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**Subject: State Aid SA.59899 (2020/N) – Czech Republic  
COVID 19 – Targeted Employment Program Antivirus Plus**

**State Aid SA.59334 (2020/N) – Czech Republic  
COVID 19 – Amendment to wage subsidy scheme (SA.57102)**

Excellency,

## **1. PROCEDURE**

- (1) By electronic notification of 22 December 2020, the Czech Republic notified aid in the form of limited amounts of aid (“Measure 1”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)<sup>1</sup>. The notification was registered under State Aid case SA.59899 (2020/N).

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<sup>1</sup> 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

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- (2) On the same day, the Czech Republic notified by electronic notification amendments (“Measure 2”) to the aid scheme (“the existing aid scheme”) previously approved by Decision of 27 July 2020 in case SA.57102 (“the initial Decision”)<sup>2</sup> under the Temporary Framework. The notification was registered under State aid case SA.59334 (2020/N).
- (3) In relation to the above two notifications (SA.59899 (2020/N) and SA.59334 (2020/N)), the Czech Republic 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 1/1958<sup>3</sup>, and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURES**

- (4) The Czech Republic considers that the COVID-19 outbreak continues to affect the real economy and put at risk the jobs of workers and employees of undertakings that have reduced or suspended partially or entirely their activities due to the state of emergency and containment measures enforced by the national authorities. As a result, the risk of significant redundancies remains<sup>4</sup>. Both notified measures thus aim to preserve employment of persons who, due to the COVID-19 outbreak, would otherwise have been laid off, and to allow undertakings to resume their activities immediately after the crisis.
- (5) The Czech Republic confirmed that the aid under Measure 1 and Measure 2 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 territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (6) The compatibility assessment of the notified measures is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework (as regards Measure 1) and sections 2 and 3.10 of the Temporary Framework (as regards Measure 2).

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on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

<sup>2</sup> Commission Decision C (2020) 5265 final of 27 July 2020 - SA.57102 (2020/N)

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

<sup>4</sup> The Czech Republic declared the first state of emergency between 12 March 2020 and 17 May 2020 to curb the impact of the COVID-19 pandemic, closing schools, restricting events and the operation of shops, restaurants and certain other establishments, and significantly limiting gathering of people. Due to a second wave of the COVID-19 outbreak, certain restrictions were re-introduced in September 2020. A second state of emergency was declared on 5 October 2020 (and currently lasts until 22 January 2021). This brought new restrictions on events, operation of schools, shops, catering facilities and other businesses. Based on the forecast submitted by the Member State, the crisis significantly affects the whole economy. The real GDP is expected to drop by 6.6% in 2020. The unemployment rate is expected to grow from 2% in 2019 to 2.6% in 2020 and to 3.4% in 2021 (although employment support measures approved under SA.57102 have been in place since 6 April 2020). To help households and firms through the crisis, the government announced a stimulus package involving direct support measures and public guarantees.

## 2.1. Description of Measure 1

### 2.1.1. *The nature and form of aid*

- (7) Measure 1 provides aid in the form of direct grants.

### 2.1.2. *Legal basis*

- (8) The legal basis for Measure 1 is Government Resolution No. 353 of 31 March 2020, as amended<sup>5</sup>, adopted on the basis of § 120 of Act No. 435/2004 Coll., Employment Act.

### 2.1.3. *Administration*

- (9) The Labour Office of the Czech Republic (“Labour Office”) is responsible for administering Measure 1.

### 2.1.4. *Budget and duration*

- (10) The estimated budget of Measure 1 is CZK 4.2 billion (ca. EUR 160 million<sup>6</sup>). The measure will be covered from the State budget.
- (11) Aid under Measure 1 may be granted until no later than 30 June 2021.

### 2.1.5. *Beneficiaries*

- (12) The beneficiaries of Measure 1 are undertakings who employ personnel (with the exception of employers whose wage costs are covered from public budgets<sup>7</sup>) and who were prohibited or substantially restricted by the Czech Government, the Ministry of Health or other State institutions for protection of public health in carrying out their economic activities during the period of the COVID-19 outbreak.

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<sup>5</sup> Government Resolution No. 353 has been amended by Government Resolution No. 481 of 27 April 2020, Government Resolution No. 581 of 25 May 2020, Government Resolution No. 604 of 1 June 2020, Government Resolution No. 635 of 8 June 2020, Government Resolution No. 811 of 27 July 2020, Government Resolution No. 876 of 24 August 2020, Government Resolution No. 1039 of 14 October 2020, Government Resolution No. 1098 of 26 October 2020 and Government Resolution No. 1365 of 21 December 2020.

