



EUROPEAN COMMISSION

Brussels, 30.7.2021
C(2021) 5856 final

PUBLIC VERSION

This document is made available for information purposes only.

**Subject: State Aid SA.62375 (2021/N) – Czechia - COVID-19:
Damage compensation scheme for rail passenger transport operators**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, on 15 June 2021, the Czech authorities notified to the Commission, in accordance with Article 108(3) of the Treaty of the Functioning of the European Union (TFEU), an aid scheme supporting rail passenger transport (“the scheme” or “the measure”)¹. Under the measure, the Czech authorities will provide compensation to rail passenger transport operators for damage suffered during the period between 12 March 2020 and 30 June 2020 as a result of the COVID-19 outbreak.
- (2) Czechia exceptionally agreed to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,² and to have this Decision adopted and notified in English.

¹ The Commission services requested additional information from Czechia on 24 and 25 June and on 2, 12, 13, 14, 17 and 19 July 2021 to which the latter replied on 24 June and 1, 7, 12, 13, 14 July and on 19 July 2021. The Commission services and the Czech authorities held telephone calls on 2 and on 13 July 2021.

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

His Excellency Jakub KULHÁNEK
Minister of Foreign Affairs of the Czech Republic
Loretánské náměstí 5
118 00 Praha 1, Czech Republic

2. DESCRIPTION OF THE MEASURE

2.1. The COVID-19 outbreak in Czechia and the containment measures taken by the Czech authorities

- (3) The first three cases of the infectious disease SARS-CoV-2 (COVID-19) in Czechia were confirmed on 1 March 2020.
- (4) As in other countries, in response to the COVID-19 outbreak, Czechia has taken sequential mitigation measures (“the containment measures”) to prevent the spread of COVID-19 in the country, as summarised below³, following the declaration of the state of emergency as of 12 March 2020.⁴ Non-compliance with the limitations imposed or violation of the rules was generally subject to sanctions.

2.1.1. International rail passenger transport

- (5) As indicated by the Czech authorities, from 12 March 2020⁵ to 30 June 2020, international passenger transport was disrupted or severely restricted. International rail passenger services between Czechia and Slovakia, Poland, Austria and Germany were stopped from 13 March 2020 due to the containment measures taken by Czechia and neighbouring countries. During the time international traffic was interrupted, trains usually carried passengers only to the border crossing station, i.e. to the last designated station in the territory of Czechia. International rail passenger transport was therefore halted.
- (6) The Government of Czechia permitted international bus and rail transport operations to resume from 11 May 2020. Nevertheless, even after 11 May 2020, there was a general entry ban for foreigners subject to some exceptions⁶ and in general, it was strongly recommended not to travel across borders. The possibility to travel from Czechia abroad was primarily regulated by the neighbouring countries. The free movement of persons between Czechia and Slovakia resumed on 4 June 2020. Austria abolished border controls from 4 June 2020. Germany opened its borders for free crossing from 15 June 2020 and Poland abolished its border controls to Czechia as from 13 June 2020. However, the citizens of Poland in the Silesian Voivodeship could still not travel freely to Czechia. Likewise, the Czech citizens were recommended not to travel to that Polish region.

³ A general overview and up to date information on the COVID-19 outbreak in Czechia is available at <https://www.vlada.cz/en/media-centrum/aktualne/measures-adopted-by-the-czech-government-against-coronavirus-180545/>.

⁴ Originally, the state of emergency was declared for a period of thirty days from 12 March 2020. It was gradually extended and, finally, for the so-called spring (first) wave of COVID-19 it remained in place throughout the entire territory of Czechia until 17 May 2020.

⁵ On the same day when the state of emergency was introduced, i.e. 12 March 2020, the Czech Government adopted Resolution No. 198. The latter instrument adopted crisis measures consisting, inter alia, “in the entry ban for all foreigners coming from risk areas, with the exception of foreigners residing in the Czech Republic with a temporary stay of more than 90 days or permanent residence in the territory of the Czech Republic; this does not apply if the entry of these foreigners is in the interest of the Czech Republic.” Those restrictions took effect on 14 March 2020.

⁶ In particular for family members and cross-border workers. The list of exceptions kept being updated according to the development of the pandemic situation.

- (7) Despite the gradual reopening of its borders by mid-June, in the second half of June foreigners were still prohibited from entering Czechia, save for specified exceptions (in particular specific business activities). After 30 June 2020, only traffic restrictions at the Furth im Wald border crossing persisted (rail transport services on the Prague-Munich line resumed on 11 July 2020).

2.1.2. Domestic rail passenger transport

- (8) The State deemed essential the continued provision of domestic rail passenger transport to ensure connectivity for people working in vital economic sectors like food supply as well as in health care and areas of public security like police and fire fighters. However, even though the beneficiary rail transport operators continued to provide their services, the travels of their clients were largely limited due to various restrictions.

