



2025/2433

5.12.2025

COMMISSION DECISION (EU) 2025/2433

of 29 July 2025

on the aid scheme SA.51501 (2021/C) (ex 2019/NN) (ex (2018/N) implemented by Czechia in favour of large enterprises active in primary agricultural production

(notified under document C(2025) 5149)

(Only the Czech version is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (hereafter the 'TFEU'), and in particular Article 108(2), first subparagraph, thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By letter dated 29 June 2018, Czechia notified to the Commission the aid scheme SA.51501 (2018/N) – *Czechia, Aid for insurance premium for large enterprises*, which provides for the granting of aid for the payment of insurance premiums covering damage caused by natural disasters, adverse climatic events and plant pests or animal disease respectively to crops and livestock (the 'scheme').
- (2) The Commission requested additional information by letters of 24 August 2018, 8 October 2018, 17 December 2018, 6 March 2019, 28 May 2019 and 8 January 2020. The Czech authorities submitted additional information by letters of 18 September 2018, 18 January 2019, 23 April 2019, 23 September 2019 and 10 February 2020.
- (3) Information obtained during the preliminary examination of the scheme revealed that some aid had already been granted to large enterprises for the payment of insurance premiums covering damage caused by natural disasters, adverse climatic events and plant pests or animal disease respectively to crops and livestock (the individual aid). The Czech authorities granted this aid under the scheme SA.49594 (2017/XA) ⁽²⁾, considering that the recipients qualified as SMEs.
- (4) On 12 January 2021, the Commission adopted Decision C(2021)34 final of 12 January 2021 ⁽³⁾ (hereafter the 'opening decision'), whereby it informed Czechia that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of (i) the individual aid and (ii) the scheme. The opening decision was published in the *Official Journal of the European Union* ⁽⁴⁾.
- (5) By letter of 19 February 2021, the Czech authorities submitted their comments.
- (6) The Commission received no comments from other interested parties.
- (7) The Commission requested further clarification from the Czech authorities by letters of 4 August 2023, 8 February 2024 and 6 June 2024. The Czech authorities responded by letters of 24 August 2023, 28 February 2024 and 26 June 2024.

⁽¹⁾ OJ C 60, 19.2.2021, p. 54.

⁽²⁾ SA.49594 (2017/XA) Aid for insurance premium, TAM.

⁽³⁾ *Ibid.*

⁽⁴⁾ *Ibid.*

2. SCOPE OF THIS DECISION

- (8) This decision assesses the compatibility with the internal market i) of the scheme and ii) of the individual aid referred to in recital 3.

3. DESCRIPTION OF THE SCHEME

3.1. Objective

- (9) The objective of the scheme is to provide aid for the payment of insurance premiums, thus making insurance broadly available to the sector of agricultural primary production. Insurance is considered to be an efficient risk management tool, providing increased security for farmers against unforeseeable damage. The scheme provides for aid for insurance premiums covering crops and livestock.

3.2. Duration

- (10) The scheme is proposed to be in place from the notification of the Commission Decision approving the scheme until 31 December 2024.

3.3. Legal bases

- (11) The legal base is constituted by the following legal acts:
- (a) Act No 252/1997 Coll. on agriculture, as amended [*Zákon č. 252/1997 Sb., o zemědělství, ve znění pozdějších předpisů*], in particular § 2da (2)(c) and (3)(f) thereof;
 - (b) Draft Rules for granting insurance aid to large enterprises by the Support and guarantee agricultural and forestry fund ('Granting Principles') [*Zásady pro poskytování finanční podpory pojištění pro velké podniky Podpůrným a garančním rolnickým a lesnickým fondem, a.s.*].

3.4. Budget

- (12) The overall budget of the scheme is estimated at CZK 690 million (approx. EUR 25,8 million ⁽⁹⁾). The aid is to be financed from the State budget.
- (13) The granting authority is the Support and guarantee agricultural and forestry fund [*Podpůrný a garanční rolnický a lesnický fond, a.s.*]. It is a special purpose government agency, in the form of joint stock company, in which 100 % of the shares are owned by the State. It acts as a granting authority on the basis of § 2da of Act No 252/1997 Coll. on agriculture.

3.5. Aid form

- (14) Aid would be paid in the form of direct grants. The Czech authorities consider this aid form as the most appropriate for covering the costs of insurance premiums.

3.6. Beneficiaries

- (15) The scheme is designed in favour of large enterprises active in the agricultural primary production.
- (16) The estimated number of beneficiaries is more than 1 000.
- (17) The Czech authorities confirmed that undertakings in difficulty within the meaning of point 33(63) of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas ⁽⁶⁾ (hereafter the '2023 Guidelines') are not eligible for aid under the scheme.

⁽⁹⁾ Recital 6 of the opening decision. The CZK/EUR exchange rate on the date of the notification of this scheme (29 June 2018) was 1CZK= EUR 0,03841.

⁽⁶⁾ OJ C 485, 21.12.2022, p. 1.

- (18) Likewise, the Czech authorities committed to suspend the payment of the aid if the beneficiary still had at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision (either concerning an individual aid or an aid scheme), until the beneficiary has reimbursed or paid into a blocked account the total amount of the unlawful and incompatible aid including the corresponding recovery interest.

3.7. Further details

- (19) With the notification, Czechia intends to complement existing aid measure SA.49594 (2017/XA) that was in place as from 1 January 2018 ⁽⁷⁾. This measure was exempted on the basis of Commission Regulation (EU) No 702/2014 ⁽⁸⁾ (hereafter the 'ABER') and its scope was limited to SMEs. By the notification, Czechia therefore intends to put in place the basis for aid in favour of large enterprises.
- (20) According to the national legal basis, 'natural disasters' are understood as earthquakes, avalanches, landslides and floods, tornadoes and naturally occurring wildfires. 'Adverse climate events' are understood as adverse weather conditions such as frost, storms and hail, ice, heavy or persistent rain, drought or other adverse climate conditions. 'Plant pests' are understood as any species, strain or biotype of plant, animal or pathogen harmful to plants or plant products.

Aid for insurance covering damage caused to crops

- (21) Aid can be granted to growers who take out a crop-insurance policy in their own name and pay at least CZK 1 000 (approx. EUR 37,4) in premiums for a relevant year. Forests and forest nurseries are not considered as crops.
- (22) The aid intensity depends on the type of crops. It varies between 35 % and 65 % of the documented cost of special-crop insurance for a relevant year. For other crops, the aid intensity varies between 10 % and 50 % of the documented cost of the insurance for a relevant year.
- (23) 'Special crops' means in particular:
- (a) permanent crops, including nurseries, i.e.: vines, hops, fruit (apricots, apples, pears, cherries, peaches, currants, gooseberries, nuts, almonds, quince, plums, damsons, greengages, raspberries, blackberries, rowanberries, black rowanberries, chestnuts);
 - (b) strawberries;
 - (c) potatoes;
 - (d) sugar beet;
 - (e) vegetables;
 - (f) ornamental plants including nurseries, medicinal, aromatic and culinary plants, poppies;
 - (g) fibre plants (flax and hemp);
 - (h) production of grasses and clover grown for seed.

Aid for insurance covering damage caused to livestock

- (24) Aid can be granted to livestock farmers who take out a livestock-insurance policy in their own name and pay at least CZK 1 000 (approx. EUR 37,4) in premiums for a relevant year.

⁽⁷⁾ Before 1 January 2018, aid was granted on the basis of SA.40185 (2014/XA).

⁽⁸⁾ Commission Regulation (EU) 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, ELI: <http://data.europa.eu/eli/reg/2014/702/oj>).

- (25) The aid intensity varies between 35 % up to 65 % of the documented insurance costs.

Further conditions

- (26) The Czech authorities confirmed that the insurance payments must be limited to compensations for not more than the cost of making good the damage caused by the events concerned (recital 20) and that they could cover only the actual production before the damage occurrence. Further, insurance contracts would not require or specify the type or quantity of future production.
- (27) The Czech authorities confirmed that the aid cannot be limited to insurance provided by a single insurance company or a group of companies and that the aid cannot be conditional upon the insurance contract being concluded with a company established in Czechia.
- (28) The aid applicants have to conclude an insurance contract with an insurance provider, which has a cooperation agreement with the granting authority⁽⁹⁾. Any insurance provider may request to conclude such a cooperation agreement with the granting authority.
- (29) According to the national legal basis and as confirmed by the Czech authorities, the aid application has to be submitted before the payment of insurance premium.
- (30) The aid application has to include the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs.
- (31) Applicants have to describe in the application the situation without the aid (counterfactual scenario) and submit documentary evidence in support of the counterfactual described in the application. When receiving an application, the granting authority has to carry out a credibility check of the counterfactual and confirm that the aid has the required incentive effect.
- (32) Aid cannot be cumulated with aid received from other local, regional, national or Union schemes or with ad hoc aid for the same eligible costs.
- (33) The maximum aid intensity and aid amount are calculated in a non-discriminatory manner by the granting authority at the moment of granting the aid. The eligible costs must be supported by clear, contemporary documentary evidence. For the purposes of calculating the aid intensity and the eligible costs, all figures used have to be taken before any deduction of tax or other charge.
- (34) Value added tax ('VAT') is not eligible for aid, except where it is not recoverable under the national rules.
- (35) The Czech authorities explained that the scheme is not expected to have an environmental impact, as it consisted only of aid towards the payment of insurance premiums.
- (36) The same measure is not included in the Czech Strategic Plan ('CSP'), but the scheme was consistent with the general common agricultural policy ('CAP') objective of fostering competitive and resilient agricultural sector, laid down in Article 5, point (a) of Regulation (EU) 2021/2115 of the European Parliament and of the Council⁽¹⁰⁾, as well as with the specific CAP objective of supporting viable farm income and resilience of the agricultural sector and increasing farm competitiveness, as laid down in Article 6(1), points (a) and (b), of that Regulation.

⁽⁹⁾ A list of the concerned insurance undertakings can be found at: <https://www.pgrlf.cz/programy/podpora-pojisteni-2/podpora-pojisteni-spolupracujici-pojistovny/>.

⁽¹⁰⁾ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1, ELI: <http://data.europa.eu/eli/reg/2021/2115/oj>).

- (37) The Czech authorities confirmed that they would publish in the European Commission's transparency award module ⁽¹¹⁾ the full text of the scheme and its implementing provisions or legal basis, the identity of the granting authority and the identity of the beneficiaries which receive individual aid award exceeding EUR 60 000 ⁽¹²⁾. The Czech authorities confirmed that such information would be published after the decision to grant the aid has been taken, it would be kept for at least 10 years and be available for the general public without restrictions.
- (38) The Czech authorities committed to adapt the scheme to the new rules ⁽¹³⁾, which have been in force as from 1 January 2023 and apply them to the scheme ⁽¹⁴⁾.

4. DESCRIPTION OF THE INDIVIDUAL AID

4.1. Objective

- (39) The objective of the individual aid was to make insurance broadly available to agricultural sector through partial compensation of the costs of insurance premium. The eligible insurance covered crops and livestock.

4.2. Duration

- (40) The individual aid was granted from 1 January 2018 until 31 December 2022.

4.3. Legal bases

- (41) Czechia granted the individual aid on the basis of the scheme SA.49594 (2017/XA).

4.4. Budget

- (42) The budget of the individual aid has not been established. While the formal investigation allowed to identify one beneficiary of such individual aid (recital 261), other beneficiaries may have also received of the individual aid. In any event, the individual aid was financed from the State budget.
- (43) The granting authority was the Support and guarantee agricultural and forestry fund [*Podpůrný a garanční rolnický a lesnický fond, a.s.*]. It is a special purpose government agency, in the form of joint stock company, in which 100 % of the shares are owned by the State. It acts as a granting authority on the basis of § 2da of Act No 252/1997 Coll. on agriculture.

