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**Subject: State Aid SA.104342 (2022/N) – Czechia
TCF: Aid in relation to additional costs due to exceptionally severe
increases in natural gas and electricity prices**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 7 November 2022, Czechia notified aid in the form of aid for additional costs due to exceptionally severe increases in natural gas and electricity prices (Programme to support undertakings in relation to additional costs due to exceptionally severe increases in natural gas and electricity prices, the “measure”) under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis Framework”)¹.
- (2) Czechia exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with

¹ Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia C(2022)7945 (OJ C 426, 9.11.2022, p. 1–34).

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Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Czechia considers that the Russian aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken by Russia (“the current crisis”) so far affects the real economy. The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. The Czech authorities argue that rising energy prices affect virtually every economic activity.
- (4) In August 2022³, Czech authorities adjusted downwards the economic growth expectation of Czechia compared to calculations carried out in January 2022⁴, both for year 2022 (from 3.1% to 2.2% GDP) and for year 2023 (from 3.3% to 1.1% GDP).
- (5) The Czech economy is facing high inflation that reached 17.5% in July 2022. Part of the inflation is the consequence of electricity and natural gas price increases. Electricity prices on the day-ahead market in Czechia reached 476.4 EUR/MWh in August 2022 compared to 84.9 EUR/MWh in the same month of the previous year (+461% increase).⁵ As for natural gas, the price on the day-ahead market at the end of August 2022 reached 215.23 EUR/MWh, compared to 23.81 EUR/MWh last year (+800% increase).⁶
- (6) In light of the foregoing, Czechia considers it necessary to provide some financial support to undertakings affected by the increases in the prices of gas and electricity, including targeted support to those that are particularly energy-intensive.
- (7) Thus, the measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as by the economic counter measures taken so far by Russia.
- (8) Czechia confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This

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

³ <https://mfcr.cz/en/statistics/macroeconomic-forecast/2022/macroeconomic-forecast-august-2022-48478>

⁴ <https://mfcr.cz/en/statistics/macroeconomic-forecast/2022/macroeconomic-forecast-january-2022-46149>

⁵ BloombergNEF: EU Power and Fuel Prices: Time Series.

⁶ EEX, Spot market data, <https://www.eex.com/de/marktdaten/erdgas/spot>.

is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

- (9) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of section 2.4 of the Temporary Crisis Framework.

2.1. The nature and form of aid

- (10) The measure provides aid in the form of direct grants.

2.2. Legal basis

- (11) The legal basis for the measure is the Resolution of the Government of the Czech Republic No. 876 of 19 October 2022⁷ to update the “Programme to support undertakings in relation to additional costs due to exceptionally severe increases in natural gas and electricity prices”⁸ and the Programme itself.

2.3. Administration of the measure

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

2.4. Budget and duration of the measure

- (13) The estimated budget of the measure is CZK 30 billion (approx. EUR 1.23 billion⁹).
- (14) The measure will be financed by the general State budget.
- (15) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 March 2023.

2.5. Beneficiaries

- (16) The final beneficiaries of the measure are large enterprises¹⁰ active in Czechia that are affected by significant increases in natural gas or electricity prices, as a consequence of the crisis.
- (17) Credit institutions or other financial institutions are excluded as eligible final beneficiaries.
- (18) Because the Czech authorities consider that some subsectors fall within the financial sector, benefit from the current crisis or produce goods with harmful

⁷ The Government resolution stipulates that no support will be granted before the approval of the Programme by the European Commission.

⁸ Available at <https://apps.odok.cz/attachment/-/down/NANACKHAAHGL>.

⁹ Conversion rate on the day of notification, 1 EUR = 24.301 CZK https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/euro_fxref-graph-czk.en.html

¹⁰ As defined in in Article 2 point 24 of to 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, 26.6.2014, p. 1).

effects on human health, the undertakings having the following NACE codes are excluded as eligible beneficiaries:

- (a) B5 - Mining of coal and lignite
 - (b) B6 - Extraction of crude petroleum and natural gas
 - (c) B9.1.0 - Support activities for petroleum and natural gas extraction
 - (d) C19 - Manufacture of coke and refined petroleum products
 - (e) D35.1 - Electric power generation, transmission and distribution
 - (f) D35.2 - Manufacture of gas; distribution of gaseous fuels through mains
 - (g) G46.7.1.2 - Wholesale of liquid fuels and related products
 - (h) G46.7.1.3 - Wholesale of gaseous fuels and related products
 - (i) H49.5.0.1 - Transport via oil pipelines
 - (j) H49.5.0.2 - Transport via gas pipelines
 - (k) K64 - Financial service activities, except insurance and pension funding, with the exclusion of K64.11 – Central banking
 - (l) R92 - Gambling and betting activities
- (19) The Czech authorities estimate that the measure will benefit about 10 000 undertakings.
- (20) Czechia confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.
- (21) Czechia confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations¹¹. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

- (22) The measure is open to all sectors except the financial sector (see recital (17)) and the subsectors listed in recital (18). It applies to the whole territory of Czechia.