Restrictions on free movement of persons

- (9) With effect from 16 March 2020, the Czech Government prohibited the free movement of persons throughout Czechia, except for certain narrowly defined activities, such as travel to work, journeys to family and close relatives, or journeys necessary for the provision of basic necessities. In addition, on 16 March 2020, the public authorities decided to close the municipalities of Litovel, Uničov and other 19 municipalities in Olomouc region due to the high number of infected people. People were not allowed to travel to or from those municipalities and there was a curfew in those municipalities. Those measures applied for two weeks resulting in isolation of 24 000 people.
- (10) The intensity of those measures was progressively adapted to the specific epidemiological situation. The measures set out in recital (9) were lifted on 11 May 2020.
- (11) Even after 11 May 2020, however, the free movement of persons remained limited, in particular by restricting the operation of hotels and restaurants. Hotel accommodation was fully banned for leisure/touristic purposes until 25 May 2020. These measures were only gradually relaxed, with the last relaxation on 30 July.

Restrictions concerning the educational system

- (12) In the field of education, on 10 March 2020, the Ministry of Health of Czechia banned the physical presence of pupils and students in the educational establishment with effect of 11 March 2020. In addition, the Czech Government, by its Resolution of 12 March 2020, prohibited as from 13 March 2020 the personal presence of pupils and students for educational activities in the following schools and educational establishments: primary schools, secondary schools and conservatories, higher vocational schools, universities, art and music schools, language schools, and one-year post-secondary language courses. The Government Resolution applied to all pupils and students across the territory of Czechia. At primary school, it also applied to preparatory classes and the preparatory level of special primary schools. Furthermore, all events organised by schools for pupils and students, such as ski tours, outdoor schools, exchange stays were prohibited.
- (13) The regular physical presence in all educational establishments remained banned until the end of the school year 2019/2020 (30 June 2020). Only certain individual

activities restricted to a maximum of five students were allowed at universities starting from 20 April. They involved mainly activities necessary for the completion of bachelor's, master's or doctoral studies or presence for testing or clinical and practical teaching and practice. Presence in secondary schools, conservatories and higher vocational schools was only possible, starting from 11 May, for pupils and students in the final years and only under certain conditions, especially for the purpose of their preparation for school-leaving examinations and final examinations and graduate examinations. As part of the protection of risk groups of pedagogical and non-pedagogical staff, as well as pupils and their family members, distance teaching continued until the end of the school year 2019/2020, i.e. 30 June 2020).

Health system

- (14) The health sector experienced a reduction of routine patient care upon Ministerial instruction.⁷ From 10 March 2020, all providers of inpatient health services were required to ban any visits to patients in healthcare establishments, with few exceptions.⁸ Visits to clients in all residential social care establishments and all residential respite care establishments were also banned with similar exceptions. Likewise, pursuant to an extraordinary measure of the Ministry of Health, spa medical care for new patients was completely banned from 19 March 2020 and resumed only from 22 June 2020 without restrictions.

Working from home

- (15) Already at the beginning of the state of emergency, on 12 March 2020 the Government of Czechia called on employers to encourage as much as possible their employees to work from home, to comply as far as possible with any requests for leave or paid leave and to limit the performance of work that is not relevant to maintaining the employer's activities.
- (16) By its Resolution No. 217/2020 of 15 March 2020, the Government instructed all members of the Government and heads of other central administrative offices to ensure, inter alia, "*the operation of individual departments of the body always with the lowest possible number of employees present at the workplace, which must be maintained to preserve the activities of the administrative body*". The Ministry of Health subsequently ordered the same through an emergency measure adopted on 23 March 2020 and follow-up measures adopted with effect until 19 April 2020. After that date whilst presence in the offices was again allowed, certain recommendations continued to be applied aiming to prevent the community

⁷ On 16 March 2020, the Ministry of Health issued a measure n. MZDR 12066/2020-1/MIN/KAN reducing the elective care in hospitals from 17 March 2020, due to the need to release capacities for the care of patients suffering from COVID-19.

⁸ Regulation of the Ministry of Health Ref. No. MZDR 10519 / 2020-1/MIN/KAN of 9 March 2020. Under that regulation, all providers of inpatient health services were required to ban any visits to patients in their establishments where inpatient care is provided, with the exception of visits for minors, patients with restricted legal capacity, expectant mothers, hospice patients and other patients in the terminal stage of incurable disease. Those measures were in force until the end of the state of emergency, but even after its lifting visits to hospitals and social care establishments continued to be restricted.

transmission of COVID-19 such as preference of written / electronic or telephone contact over personal contact and meetings / negotiations preferably to be held in a remote manner. Furthermore, it was in general recommended to work from home as much as possible and consequently companies instructed their employees to work from home extensively, if it was possible to do so with regard to the nature of the activity performed.