4.5. Aid form

- (44) The individual aid was granted in the form of direct grants. The Czech authorities considered this form as the most appropriate for covering the costs of insurance premiums.

4.6. Beneficiaries

- (45) The beneficiaries of the individual aid were large enterprises active in agricultural primary production.
- (46) The Czech authorities confirmed that undertakings in difficulty within the meaning of point 33(63) of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas were not eligible for aid.

⁽¹¹⁾ <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>.

⁽¹²⁾ Pursuant to Section 3.2.4 of Part I. of the Guidelines, Member States are obliged to publish the identity of the beneficiaries which receive individual aid award exceeding EUR 10 000, as compared to individual awards exceeding EUR 60 000 pursuant to the 2014 Guidelines. The Czech authorities committed to adapt the scheme to the new rules (recital 38).

⁽¹³⁾ European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020.

⁽¹⁴⁾ By letter of 21 February 2023, Czechia gave its unconditional agreement to amend its existing aid schemes to comply with the 2023 Guidelines by 30 June 2023 at the latest.

- (47) Likewise, no individual aid was granted to beneficiaries that still had at their disposal an earlier unlawful aid that was declared incompatible by a Commission decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of the unlawful and incompatible aid including the corresponding recovery interest.

4.7. Further details

- (48) Under the scheme SA.49594 (2017/XA), 'natural disasters' are understood as earthquakes, avalanches, landslides and floods, tornadoes and naturally occurring wildfires. 'Adverse climate events' are understood as adverse weather conditions such as frost, storms and hail, ice, heavy or persistent rain, drought or other adverse climate conditions. 'Plant pests' are understood as any species, strain or biotype of plant, animal or pathogen harmful to plants or plant products.

Aid for insurance covering damage caused to crops

- (49) Aid could be granted to growers who took out a crop-insurance policy in their own name and paid at least CZK 1 000 (approx. EUR 37,4) in premiums for a relevant year. Forests and forest nurseries are not considered as crops.
- (50) The aid intensity depended on the type of crops. It varied between 35 % and 65 % of the documented cost of special-crop insurance for a relevant year. For other crops, the aid intensity varied between 10 % and 50 % of the documented cost of the insurance for a relevant year.
- (51) 'Special crops' means in particular:
- (a) permanent crops, including nurseries, i.e.: vines, hops, fruit (apricots, apples, pears, cherries, peaches, currants, gooseberries, nuts, almonds, quince, plums, damsons, greengages, raspberries, blackberries, rowanberries, black rowanberries, chestnuts);
 - (b) strawberries;
 - (c) potatoes;
 - (d) sugar beet;
 - (e) vegetables;
 - (f) ornamental plants including nurseries, medicinal, aromatic and culinary plants, poppies;
 - (g) fibre plants (flax and hemp);
 - (h) production of grasses and clover grown for seed.

Aid for insurance covering damage caused to livestock

- (52) Aid could be granted to livestock farmers who took out a livestock-insurance policy in their own name and paid at least CZK 1 000 (approx. EUR 37,4) in premiums for a relevant year.
- (53) The aid intensity varied between 35 % up to 65 % of the documented insurance costs.

Further conditions

- (54) The Czech authorities confirmed that the insurance payments had to be limited to compensations for not more than the cost of making good the damage caused by the events concerned (recital 20) and that they could cover only the actual production before the damage occurrence. Further, insurance contracts would not require or specify the type or quantity of future production.

- (55) The Czech authorities confirmed that the aid could not be limited to insurance provided by a single insurance company or a group of companies and that the aid could not be conditional upon the insurance contract being concluded with a company established in Czechia.
- (56) The aid applicants had to conclude an insurance contract with an insurance provider, which had a cooperation agreement with the granting authority ⁽¹⁵⁾. Any insurance provider could request to conclude such a cooperation agreement with the granting authority.
- (57) Under the scheme SA.49694 (2017/XA), and as confirmed by the Czech authorities, the aid application had to be submitted before the payment of insurance premium.
- (58) The aid application had to include the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs.
- (59) Aid could not be cumulated with aid received from other local, regional, national or Union schemes or with ad hoc aid for the same eligible costs.
- (60) The maximum aid intensity and aid amount were to be calculated in a non-discriminatory manner by the granting authority at the moment of granting the aid. The eligible costs had to be supported by clear, contemporary documentary evidence. For the purposes of calculating the aid intensity and the eligible costs, all figures used had to be taken before any deduction of tax or other charge.
- (61) VAT was not eligible for aid, except where it was not recoverable under the national rules.
- (62) The Czech authorities explained that the aid had no environmental impact, as it only compensated for part of the insurance premiums.
- (63) The same measure is not included in the Czech Strategic Plan ('CSP') or in the Czech Rural Development Programme for 2014-2020, but the aid objective is consistent with the general common agricultural policy ('CAP') objective of fostering competitive and resilient agricultural sector, as well as with the specific CAP objective of supporting viable farm income and resilience of the agricultural sector and increasing farm competitiveness.
- (64) The Czech authorities confirmed that they would publish in the European Commission's transparency award module ⁽¹⁶⁾ the full text of the measure and its implementing provisions or legal basis, the identity of the granting authority and the identity of the beneficiaries which receive individual aid award exceeding EUR 60 000 ⁽¹⁷⁾. The Czech authorities confirmed that such information would be published after the decision to grant the aid has been taken, it would be kept for at least 10 years and be available for the general public without restrictions.

5. GROUNDS FOR INITIATING THE PROCEDURE PURSUANT TO ARTICLE 108(2) TFEU

- (65) As indicated in recital 67 of the opening decision, the Commission initiated the procedure pursuant to Article 108(2) TFEU on the following grounds:
 - (a) As regards the scheme, the Commission experienced doubts relating to the moment when undertakings were required to submit their aid applications. The Commission thus also expressed doubts that that scheme complied with the (formal) incentive effect criterion.

⁽¹⁵⁾ A list of the concerned insurance undertakings can be found at: <https://www.pgrlf.cz/programy/podpora-pojisteni-2/podpora-pojisteni/spolupracujici-pojistovny/>.

⁽¹⁶⁾ <https://webgate.ec.europa.eu/competition/transparency/public/search/home/>.

⁽¹⁷⁾ Pursuant to Section 3.2.4 of Part I. of the Guidelines, Member States are obliged to publish the identity of the beneficiaries which receive individual aid award exceeding EUR 10 000, as compared to individual awards exceeding EUR 60 000 pursuant to the 2014 Guidelines. The Czech authorities committed to adapt the scheme to the new rules (recital 38).

- (b) As regards the individual aid granted to large enterprises, the Commission experienced doubts relating to the submission of the counterfactual scenario and to the moment of the application submission. The Commission thus expressed doubts that such aid was compatible with the applicable State aid rules, specifically with the incentive effect criterion. Specifically, the Commission raised doubts in relation to the submission of the counterfactual scenario and to the moment of the application submission.

5.1. Doubts regarding the compatibility of the scheme with the internal market

- (66) In accordance with Article 107(3) TFEU, aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in that Article. In the cases at hand, the Commission examined whether the derogation provided for in Article 107(3), point (c), TFEU was applicable.
- (67) In accordance with Article 107(3), point (c), TFEU, aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (68) In the opening decision, the Commission assessed the compatibility of the scheme with the internal market in the light of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 ⁽¹⁸⁾ (hereafter the '2014 Guidelines'), which were in force at the time.
- (69) Specifically, the Commission assessed the compatibility of the scheme with the internal market in the light of Chapter 3 ('Common assessment principles') of Part I the 2014 Guidelines.
- (70) On the occasion of that assessment, the Commission expressed doubts that the scheme was compatible with the internal market under Article 107(3), point (c), TFEU, because of doubts related to the moment of the aid application submission.

Moment of the application submission

- (71) Pursuant to point (66) of the 2014 Guidelines, aid could only be found compatible with the internal market if it leads to changing the behaviour of an undertaking in such a way that it engages in an additional activity in which it would have not engaged without the aid or in which it would engage in a restricted or a different manner.
- (72) Pursuant to point (70) of the 2014 Guidelines, the Commission considers that aid does not present an incentive for the beneficiary wherever work or activity has already started prior to the aid application by the beneficiary to the national authorities.
- (73) Pursuant to point 35(25) of the 2014 Guidelines, 'start of works on the project or activity' means the earlier of, either the start of the activities, or the construction works relating to the investment, or the first legally binding commitment to order equipment or employ services or any other commitment that makes the project or activity irreversible.
- (74) Under the rules of the scheme, the aid application has to be submitted after the insurance contract was concluded but before the insurance premium is paid (recital 29).
- (75) In recital 66 of the opening decision, the Commission expressed doubts that such a national procedure complied with point (35)25 of the 2014 Guidelines, specifically whether the aid applications would be submitted before the moment of the 'start of works on the project or activity', as defined in that point. The Commission expressed the preliminary opinion that in the present case the conclusion of an insurance contract constituted the first legally binding commitment and that this moment must be therefore considered as a 'start of works on the project or activity'. The Commission therefore preliminarily concluded that for point (70) of the 2014 Guidelines to be complied with, the applications should be submitted not only before the payment of the insurance premium, but also before the conclusion of the insurance contract.

⁽¹⁸⁾ OJ C 204, 1.7.2014, p. 1.

- (76) On the basis of these considerations, the Commission expressed doubts that the scheme complied with the State aid rules related to the incentive effect ⁽¹⁹⁾.
- (77) On those grounds, the Commission initiated the procedure pursuant to Article 108(2) TFEU, and invited all third parties that may have been affected by this aid as well as Czechia to submit their comments. At the same time, the Commission invited Czechia to provide all information that may help assess the aid.

5.2. Doubts regarding the lawfulness of the individual aid

- (78) In its opening decision, the Commission referred to the market information obtained during the preliminary examination, which indicated that individual aid had been granted to certain large enterprises that had been erroneously evaluated by the granting authority as SMEs at the moment of granting. The Commission considered that such evaluation had been done on purely formal grounds ⁽²⁰⁾, i.e. by exclusively checking the formal fulfilment of the criteria defining an SME, without taking into account the economic reality and case law principles set out in recitals 58 to 61 of the opening decision. The Commission considered that Czechia had already granted aid to beneficiaries that may not have complied with the SME definition at the moment of granting aid ⁽²¹⁾ and that, therefore, could not benefit from the scheme SA.49594 (2017/XA). The Commission thus considered that any such individual aid already granted prior to the notification of the scheme and, therefore, prior to its approval, was unlawful because it was granted in violation of Article 108(3) TFEU ⁽²²⁾.
- (79) The consideration outlined by the Commission in the opening decision was based on its interpretation of Article 4(2) of Annex I to the ABER, as explained in recital 61 of that decision. The Commission specified that its interpretation was based on the case law of the Court of Justice and the General Court of the European Union ('Union Courts') guided by the principle of *effet utile*.

5.3. Doubts regarding the compatibility of the individual aid with the internal market

- (80) In accordance with Article 107(3) TFEU, aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in that Article. In the cases at hand, the Commission examined whether the derogation provided for in Article 107(3), point (c), TFEU was applicable.
- (81) In accordance with Article 107(3), point (c), TFEU, aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (82) In the opening decision, the Commission assessed the compatibility of the individual aid with the internal market in the light of the 2014 Guidelines, which were in force at the time.
- (83) Specifically, the Commission assessed the compatibility of the individual aid with the internal market in the light of Chapter 3 ('Common assessment principles') of Part I the 2014 Guidelines.
- (84) On the occasion of that assessment, the Commission expressed doubts that the aid granted unlawfully was compatible with the internal market under Article 107(3), point (c), TFEU, specifically in relation to the presence of an incentive effect. In that regard, the Commission examined two conditions: submission of counterfactual scenario and the moment of the aid application submission.

⁽¹⁹⁾ Recital 66 of the opening decision.

⁽²⁰⁾ Recital 57 of the opening decision.

