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Subject: State Aid SA.61912 (2021/N) - Czechia
COVID-19: Amendment of the support scheme for Health Spas
(SA.58018)

Excellency,

1. PROCEDURE

- (1) By electronic notification of 25 February 2021, Czechia notified amendments to the existing aid scheme “*COVID-Spa*” (“the initial measure”) in light of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).¹ These amendments were notified under the title “*COVID-Spa II*” (“the measure”).
- (2) The Commission had previously approved the initial measure by Decision C(2020) 5552 final of 7 August 2020 (“the initial decision”)² under Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”). The

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by 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) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

² Decision in case SA.58018 (2020/N) – Czechia - COVID-19: Support for Health Spas, OJ C 302, 11 September 2020.

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principles of sections 2 and 3.1 of the Temporary Framework were applied by analogy. By subsequent Decision C (2020) 9349 final of 16 December 2020, the Commission extended the duration of the measure until 30 June 2021.³

- (3) 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 1/1958⁴ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. The initial decision

- (4) The objective of the initial measure was to support demand for the services provided by facilities with a special permission to provide spa⁵ medical procedures and curative rehabilitation treatments. This was to be achieved through State financing of direct “grants” compensating discounts provided to EU/EEA consumers on curative, preventive stays and treatments in such facilities. The discounts were available to all consumers from the EU/EEA. The stays could take place until 31 December 2020 (recital 10 of the initial decision). Aid under the initial measure could have been granted as from its approval until no later than 31 December 2020 (recital 14 of the initial decision).
- (5) In the initial decision, the Czech authorities had submitted that the governmental measures adopted in Czechia in response to the COVID-19 outbreak since March 2020⁶, have had a severe impact on the turnover of these facilities. This was caused by a significant reduction in the number of visitors, either coming from Czechia or from other EU/EEA or third countries.⁷ Objective obstacles (e.g. closed borders, stringent hygienic measures and reduced income of prospective clients) were also mentioned by the Czech authorities as contributing factors to the overall drop of bookings for these services.

2.2. The measure

- (6) Czechia notifies of its intention to continue to support demand for the services provided by these facilities due to the adoption of further governmental measures following the second and third wave of the COVID-19 outbreak in Czechia. In particular, on 5 October 2020 the state of emergency was declared,⁸ the free

³ Decision in case SA.59705 (2020/N) – Czech Republic COVID-19: Modifications to SA.56961, SA.57071, SA.57149, SA.57195, SA.57358, SA.58018, SA.58167 and SA.58398.

⁴ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁵ A spa is defined as an area or part of an area of a municipality or several municipalities where natural mineral springs are located, pursuant to the Czech law on the spa industry.

⁶ These governmental measures are listed in recital 5 of the initial decision.

⁷ In the initial decision, the Czech authorities submitted that 40% of these facilities’ clients are consumers from EU or third countries and approximately 60% of clients are individuals residing in Czechia.

⁸ Government resolution no. 957 of 30.9.2020, as amended. The State of emergency in Czechia was in force until 28 February 2021.

movement of the population was restricted⁹ and the operation of certain facilities, including those providing spa medical procedures and curative rehabilitation treatments was restricted.¹⁰ As part of the restrictions, these facilities could not offer services between 28 October 2020 and 22 November 2020.¹¹

- (7) As a result, the majority of the planned consumer visits, which were based on discounts granted under the initial measure, could not be realized by the end 2020 and had to be cancelled. The cancellations were either due to the governmental measures ordering the closure (or restriction of operation) of these facilities, or were requested by the clients themselves (due to illness or quarantine obligations). In addition, the combination of governmental measures and the disruption in international travel due to COVID-19 kept the demand from foreign guests low. Therefore, the allocated budget of the initial measure was not exhausted. The Czech authorities submit that only a small part (approximately 14.4%) of the originally allocated budget was paid out to the beneficiaries.
- (8) Czechia considers that the COVID-19 outbreak continues to affect the real economy. The measure aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine their viability and thereby to preserve the continuity of economic activity during and after the outbreak. In line with their submissions in the initial decision¹², the Czech authorities also consider that extending the period of support granted under the initial measure will offset the drop in the number of visitors in these facilities, in particular from abroad, will preserve employment in these facilities and help to maintain the scope and quality of services offered. As in their submissions in the initial decision,¹³ the Czech authorities repeat that the beneficiaries' facilities constitute an important source of employment in Czechia.