¹¹ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

2.7. Basic elements of the measure

- (23) The measure provides aid due to exceptionally severe increases in natural gas and electricity prices.
- (24) The aid will be granted for eligible costs incurred between 1 February 2022 and 31 December 2022 (the “eligible period”).
- (25) Eligible costs for each month within the eligible period are calculated according to the following formula: $Y(t) = (p(t) - p(\text{ref}) \times 2) \times q(t)$
- (a) Where: $Y(t)$ = eligible cost in a given month t during the eligible period (in EUR);
 - (b) q = consumed quantity, i.e. the number of units of electricity and natural gas that the beneficiary purchased from external suppliers as a final customer (in MWh). Sales and own production of gas and electricity are not taken into account to compute the number of units of natural gas and electricity procured.
 - (c) p = price per unit of electricity or natural gas paid by the beneficiary (in EUR/MWh) and does not include taxes, charges, grid tariff, refunds of taxes and duties
 - (d) t = given month in the eligible period
 - (e) $p(\text{ref})$ = price per unit of electricity or natural gas paid by the beneficiary on average in the reference period from 1 January 2021 to 31 December 2021 (in EUR/MWh).
- (26) For undertakings that are not able to provide invoices on a monthly basis, another simplified formula is foreseen to calculate eligible costs over the eligible period: $Y(\text{ep}) = (p(\text{ep}) - p(\text{ref}) \times 2) \times q(\text{ep})$
- (a) Where: $Y(\text{ep})$ = eligible cost during the eligible period (in EUR)
 - (b) q = consumed quantity, i.e. the number of units of electricity and natural gas that the beneficiary purchased from external suppliers as a final customer (in MWh). Sales and own production of gas and electricity are not taken into account to compute the number of units of natural gas and electricity procured.
 - (c) p = average price per unit of electricity or natural gas paid by the beneficiary during the eligible period (in euros/MWh) and does not include taxes, charges, grid tariff, refunds of taxes and duties
 - (d) ep = eligible period
 - (e) $p(\text{ref})$ = price per unit of electricity or natural gas paid by the beneficiary on average in the reference period from 1 January 2021 to 31 December 2021 (in euros/MWh).
- (27) Undertakings benefiting from gas and electricity price caps established by the Government Regulation No. 298 coll. of 5 October 2022 on setting prices of

electricity and gas in an extraordinary market situation¹² cannot receive aid under the measure.

- (28) Figures in this section are gross, that is, before any deduction of tax or other charges.
- (29) To request aid, eligible undertakings should submit an application to the competent authority for the entire eligible period by 31 January 2023.
- (30) The eligible costs are calculated over the eligible period on the basis of the energy bills provided by the undertaking in its aid application.
- (31) The Czech authorities explain that, as from 1 September 2022, the quantity of natural gas and electricity used to calculate the eligible costs cannot exceed 70% of the beneficiary's consumption for the same period in 2021.
- (32) Aid will not exceed 30% of the eligible costs of the beneficiary, up to a maximum of CZK 45 million (approx. EUR 1.84 million¹³) at any given point in time.
- (33) However, beneficiaries qualifying as energy-intensive businesses¹⁴ may receive aid exceeding the ceilings in recital (32) to ensure the continuation of an economic activity, provided that the conditions in recitals (30) and (31) are respected, that the undertaking incurs operating losses¹⁵ during the eligible period, and that the increase in the eligible costs of the undertaking, as defined in recital (25), amounts to at least 50% of the operating loss in the eligible period:
- (a) All undertakings carrying on energy-intensive businesses may receive aid not exceeding 50% of the eligible costs and 80% of the operating loss of the undertaking, up to CZK 200 million (approx. EUR 8.23 million¹⁶) per undertaking at any given point in time;
- (b) Undertakings carrying on energy-intensive businesses active in a sector or sub-sector listed below may receive aid not exceeding 70% of the eligible costs and not exceeding 80% of the operating losses of these activities¹⁷. The overall aid will not exceed CZK 200 million (approx. EUR 8.23

¹² Government Regulation No. 298 coll. of 5 October 2022 is not subject of the assessment of this decision.