⁽²¹⁾ Recital 62 of the opening decision.

⁽²²⁾ Recital 42 of the opening decision.

Submission of counterfactual scenario

- (85) Pursuant to point (72) of the 2014 Guidelines, beneficiaries, which are large enterprises, have to describe in the aid application the situation without the aid, i.e. the counterfactual scenario or alternative project or activity. The counterfactual scenario have to be supported by documentary evidence and the granting authority had to carry out its credibility check and confirm its incentive effect.
- (86) At the stage of the opening decision, the Commission had doubts as to whether that requirement was respected in case of large beneficiaries that received individual aid referred to in recital 3. The Commission considered that this condition was not complied with because of the misapplication of the SMEs definition in the context of the implementation of the block-exempted scheme SA.49594 (2017/XA).
- (87) In that regard, in the opening decision the Commission referred to certain elements of the SME definition set out in Annex I to the ABER and the relevant case law of the Union Courts ⁽²³⁾, as also referred to in recitals 78 and 79 of this Decision.
- (88) Beneficiaries of the aid under the block-exempted scheme could be only SMEs and, thus, they were not required to submit the counterfactual scenario. Therefore, the Commission expressed doubts as to whether the beneficiaries of the individual aid submitted the counterfactual scenario required to establish the incentive effect of such aid ⁽²⁴⁾.

Moment of the application submission

- (89) Pursuant to point (66) of the 2014 Guidelines, aid could only be found compatible with the internal market if it leads to changing the behaviour of an undertaking in such a way that it engages in an additional activity in which it would have not engaged without the aid or in which it would engage in a restricted or a different manner.
- (90) Pursuant to point (70) of the 2014 Guidelines, the Commission considers that aid does not present an incentive for the beneficiary wherever work or activity has already started prior to the aid application by the beneficiary to the national authorities.
- (91) Pursuant to point 35(25) of the 2014 Guidelines, 'start of works on the project or activity' means the earlier of, either the start of the activities, or the construction works relating to the investment, or the first legally binding commitment to order equipment or employ services or any other commitment that makes the project or activity irreversible.
- (92) In the case at hand, the aid application had to be submitted after the insurance contract had been concluded but before the insurance premium was paid (recital 29 of this Decision).
- (93) In recital 62 of the opening decision, the Commission expressed doubts as to whether the beneficiaries which received individual aid as a result of their erroneous classification as SMEs had submitted a counterfactual scenario.
- (94) The Commission thus decided to initiate the procedure pursuant to Article 108(2) TFEU regarding the individual aid 'because of doubts related to the submission of the counterfactual scenario and to the moment of the application submission' ⁽²⁵⁾.

6. OBSERVATIONS BY CZECHIA

- (95) Czechia informed the Commission that under the scheme no call for aid applications had been open. Therefore, no aid was granted under the scheme before the date of the submission of the comments of the Czech authorities to the opening decision.
- (96) Czechia informed the Commission that in the standard administrative follow up check several beneficiaries of aid under the block-exempted scheme SA.49594 (2017/XA) were identified as large enterprises. Since at that time there was no legal basis in place for large enterprises and that block-exempted scheme was limited to SMEs (recital 19), Czechia put in place recovery procedures concerning those beneficiaries. Czechia submitted a list of beneficiaries which were concerned by the recovery.

⁽²³⁾ Recitals 58 to 61 of the opening decision.

⁽²⁴⁾ Recitals 62 and 67, first bullet point, of the opening decision.

⁽²⁵⁾ Recital 67, first bullet point, of the opening decision.

- (97) Czechia also submitted the following list of other checked beneficiaries for which, according to the Czech authorities, the *ex-post* check did not reveal any irregularities: AGROPARKL s.r.o., Podnik pro výrobu vajec v Kosičkách s.r.o., Zemědělský podnik Kvasicko, a.s., MEZILEŠÍ s.r.o., MORAVA-HOP s.r.o., AGRO Jesenice u Prahy a.s., ZEPOS a.s., AGROSERVIS 1. zemědělská a.s. Višňové, JAROS s.r.o., Zea a.s., ZEV Šaratice a.s., Agro družstvo Sebranice, PROVEM a.s. Havlíčkův Brod, Zemědělské družstvo Radiměř, Zemědělské družstvo Květná, Zemědělské družstvo Vendolí, Rostěnice a.s., Agria a.s., ZD Krásná Hora nad Vltavou a.s., Zemědělské družstvo Dolany, ČESKÁ VEJCE FARMS, s.r.o., DRUKO STRŽÍŽOV s.r.o., FARMA VESELKA s.r.o., KLADRUBSKÁ a.s., Lužanská zemědělská a.s., Vlčnovská zemědělská a.s. and Zemědělská společnost Blšany s.r.o.
- (98) In respect of the Commission's doubts mentioned in recital 62 of the opening decision (i.e. that some of the beneficiaries may not have complied with the SME definition at the moment of granting aid), Czechia submitted that those beneficiaries did not submit the counterfactual scenarios. Czechia argued that the aid was granted only to SMEs under the block-exempted scheme SA.49594 (2017/XA) and in compliance with the requirements laid down in the ABER. Therefore, the block-exempted scheme did not lay down the condition of a counterfactual scenario.
- (99) Czechia claimed that apart from the identified administrative errors (recital 96 of this Decision), no aid was granted to beneficiaries which would not be eligible for aid under the block-exempted scheme for the reason of their size. According to the Czech authorities, this condition was always assessed in light of the rules set out in binding Union law, in particular in the Annex I to the ABER.

6.1. Qualification of certain beneficiaries as SMEs

- (100) The Czech authorities specifically referred to Article 4(2) of Annex I to the ABER whereby 'Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount of staff or financial ceilings stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or microenterprise unless those ceilings are exceeded over two consecutive accounting periods'.
- (101) The Czech authorities pointed out that there are no exceptions to that rule and that this provision has been articulated as a general rule that applies automatically insofar as its premises have been found valid and true. They further pointed out that a change in an ownership structure of an enterprise after a merger or acquisition consistently leads to exceeding the applicable SME threshold values. In that regard, Czechia found unreasonable recital 60 of the opening decision in which the Commission considered that granting the aid to such enterprises as incompatible with the incentive effect principle.
- (102) Czechia considers that if the rule laid down in Article 4(2) of Annex I to the ABER was not to be applied formalistically but rather taking into account the economic reality, a different wording would be used, e.g. 'This rule does not apply where it becomes apparent that the change is permanent.' Only then the economic reality could and would be reflected in the application of the rule, and in all circumstances rather than only in case of a merger or an acquisition of a company, which, by themselves, have no bearing on the irreversibility of the change.
- (103) In view of the Czech authorities, considering the economic reality alone may prove fundamentally deceptive in similar cases. In practice, enterprises frequently encounter a leap increase in the headcount of staff or financial ceilings due to their successful commercial or manufacturing policy, i.e. even in the absence of a merger or acquisition, which may be such that it is obvious that the process is irreversible. Yet, even in such circumstances, the rule laid down in Article 4(2) of Annex I to the ABER applies without requiring national authorities to re-assess the economic reality of each individual case in the application of the rule.
- (104) On the other hand, a merger or an acquisition may not amount to an irreversible change of ownership, but rather entail a process of various structural changes or transformations, or an acquisition of enterprises for investment purposes.

- (105) Czechia further considers that the rule laid down in Article 4(2) of Annex I to the ABER represents a clear, relevant, and proportional criterion that allows for reasonable fluctuations in figures and disclosures reported by an enterprise over a certain period. Nothing in that rule appears to indicate that the Commission intended to put national authorities in charge of assessing the economic reality in each individual case. In view of Czechia, the role of national authorities is limited to reviewing the compliance with the criteria as unambiguously laid down in Article 4(2) of Annex I to that Regulation. The obligation to assess the permanency (or ephemerality) values reported by enterprises would not correspond to the requirement of using clear and simple assessment criteria, since such assessment would require a comprehensive economic assessment of each individual applicant. That would go contrary to the Commission's objective to simplify the administrative burden and improve transparency and legal certainty, and to ensure a uniform application of block exemption rules across the Member States.
- (106) As regards the interpretation of Article 4(2) of Annex I to the ABER by reference to the case law, Czechia considers that while the contents of a legal rule may be clarified by interpretation, the interpretation may not be used to misconstrue a law whose meaning is clear and intelligible. Such a course of action would risk producing an unacceptable lack of certainty in legal transactions.
- (107) Czechia points out that the case law to which the Commission refers in recital 59 of the opening decision refers to the relationships between so-called linked enterprises, which is the criterion used for the purposes of the application of Article 3 rather than of Article 4 of Annex I to the ABER.
- (108) According to Czechia, Article 4(1) of Annex I to the ABER delineates the relevant data (headcount of staff and financial ceiling) for enterprises that have passed the linked enterprise test, and therefore represents the 'second stage' of the enterprise status assessment. It therefore addresses a different situation and does not apply to the assessment of relationships between enterprises under the case law to which the Commission refers in its opening decision.
- (109) Czechia additionally submits that Article 4(2) of Annex I to the ABER further elaborates on Article 4(1) of that Annex when it provides, with respect to an enterprise that has already passed the linked enterprise test and for which the authorities obtained the requisite data (headcount of staff and financial amounts under Article 4(1) of Annex I to that Regulation), whether such enterprise does or does not satisfy the eligibility requirements to qualify as a SME. Article 4(2) of Annex I to the ABER therefore represents the third stage of the assessment of a SME status, when it sets out the rule that the change in the reported data of enterprises that have passed the linked enterprise test under Article 3(1) to (4) of that Annex does not automatically result in the loss or acquisition of the SME status.
- (110) Czechia therefore concludes that the case law quoted by the Commission does not apply to the case at hand, because it does not refer to the 'third stage' of the assessment of a SME status. Also in Czechia's view, the Commission's established policy or the previous rulings of the Union Courts do not imply that Article 4(1) of Annex I to the ABER would not apply in the circumstances when the SME thresholds are exceeded due to a merger or an acquisition. On the contrary, in a ruling T-745/17 ⁽²⁶⁾, the General Court of the European Union clearly concluded that Article 4(2) of Annex I to Commission Regulation (EU) No 651/2014 ('GBER') ⁽²⁷⁾ applies even in case of mergers and acquisitions.
- (111) Finally, Czechia submitted that in order to improve the legal certainty for aid beneficiaries and granting authorities, as from 1 August 2018, it abandoned the foregoing implementation practice, and, acting in accordance with the Commission's User Guide to the SME Definition, it no longer applies Article 4(2) of Annex I to the ABER to enterprises that exceed the SME thresholds as a result of a change in ownership. At the same time, Czechia maintains that its previous implementation did not constitute the violation of that provision.

⁽²⁶⁾ Judgment of the General Court of 9 September 2020, *Kerkosand v Commission*, T-745/17, ECLI:EU:T:2020:400. Recital 66 of the opening decision.

⁽²⁷⁾ 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, ELI: <http://data.europa.eu/eli/reg/2014/651/oj>).