2.3. The notified amendments

- (9) With this notification, the Czech authorities notify the Commission of their intention to extend the period within which consumers can benefit from State-supported discounted stays until 31 December 2021.
- (10) Following the latest amendment of the Temporary Framework¹⁴ the Czech authorities notify the Commission of their intention to:

⁹ Government resolution no. 1078 of 21. 10. 2020 (Restriction of movement since 22.10.2020 up to 3.11.2020. Subsequently, it was extended until 22.1.2021).

¹⁰ Government resolution no. 1103 of 26.10.2020 (Spa facilities could not offer services to self-payers during the period 28.10.2020 to 22.11.2020).

¹¹ The Czech authorities submit that the services could not be offered to "self-payers" during this period of time, a term used to describe consumers who choose to pay for their treatment directly outside of health insurance.

¹² Recital 6 of the initial decision.

¹³ Recital 6 of the initial decision.

¹⁴ C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

- extend the duration of the scheme until 31 December 2021. Therefore, aid may be granted under the measure as from notification of the Commission's approval until no later than 31 December 2021;
 - increase the maximum overall aid amount per undertaking from EUR 800 000 to EUR 1.8 million.¹⁵ As per recital 24 of the initial decision, the maximum overall aid amount will also include all other State aid granted on the basis of section 3.1 of the Temporary Framework.
- (11) The Czech authorities confirmed that all other conditions and elements of the initial measure remain unchanged. Most importantly, the budget of the measure also remains unchanged at CZK 1 000 million, i.e. approx. EUR 38.3 million.¹⁶ Also, the discounts continue to be made available to all EU/EEA consumers.
- (12) The Czech authorities also confirmed that the cumulation rules and the monitoring and reporting obligations undertaken by the initial decision (recitals 25-27 of the initial decision) will be respected.
- (13) The Czech authorities submit that these amendments will only be put into effect after the notification of the Commission's approval.
- (14) 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.
- (15) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.4. Legal basis of the notified measure

- (16) In addition to the legal bases of the initial measure listed in recital 11 of the initial decision, the legal basis for this measure is: Government Resolution No.169/2021 on the amendment of Government Resolution No. 48/2021, extending the duration of the *COVID-spa* support until 31 December 2021.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (18) 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.

¹⁵ All figures used must be gross, that is, before any deduction of tax or other charge.

¹⁶ https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-inforeuro_fr. - exchange rate on 25 February 2021.

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.

- (19) The measure constitutes State aid in the meaning of Article 107(1) TFEU for the reasons set out in the initial decision.¹⁷ The notified amendments do not affect that conclusion. The Commission therefore refers to the respective assessment in the initial decision and concludes that the measure constitutes State aid in the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (20) The Commission assessed the initial measure on the basis of Article 107(3)(b) TFEU in light of the Temporary Framework and concluded that it was appropriate, necessary and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU including the conditions set out in the Temporary Framework.¹⁸
- (21) More specifically, in recital 39 of the initial decision, the Commission noted that, even though the measure had been notified under the Temporary Framework “*in light of the particular nature of the measure (as aid to the price charged to the end-consumers) and its potential effects on the internal market which may be different from those of the measures envisaged in section 3.1 of the Temporary Framework, the Commission will assess the measure based on the general criteria for compatibility under Article 107(3)(b) TFEU. The Temporary Framework can provide guidance and its principles can be applied by analogy as far as appropriate*”.
- (22) Furthermore, in recital 40 of the initial decision, the Commission noted that “[a]s for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member State concerned [...], on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other”.
- (23) The current measure has been notified under the Temporary Framework (recital (1)). In line with the Commission’s assessment in the initial decision, as explained in recital (21) above, the notified measure will also be assessed based on the general criteria for compatibility under Article 107(3)(b) TFEU. The Section 3.1 of the Temporary Framework can provide guidance and its principles can be applied by analogy as far as appropriate.

Appropriateness

- (24) In order to be appropriate, the aid has to be well targeted to its objective, i.e., in this case to remedy a serious disturbance in the economy. This would not be the

¹⁷ Recitals 29-34 of the initial decision.

¹⁸ Recital 55 of the initial decision.

case if the disturbance would also disappear in the absence of the measure or if the measure is not appropriate to remedy the disturbance.

