EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State Aid SA.57094 (2020/N) – Czechia – COVID-19 – Loan guarantee scheme to support the economy in response to the COVID-19 crisis

Excellency,

1. PROCEDURE

(1) By electronic notification of 29 April 2020, Czechia notified aid in the form of a loan guarantee scheme for exporting large undertakings[1] (*Czech loan guarantee scheme for exporting large undertakings in response to the COVID-19 crisis*, “the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).[2]

(2) The Czech authorities confirm that the notification does not contain confidential information

(3) Czechia exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,[3] and to have this Decision adopted and notified in English.

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[1] Large enterprises are defined as undertakings with 250 employees or more.

[2] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak of 19 March 2020, OJ C 91I , 20.3.2020, p. 1–9, amended on 3 April 2020, OJ C 112I , 4.4.2020, p. 1–9.

[3] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DESCRIPTION OF THE MEASURE

(4) Czechia considers that the COVID-19 outbreak has started to affect the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the damage inflicted upon undertakings impacted by the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.

(5) According to the Czech authorities, the economic impact of COVID-19 outbreak has resulted in financing challenges for the Czech exporters, including large enterprises and their suppliers. The measure, however, is not export aid, i.e. it does not promote export activity and is not directly linked to elements such as the quantities exported or to the establishment and operation of a distribution network as defined by the General Block Exemption Regulation ("GBER")[4], the Block Exemption Regulation for the Agricultural Sector ("ABER")[5] and the Block Exemption Regulation for the Fishery and Aquaculture Sector ("FIBER")[6], but it guarantees loans to cover losses of large companies that also do exports (see below recital (8)).

(6) Therefore, the Czech authorities wish to introduce a guarantee scheme for qualifying loans to the large companies that also do exports and their suppliers, channelled through commercial credit institutions.

(7) The measure is expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by Section 2 of the Temporary Framework.

2.1. The nature and form of aid

(8) The Czech authorities want to introduce a loan guarantee scheme for large companies with a share of exports of goods and services of at least 20% of their annual sales revenues in 2019 and for their suppliers.

(9) The measure provides aid in the form of guarantees on new and existing working capital loans and new investment loans, thus ensuring the continuation of business in otherwise healthy businesses affected by the crisis.

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4 Article 1(2)(c) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

5 Article 1(4)(c) of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 193, 1.7.2014, p. 1.

6 Article 1(3)(b) of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 369, 24.12.2014, p. 37.

2.2. National legal basis

(10) The legal bases for the measure are:

(a) the Act No.58/1995 Coll. of 14 March 1995 on Insurance and Financing of Exports with State Support and on Supplement to Act No. 166/1993 Coll., on the Supreme Audit Office, as amended in Amendment: 60/1998 Coll., Amendment: 188/1999 Coll., Amendment: 282/2002 Coll., Amendment: 377/2005 Coll., Amendment: 23/2006 Coll., Amendment: 293/2009 Coll., Amendment: 230/2013 Coll., Amendment: 220/2015 Coll.,

(b) the amendment No.214/2020, draft of which has been submitted to the Commission and

(c) Government Decree No.215/2020 on Implementation of Certain Provisions of the Act on Insurance and Financing of Exports with State Support, as amended, draft of which has been submitted to the Commission.

2.3. Administration of the measure

(11) The State-owned Czech Export Guarantee and Insurance Corporation (hereinafter referred to as "EGAP") is responsible for administering the measure.

(12) Aid under the measure is channelled through commercial credit institutions.

2.4. Budget and duration of the measure

(13) The Czech authorities estimate that the aggregate principal of guaranteed loans will not exceed the amount of CZK 142 billion (EUR 5.2 billion)[7].

(14) Aid under the measure may only apply to eligible loans that are granted in the period as from 13 March 2020 until 31 December 2020 for the new loans, and as from 1 July 2019 until 31 December 2020 for the existing loans.

2.5. Beneficiaries

(15) The final beneficiaries of the measure are large undertakings incorporated or registered in Czechia for which exports amount to at least 20% of their total sales revenues in 2019, and their eligible suppliers.

(16) Aid may be granted under the measure only to eligible undertakings that were not in difficulty within the meaning of GBER[8], ABER[9] and FIBER[10] on 31 December 2019. It may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced

[7] The amounts have been converted to euro using the foreign exchange rate CZK/EUR on 27 April 2020.

[8] As defined in Article 2 (18) GBER.

[9] As defined in Article 2(14) ABER.

[10] As defined in Article 3(5) FIBER.

difficulties or entered into difficulty thereafter because of the COVID-19 outbreak.