6.2. Start of work and moment of application submissions

- (112) Czechia submitted that in the case at hand, it is the moment of payment of the insurance premium that must be considered as the moment of *start of works* and not the conclusion of the insurance contract, as suggested by the Commission in the opening decision ⁽²⁸⁾.
- (113) Czechia explained that under its national rules, a ‘project’ or ‘activity’ refers to an insurance, which is paid on an annual basis. An undertaking must therefore decide every year whether it will take the annual insurance and aid can be granted solely for an annual insurance and not for a multiannual insurance period.
- (114) In relation to the determination of the moment of the *start of works on the project or activity*, the Czech authorities refer to the prevailing business practice: agricultural undertakings enter into an insurance contract with an automatic extension clause. The automatic extension is essential for obtaining a long-term insurance coverage. Afterwards, insurance coverage for a relevant year requires paying the annual insurance premium. If an undertaking does not pay the premium for an upcoming year, it forfeits its coverage for that year. No other steps than the payment of the annual premium are required.
- (115) The Czech authorities consider that in the absence of aid an undertaking insured in one year would not necessarily take the insurance for a next year. Prior to the payment of the insurance premium, an enterprise does not make a legally binding commitment that would make the annual insurance *irreversible*. Each annual insurance must be seen as a separate project that requires a new and independent decision-making and it cannot be inferred from the existence of a multiannual contract or an annual insurance paid in one year that an undertaking will take the same insurance for a next year.
- (116) In these circumstances, the objective of the aid is to incentivize undertakings to take out the annual insurance. In the absence of public support that motivates farmers to take insurance every year, the insurance coverage of risks in the agricultural sector would be considerably lower given the high insurance premium cost and the limited financial resources available to the farming sector.
- (117) Therefore, according to the Czech authorities, in the case at hand the payment of the annual premium should be considered as the moment of the *start of works*.
- (118) This practice has been reflected also in the national legal framework for insurance. According to § 2804 of Act 89/2012 Sb., the Civil Code, as amended: ‘If the insurer reminds the policyholder to pay insurance premium and advises him in the reminder that the insurance will be extinguished unless the insurance premium is paid within an additional time limit of at least one month from the date of delivery of the reminder, the insurance is extinguished upon the expiry of the time limit within which the insurance premium has not been paid.’.
- (119) The Czech authorities explained the importance of multiannual contracts. If beneficiaries were to terminate their existing insurance policies prior to signing a new insurance contract, they would be bound to forego their insurance coverage for a certain period of time. This would produce an undesirable consequence that would go contrary to the purported aims of the scheme and that would be unacceptable from the perspective of enterprise risk management. The Czech authorities consider that beneficiaries may not be reasonably asked to expose themselves to the risk for purely formalistic reasons.
- (120) Furthermore, insurance companies commonly offer incentives for taking out the long-term insurance, such as insurance premium discounts or other benefits, which motivates farmers to take out coverage for a broader range of risks.
- (121) The Czech authorities confirmed that no aid would be granted to a beneficiary that had paid the annual insurance premium prior to the aid application submission.
- (122) Notwithstanding the foregoing, the Czech authorities observe that the very condition that requires beneficiaries to apply for the aid prior to the *start of works on the project* should not be taken as the absolute criterion for granting the aid. On the contrary, the case law of the Union courts finds that in specific cases circumstances may occur that will produce a real incentive effect even if the start of works on the project predates the date of the aid application ⁽²⁹⁾. The Czech authorities therefore submit the view that the requirement should not be treated with excessive formalism.

⁽²⁸⁾ Recital 66 of the opening decision.

⁽²⁹⁾ Judgment of the Court of 13 June 2013 in joined cases C-630/11 P, HGA srl. and Others, C-631/11 P, Regione autonoma della Sardegna, C-632/11 P, Timsas srl. And C-633/11 P, Grand Hotel Abi d’Oru SpA, ECLI:EU:C:2013:387, paragraphs 109-110.

7. ASSESSMENT

7.1. Existence of aid within the meaning of Article 107(1) TFEU

- (123) According to Article 107(1) TFEU, '[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (124) According to settled case-law, classification of a national measure as 'State aid' within the meaning of Article 107(1) TFEU requires all the following conditions to be fulfilled. First, there must be an intervention by the State or through State resources. Second, that intervention must be liable to affect trade between Member States. Third, it must confer a selective advantage on the recipient. Fourth, it must distort or threaten to distort competition ⁽³⁰⁾.
- (125) In recital 40 of the opening decision ⁽³¹⁾, the Commission came to the preliminary conclusion that the conditions of Article 107(1) TFEU were fulfilled and that the scheme constituted State aid within the meaning of that Article.
- (126) This preliminary conclusion was not called into question in the comments received from Czechia. Moreover, Czechia itself notified the scheme as State aid.
- (127) The scheme is imputable to the State as it is based on the legal acts described in recital 11 and implemented by State authority (recital 13). The aid would be paid from the State budget, thus through State resources (recital 12).
- (128) The scheme confers an advantage on their beneficiaries in the form of direct grants (recital 14). The scheme thus relieves those beneficiaries of costs, which they would have to bear under normal market conditions.
- (129) The scheme is selective since aid would be awarded only to certain undertakings, specifically to large undertakings active in primary agricultural production (recital 15). Other undertakings in a comparable legal and factual situation are not eligible for aid and thus would not receive the same advantage. As a general rule, economic operators should cover their own costs.
- (130) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade. The beneficiaries of aid operate in the sector of primary agricultural production, where intra-EU trade takes place. This sector is thus open to competition at Union level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the scheme was liable to distort competition and to affect trade between Member States.
- (131) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the scheme constitutes State aid within the meaning of that Article. The Czech authorities did not contest that conclusion.
- (132) Due to the fact that the aid is based on an act under which, without further implementing measures being required (recital 11), individual aid awards could be made to undertakings defined within the act in a general and abstract manner ⁽³²⁾, the Commission considers that it constitutes an aid scheme within the meaning of point (35)(4) of the 2014 Guidelines and of point (33)(13) of the 2023 Guidelines.
- (133) As regards the individual aid, the Commission considers that in light of its common features with the aid granted under the scheme, the considerations of recitals 123 to 130 apply *mutatis mutandis* to that individual aid. The Commission therefore concludes that the individual aid already granted to large enterprises constitutes State aid within the meaning of Article 107(1) TFEU.

⁽³⁰⁾ Judgment of the Court of 7 November 2024 in case C-588/22P, Ryanair v Commission, ECLI:EU:C:2024:935, paragraph 100.

⁽³¹⁾ Recital 40 of the opening decision.

⁽³²⁾ See in particular, Sections 2.2.3 and 2.2.4.

7.2. Compatibility of the scheme with the internal market

7.2.1. Article 107(3), point (c), TFEU and applicable guidelines

- (134) Under Article 107(3), point (c), TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (135) Therefore, in order to be found compatible under Article 107(3), point (c), TFEU, aid must (i) facilitate the development of a certain economic activity or of certain areas (positive condition) and (ii) must not adversely affect trading conditions to an extent contrary to the common interest (negative condition).
- (136) The Commission will assess whether these two conditions are fulfilled in the light of the applicable guidelines. In the opening decision, the Commission assessed the compatibility of the scheme in the light of the 2014 Guidelines, which were in force at the time of the adoption of the opening decision. However, the 2014 Guidelines were replaced by the 2023 Guidelines, which have been in force as of 1 January 2023. Pursuant to point (655) of the 2023 Guidelines, the Commission will apply those Guidelines to all notified aid measures in respect of which it is called upon to take a decision after 1 January 2023, even where the aid was notified prior to that date. Therefore, in this decision the Commission assesses the compatibility of the scheme in the light of the 2023 Guidelines.
- (137) As regards the aid which can be granted on the basis of the scheme, Chapter 3 of Part I (Compatibility assessment pursuant to Article 107(3), point (c), TFEU) and Section 1.2.1.6 of Part II (Aid for the payment of insurance premiums) of the 2023 Guidelines are applicable.

7.2.2. Positive condition: the aid must facilitate the development of an economic activity or of certain economic areas

7.2.2.1. Facilitation of an economic activity

- (138) Pursuant to point (43) of the 2023 Guidelines, the Member State must demonstrate that the aid aims at facilitating the development of the identified economic activity.
- (139) The Commission notes that the scheme is designed to support farmers through risk and crisis events by incentivising them to take out insurance. Insurance is an important tool for the farming sector, which is exposed to the frequent occurrence of risk and crisis events. In this way, the aid supports the primary agricultural production (recital 9).
- (140) Pursuant to point (44) of the 2023 Guidelines, Member States must also describe whether and, if so, how the aid will contribute to the achievement of the objectives of the CAP and within that policy to the objectives of Regulation (EU) 2021/2115 and describe more specifically the expected benefits of the aid. The objectives of the scheme are consistent with the CAP objective of fostering a smart, competitive, resilient and diversified agricultural sector ensuring long-term food security, set out in Article 5, point (a), of Regulation (EU) 2021/2115, as well as with the objectives set out in Article 6 (1), points (a) and (b), of that Regulation which seek to support viable farm income and resilience of the agricultural sector and increase farm competitiveness (recital 36). Therefore, point (44) of the 2023 Guidelines is complied with.
- (141) The Commission therefore considers that aid would facilitate an economic activity, in that it would facilitate the competitiveness and resilience of the agricultural primary production.

7.2.2.2. Incentive effect (moment of the application submission)

- (142) The second ground for opening the formal investigation related to the condition of aid presenting incentive effect, specifically in relation to the moment of the submission of the aid application ⁽³³⁾. The Commission had doubts whether under the scheme the applications would be submitted before the start of works (see also recital 94).
- (143) The Commission recalls that pursuant to point (70) of the 2014 Guidelines and point (50) of the 2023 Guidelines, wherever work or activity has already started prior to the aid application by the beneficiary to the national authorities such aid does not present an incentive for the beneficiary.
- (144) Pursuant to point 35(25) of the 2014 Guidelines and point 33(57) of the 2023 Guidelines, ‘start of works on the project or activity’ means the earlier of, either the start of the activities, or the construction works relating to the investment, or the first legally binding commitment to order equipment or employ services or any other commitment that makes the project or activity irreversible.
- (145) The Czech authorities responded to these doubts by providing a detailed explanation of the procedure related to the insurance contracts (recitals 113 to 122).
- (146) The Czech authorities explained that the insurance coverage for a relevant year requires the beneficiary to pay the annual insurance premium. Without an annual payment covering an upcoming year, coverage for that year is forfeit. Prior to the payment of the insurance premium, an enterprise does not make the legally binding commitment that would make the annual insurance irreversible.
- (147) The Czech authorities submitted that in the absence of aid an undertaking insured in one year does not necessarily take the insurance for a next year. Therefore, each annual insurance must be seen as a separate project. It cannot be inferred from the existence of an annual insurance in one year that an undertaking will continue with the contract in the next year (recital 113).
- (148) The Commission takes note that the conclusion of the contract does not automatically impose the obligation of paying the annual insurance. The Commission considers that after the conclusion of the insurance contract, farmers are under no obligation to pay an annual insurance and have the discretion to choose to take the insurance for a given year or not by either paying the insurance premium or not. In such circumstances, the decisive moment for assessing the incentive effect of the aid is indeed the moment of the payment of annual insurance premium and not the moment when a contract, which has an automatic extension clause, is concluded (recital 112).
- (149) The Commission therefore considers that the aid provides an incentive for farmers to take out the annual insurance which they may not undertake without the aid. Further, the Czech authorities confirmed that no aid would be granted to a beneficiary that had paid the annual insurance premium prior to the aid application (recital 121).
- (150) The Commission therefore agrees with the Czech authorities that the moment of payment of annual insurance premium must be considered as ‘start of work on a project or activity’ and not the moment when the insurance contract is concluded.
- (151) Pursuant to point (47) of the 2023 Guidelines, the scheme has an incentive effect if it changes the behaviour of undertakings in such a way that they engage in additional activity contributing to the development of the sector, in which they would have normally not engaged in without aid or would have engaged in a different or restricted manner.
- (152) Pursuant to point (48) of the 2023 Guidelines, State aid measures which are simply intended to improve the financial situation of undertakings but which in no way contribute to the development of the sector, and in particular aid which is granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to constitute operating aid which is incompatible with the internal market. Furthermore, by its very nature, such aid is also likely to interfere with the mechanisms regulating the organisation of the internal market.

⁽³³⁾ Recital 67, 2nd indent of the opening decision.

