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Subject: **State aid SA.57071 (2020/N) – Czechia – COVID-19 - Support to R&D projects**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 17 April 2020, amended on 4 May 2020, the Czech authorities notified an aid scheme covering support to research and development (“R&D”) projects (“the measure”), under article 107(3)(c) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by section 3.6 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 health crisis (“the Temporary Framework”), as amended.¹
- (2) The Czech authorities confirmed that the notification does not contain confidential information.
- (3) The Czech authorities exceptionally agree to waive their rights deriving from Article 342 of the TFEU, in conjunction with Article 3 of Regulation 1/1958,² and to have this Decision notified and adopted in English.

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9., as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1–9.

² 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) The measure aims at supporting COVID-19 relevant R&D activities that contribute to developing rapidly COVID-19 relevant products. The Czech authorities consider that it is crucial that the State can provide incentives to companies to direct their activities towards research of certain products, to deploy rapidly medical and non-medical technologies and solutions to combat effectively the COVID-19 crisis. The Czech authorities consider that the measure contributes to addressing the public health crisis.
- (5) The compatibility assessment of the measure is based on Article 107(3)(c) TFEU, as interpreted by Section 3.6 of the Temporary Framework.

2.1. Nature and form of aid

- (6) The measure provides aid in the form of direct grants for COVID-19 relevant R&D projects.

2.2. National legal basis

- (7) The legal basis for the measure is the Call under the Czech Rise Up Programme – Smart measures against COVID – 19 2.0.

2.3. Administration of the measure

- (8) The Ministry of Industry and Trade of Czechia is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The budget of the measure amounts to CZK 200 million (approx. EUR 7.3 million).
- (10) The measure will be financed from the State budget.
- (11) Individual aid applications under this measure may be submitted during the six months following the approval of the measure. Individual aid may be granted under the measure as from its approval until no later than 31 December 2020.

2.5. Beneficiaries

- (12) The final beneficiaries of the measure are undertakings, irrespective of their size (micro, small and medium-sized enterprises, large undertakings) and research organisations. Financial institutions are excluded.
- (13) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)³, the Agricultural Block Exemption Regulation⁴ or of the Fisheries Block Exemption Regulation⁵ respectively on 31 December 2019.

³ As defined in Article 2(18) 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, Article 2(14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry

- (14) The Czech authorities estimate that approximately 70 beneficiaries will apply for aid under this measure.

2.6. Sectoral and regional scope of the measure

- (15) The measure is open to research organisations and undertakings of all sectors conducting COVID-19 relevant research activities. It applies to the whole territory of Czechia.

2.7. Basic elements of the measure

- (16) The aid measure supports COVID-19 relevant research into vaccines, medicinal products and treatments, medical devices and hospital and medical equipment, disinfectants, and protective clothing and equipment, and into relevant process innovations for an efficient production of the required products.
- (17) The following R&D stages are supported: industrial research, and experimental development⁶. Furthermore, the aid measure supports clinical trials, including trial phases I to IV and efforts for obtaining, validating and defending patents and other intangible assets, and for obtaining the conformity assessments and/or authorisations necessary for the marketing of new and improved vaccines and medicinal products, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment.
- (18) Under the measure, the following cost components are eligible for the duration of the project:
- a) personnel costs;
 - b) costs of instruments and equipment, including costs of digital and computing equipment;
 - c) costs of buildings and land for the duration of the project;
 - d) costs of contractual research and other relevant research services, including costs for digital and computing services;

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, and Article 3(5) of the 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 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

⁴ As defined in Article 2 (14) of the 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.

⁵ As defined in Article 3 (5) of the 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 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

⁶ As defined in paragraph (84), (85) and (86) of Article 2 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.

- e) knowledge and patents bought or licensed from outside sources in arm's length transactions;
 - f) other operating expenses, e.g. materials;
 - g) additional overhead costs incurred directly as a result of the R&D project;
 - h) costs for obtaining, validating and defending patents and other intangible assets;
 - i) costs incurred for obtaining the conformity assessments and/or authorisations necessary for the marketing of new and improved vaccines and medicinal products, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment;
 - j) costs for pre-clinical and clinical trials (trial phases I-IV).
- (19) Only costs directly related to, and necessary for the R&D project, and the subsequent IPR protection, clinical trial (phases I-IV) and regulatory procedures, are eligible.
- (20) The Czech authorities confirmed that assets (instruments, equipment, etc.) that are not used for the full duration of the R&D project and/or are also used for other purposes than the R&D projects covered by the measure, will be taken into account only *pro rata* (i.e depreciation over the period of duration of the R&D project if applicable or *pro rata* of the capacity used for the R&D project).
- (21) The Czech authorities confirmed that costs related to phase-IV trials are eligible as long as they allow further scientific or technological advance.
- (22) The Czech authorities confirmed that for projects that have started before 1 February 2020, aid under this measure is only granted if it is necessary to accelerate works or to widen the scope of a project, and only the additional costs in relation to the acceleration efforts or the widened scope are eligible.
- (23) The Czech authorities confirmed that under this measure aid will not be granted to undertakings carrying out contract research on behalf of other undertakings.
- (24) Under the measure, the maximum allowable aid intensity is 75 % both for industrial research and experimental development.
- (25) The Czech authorities confirmed that aid is granted subject to the condition that the aid beneficiary shall commit to grant non-exclusive licences under non-discriminatory market conditions to third parties in the European Economic Area.
- (26) The Czech authorities confirmed that all individual aid under the scheme will be granted by 31 December 2020.
- (27) The Czech authorities confirmed that aid for Covid-19 relevant R&D projects may be cumulated with other aid for the same eligible costs provided the combined aid does not exceed the ceilings defined under points 35 (d) and (e) of the Temporary Framework.

