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Subject: State Aid SA.107597 (2023/N) – Czechia
TCTF: The programme to support the customers of heat industry related to the high price of heat energy

Excellency,

1. PROCEDURE

- (1) By electronic notification of 22 May 2023⁽¹⁾, Czechia notified aid in the form of limited amounts (TCTF: “*The programme to support the customer in the heat industry related to the high price of heat energy*”, the “measure”) under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis and Transition Framework”) ⁽²⁾. Czechia provided additional information on 6 and 15 June 2023.

⁽¹⁾ At pre-notification stage, initiated on 15 February 2023, the case was registered as SA.106418.

⁽²⁾ Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101,

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- (2) Czechia exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958 ⁽³⁾ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Czechia considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken, for example by Russia, have economic repercussions on the entire internal market ("the current crisis"). The current crisis has 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 inputs and raw materials and primary goods. The impact of the current crisis on Czechia’s economic activity is strong. GDP growth in 2022 has been revised downwards since the start of Russian military aggression against Ukraine, and Czechia expects GDP forecasts to decline further in 2023. The most burdensome effect comes from the increase in energy prices, including heat as a secondary effect, which started from February 2022 and marked even stronger upward shifts later that year ⁽⁴⁾. This mainly affects industry, but many service providers are also experiencing difficulties which threaten their functioning due to increased energy prices. The negative impact of an extensive period of increased energy prices has affected almost all sectors. Russian military aggression against Ukraine has a significantly negative impact on economic development.
- (4) The measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy, by applying rebates of the price of heat which significantly increased as a result of the current crisis. According to the interim report on the development of heat energy price changes as of 1 December 2022 processed by the Energy Regulatory Office, the resulting price of heat in February 2022 determined by a weighted average, which includes the prices of heat produced from all fuels ⁽⁵⁾ in all price

17.3.2023, p. 3). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 28.10.2022, p. 1), (“Temporary Crisis Framework”), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

- (3) Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).
- (4) See, for example, reports from Eurostat available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20230426-2#:~:text=In%20the%20second%20half%20of,%E2%82%AC28.4%20per%20100%20kWh> and https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Electricity_price_statistics (accessed: 12 June 2023).
- (5) The average price includes prices for all thermal energy supplied to customers in Czechia, i.e. thermal energy produced from all possible fuels, such as natural gas, coal, biomass and other renewable energy sources, waste, fuel oil, electricity, nuclear energy, biomethane, biogas and others.

localities ⁽⁶⁾, was CZK ⁽⁷⁾ 649/GJ without VAT. In December 2022, the price of heat had already increased to 748 CZK/GJ without VAT. The largest increase was found in the production of heat from natural gas, where the price of heat increased from 697 CZK/GJ without VAT in February 2022 to 925 CZK/GJ without VAT in December 2022. The number of price localities where the price of heat is above the level of 1 000 CZK/GJ without VAT increased significantly, by 107 between February and December 2022. In February 2022, there were 238 such price localities, and in December 2022 there were already 345 such localities. In several localities a price increase of more than 100% in 2022 was recorded.

- (5) 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 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 measure is based on Article 107(3)(b) TFEU, in light of sections 1 and 2.1 of the Temporary Crisis and Transition Framework.

2.1. The nature and form of aid

- (7) The measure provides aid to the final beneficiaries defined in recital (12) in the form of rebates ⁽⁸⁾.
- (8) The legal bases ⁽⁹⁾ for the measure are:
 - (a) The programme to support customers in the heating industry related to the high price of heat energy under the Temporary Crisis Framework for State aid measures to support the economy after Russia's aggression against Ukraine (the “Programme”) approved by the Resolution of the Government of the Czech Republic No. 1100 of December 21, 2022. (“Government Resolution”),
 - (b) Draft Call for the “Programme to support customers in the heating industry related to the high price of heat energy under the TCF” for the eligible period 1.1.2022-31.12.2022, and
 - (c) Draft Call for the Programme to support customers in the heating industry related to the high price of thermal energy under the TCF” for the eligible

⁽⁶⁾ Price locality means the territory in which the thermal energy supplier supplies thermal energy to customers. The price decision of the Energy Regulatory Office provides the criteria for defining the price localities.

⁽⁷⁾ For information about the exchange rate, see footnote 11 below.

⁽⁸⁾ The Czech authorities explained that the pass-on of aid can take various forms depending on the heat energy supplier: it can be a direct payment (i.e. payment sent by the heat energy supplier to the Beneficiary's account), the amount of support can be set off by the supplier against the advance payments, it can be offset by the supplier against the heat energy billing (i.e. the amount of support can be deducted from the advance payments or arrears).

⁽⁹⁾ The legal bases refer to the Temporary Crisis Framework, as that was the legal framework in force at the time of adoption of the government resolution referred to in recital (8)(a) (see, footnote 1 above).

period 1.1.2023-31.12.2023 (both calls mentioned in this recital hereinafter combinedly referred to as “Calls”) ⁽¹⁰⁾.