- (153) Pursuant to point (50) of the 2023 Guidelines, the Commission considers that aid does not present an incentive for the beneficiary wherever work on the relevant project or activity has already started prior to the aid application by the beneficiary to the national authorities.
- (154) Pursuant to point (51) of the 2023 Guidelines, the aid application must include at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs. In addition, pursuant to point (52) of the 2023 Guidelines, large enterprises must describe in the application the situation without the aid, which situation is referred to as the counterfactual scenario or alternative project or activity and submit documentary evidence in support of the counterfactual described in the application. This requirement does not apply to municipalities that are autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants. Pursuant to point (53) of the 2023 Guidelines, when receiving an application, the granting authority must carry out a credibility check of the counterfactual scenario and confirm that the aid has the required incentive effect. A counterfactual scenario is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the project or activity concerned.
- (155) In the opening decision, the Commission expressed doubts that the national legal basis complied with point (70) of the 2014 Guidelines, which is identical to point (50) of the 2023 Guidelines. As concluded in recital 150, the Commission considers that in the case at hand the moment of the start of work on the project or activity is the payment of the annual insurance premium.
- (156) The Czech authorities confirmed that the scheme sets out the condition of the aid application being submitted by aid beneficiaries before the start of work or activity (recital 29 and 150). The application has to include at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs (recital 30). Large undertakings also must submit the counterfactual scenario or alternative project or activity and submit documentary evidence in its support (recital 31).
- (157) The aid can be granted for the costs of insurance premium (recital 21). Thus, it would not subsidise the costs of an activity that an undertaking would have incurred in any event and will not compensate for the normal business risk of an economic activity and it was not intended to simply improve the financial situation of undertakings.
- (158) On that basis, the Commission concludes that the scheme presents an incentive effect.

7.2.2.3. No breach of relevant provisions and general principles of Union law

- (159) Pursuant to point (61) of the 2023 Guidelines, if a State aid measure, the conditions attached to it, including its financing method when the financing method forms an integral part of the State aid measure, or the activity it finances entails a violation of relevant Union law, the aid cannot be declared compatible with the internal market.
- (160) The conditions of the scheme are set out in accordance with the applicable Union legislation. There is no indication that the proposed aid or the conditions attached to it would entail any violation of the relevant provisions and general principles of Union law. Therefore, the Commission finds that point (61) of the 2023 Guidelines is complied with.
- (161) Pursuant to point (62) of the 2023 Guidelines, the Commission will not authorise State aid which is incompatible with the provisions governing the common organisation of the market or which would interfere with the proper functioning of the common organisation. There is no indication that the proposed aid would be incompatible with the provisions governing the common organisation of the market or would interfere with the proper functioning.
- (162) Pursuant to point (63) of the 2023 Guidelines, State aid cannot be declared compatible with the internal market where the award of aid is subject to the obligation for the beneficiary undertaking to use national products or services. The scheme does not provide for such an obligation.

- (163) Pursuant to point (64) of the 2023 Guidelines, the Commission will not authorise aid for export-related activities to third countries or to Member States which would be directly linked to the quantities exported, aid contingent upon the use of domestic over imported goods, or aid to establish and operate a distribution network or to cover any other expenditure linked to export activities. The scheme does not provide for such types of aid.

7.2.2.4. Conclusion

- (164) The Commission therefore considers that the scheme would facilitate the development of the agricultural primary production activity.

7.2.3. *Negative condition: the aid must not unduly affect trading conditions to an extent contrary to the common interest*

- (165) Pursuant to point (67) of the 2023 Guidelines, by its very nature, any aid measure generates distortions of competition and has an effect on trade between Member States. However, in order to establish if the distortive effects of the aid are limited to the minimum, the Commission verifies whether the aid is necessary, appropriate, proportionate and transparent.
- (166) Pursuant to point (68) of the 2023 Guidelines, the Commission then assesses the distortive effect of the aid in question on competition and trading conditions. The Commission will then balance the positive effects of the aid with its negative effects on competition and trade. Where the positive effects outweigh the negative effects, the Commission will declare the aid compatible.

7.2.3.1. Need for State intervention

- (167) Pursuant to point (70) of the 2023 Guidelines, State aid can achieve an objective of common interest if it is targeted towards the correction of market failures.
- (168) The Commission notes that the Czech authorities explained that the scheme seeks to achieve a higher level of security for agricultural businesses against unforeseen damages by making insurance coverage widely available throughout the agricultural sector. The scheme therefore aims to motivate farmers to take out the insurance to better manage the occurrence of risks and crisis events.
- (169) The Commission considers on that basis that the State intervention would lead to insurance widely being available to the farming sector, which may be otherwise confronted with high insurance prices. Therefore, the Commission considers that point (70) of the 2023 Guidelines is complied with.
- (170) Pursuant to point (71) of the 2023 Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning those aid measures which fulfil the specific conditions laid down in Part II of the 2023 Guidelines. The Commission notes that the scheme fulfils the specific requirements laid down in Section 1.2.1.6. of Part II of the 2023 Guidelines (recitals 197 to 206). Therefore, in accordance with point (71) of the 2023 Guidelines, the Commission considers that there is a need for State intervention.

7.2.3.2. Appropriateness of the aid

- (171) Pursuant to point (72) of the 2023 Guidelines, the proposed aid measure must be an appropriate policy instrument to address the concerned policy objective. The Member State must demonstrate that the aid and its design are appropriate to achieve the objective of the measure at which the aid is targeted.
- (172) The objective of the scheme is to support farmers in insuring their activities against unforeseen risk and crisis events in order to improve competitiveness of the farms. Thus, the Commission considers that the scheme does contribute to the overall competitiveness and resilience of the agricultural sector. The Commission therefore concludes that the scheme is an appropriate policy instrument for achieving those objectives.

Appropriateness among alternative policy instruments

- (173) As provided for in point (73) of the 2023 Guidelines, the Commission considers that aid granted in the agricultural and forestry sector which fulfils the specific conditions laid down in the relevant Section of Part II of the 2023 Guidelines is an appropriate policy instrument.
- (174) The scheme fulfils the specific requirements laid down in Section 1.2.1.6 of Part II of the 2023 Guidelines (recitals 197 to 206). Therefore, it is an appropriate policy instrument.
- (175) Point (74) of the 2023 Guidelines does not apply in the present case, as the operations eligible for aid are not co-financed under the Czech CAP Strategic Plan (recital 36).

Appropriateness among different aid instruments

- (176) Pursuant to point (75) of the 2023 Guidelines, aid may be granted in various forms. However, the Member States should ensure that the aid is granted in a form that is the least likely to distort trade and competition.
- (177) Pursuant to point (76) of the 2023 Guidelines, where a specific form is set out for an aid measure as described in Part II of the 2023 Guidelines, such form is considered to be an appropriate aid instrument for the purpose of those Guidelines. The applicable rules are those of Section 1.2.1.6. of Part II of the 2023 Guidelines, which does not set out a specific aid form.
- (178) Under the scheme, the aid can be granted to farmers as a direct grant (recital 14), which the Czech authorities consider as the most appropriate form for supporting insurance premium costs.
- (179) The purpose of the scheme is to compensate farmers for the insurance premium costs. The Commission agrees that direct grants are the most suited form where aid has compensatory purpose. On this basis, the Commission concludes that the scheme fulfils point (76) of the 2023 Guidelines.

7.2.3.3. Proportionality of the aid

- (180) Pursuant to point (83) of the 2023 Guidelines, aid is considered proportionate if its amount per beneficiary is limited to the minimum needed for carrying out the aided activity. Pursuant to point (84) of the 2023 Guidelines, for aid to be proportionate, the amount of aid should not exceed the eligible costs, with some exceptions. Pursuant to point (85) of the 2023 Guidelines, in order to ensure predictability and a level playing field, the Commission applies maximum aid intensities.
- (181) Pursuant to point (86) of the 2023 Guidelines, if the eligible costs are correctly calculated and the maximum aid intensities or maximum aid amounts set out in Part II of the 2023 Guidelines are respected, the criterion of proportionality is deemed to be fulfilled.
- (182) Pursuant to point (87) of the 2023 Guidelines, the maximum aid intensity and aid amount must be calculated by the granting authority when granting the aid. The eligible costs must be supported by documentary evidence which should be clear, specific and contemporary. For the purposes of calculating the aid intensity and the eligible costs, all figures used must be taken before any deduction of tax or other charge. VAT is not eligible for aid, except where it is not recoverable under national VAT legislation.
- (183) Aid granted on the basis of the scheme would not exceed 65 % of the eligible costs (recitals 22 and 25). This aid intensity respects the maximum allowed aid intensity for the insurance premium aid, set out in point (411) of the 2023 Guidelines.
- (184) The eligible costs do not include the VAT (recital 34).
- (185) Furthermore, the Commission notes that the Czech authorities confirmed that the eligible costs would be correctly calculated by the granting authority when granting the aid (recital 33).

(186) The Commission therefore concludes that the aid is proportionate.

7.2.3.4. Cumulation of aid

(187) Pursuant to point (103) of the 2023 Guidelines, aid may be granted concurrently under several schemes or cumulated with ad hoc aid, provided that the total amount of State aid for an activity or project does not exceed the aid ceilings laid down in the 2023 Guidelines.

(188) Pursuant to point (104) of the 2023 Guidelines, aid with identifiable eligible costs may be cumulated with any other State aid, as long as those aids concern different identifiable eligible costs. Aid with identifiable eligible costs may be cumulated with any other State aid, in relation to the same eligible costs, partly or fully overlapping, only if such cumulation does not result in exceeding the highest aid intensity or aid amount applicable to this type of aid under the 2023 Guidelines.

(189) The Commission notes that the Czech authorities confirmed that aid under the scheme cannot be cumulated with aid from other local, regional or national sources or Union funds or with de minimis aid or ad hoc aid covering the same eligible costs (recital 32).

7.2.3.5. Transparency

(190) Pursuant to point (112) of the 2023 Guidelines, Member States must ensure the publication of the information listed in that point in the European Commission's transparency award module or on a comprehensive State aid website at national or regional level.

(191) The Czech authorities confirmed that the transparency conditions would be met. They committed to ensure the publication in the European Commission's transparency award module of the full text of the scheme and its implementing provisions or legal basis, the identity of the granting authority and the identity of the beneficiaries which would receive individual aid award exceeding EUR 60 000 (recital 37). The Czech authorities committed to amend the scheme to comply with the new rules, which entered into force on 1 January 2023. Under these rules, the threshold for individual aid which must be published, has been lowered to EUR 10 000. On the basis of the commitment of the Czech authorities to take the appropriate measures, the Commission considers that the Czech authorities ensure that the transparency requirements related to individual aid awards, as set out in point (112) of the 2023 Guidelines would be respected.

(192) Pursuant to point (114) of the 2023 Guidelines, such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and be available for the general public without restrictions. The Czech authorities confirmed that these requirements would be fulfilled (recital 37).

7.2.3.6. Avoidance of adverse negative effects on competition and trade

(193) Pursuant to point (117) of the 2023 Guidelines, the Commission identifies the market(s) affected by the aid, taking into account the information provided by the Member State on the product market(s) concerned, that is to say the market(s) affected by the change in behaviour of the aid beneficiary. In assessing the negative effects of the aid measure, the Commission will focus its analysis of the distortions of competition on the predictable impact the aid in the agricultural and forestry sectors and in rural areas has on competition between undertakings in the product market(s) affected.

(194) Pursuant to point (118) of the 2023 Guidelines, if the aid is well targeted, proportionate and limited to the net extra costs, its negative impact is softened and the risk that it adversely distorts competition is more limited. Further, the Commission establishes maximum aid intensities or aid amounts. The aim is to prevent the use of State aid for activities where the ratio between the aid amount and eligible costs is to be deemed very high and particularly likely to be distortive. In general, the greater the positive effects the aided activity is likely to give rise to and the higher the likely need for aid, the higher the cap on aid intensity.

