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**Subject: State Aid SA.59536 (2020/N) – Czechia
COVID-19: Continuation of the support programme for businesses
in the cultural sector**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 18 November 2020, Czechia notified aid in the form of limited amounts of aid (“Continuation of the support programme for businesses in the culture sector affected by the COVID-19 pandemic caused by the SARS-CoV-2 virus - COVID - CULTURE”, the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).¹ The aid scheme “COVID

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, 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, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3, and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

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CULTURE” (the “first measure”) was approved by the Commission by Decision of 19 August 2020 in case SA.58213.²

- (2) Czechia exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958³ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Czechia considers that the COVID-19 outbreak is affecting 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 liquidity shortage faced by undertakings because of 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.
- (4) The Czech authorities consider that the COVID-19 outbreak and the related imposition of restrictions on cultural activity by the Czech Government has been affecting significantly the field of culture. According to the Czech authorities, the first measure, which consisted in aid in the form of direct grants, aimed mainly at supporting undertakings in the cultural sector for the cancellation or postponement of events scheduled for the spring and summer season (ending on the last day of the summer period, *i.e.*, 31 August 2020). They further submit that the first measure was planned by the Government under the presumption that the COVID-19-related restrictions on cultural activities would be lifted by autumn and that both new (*i.e.*, scheduled *ab initio* to take place after 31 August 2020) and postponed (*i.e.*, scheduled initially to take place before 31 August 2020) events would take place after summer.
- (5) However, as the health and epidemiological situation deteriorated in Czechia, COVID-19-related restrictions were gradually reactivated. Restrictions on the number of people allowed at outdoor and indoor cultural events were reintroduced and, on 5 October 2020, an emergency measure of the Czech Government prohibited again the organisation of all cultural activities.
- (6) The Czech authorities therefore consider that additional measures are needed in order support undertakings active in the cultural sector for losses suffered because of audience number limitations, cancelled or postponed events. In this regard, the Czech authorities submit that the music sector currently operates at 15 % of normal activity, and has an estimated loss of EUR 340.1 million (CZK 9 billion).⁴ In particular, organisers of major cultural events, such as concerts and festivals

² Commission Decision of 19 August 2020 in SA.58213 (2020/N) – Czech Republic COVID-19: Aid to the cultural sector, OJ C 294, 4/9/2020, p. 20 available at: https://ec.europa.eu/competition/state_aid/cases1/202034/287701_2183265_55_2.pdf

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

⁴ Exchange rate on 18 November 2020, 1 EUR = 26.401 CZK, based on the ECB foreign exchange reference rates. Source: <http://www.ecb.europa.eu/stats/eurofxref/>

with a large audience, are mostly affected. Furthermore, the Czech authorities submit that no more than 30% of the usual cultural events take place as the organisers cancel or postpone for 2021 events which were initially scheduled for autumn 2020. Performing artists participating in those events or working at cultural facilities (such as theatres or operas) were also affected by event cancellations or postponements.

- (7) The objective of the measure is to support undertakings (including both business entities and self-employed persons providing artistic or professional technical support) in the cultural sector in Czechia for losses endured due to COVID-19 governmental measures. In particular, the measure aims at enabling businesses active in the cultural sector to continue their activity once the COVID-19 restrictions are lifted, to provide financial support to freelance artists working in the fields of music, theatre and dance as well as to companies organising cultural events or providing technical support for such events.
- (8) Czechia confirmed that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the Czech territory. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (9) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

- (10) The measure provides aid in the form of direct grants. The overall nominal value of the grants shall not exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges.

2.2. Legal basis

- (11) The legal bases for the measure are:
 - the draft Government Resolution No. 1036 of 14 October 2020 on the Continuation of the support programme for businesses in the culture sector affected by the COVID-19 pandemic caused by the SARS-CoV-19 virus “COVID – CULTURE”;
 - the Government Resolution No. 769 of 20 July 2020 approving the “COVID – CULTURE” programme of support for business entities in the field of culture affected by the worldwide spread of COVID-19 caused by the SARS-CoV-19 virus;
 - Act No. 155/1995 Coll. Pension Insurance Act and
 - Act No. 218/2000 Coll., on budgetary rules and on the amendment of related acts, as amended.

2.3. Administration of the measure

- (12) The Ministry of Industry and Trade and the Ministry of Culture are responsible for administering the measure (i.e. reviewing the applications and granting the aid).