- (25) The Commission refers to its analysis of appropriateness as set out in recitals 41-45 of the initial decision and notes that the same considerations continue to apply given the persistence of the COVID crisis and its economic impact. In addition to those considerations, the Commission notes the following:
- the most recent regulatory measures enforced in Czechia (recital (6)), namely, the declaration of the state of emergency, which is still ongoing since October 2020, and which restricts movement of the population and the provision of services in the beneficiaries' facilities, not only leads to a turnover loss for these facilities but also affects the wider economy of Czechia (recital (8));
 - due to the above-mentioned regulatory measures, the number of visitors of the beneficiaries' facilities, both from Czechia as well as from abroad, has significantly decreased given the objective obstacles of closed borders and the application of stringent measures to contain the spread of COVID-19. In this regard, the Commission also notes that the beneficiaries' facilities constitute an important source of employment in Czechia (recital (8));
 - the measure is part of a series of measures conceived at national level by the Czech authorities to remedy a serious disturbance in their economy, is important for preserving employment and economic continuity in the country and is of a scale which can be reasonably anticipated to produce effects across the affected regions of Czechia who have a high concentration of spa facilities (almost all regions of Czechia) (recital (8)).

- (26) The Commission therefore considers that the measure continues to be appropriate to remedy a serious disturbance in the economy of Czechia.

Necessity and proportionality

- (27) In order to meet the compatibility criterion of necessity, the aid measure must, in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach this objective. So as to be proportionate, the measure should not entail excessive distortions of competition and excessive effects on the proper functioning of the internal market.
- (28) The Commission refers to its analysis of necessity and proportionality as set out in recitals 46-54 of the initial decision and notes that the same considerations continue to apply given the persistence of the COVID crisis and its economic impact. In addition to these considerations, the Commission notes the following:
- the beneficiaries as well as the conditions under which consumers may benefit from the discounts provided under the measure remain the same as in the initial measure (recital (11));
 - the amounts of aid per undertaking remain limited, both in absolute and relative terms (recital (10)), the budget remains unchanged as per the

initial measure (recital (11))¹⁹ and the aid is granted only until the 31 December 2021 (recital (10));

- the discounts continue to be made available to all EU/EEA consumers (recital (11));
- given that facilities with a special permission to provide spa medical procedures and curative rehabilitation treatments are present in almost every region of Czechia and constitute an important source of employment in the country (recital (8)), the current drop in demand for services provided by these facilities is not only having a negative impact on their overall cost of operation but may also lead to dismissals of highly specialised personnel. Therefore, the risk of intensification of problems linked with unemployment in the regions where the facilities are located, caused by reduced demand for the services of these facilities due to COVID-19, remains.

(29) Similarly to the initial decision, and following the latest amendment of the Temporary Framework, the conditions of section 3.1 of the Temporary Framework are fulfilled *mutatis mutandis*:

- The overall nominal value of the aid shall not exceed EUR 1.8 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (10)). The maximum overall aid amount will also include all other State aid granted on the basis of section 3.1 of the Temporary Framework. The measure therefore complies with point 22(a) of the Temporary Framework.
- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital ((11)). The measure therefore complies with point 22(b) of the Temporary Framework.
- As per recital 52 of the initial decision, and as confirmed by the Czech authorities (recital (11)) aid may not be granted under the measure to medium²⁰ and large enterprises that were already in difficulty on 31 December 2019. The measure therefore complies with point 22(c) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid²¹ or restructuring aid.²² The measure therefore complies with point 22(c)bis of the Temporary Framework.

¹⁹ The remaining budget to be spent is therefore lower than the one initially approved

²⁰ As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

²¹ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

²² Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

- Aid will be granted under the measure no later than 31 December 2021 (recital (10)). The measure therefore complies with point 22(d) of the Temporary Framework.
- 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 (recital (14)).
- Although the measure is assessed directly under Article 107(3)(b) TFEU, Czechia confirms that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (12)). The Czech authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recital (12)).

- (30) Based on the above, the Commission concludes that the measure continues to be limited to the amount and form necessary to achieve the objective pursued to ensure aid to fundamentally sound enterprises, which should help to mitigate the serious disturbance that the COVID-19 outbreak has on the Czech economy. The Commission therefore concludes that the measure continues to be necessary to the objective of mitigating a serious disturbance of the Czech economy.
- (31) Furthermore, the Commission concludes that the features described above continue to ensure that the measure is proportionate to the objective pursued. It does not create excessive negative effects on the proper functioning of the internal market, taking into account its utility as to the objective of mitigating a serious disturbance of the Czech economy.

Conclusion on compatibility

- (32) In light of the above, the Commission considers that the notified amendments do not alter the Commission's conclusions on the compatibility of the initial measure, as set out in the initial decision. The Commission therefore concludes that the measure continues to be appropriate, necessary and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU including the conditions set out in Section 3.1 of the Temporary Framework.

4. CONCLUSION

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

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
Decision-making & Collegiality
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