2.6. Sectoral and regional scope of the measure

(17) The measure applies to the whole territory of Czechia and is open to all sectors, except the ones explicitly mentioned in recital (18).

(18) These sectors are exempted (NACE codes used):

- undertakings in land and pipeline transport (Code 49);
- undertakings in water transport (Code 50);
- undertakings in air transport (Code 51);
- undertakings in accommodation business (Code 55);
- travel agencies, tour operators and other reservation services and related activities (Code 79); and
- undertakings in gambling and betting activities (Code 92).

2.7. Basic elements of the measure

2.7.1. Nature of the qualifying loans

(19) The State guarantee covers losses incurred on new and existing working capital loans and new investment loans to the eligible undertakings, with a maximum maturity of five years for investment loans and three years for working capital loans and which are contracted in the period referred to in recital (14).

(20) The guarantees can be provided on the existing working capital loans, contracted as of 1 July 2019 or later, and will only cover the loans that correspond to the using of hitherto unused credit lines and the hitherto unused part of revolving credit facilities. These will actually represent a new source of liquidity from the moment that the credit line is up for renewal from the side of the bank and when the bank can revise the revolving credit facilities. The guarantees can only be granted at moments when the credit contract allows the bank and the client to revise the terms of the contract (for example tenor, interest rate, disposable amount and similar) and/or to terminate the contract. Hence, the possible revision would reflect the benefits of added State guarantee to the credit relationship.

2.7.2. Maximum amount of the qualifying loans

(21) The qualifying loan's principal must not exceed 25% of the beneficiary's total turnover in 2019, as self-certified by the borrower in connection with its credit

application. In any event, the guaranteed amount must not exceed CZK 2,000 million (EUR 71 million) per undertaking, including linked enterprises.[11]

(22) The minimum principal amount of the qualifying loan is defined as CZK 5 million (EUR 200,000) for the group of linked enterprises.

2.7.3. Maximum amount of the guarantee

(23) The guarantee applies to the loan principal of the qualifying loans, and cannot exceed:

- (a) 80% of the loan principal in case the loan provider is rated by EGAP on the rating scale as "B" or better, and
- (b) 70% of the loan principal in case the loan provider is rated by EGAP on the rating scale as "B-".

(24) In any case, the losses are sustained proportionally and under same conditions, by the credit institution and EGAP. Furthermore, the Czech authorities confirmed that when the size of the loan decreases over time, the guaranteed amount decreases proportionally.

2.7.4. Maximum duration of the guarantee

(25) The guarantee duration must not exceed three years for working capital loans and five years for investment loans.

2.7.5. Remuneration of the guarantee

(26) The guarantee is remunerated on a per loan basis; it is based on a progressive premium taking into account the maturity of the underlying qualifying loans, as follows:

Rating of undertaking	Guarantee premium for the 1st year of the guarantee	Guarantee premium for the 2nd and 3rd years of the guarantee	Guarantee premium for the 4th to 6th years of the guarantee
B+ and higher	45bps	90bps	180bps
B	60 bps	120bps	200bps
B-	114 bps	175bps	219bps

For guarantee premium to be paid by large enterprises with the credit rating B+ and higher, Czechia used the flexibility provided by point 25 (b) of the Temporary Framework, whereby Member States may notify schemes with the possibility to modulate maturity, pricing and guarantee coverage. The Czech authorities have notified minimum guarantee premia that are lower than those in

[11] As defined in Article 3(3) of the Annex I of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1, and Article 3(3) of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1.

the point 25 (a) for large enterprises with the credit rating B+ and higher, while they note that the guarantee coverage of 80% is lower than the maximum guarantee coverage of 90% allowed under the Temporary Framework.

(27) According to the Czech authorities, the fact that the measure is open to all banks, together with the conditions for guarantees for existing loans (recital (20)) and the interest rate margin cap (recital (29)), ensures that the aid will be passed on to the final beneficiaries.

2.7.6. Mobilisation of the guarantee

(28) The Czech authorities confirm that the mobilisation of the guarantee is contractually linked to specific conditions agreed between the parties when the guarantee is initially granted.

2.7.7. Additional provisions

(29) For the underlying loans, the financial intermediaries are required to set the caps on interest rate margins at:

(a) 1.5% per annum for loans with maturity of up to one year,

(b) 2.5% per annum for loans with maturity of up to three years, and

(c) 3.5% per annum for loans with maturity of up to five years.

For those working capital loans already contracted as of 1 July 2019, the interest rate margin provisions will apply from the moment the guarantee is provided, which, as described in recital (20), would happen at a moment when the parties can revise the contract terms and hence reflect the presence of the State guarantee.