Restrictions related to cultural and sports events

- (17) The Czech authorities submit that the Government's measures included a number of restrictions that had a significant impact on rail passenger transport. In that respect they refer in particular to the ban on cultural and sports events that persisted with varying intensity from the beginning of the state of emergency on 12 March 2020 until 30 June 2020.
- (18) Theatrical, musical, film and other artistic performances, sports, cultural, religious, club, dance, traditional and similar events and other gatherings, exhibitions, festivities, funfairs, shows, tastings, markets and fairs, educational events, celebrations, both public and private, with participation exceeding a specified number of persons at the same time, were completely banned. Furthermore, visits to museums, archives, libraries, monuments, galleries, zoological and botanical gardens were also banned.
- (19) The Government furthermore restricted sports activities in sports grounds, parks, nature and other publicly accessible places, while it gradually regulated the number of people who may be present on sports grounds together, while indoor sports grounds had to remain mostly closed. Restrictions also applied to marriages, funerals and religious services. In summary, those restrictions contributed to the reduction of demand for public transport services.
- (20) The Czech authorities submit that major cultural events which in total typically attract thousands of spectators from all over the country and abroad, were cancelled or only streamed online. Amongst them were concerts of the Moravian Philharmonic Olomouc, the jubilee 75th year of the International Music Festival "Prague Spring", consisting of dozens of concerts, the Jazzfest Brno, the concert of American saxophonist Joshua Redman, and the Czechoslovak Beat Festival with a capacity of up to 4 000 spectators.
- (21) The Czech authorities furthermore submit that galleries and other cultural institutions, as well as touristic attractions like the Prague Castle, where over two million people come annually were closed.
- (22) Furthermore, major sporting events were concerned by the bans, like two major traditional running races in Prague, both with the participation of more than 10 000 runners and thousands of fans from Czechia and abroad or the Golden Spike international athletics meeting, part of the World Athletics Continental Tour - Gold series, which was to take place in Ostrava on 22 May 2020.
- (23) The Czech authorities noted that cultural and sports life has practically stopped during the spring state of emergency from 12 March to 30 June 2020.

2.2. The economic impact of the containment measures on supra-regional and long-distance public transport by rail

- (24) The Czech authorities submit that the COVID-19 outbreak and the containment measures described in section 2.1 severely affected the financial equilibrium of rail passenger transport operators in both the Czech supra-regional and long-distance rail passenger transport sector throughout the first wave from 12 March 2020 to 30 June 2020. Supra-regional rail passenger transport is provided in Czechia by commercial operators (i.e. not subject to public service obligations) and concern, in principle, express trains. Long-distance rail passenger transport is provided by both commercial operators and operators subject to public service obligations. Long distance rail passenger transport covers also international passenger transport by rail.
- (25) The various containment measures led to a significant passenger decrease and thereby to substantial revenue loss. In the first quarter of 2020 (1 January to 31 March), the total number of passengers transported by rail decreased by 17% compared to the first quarter of 2019. In the second quarter 2020 (1 April to 30 June 2020) the total passenger number decreased by 48% compared to the second quarter of 2019.
- (26) According to preliminary data provided by the Czech authorities including all rail passenger services, rail passenger transport decreased significantly in the months following the COVID-19 outbreak. The demand (in million persons-kilometres) decreased in 2020 as compared to 2019 by around 47% in March, 78% in April, 60% in May and 45% in June.
- (27) International rail passenger services came to a complete halt in the period during which restrictions to passenger transport across the Czech borders applied (see recitals (4) to (7)), and, therefore, experienced a decline of 100% down to zero.
- (28) The Czech authorities submit that long-distance and supra-regional rail transport was heavily hit by the closure of secondary schools and universities involving a significant impact on the students and in particular older pupils which typically constitute a material passenger group in long-distance and supra-regional trains⁹ especially to and from the traditional university cities of Prague and Brno and other cities with major educational establishments, such as Pilsen, Ústí nad Labem, Hradec Králové, Olomouc or Zlín. Commuting of students to universities and secondary education institutes constitutes an important part of the transport demand for travels to all regional cities in Czechia, as students and pupils often commute from other regions.
- (29) The Czech authorities submit that all of the above had a major impact on the mobility of the population, which is reflected in transport volume figures. In Q2, the rail passenger transport experienced a drop of 61% (passenger-kilometres dropped from 2 909 million to 1 137 million and passenger numbers decreased from 50 053 000 in 2019 to only 25 934 000).

⁹ Pupils and students constitute 30 – 35 % of passengers in supra-regional trains. In long-distance trains, the share is around 25 %.