<sup>6</sup> Based on the exchange rate 26.395 CZK/EUR.

<sup>7</sup> The excluded employers are listed in §109 paragraph 3 of Act No. 262/2006 Coll., the Labour Code, and encompass the State, territorial self-governing units, State funds, contributory organizations, school legal entities established by the Ministry of Education, Youth and Sports, regions, municipality or voluntary unions of municipalities or regional councils of the cohesion region.

- (13) However, large and medium undertakings<sup>8</sup> that were already in difficulty (within the meaning of the General Block Exemption Regulation<sup>9</sup>) on 31 December 2019 are excluded from Measure 1. Micro or small enterprises<sup>10</sup> that were already in difficulty on 31 December 2019 can benefit from Measure 1 provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid<sup>11</sup> or restructuring aid<sup>12</sup>.
- (14) Furthermore, undertakings for which the overall nominal value of State aid granted under Section 3.1 of the Temporary Framework (including State aid granted under Measure 1) would exceed EUR 800 000 are excluded from Measure 1.
- (15) Undertakings active in the fishery and aquaculture sector are excluded from Measure 1 if the overall nominal value of State aid granted to these undertakings under Section 3.1 of the Temporary Framework (including State aid granted under Measure 1) exceeds EUR 120 000.
- (16) Undertakings active in the primary production of agricultural products are excluded from Measure 1 if the overall nominal value of State aid granted to these undertakings under Section 3.1 of the Temporary Framework (including State aid granted under Measure 1) exceeds EUR 100 000.

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<sup>8</sup> 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, OJ L 187, 26.6.2014, p. 1, Annex I to Commission Regulation (EC) 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 on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1 and Annex I to 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 on the Functioning of the European Union OJ L 369, 24.12.2014, p. 37.

<sup>9</sup> 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. Wherever reference is made in this Temporary Framework to the definition of “undertaking in difficulty” as contained in Article 2(18) of Regulation (EU) No 651/2014, it shall be read as also referring to the definitions contained in Article 2(14) of Regulation (EU) No 702/2014 and Article 3(5) of Regulation 1388/2014 respectively.

<sup>10</sup> Cf. footnote 8.

<sup>11</sup> 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 this Communication.

<sup>12</sup> 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 this Communication.

### 2.1.6. Sectoral and regional scope

- (17) Measure 1 is open only to sectors which the Government, the Ministry of Health or other State institutions for protection of public health prohibited or substantially restricted in carrying out economic activities during the period of the COVID-19 outbreak<sup>13</sup>. The financial sector is not among these prohibited/restricted sectors and cannot benefit from Measure 1.
- (18) Measure 1 applies to the whole territory of the Czech Republic.

### 2.1.7. Basic elements of Measure 1

- (19) The Czech authorities explain that due to the spread of COVID-19, the declaration of the state of emergency and containment measures enforced in this respect by the national authorities, certain undertakings have been ordered to close their businesses or substantially reduce their economic activities. The employees of these undertakings therefore had to stop working. According to the Czech Labour Code<sup>14</sup>, in the case of such “obstacles to work” the employer is obliged to pay a 100% wage compensation to the employee even though the employee is not working<sup>15</sup>. The employers therefore bear the wage costs without being compensated by any activity of their employees. The objective of Measure 1 is to mitigate the negative effects of COVID-19 outbreak on these employers and avoid that this situation results in redundancies.
- (20) The aid under Measure 1 amounts to 100% of the employer’s wage costs (wage compensation and related social security and public health insurance contributions), however only up to the maximum of CZK 50 000 CZK (ca. EUR 1 894) per employee per month. The overall aid granted to an undertaking must not exceed EUR 800 000 (or EUR 120 000 in case of an undertaking active in the fishery and aquaculture sector and EUR 100 000 in case of an undertaking active in the primary production of agricultural products).
- (21) Measure 1 applies to cases where closure or restriction of operations was directly ordered by the Government, the Ministry of Health or other State institutions for protection of public health<sup>16</sup>.
- (22) Aid under Measure 1 can be granted with respect to wage costs incurred from 1 October 2020 until 28 February 2021.