¹³ Conversion rate on the day of notification, 1 EUR = 24.301 CZK https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/euro_fxref-graph-czk.en.html

¹⁴ Within the meaning of the first limb of Article 17(1)(a) of the Energy Taxation Directive (Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, OJ L 283, 31.10.2003, p. 51–70) and on the basis of financial accounting reports for the calendar year 2021 or the latest available annual accounts.

¹⁵ The undertaking is considered to have operating losses when EBITDA (earnings before interest, taxes, depreciation, and amortisation, excluding one off impairments) for the eligible period is negative. Negative EBITDA of beneficiaries is verified on a monthly basis.

¹⁶ Conversion rate on the day of notification, 1 EUR = 24.301 CZK https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/euro_fxref-graph-czk.en.html

¹⁷ A beneficiary will be considered as active in a sector or subsector listed in Annex I according to the beneficiary's classification in the sectoral national accounts.

million¹⁸) per undertaking at any given point in time. List of the sectors and subsectors concerned:

- 14.11 Production of leather clothing
- 24.42 Aluminium production
- 20.13 Production of other inorganic basic chemicals
- 24.43 Production of lead, zinc and tin
- 17.11 Fibre production
- 07.29 Extraction of ores of other non-ferrous metals
- 17.12 Production of paper and cardboard
- 24.10 Production of pig iron, steel and ferroalloys
- 20.17 Production of synthetic rubber in primary form
- 24.51 Iron casting - 20.60 Production of artificial fibres
- 19.20 Production of petroleum products
- 24.44 Copper production
- 20.16 Production of plastics in primary form
- 13.10 Preparation and spinning of textile fibres
- 24.45 Manufacture of other non-ferrous metals
- 23.31 Production of ceramic tiles and coverings
- 13.95 Manufacture of non-woven textiles and products made from them, excluding clothing
- 23.14 Glass fibre production
- 20.15 Production of fertilizers and nitrogen compounds
- 16.21 Production of veneer and wood-based panels
- 23.11 Production of flat glass
- 23.13 Production of hollow glass
- 20.11.11.50 Hydrogen

¹⁸ Conversion rate on the day of notification, 1 EUR = 24.301 CZK
https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/euro_fxref-graph-czk.en.html

- 20.11.12.90 Inorganic oxygen compounds of non-metals
- 20.14.12.13 Cyclohexane
- 20.14.12.23 Benzene
- 20.14.12.25 Toluene
- 20.14.12.43 o-xylene
- 20.14.12.45 p-xylene
- 20.14.12.47 m-xylene and mixed xylene isomers
- 20.14.12.50 Styrene
- 20.14.12.60 Ethylbenzene
- 20.14.12.70 Cumin
- 20.14.12.90 Other cyclic hydrocarbons
- 20.14.23.10 Ethylene glycol (ethanediol)
- 20.14.63.33 2,2-Oxydiethanol (diethylene glycol; digol)
- 20.14.63.73 Ethylene oxide (oxirane)
- 20.14.73.20 Benzene (benzene), toluene (toluene) and xylene (xylenes)
- 20.14.73.40 Naphthalene and other mixtures of aromatic hydrocarbons (except benzene, toluene, xylene)
- 23.99.19.10 Slag wool, stone wool and similar mineral wool and mixtures thereof, in bulk, sheets, plates or rolls.

2.8. Cumulation

- (34) The Czech authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹⁹ or the General Block

¹⁹ 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).

Exemption Regulation²⁰ or the Agricultural Block Exemption Regulation²¹ or the Fishery and aquaculture Block Exemption Regulation²² provided the provisions and cumulation rules of those Regulations are respected.

- (35) The Czech authorities confirm that aid under the measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (36) The Czech authorities confirm that aid under the measure may be cumulated with aid measures approved under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak²³ (COVID-19 Temporary Framework) for which cumulation is allowed²⁴. Those measures were approved by the Commission under the COVID-19 Temporary Framework and the aid under the notified measure may be cumulated with those measures provided the respective cumulation rules are respected.
- (37) The Czech authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis Framework provided the provisions in those specific sections are respected.
- (38) Aid under recital (32) may be cumulated with other aid under section 2.1 of the Temporary Crisis Framework provided the overall cap of CZK 45 million (approx.

²⁰ 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).

²¹ 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).

²² 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).