- (30) The Czech authorities further submit that the restrictions on international rail passenger transport caused dramatic declines in the volume of transport services in passenger-kilometres in national supra-regional and long distance transport as feeder traffic had come to a halt. For example, on the Ex5 line from Prague to the north, in the direction of Dresden and Berlin, less than 18% of passenger-kilometres were recorded compared to the same period in 2019, i.e. from March to June. On the Ex6 line from Prague to the western State border in the direction of Munich, the volume of transport services in the period from March to June dropped to 38%, compared to the same period in 2019. Those changes in the volumes of transport services had a corresponding impact on the decline in revenues from the provision of the services in question, which in turn heavily affected the financial situation of the rail operators.
- (31) Furthermore, on the key line Ex3 (one of the most important lines in the Czech Republic), connecting Prague and Brno and the State border in the direction of Vienna/Bratislava, the following figures were reported in comparison with the same month in 2019:
- a) in March 2020, about 42% of the passenger-kilometres recorded in March 2019,
 - b) in April 2020, about 5% of the passenger-kilometres recorded in April 2019,
 - c) in May 2020, about 23% of the passenger-kilometres recorded in May 2019 and
 - d) in June 2020, about 35% of the passenger-kilometres recorded in June 2019.
- (32) In the aggregate, in the months from March to June, only 26% of passenger-kilometres were reported on the Ex3 line compared to the previous year.
- (33) The Czech authorities submit that adding to the effects of other measures, the restriction of free movement of persons (see recitals (9) and (10)) also affected long-distance and supra-regional rail passenger transport. Moreover, the restriction of leisure activities had a major impact on long-distance and supra-regional rail passenger transport, as passengers focused only on necessary journeys, which took place mainly within the same region. This resulted in particular in lower demand for long-distance trains, which often ran completely empty. Demand for those services experienced a sharp decline immediately after the imposition of the state of emergency on 12 March 2020, as shown for instance by the data for the R20 line Prague - Děčín. The volume of transport services on that line declined in the first days of the state of emergency to 25-30 % of its level on comparable days in the previous year, when no restriction was in place. The Czech authorities submit that all long distance and supra-regional lines were affected in similar manner.
- (34) The Czech authorities submit that the closure of secondary schools and universities hit heavily traffic results of long-distance and supra-regional rail transport

involving a significant impact on the volume of transport services.¹⁰ This affected all lines of long-distance and supra-regional rail transport in various directions of commuting, especially to the classic university cities of Prague and Brno, but also to other cities with major educational establishments, such as Pilsen, Ústí nad Labem, Hradec Králové, Olomouc or Zlín. Commuting of students to universities constitutes an important part of the transport demand for travels to all regional cities in the Czech Republic, as students often commute from other regions, using precisely long-distance and supra-regional rail transport. That measure had an impact on transport services on all long-distance and supra-regional transport lines, primarily to big cities (i.e., on all those lines without any exceptions). The Czech authorities refer for instance to the line R18 Prague - Luhačovice, which is used by students from the Zlín Region commuting to Olomouc and further to Prague, and where dramatic declines were recorded between the months from March to June of 2019 and 2020. The largest decline on that line occurred during the month of April, when the volume of transport services in passenger-kilometres dropped to 46%.

- (35) The Czech authorities submit that while providers of supra-regional and long-distance rail passenger transport suffered a significant drop in revenues, they continued to bear their fixed costs (e.g. for wages, lease and financial commitments, overhead costs). The Czech authorities estimate that the losses for public service operators (subprogramme 1) amount to more than CZK 570 million (approximately EUR 22.4 million), and for the commercial transport segment (subprogramme 2) to more than CZK 230 million (approximately EUR 9 million) during the period from 12 March to 30 June 2020.

2.3. Objective of the Measure

- (36) The scheme aims at compensating providers of supra-regional and long-distance rail passenger transport for the damage suffered due to the COVID-19 outbreak and the containment measures introduced by the Government of Czechia and neighbouring countries as a consequence of it, as described in section 2.1. The sharp decline in passengers in long-distance and supra-regional rail transport due to the COVID-19 outbreak poses a risk to the financial situation and hence continued provision of those services by the affected rail passenger transport operators. The granting of the aid will therefore ensure that the frequency and quality of those services can be maintained also in future.

2.4. The nature and form of the Measure

- (37) The aid takes the form of direct grants. The aid is allocated between two distinct subprogrammes, which are, however, both part of a single comprehensive public transport system in Czechia. Subprogramme 1 concerns compensation for damage suffered by rail passenger transport operators to whom the State has awarded public

¹⁰ The Czech authorities used data based on State discounts related to social tariffs (in line with the general rules according to Article 3(2) of Regulation 1370/2007) to estimate the impact of the pandemic on student and pupils transport. Based on that information, the compensation for "students aged 18-26" in Q2 of 2019, was 543 511 778 CZK. In the same period of 2020, it was 208 112 006 CZK, which represents a decrease of 61 %.

service contracts pursuant to Article 3(1) of Regulation 1370/2007¹¹ (“public service operators”). Subprogramme 2 concerns compensation for damage suffered by rail passenger transport operators operating regular scheduled passenger transport services outside the scope of public service contracts¹², i.e. commercial rail transport operators (“commercial operators”).

