings.
- (25) The Commission therefore finds that the notified aid scheme involves aid within the meaning of Article 107(1) TFEU.

3.2. Legal basis for the compatibility assessment

- (26) Article 93 TFEU provides that "*aids shall be compatible with the Treaties if they meet the needs of coordination of transport [...]*".
- (27) After the entry into force of Regulation (EC) No 1370/2007,⁸ Article 93 TFEU became 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 (points 20 and 85 of the Communication from the Commission "Community guidelines on State aid for railway undertakings" (the Railway Guidelines⁹)). Since the Measure is not covered by Regulation (EC) No 1370/2007, its compatibility will be assessed directly under Article 93 TFEU.
- (28) Article 93 TFEU states that State aid shall be compatible if it "*meets the needs of coordination of transport*". The concept of aid meeting the needs of co-ordination of transport refers to the need for governmental intervention arising in the absence of competitive market or in the presence of market failures.
- (29) The Commission has, in line with its constant decision practice, considered that aid is compatible with the internal market on the basis of Article 93 TFEU if the following conditions are met: (i) the aid contributes to an objective of common interest, (ii) the aid is necessary, and provides an incentive effect, (iii) the aid is proportionate, (iv) the access to the infrastructure in question is open to all users on a non-discriminatory basis, and (v) the aid does not lead to distortions of competition contrary to the common interest.
- (30) As regards railway transport undertakings in particular, the rules for the interpretation of Article 93 TFEU have been set out in the Railway Guidelines. According to point 95 of the Railway Guidelines, aid which meets the needs of transport coordination has to be considered compatible with the TFEU. Point 96 of the Railway Guidelines provides that for a given aid measure to be considered to 'meet the needs' of transport coordination, the aid has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition which is inherent in the aid must not jeopardise the general interests of the Union.
- (31) In the following case, the beneficiaries of the Measure are railway undertakings as well as undertakings which own vehicles but are not railway undertakings. In accordance with the Commission's previous decision-making practice¹⁰, the

⁸ 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 of 3.12.2007, p.1.

⁹ OJ C 184 of 22.7.2008, p. 13.

¹⁰ See inter alia recital (24) and (25) of Commission Decision SA.55912 (2019/N) – Italy Prolongation of the State aid scheme for combined transport in the Province of Trento, recital (33) of Commission

principles set out in the Railway Guidelines concerning aid for the needs of transport coordination apply also when the direct beneficiaries of the scheme are not railway undertakings. The compatibility assessment of the present scheme regarding railway undertakings and undertakings which own vehicles but are not railway undertakings will therefore be carried out on the basis of Section 6 of the Railway Guidelines and of its subsection 6.3 concerning aid for interoperability (points 100 to 112).

3.3. Compatibility of the aid

3.3.1. Objective of common interest

- (32) The objective of the aid scheme is to develop interoperability in railway transport in the Czech Republic. The European Union pursues a policy aiming at improving conditions for better competitiveness and broader usage of railway transport and a progressive getting over the differences throughout the European Union for railways quality and reliability. This aim is also stipulated in the 2014-2020 Operational Programme for Transport in the Czech Republic, dedicated for the improvement of transport infrastructures across the country.¹¹ The Measure aims at ensuring interoperability on important railway lines, including those that are part of the Trans-European networks.
- (33) The aid will have the effect of encouraging the modal shift to rail as one of the fundamental goals of the proposed measure is the strengthening of competitiveness of railway transport against road transport. The Commission recalls that no railway system can be fully competitive unless all matters relating to the removal of technical barriers to trade in trains and to their interoperability are resolved first.¹² In addition, the aid will at least partially reduce the additional costs incurred by railway transport in an effort for ensuring interoperable systems. In addition, the introduction of interoperability criteria will have a direct impact on the actual liberalisation of the railways market, which is sometimes prevented by both technical and operational obstacles resulting from incompatible railway networks. The existing obstacles work to the benefit of the railway carriers established in the territory of the Czech Republic and prevent the entry to the market by new operators. More equal conditions will be created in the transport market for all kinds of transports, thus supporting competitiveness of the railway transport against road transport, which represents one of the major long-term goals of the European Commission in the area of transport.¹³ Finally, the technical and operational interconnection of the railway networks in the Czech Republic and its neighbouring countries represents an indispensable condition for achieving

decision of 5.11.2019, SA.55451 (2019/N) – The Netherlands Support for ERTMS upgrade, recital (35) of Commission decision of 18.12.2018, SA.51229 (2018/N) – Italy – Norma Retrofit: measures to support noise reduction on freight wagons in Italy, OJ C 101, 15.3.2019, p. 1, and recital (58) of Commission decision of 20.12.2018, SA.50115 (2018/N) – Italy – Intermodal rail transport of iron slabs in the FVG region with further references in footnote 44.