²³ 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 Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

²⁴ SA.57464, SA.57475, SA.57506, SA.57149, SA.58213, SA.58167, SA.62040, SA.58398, SA.58018, SA.100917, SA.57358, SA.59705, SA.58198, SA.59118, SA.59336, SA.58430, SA.59536, SA.59340, SA.59353, SA.59899, SA.61234, SA.61358, SA.61361, SA.62044, SA.61808, SA.61912, SA.60280, SA.61948, SA.62471, SA.61837, SA.62362, SA.62930, SA.60062, SA.62375, SA.101034, SA.57094, SA.57195, SA.58015, SA.60374, SA.61824, SA.61470, SA.57071, SA.56961, SA.57063, SA.57149, SA.59705, SA.62970, SA.100917, SA.59705, SA.57102, SA.62441, SA.100663, SA.101719, SA.59334, SA.62441, SA.100663, SA.101719, SA.59401, SA.62477, SA.100917, SA.102180, SA.59705, SA.56961, SA.57071, SA.57149, SA.57195, SA.57358, SA.58018, SA.58167, SA.58398, SA.62040, SA.58213, SA.59536, SA.58167, SA.57358, SA.57195, SA.58198, SA.61234, SA.59118, SA.57094, SA.100917, SA.57358, SA.58018, SA.58167, SA.62471, SA.62477, SA.62970, SA.102180, SA.62477, SA.62471, SA.57614, SA.62375

EUR 1.84 million²⁵) per undertaking is not exceeded. Aid under recital (33) may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided the overall cap of CZK 200 million (approx. EUR 8.23 million²⁶), is not exceeded.

2.9. Monitoring and reporting

- (39) The Czech authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis 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 primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting²⁷).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (40) By notifying the measure before putting it into effect, the Czech authorities have respected their obligations under Article 108(3) TFEU (recital (11)).

3.2. Existence of State aid

- (41) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (42) The measure is imputable to the State, since it is administered by the Czech Ministry of Industry and Trade and it is based on the Resolution of the Government of the Czech Republic No. 876 of 19 October 2022 (see recitals (11) and (12)). It is financed through State resources, since it is financed by public funds (see recital (14)).
- (43) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (10)). The measure thus confers on those beneficiaries an advantage which they would not have had under normal market conditions.
- (44) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular large undertakings affected by natural gas and

²⁵ Conversion rate on the day of notification, 1 EUR = 24.301 CZK https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/euro_fxref-graph-czk.en.html

²⁶ Conversion rate on the day of notification, 1 EUR = 24.301 CZK https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/euro_fxref-graph-czk.en.html

²⁷ 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.

electricity price increases, excluding the financial sector and sectors that benefit from the current crisis or produce goods with harmful effects on human health (see recitals (17) and (18)).

- (45) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (46) Therefore, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Czech authorities do not contest that conclusion.

3.3. Compatibility

- (47) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (48) 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*”.
- (49) By adopting the Temporary Crisis Framework, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed by the EU or its international partners and the counter measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Czechia. 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 if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy caused by the Russian military aggression against Ukraine, the sanctions imposed by the EU or by its international partners, as well as the economic counter measures taken so far, for example by Russia.
- (50) The measure aims at mitigating the impact of natural gas and electricity price increases at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Czechia.
- (51) The measure is one of a series of measures conceived at national level by the Czech authorities to remedy a serious disturbance in their economy. The importance of the measure to mitigate the impact of natural gas and electricity price increases is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Czech economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Aid for additional costs due to exceptionally severe increases in natural gas and electricity prices*”) described in section 2.4 of the Temporary Crisis Framework.

- (52) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of Section 2.4 of the Temporary Crisis Framework.
- (53) In particular, aid granted to undertakings that are not energy-intensive, is compatible with point 66 of the Temporary Crisis Framework:
- Aid will be granted under the measure no later than 31 March 2023 (see recital (15)). The measure therefore complies with point 66(a) of the Temporary Crisis Framework.
 - The aid takes the form of direct grants (see recital (10)) and its nominal value will not exceed 30% of the eligible costs up to a maximum of CZK 45 million (approx. EUR 1.84 million²⁸) at any given point in time; all figures used are gross, that is, before any deduction of tax or other charges (see recitals (28) and (32)). The measure therefore complies with points 66 (b) and 66 (f) of the Temporary Crisis Framework.
 - Aid is granted under the measure on the basis of a scheme with an estimated budget (see recital (13)). The measure is designed to benefit large enterprises affected by significant natural gas and electricity price increases as smaller undertakings benefit from other measures to reduce the impact of the high natural gas and electricity prices (see recitals (16) and (27)). Financial and credit institutions, as well as subsectors concerning financial services; that benefit from the current crisis; or produce goods with harmful effects on human health are also excluded from the potential beneficiaries (see recitals (17) and (18)). The Commission considers that the measure is designed sufficiently broadly and does not lead to an artificial limitation of potential beneficiaries. The measure therefore complies with point 66(d) of the Temporary Crisis Framework.
 - The eligible costs are calculated with a methodology that is more restrictive than the one provided for in point 66(e) of the Temporary Crisis Framework over the period between 1 February 2022 and 31 December 2022 (see recitals (24) to (26)). In particular:
 - the eligible period stops on 31 December 2022, while the Temporary Crisis Framework allows for the eligible period to extend until 31 December 2023;
 - the eligible costs are defined as the difference between the unit price paid by the beneficiary in a given month in the eligible period and twice (200%) the unit price paid by the beneficiary on average in the reference period from 1 January 2021 until 31 December 2021, while the Temporary Crisis Framework allows for the eligible costs to be calculated on the basis of the difference between the unit price paid by