2.5. National legal basis

(38) The national legal basis of the scheme is a call for applications to be adopted in accordance with the Act No. 218/2000 Coll. on budgetary rules and its Implementing Decree No. 560/2006 Coll., on State budget participation in financing asset replacement programmes, as amended.

2.6. Administration of the Measure

(39) The aid will be granted and administered by the Ministry of Transport of Czechia.

2.7. Budget and duration of the Measure

(40) Compensation under the scheme is financed by the State budget.

(41) The total estimated budget of the scheme is CZK 800 million (approximately EUR 31 million).

(42) The scheme provides compensation to rail passenger operators for damage suffered during the period between 12 March 2020 and 30 June 2020 (“compensation period”).

(43) The Czech authorities confirm that the measure will not enter into force nor any aid will be paid out before notification of the Commission’s approval.

2.8. Beneficiaries

(44) The beneficiaries of the scheme are rail passenger transport operators providing supra-regional and long-distance passenger transport services meeting the following eligibility conditions:

- a) They were not undertakings in difficulty¹³ on 11 March 2020;
- b) As of the date of submitting the application for aid under the scheme, they must meet the indebtedness criteria which apply to the public sector

¹¹ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 as amended, OJ L 315, 3.12.2007, p. 1.

¹² As submitted by the Czech authorities, the regular scheduled passenger transport services are services that under timetable 2019/2020 were supposed to be operated for a total of at least five days during the spring state of emergency.

¹³ As defined in Article 2(18) 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, 26.6.2014, p. 1.

including the financial administration, customs administration, public health insurance companies, social security, companies contributing to the state employment policy and state funds;

- c) By accepting aid under the scheme, they waive their right to claim further compensation for damage suffered due to COVID-19 outbreak and related containment measures for the period until end of September 2020.
- (45) As regards long distance rail passenger transport, the scheme applies to both commercial operators and public service operators, as set out in recital (37).¹⁴ The estimated number of beneficiaries is five.
- (46) The scheme does not apply to providers of regional passenger transport services. In that respect, the Czech authorities noted that the dividing line between long-distance and regional transport by rail in Czechia is at a lower level of regionality than in most European countries.¹⁵
- (47) The beneficiaries must demonstrate that they suffered damages as a direct consequence of the COVID-19 outbreak and the resulting containment measures.

2.9. Eligible costs and modalities for compensation

- (48) The eligible costs correspond to the damage caused to the beneficiaries by the COVID-19 outbreak and related containment measures during the compensation period.
- (49) The aid amount will be, determined as follows:
- a) in the case of subprogramme 1 (transport services subject to public service obligations, “PSOs”), as the net costs (i.e. costs minus revenues¹⁶) actually incurred during the compensation period. The extra costs for infection prevention measures are added to the costs, whereas avoided costs/cost savings are deducted;
 - b) in the case of subprogramme 2 (commercial transport), the net losses (actual damage) correspond to the loss of revenues, minus avoided costs and plus the additional costs incurred in relation to COVID-19 outbreak and the containment measures, during the compensation period. In practice, the damage is calculated for each eligible beneficiary under subprogramme 2 as the difference between the EBT¹⁷ obtained in the period 12 March – 30 June 2020 and the EBT in the same period in 2019. The compensation will at a maximum allow beneficiaries to cover the costs in the relevant period in 2020 that are not covered by the respective

¹⁴ As set out in recital 24, supra-regional transport is only provided on a commercial basis.

¹⁵ For example, a train of the RegionalExpress business category is a regional transport train in Germany, but in Czechia a similar train is usually ordered from the Ministry of Transport as an “express train” and is therefore part of long-distance transport.

¹⁶ Revenues include PSO compensation.

¹⁷ Earnings before taxes.

revenues. According to the Czech authorities, there will be no compensation for lost profits. As stated by the Czech authorities, since the EBT data per day are not available, for March 2020, which was only partially affected by the containment measures, the EBT will be taken into consideration on a pro rata basis for the days from 12 March to 31 March.¹⁸