¹¹ See: http://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/czech-republic/2014cz16m1op001

¹² White Paper European transport policy for 2010: time to decide. COM (2001) 370, of 12.9.2001, p 30

¹³ See in particular recitals 2 and 5 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast).

the growth potentials in the long-distance transport category.¹⁴ It results that the aid will have the effect of encouraging the modal shift to rail and, by favouring competition, lead to a reduction of the price demanded from the passenger or the shipper within the meaning of paragraph 110 of the Railway Guidelines.

- (34) The Czech authorities provided information regarding implementation of the Existing Scheme, including the number of vehicles already equipped with the ETCS units as well as the envisaged number of rolling stock for which the on-board units still need to be financed or upgraded (recital (7)).
- (35) The Commission therefore concludes that aid granted for achieving interoperability contributes to an objective of common interest and that such aid is an appropriate means of achieving this objective.

3.3.2. *Other conditions*

- (36) Point 107(c) of the Railway Guidelines provides that the necessity and proportionality of the aid will be presumed if the interoperability aid does not exceed 50 % of the eligible costs.
- (37) According to point 106 of the Railway Guidelines, the eligible costs cover, to the extent to which they contribute to the objective of coordinating transport, all investments relating to the installation of safety systems and interoperability, or noise reduction both in rail infrastructure and in the rolling stock.
- (38) Under the notified measure, the eligible investment costs are investment costs for particular equipment.
- (39) The maximum aid intensity permitted under the scheme is 50% of eligible costs in relation to the fitting-out of vehicles with GSM-R units and the aid cannot be cumulated with aid received from other local, regional, national or Community schemes, the notified measure can be presumed to be necessary and proportionate in accordance with point 107(c) of the Railway Guidelines in this regard.
- (40) In relation to ETCS on-board units, the maximum aid intensity permitted under the scheme is 85% of eligible costs. According to point 108 of the Railway Guidelines, for aid above 50% aid intensity threshold for interoperability aid the Member States must demonstrate the need and proportionality of the measures in question. According to footnote 8 of the Railway Guidelines, this could be the case with interoperability measures on the trans-European transport network.
- (41) The Measure concerns investments that are to be used, among others, on railway routes that are part of the trans-European network. In addition, the Czech authorities previously explained that that higher aid intensity is due to exceptionally high investment demands and the need to achieve the objectives set out in the ERTMS National Implementation Plan. This value is based on the anticipated costs for one vehicle, of in excess of CZK 10 million (approximately EUR 370 thousand).

¹⁴ See in particular recitals 7 and 8 of Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (Recast).

- (42) Taking into account the above, the Measure is considered to be necessary and proportionate in accordance with points 107(c) and 108 of the Railway Guidelines also as regards aid for ETCS on-board units.
- (43) The Czech authorities have further confirmed that all wagon owners whose wagons operate in the Czech Republic will be able to benefit from the same treatment and thus that the aid is granted on non-discriminatory terms.
- (44) Beneficiaries may only be entities with its headquarters, branch office or an organisational unit in the Czech Republic. In this regard, applicants do not have to be predominantly established in the Czech Republic, a secondary establishment is enough.
- (45) The Czech authorities confirmed that the other conditions of the Existing Scheme remain the same (recital (16)). The Commission therefore considers that the modifications of the Existing Scheme introduced by this Notification will not change the assessment made in the 2017 Decision.
- (46) Therefore, the Commission concludes that the aid scheme is necessary and proportionate to the intended objective to ensure interoperability in the relevant subsystems and that a possible distortion of competition which is inherent in the aid scheme does not jeopardise the general interest of the Union.
- (47) Finally, as stated in point 97 of the Railway Guidelines, in view of the rapid development of the transport sector, and hence the need for coordinating it, any aid notified to the Commission for the purpose of obtaining a decision on the basis of Article 93 TFEU, has to be limited to a maximum of five years in order to allow the Commission to re-examine it in the light of the results obtained and, where necessary, to authorise its renewal. Considering the notification submitted by the Czech authorities to the Commission covers a three-year period only, this condition is also fulfilled.

4. CONCLUSION

- (48) The Commission has decided not to raise objections to the aid 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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Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