2.8. Cumulation

(30) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

(31) The Czech authorities confirmed that aid granted under Section 3.2 of the Temporary Framework will not be cumulated with other aid granted for the same underlying loan principal under Section 3.3 of the Temporary Framework, and vice versa. Aid granted under Section 3.2 and Section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the thresholds set out in point 25(d) or in point 27(d) of the Temporary Framework.

2.9. Monitoring and reporting

(32) The Czech authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework. In particular, the authorities will provide information demonstrating that none of the beneficiaries were already companies in difficulty on 31 December 2019 within the meaning of the GBER.

3. ASSESSMENT

3.1. Legality of the measure

(33) By notifying the measure before putting it into effect, the Czech authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(34) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(35) The measure is imputable to the State, since it is administered by the State-owned EGAP. It is based on the Czech legislation. The measure is financed through State resources, since it is financed by public funds.

(36) The measure confers an advantage on its beneficiaries in the form of guarantees on loans. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(37) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular large undertakings registered in Czechia, and excludes undertakings pertaining to certain sectors.

(38) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(39) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Czech authorities do not contest that conclusion.

3.3. Compatibility

(40) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(41) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "*to remedy a serious disturbance in the economy of a Member State*".

(42) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (Section 2) that "*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*". The Commission concluded that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*".

(43) The Temporary Framework contains a Section 3.2 in which the Commission explains how it will assess aid in the form of loan guarantees. Point 25, letters (a) to (h), set out the compatibility criteria which the Commission will use to assess such loan guarantees, either in the form of schemes or individual measures.

(44) The measure aims at mitigating liquidity challenges and facilitating the access of firms to external finance at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(45) The measure is one of a series of measures conceived at national level by the Czech authorities to remedy a serious disturbance in their economy. The importance of the measure to mitigate large companies' refinancing challenges is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Czech economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid "*Aid in the form of guarantees on loans*" described in Section 3.2 of the Temporary Framework.

(46) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:

- The measure sets minimum levels for guarantee premia for large enterprises with the credit rating B or B- in line with the guidance in point 25(a) of the Temporary Framework. Guarantee premia for large enterprises with the credit rating B+ or better comply with point 25(b) of the Temporary Framework, given that the coverage ratio is 80% (hence below the maximum 90% as stipulated in point 25 (f) of the Temporary Framework). Lower coverage ratio allows for lower pricing as the increased risk-sharing with financial intermediaries ensures that the guarantees would be less risky for Czech authorities (recital (26)).

- Guarantees can be granted under the measure by 31 December 2020 at the latest (recital (14)). The measure therefore complies with point 25(c) of the Temporary Framework.

- For all loans, the maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d)(ii) of the Temporary Framework (recital (21)).

- The measure limits the duration of the guarantees to a maximum of five years (recital (25)). Those guarantees cover up to 80% of the loan principal and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State. Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (24)). The measure therefore complies with point 25(f)(iii) of the Temporary Framework.

- Guarantees granted under the measure relate to working capital and investment loans (recitals (19) and (20)). The measure therefore complies with point 25(g) of the Temporary Framework.

- Firms already in difficulty (situation as of 31 December 2019) within the meaning of the GBER, ABER and FIBER are excluded from benefitting from the measure (recital (16)). The measure therefore complies with point 25(h) of the Temporary Framework.

- The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. The Commission takes into account the fact that all commercial credit institutions have in principle access to the measure, thus creating competition between those institutions. As the guarantee will only be granted to existing loans when the parties have the possibility to revise the terms or to terminate the contract in principle, the advantageous terms of guarantee can be included into the loan terms and competition between financial intermediaries provides an additional incentive to do so. Furthermore, the Commission takes into account that underlying loans are eligible to the scheme if the interest rate margin does not exceed the cap. Such safeguards ensure that the commercial banks, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital (27) and (29)). The measure therefore complies with points 29 to 31 of the Temporary Framework.

- The Czech authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (32)).

- The cumulation rules regarding combination with *de minimis* and aid for other purposes are respected (recitals (30) and (31)) in line with point 20 of the Temporary Framework. Lastly, the mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (28)).

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU

(47) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (**"BRRD"**)[12] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of BRRD.

(48) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[13] Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial

[12] OJ L 173, 12.6.2014, p. 190-348.

[13] Points 6 and 29 of the Temporary Framework.

institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Art. 2(1) No 28 BRRD.

(49) Moreover, as indicated in recital (46), the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(50) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD.

5. 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 107(3)(b) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President