2.8. Cumulation

- (28) The Czech authorities confirmed that, if aid under this measure is cumulated with *de minimis* aid⁷ and/or with aid under the General Block Exemption Regulation⁸, the Agricultural Block Exemption Regulation⁹ or the Fisheries Block Exemption Regulation¹⁰ respectively, the provisions of the relevant Regulations will be respected.
- (29) The Czech authorities confirmed that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (30) The Czech authorities confirmed that aid granted under the measure may be combined with support from other sources for the same eligible costs, provided the total amount of combined aid does not exceed the aid ceilings laid down in points 35(d) and (e) of the Temporary Framework.

2.9. Transparency, monitoring and reporting

- (31) The Czech authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework, including the obligation to publish relevant information on each individual aid granted under the measure on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting.

⁷ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

⁸ 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.

⁹ As defined in Article 2 (14) of the 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.

¹⁰ As defined in Article 3 (5) of the 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 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

3. ASSESSMENT

3.1. Existence of State aid

- (32) 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.
- (33) The measure is imputable to the State, since it is administered by the Ministry of Industry and Trade, and it is based on a national call for aid applications under the Czech Rise Up Programme – Smart measures against COVID – 19 2.0 (see recitals (7) and (8) of this decision).
- (34) The measure is financed through State resources, since it is financed from the State budget (see recital 10).
- (35) The notified measure confers an advantage on its beneficiaries in the form of direct grants (see recital (6)). The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.
- (36) The advantage granted by the measure is selective, since it will be awarded, upon application, only to certain undertakings and research organisations carrying out COVID-19 relevant research. In addition, the final beneficiaries of the measure are limited to those indicated in recitals (12) to (14).
- (37) The measure is liable to distort competition, since it strengthens the competitive position of certain undertakings, including research organisations that carry out economic activities¹¹. It also affects trade between Member States, since its beneficiaries are active in sectors in which intra-Union trade exists.
- (38) 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.

3.2. Lawfulness of the measure

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

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.

¹¹ Pursuant to paragraph 20 of the Framework for state aid for research and development and innovation, where a research organisation is used for both economic and non-economic activities, public funding falls under state aid rules only insofar as it covers costs linked to the economic activities. See Communication from the Commission — Framework for State aid for research and development and innovation OJ C 198, 27.6.2014, p. 1–29, para. 20.

- (41) Pursuant to Article 107(3)(c) TFEU the Commission may declare compatible with the internal market “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”.
- (42) By amending the Temporary Framework on 3 April 2020, the Commission acknowledged the need to take specific temporary measures enabling Member States to combat the health crisis caused by the COVID-19 outbreak. The measure aims at enhancing and accelerating COVID-19 relevant research to address the current emergency health crisis. It has been designed to meet the requirements of a specific category of aid (“Aid for COVID-19 relevant research and development”) described in section 3.6 of the Temporary Framework.
- (43) The Commission accordingly considers that the notified measure contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to fight the health crisis.
- (44) The Commission is satisfied that the measure meets all the conditions of the Temporary Framework, and in particular its section 3.6:
- Aid under the measure is limited to the eligible research areas listed in paragraph 35 of the Temporary Framework (see recitals (16) and (17) of this decision).
 - In accordance with point 35(a) of the Temporary Framework, aid is granted in the form of direct grants (see recital (6)).
 - For R&D projects started as of 1 February 2020, aid granted under the measure is deemed to have an incentive effect; for R&D projects started before 1 February 2020, aid granted under the measure is deemed to have an incentive effect provided the aid is necessary to accelerate or widen the scope of the project (see recital (22)). The measure therefore complies with point 35(b) of the Temporary Framework.
 - Eligible costs are defined under the measure in accordance with point 35(c) of the Temporary Framework (see recital (18)). All costs necessary for the duration of the R&D aided project are eligible for aid under the measure. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid under the measure, in line with point 35(b) of the Temporary Framework (see recital (22)).
 - The aid intensity under this measure is limited to 75% both for industrial research and experimental development activities and therefore complies with point 35(d) of the Temporary Framework (see recital (24)). The measure does not include a cooperation/collaboration bonus.
 - Aid granted under the measure may be combined with support from other sources for the same eligible costs, provided the total combined amount of aid does not exceed the aid ceilings laid down in points 35(d) and (e) of the Temporary Framework (see recital (30)).
 - Beneficiaries of aid under the measure shall commit to grant non-exclusive licences under market conditions to third parties in other EEA states (see

recital (25)). The measure therefore complies with point 35(g) of the Temporary Framework.

- Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019 (see recital (13)). The measure therefore complies with point 35(h) of the Temporary Framework.
- As required by point 49 of the Temporary Framework, individual aid under the notified measure shall not be granted after 31 December 2020 (see recital (11)).
- The Commission notes that the Czech authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework. The Czech authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (see recital (31)).

(45) In the light of the above elements, the Commission considers that the measure is compliant with the compatibility conditions set out by the Temporary Framework, through which the Commission took due consideration of the common objective pursued by such aid measures and their positive effects on tackling the health emergency crisis provoked by the COVID-19 outbreak when balancing them against the potential negative effects of such measures on the internal market.
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)(c) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President