- (50) The scheme compensates the beneficiaries for up to 100% of the damage incurred during the compensation period 12 March 2020 to 30 June 2020 as a direct consequence of the containment measures specified in section 2.1.
- (51) Based on Act No. 218/2000 Coll. on budgetary rules the Ministry of Transport will prepare a call to submit aid applications. The deadline for submitting the application will be 30 days after the publication of the content of the call. Subject to the fulfilment of the conditions in the call including those set out in recital (44), the subsidy will be provided to all eligible entities by a decision of the Ministry of Transport. If the budget under a specific subprogramme is not sufficient to satisfy all applications in full, the aid amounts per beneficiary will be reduced by the same percentage.
- (52) Rail operators operating both commercial transport services and transport subject to PSOs are obliged to keep separate accounts for each transport segment in particular in accordance with Regulation 1370/2007 and related national regulations. Therefore, under the applicable legislation, in such a case the operator must be able to separate the costs and revenues that are associated with trains operated outside the scope of PSOs. The calculations provided by the operator to assess the amount of damage resulting from commercial activities must exclude any results stemming from PSOs and vice versa.
- (53) Operators of PSOs must record separately the costs and revenues arising from the individual public service contracts, and at the same time separate them from the costs and revenues arising from other business (commercial transport services). Similarly as in case of the standard cost and revenue statements in the field of PSOs, the statements of operators of PSOs undergo an inspection by the contracting authority (Ministry of Transport), during which it is examined:
 - a) Whether the costs of operators are economically justified and incurred in connection with the fulfilment of public service obligations,
 - b) Whether revenues are properly recognized in respect of the transport services operated, and
 - c) Whether the compensation does not cover any profit.
- (54) Such an inspection will be carried out by the Ministry of Transport before granting the aid. The inspection will be carried out on the basis of cost and revenue statements which the carriers will submit as part of the applications for the subsidy

¹⁸ For those days, the eligible damage is calculated by multiplying the EBT difference in March 2019/2020 by: (number of days affected by the COVID-19 outbreak and the related containment measures in March 2020 (number of days corresponding to compensation period in March 2020)/number of days in March 2020).

in question, both for PSO and commercial operators. Those statements will be reviewed by the granting authority, in order to ensure that overcompensation is not provided. The Czech authorities confirm that the compensation for the PSOs and under the submitted aid scheme will be assessed together so that overcompensation is excluded.

- (55) The Czech authorities confirmed that the following safeguards will be put in place to avoid overcompensation:
- a) Any payment exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered, including interest.
 - b) Payments to beneficiaries under the scheme will be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
 - c) Payments under the scheme are excluded for any applicant who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take appropriate measures to mitigate its damages.
 - d) Aid under the scheme cannot be cumulated with other aid for the same eligible costs.
- (56) Finally, the Czech authorities committed to submit a report to the Commission no later than one year after the present decision, specifying the amount of compensation and including a summary of all recoveries ordered under the aid measure.

3. ASSESSMENT

3.1. Lawfulness of the Measure

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

3.2. Existence of State aid

- (58) 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.
- (59) The measure is imputable to the State, since, as set out in recital (39) the aid will be granted by the Ministry of Transport of Czechia that will also administer the scheme.
- (60) The measure is financed through State resources, since the compensation under the scheme is financed by the State budget.

- (61) The measure confers an advantage on its beneficiaries in the form of direct grants. The advantage corresponds to the amount of compensation paid under the measure to each of the beneficiaries. The measure thus relieves those beneficiaries of costs that they would have to bear under normal market conditions.
- (62) The advantage granted by the measure is selective, since, as set out in recital (44), it is awarded to operators of supra-regional and long-distance public passenger transport operators by rail that can demonstrate that they have incurred damages caused directly by the COVID-19 outbreak and the resulting containment measures, to the exclusion of other undertakings.
- (63) The measure is liable to distort competition, since it strengthens the competitive position of the beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (64) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU. The Czech authorities do not contest that conclusion.

3.3. Compatibility

- (65) Since the measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. Following the notification of the Czech authorities, the Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU.
- (66) This assessment has led to the following observations.

3.3.1. The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU

- (67) Article 107(2)(b) TFEU provides that aid to make good the damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU nor other Union legislation contains a precise definition of the notion of ‘exceptional occurrence’. The Commission, in line with the consolidated case-law of the Union courts¹⁹, has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively as they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU.
- (68) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field²⁰. In that regard, the following indicators relating to the event concerned must

¹⁹ Judgement of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Atzeni and others*, Joined Cases C-346/03 and C-529/03, EU:C:2006:130, paragraph 79.

²⁰ Exceptional occurrences that have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see *Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020*, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

be cumulatively met: (i) unforeseeable or difficult to foresee²¹; (ii) significant scale/economic impact²²; and (iii) extraordinary²³.

3.3.2. *COVID-19 as an exceptional occurrence*

- (69) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak rapidly evolved, affecting not only other parts of China but spreading to the majority of countries worldwide. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (70) The WHO declaration of a pandemic²⁴, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature of the circumstances. The rapidity of the spread of the virus can cause enormous consequences both in terms of fatal outcomes in risk groups and in terms of economic and societal disruption²⁵. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. According to WHO reports and observations of the current situation, such measures can result in far-reaching disruption of various economic sectors. That disruption is thus clearly outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases,

²¹ Commission Decision of 1 August 2008 in case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31, OJ C 135, 9.5.2012, p. 1.