2.2. Administration of the measure

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

2.3. Budget and duration of the measure

- (10) The estimated budget of the measure is CZK 17 billion (approx. EUR 718 million) ⁽¹¹⁾⁽¹²⁾ and is financed by the State budget (Ministry of Industry and Trade).
- (11) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 December 2023.

2.4. Beneficiaries

- (12) The final beneficiaries of the measure are undertakings of all sizes in Czechia that qualify as customers ¹³ of heat energy based on national law and are affected by the crisis, except for customers who take or consume heat energy directly from the energy source ⁽¹⁴⁾⁽¹⁵⁾.
- (13) 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.
- (14) 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

⁽¹⁰⁾ The legal bases contain a standstill clause; the announcement of Calls will take place following the notification of the present decision.

⁽¹¹⁾ Conversion rate of the European Central Bank applied as of 22 May 2023 (EUR 1 = CZK 23,675), available at: <https://www.cnb.cz/en/financial-markets/foreign-exchange-market/central-bank-exchange-rate-fixing/central-bank-exchange-rate-fixing/>.

⁽¹²⁾ The estimated budget covers the overall financial support granted to Applicants for rebates on the bills for heating for natural persons and undertakings.

⁽¹³⁾ A customer is a person who buys heat energy for its final use and takes the purchased heat energy with a take-off heat device that is directly connected to a distribution heat device or heat energy source (Section 2 (2)(c) point 4 of Act No. 458/2002 Coll, as amended (Energy Act)).

⁽¹⁴⁾ The measure also benefits natural persons that are not undertakings. However, the present decision does not cover financial support to natural persons not engaged in an economic activity, as it does not qualify as aid.

⁽¹⁵⁾ The measure is also not intended for the supply of heat energy from a source of heat energy without the use of a heat distribution equipment.

regulations ⁽¹⁶⁾. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.5. Sectoral and regional scope of the measure

- (15) The measure is open to all sectors, except agriculture, fisheries and aquaculture. It applies to the whole territory of Czechia.

2.6. Basic elements of the measure

- (16) The objective of the measure is to mitigate the negative impact of the increased costs caused by the current crisis and of the consequent increased heat energy prices on the beneficiaries referred to in recital (12). In the absence of aid, the increased costs of heating would have been fully passed to the beneficiaries in the form of high unit prices of heat energy. Therefore, the aid will have the effect of reducing the cost of heat energy for the beneficiaries.
- (17) The aid is applied for by the producers of heat energy with a valid licence for heat energy production obtained in accordance with national law, who supply heat energy to a heat distribution installation (“Applicant”). The eligible period runs from 1 February 2022 to 31 December 2023 (“the eligible period”) ⁽¹⁷⁾ according to the conditions set forth in the calls for application. The Applicant is obliged to transfer the received advantage in full to the beneficiaries ⁽¹⁸⁾. The beneficiary will be informed by the Applicant or through a heat energy supplier of the amount of aid in the form of an absolute quantification in CZK. The aid is granted for the eligible expenses of the Applicant, which are the increase in the cost of production of heat delivered to the heat energy supply system in the eligible period compared to the period from 1 January 2021 to 31 December 2021 (“the reference period”) duly demonstrated by the Applicant. The aid cannot exceed 80 % of the unit eligible expenses of the Applicant in its given price location for the eligible period, and is also limited by different caps for different types of fuels in the form of maximum CZK per GJ ⁽¹⁹⁾. The scope of eligible expenses includes costs for fuel for heat production, electricity, technological water, and some variable costs ⁽²⁰⁾.
- (18) The maximum total amount of aid per undertaking receiving heat from the heat energy supply system, for the entire eligible period from 1 February 2022 to 31 December 2023 is limited to EUR 2 million per undertaking per Member State at any given point in time; all figures used must be gross, that is, before any deduction of tax or other charges. In the event that the undertaking is supplied with heat energy by more than one supplier of heat energy, the provision of the maximum total amount of aid for the mentioned cases will be determined in the

⁽¹⁶⁾ 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).

⁽¹⁷⁾ The eligible period for aid covering the cost of heat production from natural gas will be limited to the period from 1 February to 31 December 2022.

⁽¹⁸⁾ The obligation to pass on the advantage and the procedure in relation to the Beneficiary set out in recital (17) equally applies to a supplier or suppliers of heat energy that in a chain of supply stand between the Applicant and the Beneficiary.

⁽¹⁹⁾ The different caps are further specified in Article 20 of the Calls.

⁽²⁰⁾ Article 21 in the Calls.

announced call but cannot exceed the cap of EUR 2 million per undertaking per Member State.

- (19) The measure will be administrated via the information system of the Ministry of Industry and Trade created for these purposes. A minimum of two calls for applications will be announced for the eligible period; one for the period as from 1 February 2022 to 31 December 2022 and one for the period from 1 January 2023 to 31 December 2023.

2.7. Compliance with relevant provisions of Union law

- (20) The Czech authorities confirm that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law.