(195) In the present case, aid under the scheme can be granted for the costs of insurance premium (recital 21). In accordance with point (118) of the 2023 Guidelines, the Commission considers that the negative impact of such aid is limited, because the aid is well targeted towards its objectives (recital 172) and proportionate (recital 186).

- (196) The Commission therefore concludes that the scheme would not lead to undue distortions of competition and trade.

7.2.3.7. Specific conditions of Part II of the 2023 Guidelines

- (197) In the case at hand, Section 1.2.1.6 (Aid for the payment of insurance premiums) of Part II of the 2023 Guidelines is applicable.
- (198) Pursuant to point (403) of the 2023 Guidelines, Section 1.2.1.6 of Part II of the 2023 Guidelines applies to undertakings active in the primary agricultural production. This condition is fulfilled, as only large enterprises active in agricultural primary production are eligible (recital 15).
- (199) Pursuant to point (404) of the 2023 Guidelines, the aid must not constitute a barrier to the operation of the internal market for insurance services. In particular, the aid must not be limited to insurance provided by a single insurance company or group of companies nor be made conditional on the insurance contract being taken out with a company established in the Member State concerned. The scheme complies with these conditions (recital 27).
- (200) The scheme does not include reinsurance, therefore point (405) of the 2023 Guidelines is not applicable.
- (201) Pursuant to point (406) of the 2023 Guidelines, the eligible costs are the costs of insurance premiums for insurance to cover the damage caused by natural disasters or exceptional occurrences, adverse climatic events which can be assimilated to a natural disaster, animal diseases, plant pests and invasive alien species, the removal and destruction of fallen stock and damage caused by protected animals, as referred to in Sections 1.2.1.1, to 1.2.1.5 of the 2023 Guidelines, and by other adverse climatic events or damage caused by environmental incidents.
- (202) Aid under the scheme can be granted for the payment of insurance premiums covering damage caused by natural disasters, adverse climatic events, plant pests and animal disease (recitals 1 and 20). Therefore, the scheme complies with point (406) of the 2023 Guidelines.
- (203) Pursuant to point (407) of the 2023 Guidelines, the insurance may compensate only the cost of making good the damage referred to in point (406) of the 2023 Guidelines and may not require or specify the type or quantity of future production. This condition is fulfilled (recital 26).
- (204) The scheme does not cover insurance premiums for insurance against losses caused by environmental incidents. Therefore, points (408) and (409) of the 2023 Guidelines are not applicable.
- (205) Pursuant to point (411) of the 2023 Guidelines, the aid intensity must not exceed 70 % of the cost of the insurance premium. In respect of aid for the removal and destruction of fallen stock, the aid intensity must not exceed 100 % of the cost of the insurance premium as regards insurance premiums for the removal of fallen stock and 75 % of the cost of the insurance premium as regards insurance premiums for the destruction of such fallen stock.
- (206) Aid under this scheme can be granted up to 65 % of the eligible costs (recitals 22 and 25). Therefore, the maximum allowed aid intensity, set out in point (411) of the 2023 Guidelines, is complied with.

7.2.3.8. Weighing up the positive and the negative effects of the aid

- (207) Pursuant to point (134) of the 2023 Guidelines, the Commission assesses whether the positive effects of the aid measure outweigh its identified negative effects on competition and trading conditions. The Commission may conclude on the compatibility of the aid measure with the internal market only where the positive effects outweigh the negative ones.

- (208) Pursuant to point (136) of the 2023 Guidelines, as part of the assessment of the positive and negative effects of the aid, the Commission will take into account the impact of the aid on the achievement of the general and specific objectives of the CAP set out in Articles 5 and 6 of Regulation (EU) 2021/2115, that aim to foster a smart, competitive, resilient and diversified agricultural sector, support and strengthen environmental protection, including biodiversity, and climate action and to contribute to achieving the environmental and climate-related objectives of the Union and to strengthen the socio-economic fabric of rural areas.
- (209) Further, pursuant to point (137) of the 2023 Guidelines, in principle, due to its positive effects on the development of the sector, the Commission considers that where an aid fulfils the conditions and does not exceed the relevant maximum aid intensities or maximum aid amounts, laid down in the applicable Sections of Part II of the 2023 Guidelines, the negative effects on competition and trade are limited to the minimum.
- (210) The scheme fulfils the requirements of Section 1.2.1.6. of Part II. of the 2023 Guidelines (recitals 197 to 206), including the relevant maximum aid intensity (recital 206).
- (211) Moreover, the pursued objectives are consistent with the general and specific objectives set out in Articles 5 and 6 of Regulation (EU) 2021/2115, that aim to foster a smart, competitive, resilient and diversified agricultural sector ensuring long-term food security and support and strengthen environmental protection and to contribute to achieving the environmental objectives of the Union (recital 36).
- (212) Therefore, the Commission concludes that the positive impact of the scheme outweighs its negative effects in terms of distortions of competition and impact on trade between Member States.

7.2.4. *Conclusion with regard to the compatibility of the scheme*

- (213) Considering the above, the Commission concludes that the scheme facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers that the scheme is compatible with the internal market based on Article 107(3), point (c), TFEU as interpreted by the relevant provisions of the 2023 Guidelines.

7.3. **Lawfulness of the individual aid**

- (214) In its opening decision, the Commission referred to the market information obtained during the preliminary examination of the scheme, which indicated that aid had already been granted to some large enterprises for the payment of insurance premiums covering damage caused by natural disasters, adverse climatic events and plant pests or animal disease respectively to crops and livestock. The preliminary examination revealed that the granting authority had in fact erroneously classified some beneficiaries as SMEs at the moment of granting the aid ⁽³⁴⁾. Consequently, it had erroneously granted to those companies aid under the block-exempted scheme SA.49594 (2017/XA), which was limited to SMEs.
- (215) As regards such classification as SMEs, the Czech authorities submitted comments set out in recitals 100 to 110.
- (216) Below, the Commission addresses Czechia's comments regarding the interpretation of the notion of SMEs and assesses the lawfulness of the individual aid.

7.3.1. *As regards the interpretation of the notion of SMEs*

- (217) In the opening decision, the Commission disagreed with the granting authority's evaluation, considering that it had been done on purely formal grounds, i.e. by exclusively checking the formal fulfilment of the criteria defining an SME, without taking into account the economic reality and case law principles set out in recitals 58 to 61 of the opening decision.

⁽³⁴⁾ Recital 57 of the opening decision.

- (218) The consideration outlined by the Commission in the opening decision was based on its interpretation of Article 4(2) of Annex I to the ABER, as explained in recital 61 of the opening decision. The Commission specified that its interpretation has been based on the case law of the Union Courts guided by the principle of *effet utile*.
- (219) In their submission, the Czech authorities made it clear that in the implementation and the *ex-post* administrative verification of the block-exempted scheme, they did not consider as large enterprises those beneficiaries which had become large enterprises following a merger or an acquisition having taken place less than two years before the granting date of aid. The Czech authorities considered such beneficiaries as SMEs for the two consecutive accounting periods, which followed the aid granting date and granted them aid on the basis of the block-exempted scheme SA.49594 (2017/XA) (recitals 100 to 110).
- (220) With regard to the arguments presented by Czechia in relation to the interpretation of Article 4(2) of Annex I to the ABER (recitals 98 to 111), the Commission reiterates its position explained in detail in the opening decision ⁽³⁵⁾.
- (221) The Commission recalls that according to point (35)(14) of the 2014 Guidelines and point (33)(36) of the 2023 Guidelines, large enterprises are undertakings not fulfilling the criteria laid down in Annex I to the ABER.
- (222) Pursuant to recital 39 of the ABER, the underlying reason of exempting SMEs from the notification requirement of Article 108(3) TFEU is that 'SMEs play a decisive role in job creation and, more generally, act as a factor of social stability and drive the economy. However, their development may be limited by market failures, leading to SMEs suffering from typical handicaps. SMEs often have difficulty in obtaining capital or loans, given the risk-averse nature of certain financial markets and the limited collateral that they may be able to offer. Their limited resources may also restrict their access to information, notably as regards new technology and potential markets. To facilitate the development of the economic activities of SMEs, this Regulation should therefore exempt certain categories of aid in favour of SMEs from the notification requirement of Article 108(3) of the Treaty.'
- (223) Recital 40 of the ABER explains that the definition of an SME used for the purpose of that Regulation is based on the definition laid down in Commission Recommendation 2003/361/EC ⁽³⁶⁾, in order to eliminate differences that might give rise to distortions of competition and to facilitate coordination between different Union and national initiatives concerning SMEs as well as for reasons of administrative clarity and legal certainty.
- (224) Pursuant to Article 2(1) of Annex I to the ABER, the category of SMEs is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
- (225) Pursuant to Article 4(2) of Annex I to the ABER, where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial ceilings stated in Article 2 of that Regulation, this will not result in the loss or acquisition of the status of medium-sized, small or microenterprise unless those ceilings are exceeded over two consecutive accounting periods.

⁽³⁵⁾ Recitals 53 to 61 of the opening decision.

⁽³⁶⁾ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36, ELI: <http://data.europa.eu/eli/reco/2003/361/oj>).

- (226) The Union Courts confirmed in their case law that the definition of a SME must be interpreted strictly, as the advantages afforded by the SME status are in most cases (in particular in the area of State aid) exceptions to general rules ⁽³⁷⁾. It is necessary to remove from that qualification of SMEs groups of enterprises whose economic power may exceed that of genuine SMEs, even if they formally meet the criteria laid down in the SME definition ⁽³⁸⁾. According to the case law, it must also be ensured that the SME definition is not circumvented by purely formal means ⁽³⁹⁾.
- (227) The Union Courts further confirmed that only enterprises that suffer from the handicaps typical of an SME should be entitled to the advantages deriving from that status ⁽⁴⁰⁾. As such, the Commission considers that if an enterprise does not suffer from the handicaps typical of an SME, such an entity should not be recognised as an SME.
- (228) In paragraph (91) of its judgment in case T-745/17, to which the Czech authorities referred in their submission (recital 110), the General Court found in substance that the Commission should have experienced doubts as to whether an enterprise falling below the SME thresholds foreseen at Article 2 of Annex I to Regulation (EU) No 651/2014 at the time of granting the aid could be considered as an SMEs despite having been linked to a large undertaking during the two previous accounting periods.
- (229) The situation in the present case is the reverse of that in case T-745/17. At the time the individual aid was granted, the beneficiaries exceeded the SME thresholds set out in Article 2 of Annex I to the ABER. The SME thresholds were exceeded as a result of a lasting change in their ownership structure which occurred during the accounting period preceding that of the granting of the individual aid. The interpretation of Article 4(2) of Annex I to the ABER Regulation submitted by the Czech authorities to the effect that those beneficiaries should retain their SME status for two years following the date of the change in their ownership structure would be contrary to the spirit of Article 4(2), which aims to ensure that only enterprises that suffer from the handicaps typical of an SME should be entitled to the advantages deriving from that status.
- (230) It would be against the *effet utile* principle to provide such a flexibility for enterprises that exceed the SME thresholds on a lasting basis as a result of a change in ownership. The purpose of the flexibility provided for in Article 4(2) of Annex I to the ABER has been to ensure that enterprises that experience growth and temporarily exceed the ceilings laid down in Article 2 of that Annex can retain their SME status. Thus, it seeks to ensure legal certainty for those SMEs which are active in highly volatile markets. However, the change in a company ownership following a merger or acquisition introduces a structural change which is not subject to volatility of a market or economic growth.
- (231) In light of this reasoning, the Commission considers that the flexibility provided for in Article 4(2) of Annex I to the ABER must be limited to situations where the SME ceilings are exceeded on a temporary basis ('unless those ceilings are exceeded over two consecutive accounting periods').
- (232) The driving principle for the Commission's interpretation has been a need to ensure that only enterprises that suffer from the handicaps typical of an SME are entitled to the advantages deriving from that status and that the measures intended for SMEs genuinely benefit enterprises for which size represents a handicap and not those which belong to a large group and which therefore have access to funds and assistance not available to competitors of equal size but which do not belong to a large group.
- (233) Article 4(2) of Annex I to the ABER therefore cannot be understood as meaning that a SME which due to an acquisition or a merger becomes a large enterprise could still automatically benefit from the SME status for two consecutive accounting periods

⁽³⁷⁾ Judgment of the Court of 27 February 2014 in case C-110/13 *HaTeFo*, ECLI:EU:C:2014:114, paragraph 32.