2.4. Budget and duration of the measure

- (13) The budget of the measure is EUR 28.4 million (CZK 750 million). The measure is a scheme financed by the State budget of the Czech Republic.
- (14) Aid may be granted under the measure as from its approval until no later than 30 June 2021.

2.5. Beneficiaries

- (15) The beneficiaries of the measure are undertakings which are organising, facilitating or providing cultural events⁵ or are carrying out continuous activities in the cultural sector⁶ in Czechia. More specifically, beneficiaries include:
- i) business entities with primary activity the organisation or provision of music, music-drama, dance and theatre programs, the primary objective of which is to provide cultural services to the public in the field of Performing Arts, including those whose business in the field of culture is a secondary economic activity;⁷ and
 - ii) self-employed persons providing artistic or professional technical support in the cultural sector.
- (16) Financial institutions are excluded as eligible beneficiaries.
- (17) Aid may not be granted under the measure to medium⁸ and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)⁹ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not

⁵ The unofficial translation of draft Government Resolution No. 1036 of 14 October 2020, provided by the Czech authorities upon notification, defines *cultural event* as “the execution of a cultural service to the public for the purpose of watching a live artistic performance”.

⁶ The unofficial translation draft Government Resolution No. 1036 of 14 October 2020, provided by the Czech authorities upon notification, defines *continuous activity in culture* as “the operation of theatres, music clubs, artistic management agencies, cultural centres and other similar facilities focusing on systematic activities in the provision or mediation of cultural services to the public”.

⁷ Such as non-governmental non-profit organizations that perform secondary economic activities in the field of culture.

⁸ As defined in Annex I to 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, OJL 187, 26.6.2014, p. 1.

⁹ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014.

subject to collective insolvency procedure under national law and they have not received rescue aid¹⁰ or restructuring aid.¹¹

2.6. Sectoral and regional scope of the measure

(18) The measure is open to the cultural sector and excludes the financial sector. It applies to the whole territory of Czechia.

2.7. Basic elements of the measure

(19) The grants will be paid on the basis of a decision issued by the granting authority (see recital (12) above) upon submission of an application for a grant.

(20) General conditions of eligibility of applicants for the grants are the following:

- to have been prevented or restricted from pursuing the activity relating to the provision of cultural services to the public because of COVID-19 government measures;
- to submit only one application for support under the measure;
- to pursue a primary economic activity in the cultural sector when submitting the application and for the entire period of support;
- to be registered as a tax payer pursuant to the provisions of the Czech Tax Code; and
- to not be in arrears with the payment of obligations due by 10 March 2020, at the time of application.

Beneficiaries in the 'business entity' category

(21) As regards the beneficiaries falling under the 'business entity' category (see recital (15) above), the maximum amount of aid is CZK 10 million (approx. EUR 378 000). These beneficiaries will be able to apply for a grant covering up to 50% of their costs incurred in vain because of audience number limitations, postponed or cancelled cultural events and up to 80% of costs incurred for continuous cultural activities. The costs incurred for continuous cultural activities also include overhead costs of the business entities.

(22) Beneficiaries under the business entity category cannot claim expenses that they have already claimed under the COVID-Culture program approved by the Commission with the decision of 19 August 2020 or under another grant or support program.

(23) The expenses used as a reference point/proxy to calculate the aid amount must meet the following basic criteria:

¹⁰ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

¹¹ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

- The expenses must have been incurred in connection with the preparation, organisation, cancellation or postponement of either (i) cultural events and individual projects that were to be held in the period between 10 March 2020 to 31 December 2020, or (ii) continuous cultural activities that were to take place between 1 March 2020 and 31 December 2020;
 - The expenses must have been incurred in vain, because of the limitations, cancellations or postponements imposed by the adoption of COVID-19-related governmental measures;
 - As regards cultural events and individual projects, the aid amount will be calculated on the basis of expenses incurred in the period from 1 October 2019 to 20 November 2020;
 - As regards expenses for continuous cultural activities, the aid amount will be calculated on the basis of expenses incurred in the period from 1 March 2020 to 20 November 2020.
- (24) The following expenses will not be taken into account for the calculation of aid granted under the measure:
- investment expenses;
 - expenses which were incurred for a postponed event but are eventually utilised in the future, when the event takes place (and therefore the expenses are not considered as incurred in vain);
 - expenses which were refunded or remitted (*e.g.*, compensation from insurance, compensation by voucher).
- (25) Conditions of eligibility of business entities:
- to provide information on the postponed or cancelled cultural events or continuous cultural activities for which they claim support under the measure;
 - to not be considered insolvent and to not meet the conditions of the Czech Insolvency Act on the commencement of collective insolvency proceedings;
 - to not be in liquidation;
 - to not have an enforcement order on their property.