²² Elements taken into account by the Commission to consider that the occurrence reached a significant scale include: (i) the fact that negative consequences cannot be contained (Commission Decision of 4 October 2000 in case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France, OJ C 380, 30.12.2000, p. 9); (ii) the significant number of dead or injured people (Commission Decision of 11 April 2012 in case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35, available at https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33487 ; Commission Decision of 2 May 2002 in case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19, OJ C 170, 16.7.2002, p. 16); (iii) the occurrence of immense ecological and economic damage (Commission Decision of 11 April 2012 in case SA.33487, recital 36); (iv) the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 in case N 241/2002, recital 19).

²³ In its Decision of 19 May 2004 in case C-59/2001, concerning the aid scheme that Italy plans to implement for poultry farms — AIMA programme for the poultry industry, OJ L 32, 6.2.2007, p. 14, the Commission considered that the alleged fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination did not constitute in itself an exceptional occurrence. In fact, it was an unforeseeable event but formed part of the normal commercial risks to which an undertaking is exposed.

²⁴ WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

²⁵ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

accompanied by social alarm and severe economic consequences, containment measures needed to be adopted.

- (71) From March 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travels, closure of borders, obligation for companies to organise working from home for every position where this is possible and various social distancing measures.
- (72) In view of the above, the Commission considers that this event qualifies as an exceptional occurrence as it was not foreseeable, as it is clearly distinguishable from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market²⁶.
- (73) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

3.3.3. *Causal link between the COVID-19 outbreak and the damage compensated by the scheme*

- (74) The Commission notes that following the first registered infections on 1 March 2020, the Czech authorities declared the state of emergency on 12 March 2020 and adopted several sequential containment measures in response to the COVID-19 outbreak (section 2.1). Even before 12 March 2020, several measures were adopted. In particular, on 10 March 2020, the Ministry of Health of Czechia banned the physical presence of pupils and students in the educational establishment with effect from 11 March 2020. From 10 March 2020, all providers of inpatient health services were required to ban any visits to patients in healthcare establishments, with few exceptions (recital (14)). Moreover, on 12 March 2020 the Government of Czechia called on employers to encourage as much as possible their employees to work from home (recital (15)). After the declaration of state of emergency on 12 March 2020, various limitations and rules were gradually introduced with the effect on the entire country. In particular, the operation of international rail transport was banned from 13 March 2020²⁷; free movement of persons in the territory of Czechia was restricted with only few exceptions (commuting to work and journeys necessary for the provision of basic necessities) from 16 March 2020 (recital (9)); travel for the purpose of leisure activities was completely prohibited. Outpatient and inpatient care were significantly reduced and spa medical care for new patients was completely banned from 18 March 2020; it was only from 22 June 2020 that that sector started to operate without any restriction.
- (75) The Commission notes that restrictions on education with physical presence and the closure of universities led to a significant decline in the number of pupils and students using rail transport (recital (34)). The Commission further notes that the closure of universities for the entirety of the academic year until 30 June 2020 had

²⁶ See for instance also Commission Decision of 12 March 2020, SA.56685 - Denmark - Compensation scheme for cancellation of events related to COVID-19, OJ C 125, 17.4.2020, p. 8.

²⁷ Restrictions of international transport applied by the neighbouring countries of Czechia were in place from 13 March 2020, whereas restrictions adopted by the Czech authorities adopted on 12 March 2020 took effect on 14 March 2020.

a particular impact on supra-regional transport, since a substantial part of passengers in this type of transport is represented by commuting university students with a daily or weekly commuting frequency. Other key factors were restrictions on the operation of healthcare establishments, which at the time of crisis provided only urgent care, and restrictions on working hours of offices. Finally, the Commission notes that during large part of the compensation period cultural and sports events (hockey and football matches, music concerts), which traditionally attract a large number of spectators, who regularly travel to those events by rail, were cancelled or only streamed over the Internet.

- (76) The Commission finds that, as set out in section 2.2, overall the various containment measures have led, compared to the corresponding period in 2019, to a significant decrease in traffic of railway passenger transport. Passenger traffic compared to the levels in the corresponding periods in 2019 was 17 % lower in the first quarter of 2020 and 48 % lower in the second quarter of 2020. The passenger decline negatively affected the financial situation of the supraregional and long-distance public transport providers.
- (77) As described in particular in recitals (27), (33) and (34), the volume of traffic both on supra-regional and long-distance public transport lines declined significantly because of the closure of various work establishments and the extensive use of telework arrangements, restrictions of free movement of persons, and restrictions in the field of the education system and health care system. Due to the restriction of transport across the borders of Czechia, the volume of transport services in international transport was zero (recital (5)). Finally, the Commission notes that the severe restrictions of social life have reduced usage of public transport for that purpose to a minimum (recitals (20), (21) and (23)).
- (78) As stated in recital (8), the continued provision of public transport was essential, not only to ensure connectivity for people working in vital economic sectors (health care, police, food chain, etc.) but also for the wider economy and for people dependent on public transport for their mobility needs. For that reason, the beneficiaries under the measure continued to provide their services even as large parts of their client base were unable to travel.
- (79) The Commission takes note that non-compliance with the restrictions imposed or violation of the rules was subject to sanctions, in particular fines, which largely ensured compliance with those restrictions.
- (80) As regards the end date of the compensation period, the Commission notes that certain of the initial containment measures, such as the ban on international traffic, were lifted as of 30 June 2020 (with the exception of the Furth im Wald state border crossing) (recitals (5) to (7)). Regular physical presence in educational establishments was banned with several exceptions until the end of the school year 2020 (i.e. until 30 June), including as regards secondary education and universities (recitals (12) to (27)). Those restrictions had a very important impact on the decrease of traffic in rail passenger transport (both supra-regional and long-distance passenger transport sectors). Furthermore, throughout the compensation period, cultural and sports events (hockey and football matches, music concerts, etc.), which traditionally attract a large number of spectators who regularly travel to these events by rail, were cancelled or streamed over the Internet (recitals (17) to (22)). In addition, the ban on cultural and sporting events persisted with varying