²⁸ Conversion rate on the day of notification, 1 EUR = 24.301 CZK https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/euro_fxref-graph-czk.en.html

the beneficiary in a given month in the eligible period and 150% of the unit price paid by the beneficiary on average in the reference period from 1 January 2021 until 31 December 2021.

- as from 1 September 2022, the quantity of natural gas and electricity used to calculate the eligible costs cannot exceed 70% of the beneficiary's consumption for the same period in 2021.

The measure therefore complies with point 66(e) of the Temporary Crisis Framework.

- Aid may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided the maximum aid amount of CZK 45 million (approx. EUR 1.84 million²⁹) per undertaking is not exceeded (see recital (38)). Therefore, the measure complies with point 66(g) of the Temporary Crisis Framework.

(54) In particular, aid granted to energy-intensive undertakings facing operating loss is compatible with point 67 of the Temporary Crisis Framework:

- aid complies with points 66(a) to 66(e) of the Temporary Crisis Framework.
- aid may be cumulated with aid under section 2.1 of the Temporary Crisis Framework provided the overall cap of CZK 200 million (approx. EUR 8.23 million), is not exceeded. Therefore, the measure complies with point 66(g) of the Temporary Crisis Framework.
- Energy-intensive undertaking facing operating loss over the eligible period (negative EBITDA) may benefit from higher aid intensity and higher individual amount of aid (see recital (33)) with conditions that are more restrictive than those in point 67(d) of the Temporary Crisis Framework³⁰. The measure therefore complies with point 67(d) of the Temporary Crisis Framework.
- Aid under the measure may be granted to 'energy-intensive business' as defined under the first limb of Article 17(1)(a) of the Energy Taxation Directive³¹ facing operating loss over the eligibility period (see recital (33)). The overall aid does not exceed 65% of the eligible costs as defined in point

²⁹ Conversion rate on the day of notification, 1 EUR = 24.301 CZK https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/euro_fxref-graph-czk.en.html

³⁰ The first condition (aid may not lead to the EBITDA in the eligible period exceeding 70% of 2021 EBITDA) implies that there was a positive EBITDA in 2021 and that there could still be positive EBITDA in 2022. While the aid measure requires negative EBITDA in 2022 and that the aid cannot exceed 80% of operating losses, it means that EBITDA in 2022 will remain negative even after aid is taken into account. The same goes true for the second condition. If the undertaking had a negative EBITDA in 2021, aid cannot bring it above zero in 2022, but the scheme's design guarantees that the undertaking will remain operationally in red numbers in 2022. So under both options, the Czech scheme is stricter.

³¹ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

66(e) of the Temporary Crisis Framework (see recital (33)(a)). The overall aid amount does not exceed CZK 200 million (approx. EUR 8.23 million³²) per undertaking at any given point in time (see recital (33)(a)). The measure therefore complies with point 67(b) of the Temporary Crisis Framework

- As explained in recital (33)(b), the measure foresees increased aid intensities and amounts for energy-intensive undertakings active in some sectors and subsectors listed in Annex I to the Temporary Crisis Framework. The overall aid intensity may be increased to a maximum of 70% of the eligible costs and may amount to a maximum of 80% of the operating losses of the beneficiary. In addition, the overall aid amount may not exceed CZK 200 million (approx. EUR 8.23 million³³) per undertaking at any given point in time. The measure therefore complies with point 67(c) of the Temporary Crisis Framework.

- (55) The Czech authorities confirm that, pursuant to point 46 of the Temporary Crisis Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the 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 (see recital (8)).
- (56) The Czech authorities confirm that, pursuant to point 47 of the Temporary Crisis Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (see recital (21)).
- (57) The Czech authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (see recital (39)). The Czech authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Regulations are respected (see recital (36)).
- (58) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Crisis Framework.

³² Conversion rate on the day of notification, 1 EUR = 24.301 CZK https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-czk.en.html

³³ Conversion rate on the day of notification, 1 EUR = 24.301 CZK https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-czk.en.html

4. CONCLUSION

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

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President