⁽³⁸⁾ See, in particular: judgment of the Court of 24 September 2020 in case C-516/19 *NMI Technologietransfer*, ECLI:EU:C:2020:754, paragraphs 31-34; judgment of the Court of 29 April 2004 in case C-91/01 *Italy v Commission*, ECLI:EU:C:2004:244 paragraphs 31, 50-54; judgment of the Court of 27 February 2014 in case C-110/13 *HaTeFo*, ECLI:EU:C:2014:114, paragraphs 34 and 39; judgment of the Court of 14 October 2004 in case T-137/02, *Pollmeier v Commission*, ECLI:EU:T:2004:304, paragraphs 61-62.

⁽³⁹⁾ Judgment of the Court of 29 April 2004 in case C-91/01 *Italy v Commission*, ECLI:EU:C:2004:244, paragraph 50; judgment of the Court of 27 February 2014 in case C-110/13, *HaTeFo*, ECLI:EU:C:2014:114, paragraph 33.

⁽⁴⁰⁾ Judgment of the Court of 27 February 2014 in case C-110/13 *HaTeFo*, ECLI:EU:C:2014:114, paragraph 33, judgment of the Court of 29 April 2004 in case C-91/01, *Italy v Commission*, ECLI:EU:C:2004:244, paragraph 50.

- (234) The Commission therefore does not agree with the interpretation of the Czech authorities that the two-year grace period applies generally to all cases in which the SME ceilings are exceeded, regardless of the underlying reason. An enterprise does not continue to be a SME and does not face the same problems (access to resources, technology, etc.) when due to a merger or acquisition, it becomes part of a large enterprise, and, consequently, exceeds the SME thresholds on a lasting basis.
- (235) Likewise, the Commission does not agree with the standpoint of the Czech authorities that the case law referred to in recital 59 of the opening decision must be limited to Article 3 of Annex I to the ABER (recital 107). While that case law may have been issued specifically in relation to so-called linked enterprises, in view of the Commission this does not alter or restrict the general relevance of the *effet utile* principle. The Commission therefore considers that it must be seen as generally governing the implementation of the SME definition, in particular given that the Union Courts have encouraged in their rulings the application of the 'spirit' of the SME definition (e.g. '... with a view to ensuring that only those enterprises which really need the advantages accruing to SMEs from the different rules or measures in their favour actually benefit from them' ⁽⁴¹⁾).
- (236) Further, Czechia submits that while the contents of a legal rule may be clarified by interpretation, the interpretation may not misconstrue law whose meaning is clear and intelligible. Such a course of action would risk producing an unacceptable lack of certainty in legal transactions (recital 106).
- (237) In this regard, the Commission recalls that according to the case law of the Union Courts, any legal text should be interpreted in accordance with its wording (literal interpretation) but also with due consideration to the intention of the legislator when adopting the text. The Commission has explained ⁽⁴²⁾ that the objective of the SME definition is to ensure that support measures are granted only to those enterprises that genuinely need them. Since the SME definition applies across the policies, programmes and measures that the Commission develops and operates for SMEs, it is important to identify which enterprises truly are SMEs because they require assistance that other enterprises do not. Compared with other enterprises, SMEs are confronted with a unique set of issues, as already explained in recital 222 and that justify specific treatment.
- (238) In light of the reasoning given in recitals 221 to 237, the Commission reiterates that Article 4(2) of Annex I to the ABER does not apply generally and automatically. Instead, it must be first specified which company is relevant for the calculation of the data under Article 2(1) of that Annex and which accounting periods are relevant.
- (239) Thus, where an enterprise changed its structure or ownership on a lasting basis following a merger or acquisition and operates under the control (within the meaning of Article 3(3) of Annex I to the ABER) of a 'large enterprise' ⁽⁴³⁾ at the moment of the granting, such an enterprise must itself be considered as a large enterprise ⁽⁴⁴⁾.
- (240) It follows that such enterprise could not benefit from the SME status and that it would not be, therefore, eligible for aid under the block-exempted scheme.

7.3.2. Individual aid

- (241) In the opening decision, the Commission preliminarily considered that the scheme had been implemented already prior to its notification.
- (242) During the formal investigation procedure, the Czech authorities explained that no call for submitting applications for aid was open and, therefore, no aid was granted under that scheme.
- (243) The Commission agrees with the Czech authorities that the aid referred to in recital 3 cannot be regarded as having been granted under the scheme, since that latter scheme was notified in draft form and was thus not approved by the Commission and in force when the aid was granted.

⁽⁴¹⁾ Judgment of the Court of 29 April 2004 in case C-91/01 *Italy v Commission*, ECLI:EU:C:2004:244, paragraph 50; judgment of the Court of 14 October 2004 in case T-137/02, *Pollmeier Malchow*, ECLI:EU:T:2004:304, paragraph 61.

⁽⁴²⁾ Recommendation 2003/361/EC, recital 12.

⁽⁴³⁾ See also recital 61 of the opening decision.

⁽⁴⁴⁾ See also recital 61 of the opening decision.

- (244) For the reasons mentioned above at recitals 217 to 240, such aid cannot be regarded as having been awarded on the basis of the block-exempted scheme SA.49594 (2017/XA) either, since it was granted to large enterprises, whereas the scope of the block-exempted scheme was limited to SMEs.
- (245) Accordingly, the individual aid referred to in recital 3 was not awarded on the basis of an aid scheme and therefore constitutes 'individual aid' within the meaning of Article 1(e) of Council Regulation (EU) 2015/1589 ⁽⁴⁵⁾.
- (246) The formal investigation also revealed that, out of the companies listed in recital 97 above, ZEV Šaratice, a.s. ('ZEV Šaratice') was granted the individual aid ⁽⁴⁶⁾, on 17 January 2018. At the date of the aid granted, ZEV Šaratice' had to be considered as a large enterprise, as explained below.
- (247) It stems from information submitted by the Czech authorities that on 10 February 2017, LUKROM, spol. s.r.o. ('LUKROM') became the majority shareholder of ZEV Šaratice, owning 62,52 % of its shares. This share further increased by the end of 2017 through gradual share purchases to 70,2 %. According to the Czech authorities, due to the majority ownership of shares, as from 10 February 2017 the companies ZEV Šaratice and LUKROM became linked enterprises within the meaning of Article 3(3)(a) of Annex I to the ABER.
- (248) In their submission, the Czech authorities referred to the judgment of the General Court in case T-745/17 (recital 110). In their view, in that judgment the General Court concluded that Article 4(2) of Annex I to Regulation (EU) No 651/2014 ('GBER') applies even in case of mergers and acquisitions (recital 110).
- (249) However, the situation in that case was different from that of ZEV Šaratice in the present case: in case T-745/17, the aid beneficiary became an SME due to the transfer of shares to another company. In the present case, the situation is reversed: the majority of shares of ZEV Šaratice were acquired by a large enterprise, LUKROM.
- (250) Indeed, the accounts of LUKROM for 2017 were closed on 31 December 2017. The annual balance sheet total amounted to CZK 2 742 344 000 (approximately EUR 107 million ⁽⁴⁷⁾). For the same period, LUKROM's balance sheet indicated the average number of employees 301, plus 372 employees in other companies included in the balance sheet of this company. These data show that LUKROM was a large enterprise in 2017.
- (251) The accounts of LUKROM for 2016 were closed on 31 December 2016. The annual balance sheet total amounted to CZK 2 346 940 (approximately EUR 86,8 million ⁽⁴⁸⁾). For the same period, LUKROM balance sheet indicated the average number of employees 299, plus 375 employees in other companies included in the balance sheet of this company. These data show that LUKROM was a large enterprise also in 2016.
- (252) Therefore, the Commission considers that the judgment relied upon by the Czech authorities is not relevant for the purposes of applying Annex I to the GBER in the present case (see also recital 229).
- (253) However, as a subsidiary legal analysis, the Commission will apply the same principles as those expressed by the General Court in that judgment.
- (254) As set out in paragraph 94 of that judgment, both the national authorities and the Commission must determine precisely the relevant approved accounting period and year for the purposes of the joint calculation of the respective data within the meaning of Article 2(1) of Annex I to the GBER, read in conjunction with Article 3(3) and Article 4(2) of that Annex, and specify which company or companies must be taken into consideration to that end.

⁽⁴⁵⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9, ELI: <http://data.europa.eu/eli/reg/2015/1589/oj>).

⁽⁴⁶⁾ ZEV Šaratice, a.s. was granted the individual aid referred to in recital 3 for an amount of CZK 234 722 (approximately EUR 9 351; exchange rate on 17 January 2018: 1 EUR = 25,371).

⁽⁴⁷⁾ Exchange rate in December 2017: 1 EUR = 25,647 CZK.

⁽⁴⁸⁾ Exchange rate in December 2016: 1 EUR = 27,03 CZK.

- (255) In paragraph 93 of that judgment, the General Court further held that it is necessary to also take account of the data of a company, under the control of which the aid beneficiary carried out a substantial part of its economic activities during the considered accounting period.
- (256) In application of that judgment to the situation at hand, the Commission assesses the data of ZEV Šaratice and LUKROM jointly. Such a joint calculation takes into account the spirit of Article 4(2) of Annex I to the ABER, as the General Court stressed in paragraph 94 of the judgment in case T-745/17. Otherwise, the definition of SME would be circumvented based on purely formal means. Indeed, if the analysis of the notion of SMEs were to be done two years before the structural corporate change on each of the parties of the transaction separately, the conclusion would always be an extension of the notion of SMEs which, would go against the need to interpret Article 4(2) of Annex I to the ABER strictly (recital 230) and in line with its spirit.
- (257) As regards the relevant approved accounting period, the two accounting periods preceding the aid granting date were for years 2017 and 2016.
- (258) The accounts of ZEV Šaratice for year 2017 were closed on 31 December 2017. The annual balance sheet total amounted to CZK 120 286 000 (approximately EUR 4,69 million⁽⁴⁹⁾). For the same period, ZEV Šaratice, a.s.' annual report indicated 8 employees.
- (259) The accounts of ZEV Šaratice for year 2016 were closed on 31 December 2016. The annual balance sheet total amounted to CZK 120 286 000 (approximately EUR 4,39 million⁽⁵⁰⁾). For the same period, ZEV Šaratice, a.s.' annual report indicated 9 employees.
- (260) As mentioned above at recitals 250 and 251, the accounts of ZEV Šaratice's linked enterprise (LUKROM) for the two accounting periods preceding the aid granting date reveal that that linked enterprise alone constitutes a 'large enterprise' within the meaning of Annex I to the GBER.
- (261) Therefore, in line with Article 2(1) of Annex I to the ABER, at the date of aid grant, i.e. 17 January 2018, ZEV Šaratice was linked to – and thus part of – a 'large enterprise' within the meaning of Annex I to the ABER. Accordingly, ZEV Šaratice was not eligible for aid under the scheme SA.49594 (2017/XA), as such aid was only available to SMEs.
- (262) As regards the other companies listed at recital 97 above, the Czech authorities have not explained why these companies were checked, since, according to information provided by the Czech authorities, they were not granted aid for the insurance premium as from 1 January 2018.

7.3.3. *Unlawfulness of individual aid*

- (263) As the individual aid was granted to large companies, it does not fall under any of the categories of the ABER.
- (264) Since that individual aid was neither granted on the basis of any approved scheme, nor could be exempted under the ABER, the Commission therefore confirms its preliminary doubts and finds that the individual aid already granted to large enterprises is unlawful⁽⁵¹⁾.