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<sup>13</sup> This concerns establishments which were considered particularly prone to contribute to the spread of Covid-19 and which the Government, the Ministry of Health or the State institutions for protection of health therefore ordered to close or restrict their operations. Such restrictions and closures were ordered by crisis measures adopted on the basis of Government Resolution No. 194 of 12 March 2020 and Government Resolution No. 957 of 30 September 2020 declaring in the Czech Republic the state of emergency, and by further extraordinary measures ordered by the Government, the Ministry of Health or other State institutions for protection of public health in accordance with Act No. 258/2000 Coll., on the protection of public health, as amended.

<sup>14</sup> Act No. 262/2006 Coll., Labour Code, as amended.

<sup>15</sup> §208 of the Labour Code.

<sup>16</sup> Cf. footnote 13.

- (23) In order to receive the aid, the employer must submit an application with the Labour Office, on the basis of which the Labour Office and the employer conclude a granting agreement. The employer may apply for the aid for a maximum period starting two calendar months preceding the submission of the application and ending on 28 February 2021.
- (24) Furthermore, after each month for which the aid is claimed, the employer must submit a report listing the wage compensations paid to the employees (“wage compensation report”). In the wage compensation report, the employer needs to declare the existence of the obstacles to work related to the prohibition or substantial restriction of economic activities by the Government, the Ministry of Health or other State institutions for protection of public health during the COVID-19 outbreak and show that the relevant employees indeed did not work during the period for which the subsidy is claimed. The wage compensation report must be submitted with the Labour Office before the end of the month following the month for which the aid is claimed.
- (25) The Labour Office provides the aid within one month from the date of the submission of the wage compensation report. This means that the subsidies will not be paid out later than 30 June 2021.
- (26) For the agricultural, fisheries and aquaculture sectors, the Czech authorities confirmed that:
- where the beneficiaries are undertakings active in the processing and marketing of agricultural products, the aid is not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned;
  - aid to undertakings active in the primary production of agricultural products<sup>17</sup> is not fixed on the basis of the price or quantity of products put on the market;
  - aid to undertakings active in the fishery and aquaculture sector<sup>18</sup> does not concern any of the categories of aid referred to in Article 1, paragraph (1) (a) to (k) of Commission Regulation (EU) No 717/2014<sup>16</sup>;
  - where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22 (a) and 23 (a) of the Temporary Framework, it will be ensured, by appropriate means such as separation of accounts, that for each of these activities the relevant ceiling is respected and that the overall maximum amount of EUR 800 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23 (a) of the Temporary Framework, the overall maximum amount of EUR 120 000 is not exceeded per undertaking.

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<sup>17</sup> All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.

<sup>18</sup> Commission Regulation (EC) No (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 90, 28.6.2014, p. 45

## **2.2. Description of Measure 2 (Amendment to wage subsidy scheme SA.57102)**

### *2.2.1. Main elements of Measure 2*

- (27) The amendments notified under Measure 2 extend the duration of the existing aid scheme, the reference period in respect of which the aid is granted, increase the budget and partially change the scope of beneficiaries under the existing aid scheme. The amendments also introduce a co-financing of the existing aid scheme from the European Structural and Investment Funds, more precisely from the European Social Fund.
- (28) The overall objective of the existing aid scheme is to preserve employment of persons who, due to the COVID-19 outbreak, would otherwise have been laid off and to allow undertakings to resume their activities immediately after the crisis. The notified amendments pursue the same objective.

### *2.2.2. Legal basis*

- (29) The legal basis of the existing aid scheme, is the Government Resolution No. 353 of 31 March 2020, as amended<sup>19</sup>, adopted on the basis of § 120 of Act No. 435/2004 Coll., Employment Act. The amendments notified under Measure 2 are based on Government Resolution No. 811 of 27 July 2020, Government Resolution No. 876 of 24 August 2020, Government Resolution No. 1039 of 14 October 2020, Government Resolution No. 1098 of 26 October 2020 and Government Resolution No. 1365 of 21 December 2020, which further amended the legal basis of the existing aid scheme.

### *2.2.3. Description of Measure 2*

#### *2.2.3.1. Beneficiaries*

- (30) The beneficiaries of the existing aid scheme are undertakings who employ personnel, with the exception of employers whose wage costs are covered from public budgets<sup>20</sup>, who were negatively affected by the COVID-19 outbreak.
- (31) The amendments notified under Measure 2 restrict the scope of beneficiaries to exclude from the aid under the existing aid scheme those undertakings who, for the same reference period, benefit from Measure 1.