Beneficiaries in the 'self-employed' category

- (26) As regards the beneficiaries falling in the category of self-employed persons providing artistic or professional technical support in the cultural sector (see recital (15) above), they are eligible for a “one-off” grant set at CZK 60 000 (approx. EUR 2 273). This support will be provided to individuals for music, theatre or dance ‘art projects’ which are products of their own creative activities. The grants also intend to cover continuous artistic activity or the preparatory

phase of the art project. In the case of art projects involving more than one person, each participant must submit their own application for a grant.

- (27) Conditions of eligibility of self-employed persons:
- to pursue an activity in the fields of music, theatre and/or dance;
 - to be a citizen of Czechia or a foreigner with permanent residence in Czechia and to be a tax resident of Czechia;
 - to not be a student of a secondary school or conservatory or a student of a higher vocational school or university in Czechia, including a full-time doctoral study programme at a university in Czechia, during the implementation of the art project for which the support is provided;
 - to not have any overdue arrears towards the State budget, State funds, the budget of a territorial self-governing unit in Czechia or towards a health insurance company, as of the submission of the application;
 - to not be in a primary employment relationship (*e.g.*, teaching activities, employment in a theatre). The support applies to self-employed persons (business ID / Tax ID) for their primary self-employed activity or self-employed persons with a secondary employment relationship (or who work under a copyright agreement);
 - to not receive retirement pension or maternity/parental leave allowance (*i.e.*, the activity reported may not be a secondary source of income); and
 - to not have an interrupted or suspended trade licence.

2.8. Cumulation

- (28) The Czech authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations¹² or the GBER the provisions and cumulation rules of those Regulations are respected.
- (29) The Czech authorities confirm 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 confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in points 22(a) of that framework, will be respected.

¹² 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) 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, 26.4.2012, p. 8).

2.9. 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 above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹³).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (32) 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

- (33) 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.
- (34) The measure is imputable to the State, since it is administered by the Ministry of Industry and Trade and the Ministry of Culture (recital (12)) and it is based on a national law (recital (11)). It is financed through State resources, since it is financed by the State budget of the Czech Republic (recital (13)).
- (35) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (10)). The measure thus confers on those beneficiaries an advantage which they would not have had under normal market conditions.
- (36) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular in particular undertakings active in the cultural sector, excluding the financial sector (recitals (15) to (17), (20), (25), (27)).
- (37) 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.
- (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.

¹³ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

3.3. Compatibility

- (39) 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.
- (40) 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*”.
- (41) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in 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*”.
- (42) The measure aims at ensuring liquidity for undertakings active in the cultural sector at a time when the normal functioning of 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.
- (43) 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 preserve employment and economic continuity 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 (“*Limited amounts of aid*”) described in section 3.1 of the Temporary Framework.
- (44) 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 aid takes the form of direct grants (recital (10)).

The overall nominal value of the grants shall not exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (10)). The measure therefore complies with point 22(a) of the Temporary Framework;
 - Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (13). The measure therefore complies with point 22(b) of the Temporary Framework;
 - Aid may not be granted under the measure to medium¹⁴ and large enterprises that were already in difficulty on 31 December 2019 (see

¹⁴ As defined in Annex I to Commission Regulation (EU) No 651/2014.

recital (17)). The measure therefore complies with point 22(c) of the Temporary Framework; Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid¹⁵ or restructuring aid¹⁶ (see recital (17)). The measure therefore complies with point 22(c)bis of the Temporary Framework;

- Aid will be granted under the measure no later than 30 June 2021 (see recital (14)). The measure therefore complies with point 22(d) of the Temporary Framework;

(45) The Czech authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (31)). 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 (recitals (28)-(30)).

(46) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

4. CONCLUSION

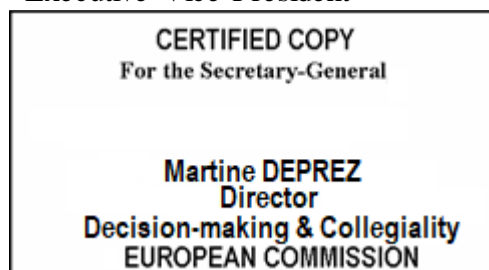
The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President



¹⁵ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

¹⁶ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.