intensity from the beginning of the state of emergency on 12 March 2020 until 30 June 2020 (recital (17)).

- (81) In view of all of the above, the Commission considers that the duration of the compensation period (12 March – 30 June 2020) is justified. Its start coincides with the declaration of the state of emergency and the introduction of certain containment measures; its end takes into account the various factors summarised in recital (80)), in particular restrictions concerning the educational system and the international rail passenger transport (recitals (27) to (34)). More specifically, the regular physical presence in all educational establishments was restricted during the whole compensation period (from 12 March to 30 June 2020) (recital (13)).
- (82) Therefore, the Commission considers that for the compensation period there is a direct causal link between the damage caused by the exceptional occurrence and the aid granted under the scheme.

3.3.4. Proportionality of the aid

- (83) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.
- (84) The Commission considers that aid granted under the scheme is strictly limited to compensation for the damage directly caused by the COVID-19 outbreak and related containment measures during the period 12 March - 30 June 2020.
- (85) As described more in detail in section 2.9, the damage eligible for compensation under subprogramme 1 targeting public service operators is calculated as the net costs (i.e. costs minus revenues including the public service compensation) actually incurred during the compensation period. The Commission notes that extra costs for infection prevention measures are added to the costs, whereas avoided costs/cost savings are deducted. The Czech authorities will carry out an inspection of cost and revenue statements to be submitted by the beneficiaries and ensure that overcompensation is avoided (recitals (53) and (54)). The Commission considers that for public service operators, the methodology based on net costs can be accepted for the calculation of the damage to be compensated.
- (86) The damage for the commercial railway operators (subprogramme 2) is calculated for each eligible beneficiary as the difference between the EBT obtained in the period 12 March – 30 June 2020 and the EBT in the same period in 2019 (recital (49)). The Commission considers that, in the present case, the methodology based on EBT is appropriate as EBT is a measure of a company's profit that includes all incomes and expenses (calculated before taxes are taken out) and is therefore an appropriate indicator of the financial results of companies. Therefore, in the present case, that methodology can be accepted for the calculation of the damage for the commercial railway operators.
- (87) The Commission considers that the pro-rata calculation of damage for the commercial rail transport operators for the period 12 March – 31 March 2020 (recital b)) is conservative, since even though the highest share of the losses occurred from 12 March until 31 March 2020 due to the COVID-19 outbreak and the containment measures introduced to contain the spread of the coronavirus, the

EBT difference between 2020 and 2019 will be divided by the number of days corresponding to the whole month of March 2020 (31 days) and – based on that calculation of the EBT difference per day - the compensation for March 2020 will be provided for the period 12 March – 31 March (20 days).

- (88) The Commission furthermore takes note of the safeguards described in recital (55).
- a) First, compensation in excess of the damage actually incurred (calculated in line with the above methodology) will be recovered in all individual instances including interest.
 - b) Second, aid granted to beneficiaries will be net of any amount obtained from insurance, litigation, arbitration or any other source for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
 - c) Third, payments under the scheme are excluded for any applicant who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take appropriate measures to mitigate its damages.
 - d) Fourth, aid provided under the scheme cannot be cumulated with other aid for the same eligible costs.
- (89) Finally, as explained in recital (56), the Commission takes note that the Czech authorities committed to provide a report to the Commission specifying the amount of compensation granted per beneficiary no later than one year after the date of this decision.
- (90) The Commission positively notes those safeguards as well as the monitoring and inspection requirements set out in recitals (53) to (54) and concludes that the mechanism put in place will ensure that the compensation under the scheme will not exceed the damage directly suffered by each beneficiary due to the COVID-19 outbreak and related containment measures and that the compensation under the scheme therefore will not exceed what is necessary to make good the actual damage suffered.
- (91) In view of the above, the Commission considers that the measure is proportional and consequently compatible with the internal market in accordance with Article 107(2)(b) TFEU.

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(2)(b) TFEU.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