2.8. Cumulation

- (21) The Czech authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations⁽²¹⁾ or the General Block Exemption Regulation⁽²²⁾ provided the provisions and cumulation rules of those Regulations are respected.
- (22) The Czech authorities confirm that the measure will not be cumulated with aid relating to the same costs granted under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (COVID-19 Temporary Framework).
- (23) 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 and Transition Framework provided the provisions in those specific sections are respected.
- (24) The Czech authorities confirm that aid granted under section 2.1 of the previous Temporary Crisis Framework and aid granted under the same respective section of the current Temporary Crisis and Transition Framework will not exceed the aid ceilings provided in section 2.1 of the current Temporary Crisis and Transition Framework at any point in time.
- (25) 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 2.1 of the Temporary Crisis and Transition Framework, the overall maximum cap per undertaking, as set out in points 61 (a) of that framework will be respected.

(21) 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. 1–8).

(22) 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).

2.9. Monitoring and reporting

- (26) The Czech authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting ⁽²³⁾).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (28) 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.
- (29) The measure is imputable to the State, since it is administered by the Ministry of Economy and Trade and it is based on the Programme approved by the Government Resolution (recitals (8) and (9)). The measure is therefore financed through State resources since it is financed by public funds (recital (10)).
- (30) The measure confers an advantage on its final beneficiaries in the form of rebates financed from direct grants provided to Applicants that channel the aid to the final beneficiaries subject to conditions and ex-post checks (recital (7)). The measure thus relieves the final beneficiaries of costs which they would have had to bear under normal market conditions. Additionally, as mentioned in footnote 14, the measure also benefits natural persons that are not undertakings. Thus, the measure does not entail aid insofar as it concerns such natural persons not engaged in economic activity.
- (31) The advantage granted by the measure is selective, since it is awarded only to certain undertakings referred to in recital (12) and excluding the agriculture, fisheries and aquaculture sectors (recital (15)).
- (32) 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.

⁽²³⁾ 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.

- (33) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU, except when it benefits natural persons that are not undertakings. The Czech authorities do not contest that conclusion.

3.3. Compatibility

- (34) 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.
- (35) 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*”.
- (36) By adopting the Temporary Crisis and Transition Framework, the Commission acknowledged (in section 1) that the current crisis has 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 which lead also to increased heating costs.
- (37) 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.
- (38) The measure aims at mitigating the negative effects of the increased costs of the heat energy producers caused by the current crisis and of the consequent increased heat energy prices on the beneficiaries 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. 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 reduce the costs of heating of final consumers, including undertakings, caused by increased costs of heat generation triggered by the current crisis 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 in the form of limited amounts of aid*”) described in section 2.1 of the Temporary Crisis and Transition Framework.
- (39) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of Czechia and meets all the relevant conditions of the Temporary Crisis and Transition Framework. In particular:
- The aid takes the form of direct grants granted as rebates to the final beneficiaries through the Applicants that receive direct grants from the granting authority (recital (7)). Therefore, the aid is channelled to the beneficiaries through the heat energy supplier(s) as described in recital (17) and in compliance with point (34) of the Temporary Crisis and Transition Framework, since the competition between suppliers is preserved and that

aid is passed on to the final beneficiaries. In particular, the amount granted to the Applicant for the partial reduction of the heat production costs will be passed on to the Beneficiaries in full and the advantage will be reflected in the form of rebates (recital (17)). The measure further does not discriminate between the Applicants as heat energy producers and is open to customers throughout the whole territory of Czechia.

- The overall aid amount will not exceed EUR 2 000 000 per undertaking per Member State; all figures used must be gross, that is, before any deduction of tax or other charges (recital (18)). The measure therefore complies with point 61(a) of the Temporary Crisis and Transition Framework.
 - Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (10)). The measure therefore complies with point 61(b) of the Temporary Crisis and Transition Framework.
 - Aid will be granted under the measure no later than 31 December 2023. (recital (11)). The measure therefore complies with point 61(c) of the Temporary Crisis and Transition Framework.
 - Aid will be granted through the Applicants which face increased costs for heat generation and to final beneficiaries that would have had to bear the increased heating costs in the absence of the aid (recitals (16) and (17)) and are therefore affected by the crisis. The measure therefore complies with point 61(d) of the Temporary Crisis and Transition Framework.
- (40) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of Union law cannot be declared compatible with the internal market²⁴.
- (41) Czechia confirms that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law. In addition, the Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market.
- (42) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.
- (43) Czechia confirms that, in accordance with point 95 of the Temporary Crisis and Transition Framework, overall aid granted under section 2.1 of the Temporary Crisis and Transition Framework and previous Temporary Crisis Framework will not exceed the aid ceilings provided in the respective sections of the Temporary Crisis and Transition Framework at any point in time (see recital (24)).
- (44) The Czech authorities confirm that, pursuant to point 51 of the Temporary Crisis and Transition 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 (recital (5)).

(²⁴) Judgment of 31 January 2023, *Commission v Braesch and Others*, C-284/21 P, EU:C:2023:58, paras, 96 *et seq.*

- (45) The Czech authorities confirm that, pursuant to point 52 of the Temporary Crisis and Transition 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 (recital (13)).
- (46) The Czech authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (26)).
- (47) 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.

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