#### *2.2.3.2. Budget, duration and reference period*

- (32) The estimated budget of the existing aid scheme, as amended by Measure 2, is CZK 25.6 billion (ca. EUR 970 million). The existing aid scheme, as amended by Measure 2, will be covered from the State budget and from the European Social Fund.

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<sup>19</sup> Government Resolution No. 353 has been amended by Government Resolution No. 481 of 27 April 2020, Government Resolution No. 581 of 25 May 2020, Government Resolution No. 604 of 1 June 2020 and Government Resolution No. 635 of 8 June 2020.

<sup>20</sup> The excluded employers are listed in §109 paragraph 3 of Act No. 262/2006 Coll., the Labour Code, and encompass the State, territorial self-governing units, State funds, contributory organizations, school legal entities established by the Ministry of Education, Youth and Sports, regions, municipality or voluntary unions of municipalities or regional councils of the cohesion region.

(33) The amendments notified under Measure 2 extend the reference period in respect of which the aid can be granted under the existing aid scheme until 28 February 2021.

(34) Aid under the existing aid scheme, as amended by Measure 2, may be granted until no later than 30 June 2021.

#### 2.2.3.3. Basic elements of the measure

(35) The amount of aid under the existing scheme as amended by Measure 2 depends on the type of obstacles to work:

(a) in **Mode A** the wage subsidy amounts to 80% of the wage costs, however only up to the maximum of CZK 39 000 CZK (ca. EUR 1 478) per employee per month.

– *Mode A* applies to cases where an employee is ordered to quarantine. In such a case, the employer is obliged to pay the employee a wage compensation for the first 14 days.

– *Mode A* further applies to cases where closure or restriction of operations was directly ordered by the Government, the Ministry of Health or other State institutions for protection of public health<sup>21</sup> and where the employer does not benefit from Measure 1 for the same reference period.

(b) in **Mode B** the wage subsidy amounts to 60% of the wage costs, however only up to the maximum of CZK 29 000 (ca. EUR 1 099) per employee per month.

– *Mode B* applies in cases where the employer has restricted or closed down operations because of the reduction of its sales, the lack of input supplies, due to the absence of a significant proportion of employees or for other reasons related to COVID-19.

(36) Pursuant to the amended wage subsidy scheme, the wage subsidy can be granted with respect to wage costs (wage compensation and related social security and public health insurance contributions) incurred from 12 March 2020 until 28 February 2021.

(37) In order to receive the wage subsidy, the employer must submit an application with the Labour Office, on the basis of which the Labour Office and the employer conclude a granting agreement. The employer may apply for the subsidy for a maximum period starting two calendar months preceding the submission of the application (however, not before 12 March 2020) and ending on 28 February 2021.

(38) Furthermore, after each month for which the subsidy is claimed, the employer must submit a report listing the wage compensations paid to the employees (“wage compensation report”). In the wage compensation report, the employer needs to declare the existence of the relevant obstacles to work related to the

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<sup>21</sup> Cf. footnote 13.



COVID-19 outbreak and show that the relevant employees indeed did not work during the period for which the subsidy is claimed. The wage compensation report must be submitted with the Labour Office before the end of the month following the month for which the subsidy is claimed.

- (39) The Labour Office provides the subsidy within one month from the date of the submission of the wage compensation report. This means that the subsidies will not be paid out later than 30 June 2021.
- (40) The Czech authorities confirm that the rules under European Social Fund will be respected.
- (41) The other elements of the existing aid scheme (described in recitals (19) – (21) of the initial Decision) remain unchanged.

### **2.3. Cumulation**

- (42) The aid ceilings and cumulation maxima fixed under the notified measures will apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the European Social Fund.
- (43) The Czech authorities confirm that aid granted under Measure 1 and Measure 2 cannot be cumulated with:
  - aid under *de minimis* Regulations<sup>22</sup> or Block Exemption Regulations<sup>23</sup>;
  - other forms of Union financing;
  - aid granted under other measures approved by the Commission under other sections of the Temporary Framework.

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<sup>22</sup> 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, 26.4.2012, p. 8).

<sup>23</sup> 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, 26.6.2014, p. 1, Commission Regulation (EC) 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 on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1 and 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 on the Functioning of the European Union OJ L 369, 24.12.2014, p. 37.

- (44) As regards Measure 1, 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) and 23(a) of that framework, will be respected.
- (45) The Czech authorities further confirm that aid granted under Measure 1 and Measure 2 cannot be combined with each other for the same reference period and with aid granted under other generally available measures or with aid schemes in the form of employment support measures.