7.4. **Compatibility of the individual aid with the internal market**

7.4.1. *Applicable guidelines*

- (265) Pursuant to point (656) of the 2023 Guidelines, unlawful aid will be assessed in accordance with the rules in force on the date of granting the aid. Therefore, in this decision the Commission assesses the aid granted before its approval by the Commission on the basis of Article 107(3), point (c), TFEU and, for all the individual aid granted before 1 January 2023 (recital 3), the 2014 Guidelines.

⁽⁴⁹⁾ Exchange rate in December 2017: 1 EUR = 25,647 CZK.

⁽⁵⁰⁾ Exchange rate in December 2016: 1 EUR = 27,03 CZK.

⁽⁵¹⁾ Recitals 42 and 50 of the opening decision.

7.4.2. Article 107(3), point (c), TFEU and applicable guidelines

- (266) Under Article 107(3), point (c), TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (267) Therefore, in order to be found compatible under Article 107(3), point (c), TFEU, aid must (i) facilitate the development of a certain economic activity or of certain areas (positive condition) and (ii) must not adversely affect trading conditions to an extent contrary to the common interest (negative condition). These two conditions are cumulative.
- (268) The Commission assesses whether these two conditions are fulfilled in the light of the applicable guidelines, which are the 2014 Guidelines. Specifically, in this case, Chapter 3 of Part I (Compatibility assessment pursuant to Article 107(3), point (c), TFEU) as interpreted by the judgment of the Court in case C-594/18 P⁽⁵²⁾ and Section 1.2.1.6 of Part II (Aid for the payment of insurance premiums) apply.

7.4.3. *As to whether the aid facilitates the development of an economic activity*

7.4.3.1. Identification of the economic activity

- (269) The Commission notes that the individual aid was designed to support farmers through risk and crisis events by incentivising them to take out insurance. Insurance is an important tool for the risk and crisis management in farming sector, which is exposed to the frequent occurrence of such events. In this way, the aid supports the primary agricultural production (recital 9).
- (270) Pursuant to point (44) of the 2014 Guidelines, aid in the agricultural and forestry sectors and in rural areas should relate closely to the CAP, should be consistent with the rural development objectives referred to in point (10) of those Guidelines and should be compatible with the rules on the common organisation of the markets in agricultural products.
- (271) Pursuant to point (46) of the 2014 Guidelines, the Commission considers that measures, implemented pursuant to and in conformity with Regulation (EU) No 1305/2013 of the European Parliament and of the Council⁽⁵³⁾ and its implementing and delegated acts or as an additional national financing in the framework of a rural development programme, are per se consistent with and contribute to the objectives of rural development.
- (272) The present aid was not co-financed under measure the RDP of Czechia, but it was designed in line with the rural development objectives (recital 63).
- (273) The Commission therefore considers that aid facilitated an economic activity, in that it contributed to the competitiveness and resilience of the agricultural primary production.

7.4.3.2. Lack of an incentive effect

- (274) Pursuant to point (66) of the 2014 Guidelines, the aid has an incentive effect if it changes the behaviour of undertakings in such a way that they engage in additional activity contributing to the development of the sector, in which they would have normally not engaged in without aid or would have engaged in a different or restricted manner. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.

⁽⁵²⁾ Judgment of the Court (Grand Chamber) of 22 September 2020 in case C-594/18 P, *Austria v Commission*, ECLI:EU:C:2020:742.

⁽⁵³⁾ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487, ELI: <http://data.europa.eu/eli/reg/2013/1305/oj>).

- (275) Pursuant to point (67) of the 2014 Guidelines, unilateral State aid measures which are simply intended to improve the financial situation of undertakings but which in no way contribute to the development of the sector, and in particular aid which is granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to constitute operating aid which is incompatible with the internal market. Furthermore, by its very nature, such aid is also likely to interfere with the mechanisms regulating the organisation of the internal market.
- (276) The aid was granted for the costs of insurance premium (recital 21). Thus, it did not subsidise the costs of an activity that an undertaking would have incurred in any event and will not compensate for the normal business risk of an economic activity and it was not intended to simply improve the financial situation of undertakings.
- (277) Pursuant to point (70) of the 2014 Guidelines, the aid does not present an incentive effect for the beneficiary wherever work on the relevant project or activity has already started prior to the aid application by the beneficiary to the national authorities. Pursuant to point 35(25) of the 2014 Guidelines, 'start of works on the project or activity' means the earlier of, either the start of the activities, or the construction works relating to the investment, or the first legally binding commitment to order equipment or employ services or any other commitment that makes the project or activity irreversible.
- (278) Pursuant to point (71) of the 2014 Guidelines, the aid application must include at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs.
- (279) In addition, pursuant to point (72) of the Guidelines, large enterprises must describe in the application the situation without the aid, which situation is referred to as the counterfactual scenario or alternative project or activity and submit documentary evidence in support of the counterfactual described in the application. Pursuant to point (73) of the Guidelines, when receiving an application, the granting authority must carry out a credibility check of the counterfactual scenario and confirm that the aid has the required incentive effect. A counterfactual scenario is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the project or activity concerned.
- (280) As it stems from recital 67 of the opening decision, as regards the individual aid, the Commission initiated the procedure pursuant to Article 108 (2) TFEU on the ground that aid was granted unlawfully to large enterprises, because of doubts related to (i) the submission of the counterfactual scenario and to (ii) the moment of the application submission (see also recital 8).
- (281) Submission of the counterfactual scenario
- (282) In their comments on the opening decision, the Czech authorities contested the Commission's interpretation of Article 4(2) of Annex I to the ABER and claimed that no aid was granted to beneficiaries which would not qualify as SMEs in compliance with the definition laid down in Annex I to the ABER ⁽⁵⁴⁾ (recitals 99 to 110).
- (283) However, the Czech authorities confirmed that the none of the beneficiaries which had received aid on the basis of the scheme SA.49594 (2017/XA) had submitted a counterfactual scenario (recital 98).
- (284) The Czech authorities do not dispute that the scheme SA.49594 (2017/XA) did not lay down the requirement of submitting, *ex ante*, the counterfactual scenario. Nor did these authorities request that the Commission departs from this requirement set out in the 2014 Guidelines ⁽⁵⁵⁾.
- (285) Accordingly, the Commission considers that the first ground of the formal investigation has been confirmed, in that the large enterprises that were granted unlawful individual aid had not submitted an *ex ante* counterfactual scenario proving that the aid presented an incentive effect.

⁽⁵⁴⁾ This comment of Czechia does not concern large beneficiaries from which aid was already recovered, as explained in recital 102 of this Decision.

⁽⁵⁵⁾ Recital 47 of the opening decision.

7.4.3.3. Conclusion on the first (positive) condition set out in Article 107(3), point (c) TFEU

- (286) In the absence of a duly established incentive effect, the individual aid at issue cannot be considered to facilitate the development of a certain economic activity or of a certain area.

7.4.4. Conclusion with regard to the compatibility of the individual aid with the internal market

- (287) The individual aid already granted to large enterprises for the payment of insurance premiums covering damage caused by natural disasters, adverse climatic events and plant pests or animal disease respectively to crops and livestock (recital 3) cannot be considered to facilitate the development of a certain economic activity or of a certain area.
- (288) Therefore, such individual aid cannot be considered as compatible with the internal market pursuant to Article 107(3), point (c), TFEU (as interpreted in the light of the 2014 Guidelines), without it being necessary to examine the second, negative, condition set out in this provision.

8. RECOVERY

- (289) According to Article 108(2) TFEU and the established case law of the Union Courts, the Commission is competent to decide that the Member State concerned shall alter or abolish aid when it has found that it is incompatible with the internal market ⁽⁵⁶⁾. The Union Courts have also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ⁽⁵⁷⁾.
- (290) In this context, the Union Courts have established that this objective is attained once a recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage, which it had enjoyed over its competitors on the internal market, and the situation prior to the payment of the aid is restored ⁽⁵⁸⁾.
- (291) In line with the case law, Article 16(1) of Regulation (EU) 2015/1589 states that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (recovery decision). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Union law'.
- (292) Thus, Czechia is obliged to recover the unlawful and incompatible individual aid (recital 261) from ZEV Šaratice, a.s. and all the other beneficiaries which were large enterprises at the moment such individual aid was granted, unless it fulfilled all conditions of the Commission Regulation (EU) No 1408/2013 ⁽⁵⁹⁾ or the application of a general principle of EU law as claimed during the formal investigation. Recovery shall cover the time from the date when the aid was put at the disposal of the beneficiary until effective recovery. The amount to be recovered shall bear interest until effective recovery.

⁽⁵⁶⁾ Judgment of 12 July 1973, *Commission v Germany*, C-70/72, ECLI:EU:C:1973:87, paragraph 13.

⁽⁵⁷⁾ Judgment of 21 March 1990, *Belgium v Commission*, C-142/87, ECLI:EU:C:1990:125, paragraph 66.

⁽⁵⁸⁾ Judgment of 17 June 1999, *Belgium v Commission*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.

⁽⁵⁹⁾ 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, ELI: <http://data.europa.eu/eli/reg/2013/1408/oj>).

HAS ADOPTED THIS DECISION:

Article 1

The scheme is compatible with the internal market pursuant to Article 107(3), point (c), TFEU.

Article 2

The individual aid already granted to large enterprises for the payment of insurance premiums covering damage caused by natural disasters, adverse climatic events and plant pests or animal disease respectively to crops and livestock was granted in breach of Article 108(3), TFEU and is incompatible with the internal market.

Article 3

1. Czechia shall recover the incompatible aid referred to in Article 2.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the large enterprise beneficiaries until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of the Commission Regulation (EC) No 794/2004 ⁽⁶⁰⁾ as amended by the Commission Regulation (EC) No 271/2008 ⁽⁶¹⁾.

Article 4

1. In accordance with Article 16 (3) of Regulation (EU) 2015/1589, recovery of the aid referred to in Article 2 of that Regulation shall be immediate and effective ⁽⁶²⁾.
2. Czechia shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 5

1. Within four months following notification of this Decision, Czechia shall submit the following information to the Commission:
 - (a) a complete list of beneficiaries that constitute large enterprises in the meaning of Annex I to Commission Regulation (EU) 2022/2472 ⁽⁶³⁾ that have not submitted a counterfactual scenario in their application and received the incompatible aid referred to in Article 2;
 - (b) the total amount (aid principal and recovery interest) to be recovered from these beneficiaries;
 - (c) a detailed description of the measures already taken and planned to comply with this Decision;
 - (d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

⁽⁶⁰⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1, ELI: <http://data.europa.eu/eli/reg/2004/794/oj>).

⁽⁶¹⁾ Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1, ELI: <http://data.europa.eu/eli/reg/2008/271/oj>).

⁽⁶²⁾ Article 16(3) of the Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the TFEU.

⁽⁶³⁾ Commission Regulation (EU) 2022/2472 of 14 December 2022 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 327, 21.12.2022, p. 1, ELI: <http://data.europa.eu/eli/reg/2022/2472/oj>).

2. Czechia shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 2 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the large enterprise beneficiaries.

Article 6

This Decision is addressed to the Czech Republic.

Article 7

1. The Commission may publish the identity of the beneficiaries of incompatible aid and the amounts of aid and recovery interest recovered in application of this Decision, without prejudice to Article 30 of Regulation (EU) 2015/1589.

2. If this Decision contains confidential information which should not be published, please inform the Commission within 15 working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of the decision. Your request specifying the relevant information should be sent electronically to the following address:

European Commission
Directorate-General Competition
State Aid Greffe
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Stateaidgreffe@ec.europa.eu

Done at Brussels, 29 July 2025.

For the Commission
Teresa RIBERA
Executive Vice-President