#### **2.4. Monitoring and reporting**

- (46) 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 and EUR 10 000 in the agricultural and fisheries sector on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting<sup>24</sup>).

### **3. ASSESSMENT**

#### **3.1. Lawfulness of the measure**

- (47) The Commission observes that Czech Republic has started to grant the aid based on the notified measures before the Commission has adopted its decision on the notified scheme. The Commission regrets that Czech Republic put the aid according to the notified schemes into effect, in breach of Article 108(3) TFEU.

#### **3.2. Existence of State aid**

- (48) For a measure to be categorised as State 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.

##### *3.2.1. Existence of State aid in Measure 1*

- (49) Measure 1 is imputable to the State, since it is administered by the Labour Office of the Czech Republic and is based on Government Resolution No. 353/2020 of 31 March 2020, as amended (see recitals (8) and (9) above). They are financed through State resources, since they are financed by public funds (recital (10)).
- (50) Measure 1 confers an advantage on its beneficiaries in the form of direct grants (see recital (7)). The measure thus confers on those beneficiaries an advantage that they would not have had under normal market conditions (see recital (19)).

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<sup>24</sup> 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.

- (51) Measure 1 is awarded only to undertakings that belong to sectors which the Government, the Ministry of Health or other State institutions for protection of public health prohibited or substantially restricted in carrying out economic activities during the period of the COVID-19 outbreak<sup>25</sup>. Businesses from other sectors, which have not been ordered to close or substantially restrict their activities but had to do so due to other reasons related to the outbreak of COVID-19 (e.g. lack of demand/supply, absence of a significant proportion of employees) are not eligible for aid under Measure 1. Thus, the measure confers a selective advantage.
- (52) Measure 1 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.
- (53) In view of the above, the Commission concludes that Measure 1 constitutes aid within the meaning of Article 107(1) TFEU. The Czech authorities do not contest that Measure 1 involves aid.

### 3.2.2. *Existence of State aid in Measure 2*

- (54) The qualification of the existing aid scheme as State aid was established in the initial Decision. The modifications introduced by the amendments notified under Measure 2 do not introduce changes in relation to the assessment of the existence of State aid and therefore they do not affect the conclusions reached in the initial Decision. In particular, the extension of the duration of the existing aid scheme, the modification of the reference period in respect of which the aid is granted, the increase of the budget of the existing aid scheme and its co-financing by the European Social Fund have no impact in relation to the assessment of the existence of State aid. The scope of beneficiaries is further restricted and therefore the advantage granted remains selective. The Commission therefore refers, for this analysis, to recitals (27) to (31) of the initial Decision. The Czech authorities do not contest that the amendments notified under Measure 2 involve aid.

### 3.3. **Compatibility**

- (55) Since Measure 1 and Measure 2 involve State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether those measures are compatible with the internal market.
- (56) 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*”.
- (57) 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*

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<sup>25</sup> In particular restrictions and closures ordered on the basis of Government Resolution No. 194 of 12 March 2020 and Government Resolution No. 957 of 30 September 2020 declaring in the Czech Republic the state of emergency, and by further crisis measures ordered by the Government, the Ministry of Health or other State institutions for protection of public health in accordance with Act No. 258/2000 Coll., on the protection of public health, as amended. The restricted sectors include for example operation of catering, accommodation, retail sale etc.

*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*”.

- (58) Both, Measure 1 and Measure 2, aim at preserving employment and/or avoiding redundancies during the COVID-19 outbreak, which is affecting the wider economy and leading to severe disturbances of the real economy of the Member States.
- (59) Measure 1 and Measure 2 are two 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 measures to preserve employment and economic continuity is widely accepted by economic commentators and they are of a scale which can be reasonably anticipated to produce effects across the entire Czech economy. Furthermore, Measure 1 has been designed to meet the requirements of a specific category of aid (“*Aid in the form of limited amounts of aid*”) described in section 3.1 of the Temporary Framework. Measure 2 has been designed to meet the requirements of a specific category of aid (“*Aid in the form of wage subsidies*”) described in section 3.10 of the Temporary Framework.

### 3.3.1. *Compatibility of Measure 1 with the Temporary Framework*

- (60) The Commission considers that Measure 1 is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meet all the conditions of the Temporary Framework. In particular:
- The aid takes the form of direct grant (see recital (7)).
  - The overall nominal value of the direct grant shall not exceed EUR 800 000 per undertaking (see recitals (14) and (20)); all figures used must be gross, that is, before any deduction of tax or other charges. Measure 1 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 (10). Measure 1 therefore complies with point 22(b) of the Temporary Framework;
  - Aid may not be granted under the measure to medium and large enterprises<sup>26</sup> that were already in difficulty on 31 December 2019 (see recital (13)). Measure 1 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

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<sup>26</sup> 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, OJ L 187, 26.6.2014, p. 1.

rescue aid<sup>27</sup> or restructuring aid<sup>28</sup> (see recital (13)). Measure 1 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 recitals (11) and (25)). Measure 1 therefore complies with point 22(d) of the Temporary Framework;
- Aid granted to undertakings active in the processing and marketing of agricultural products is not being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers (recital (26)). Measure 1 therefore complies with point 22(e) of the Temporary Framework.
- The overall nominal value of the direct grant does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector (see recital (15)) or EUR 100 000 per undertaking active in the primary production of agricultural products (see recital (16)). Measure 1 therefore complies with point 23(a) of the Temporary Framework;
- Aid granted to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market (see recital (26)). Measure 1 therefore complies with point 23(b) of the Temporary Framework;
- Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014 (see recital (26)). Measure 1 therefore complies with point 23(c) of the Temporary Framework.
- Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Czech Republic will ensure, by appropriate means such as separation of accounts that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 800 000 is not exceeded per undertaking (see recital (26)). Where an undertaking is active in the sectors covered by point 23 (a) of the Temporary Framework, the overall maximum amount of EUR 120 000 is not exceeded per undertaking (see recital (26)). The measure therefore complies with point 23bis of the Temporary Framework.
- The Czech authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (see recital (46)). The Czech authorities further confirm that the aid under Measure 1 may not be cumulated with other aid (recital (43)).

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<sup>27</sup> 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.

<sup>28</sup> 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.

### 3.3.2. *Compatibility of Measure 2 with the Temporary Framework*

- (61) The Commission has examined the amendments notified under Measure 2 pursuant to Article 107(3)(b) TFEU.
- (62) In the initial Decision, the Commission concluded that the existing aid scheme fulfilled the conditions set out Section 3.10 of the Temporary Framework and was therefore compatible with the internal market on the basis of Article 107(3)(b) TFEU. The Commission refers to its compatibility analysis as set out in recitals (32) to (39) of the initial Decision.
- (63) The amendments notified under Measure 2 extend the duration of the existing aid scheme, the budget and the reference period in respect of which the aid can be granted. They further introduce a partial financing from the European Social Fund and partially change the scope of beneficiaries under the existing aid scheme.
- (64) The extension of the duration of the existing aid scheme, the budget and the reference period in respect of which the aid can be granted is a response of the Czech Republic to the lasting COVID-19 pandemic which continues to affect the real economy and put at risk the jobs in sectors particularly affected by the pandemic. Measure 2 therefore aims at preserving employment of persons who, due to the continuing COVID-19 outbreak, would otherwise have been laid off, and to allow undertakings to resume their activities immediately after the crisis.
- (65) By restricting the scope of the beneficiaries under the existing aid scheme, the amendments notified under Measure 2 reflect the introduction of Measure 1 and prevent a cumulation of aid under the two measures for the same reference period.
- (66) In relation to the introduction of co-financing from the European Social Fund, the Czech authorities confirm that the rules under European Social Fund will be respected (see recital (40)).
- (67) The modifications introduced by the notified amendment, which concern the duration, the budget and the source of financing of the scheme (see recitals (32) and (34)), the scope of beneficiaries (see recital (35)) and the period in respect of which the aid can be granted (see recitals (33) and (36)) have no impact on the compatibility of the scheme, as amended. Finally, the amendments include minor adjustments to the application procedure (see recitals (37) to (39)), which have no impact on the compatibility of the existing aid scheme.
- (68) Apart from the amendments referred to in recitals (27) to (40), the Commission notes that there are no other alterations to the existing aid scheme (see recital (41)).
- (69) The Commission therefore considers that the amendments notified under Measure 2 do not affect the compatibility analysis of the existing aid scheme as set out in the initial Decision.

3.3.3. *Conclusion on compatibility of Measure 1 and Measure 2 with the Temporary Framework*

- (70) The Commission concludes that both, Measure 1 and Measure 2, are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since they meet all the relevant conditions of the Temporary Framework.

**4. CONCLUSION**

The Commission has accordingly decided not to raise objections to the aid awarded pursuant to the notified measures 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/eojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President