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**WORKING LANGUAGE**

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**Subject: State aid NN54/2006 – Czech Republic  
*Přerov* logistics College**

Sir,

**1. Procedure:**

- (1) By letter dated 16 February 2006, the Czech Republic notified to the Commission a subsidy granted to the College of Logistics (“*Vysoká škola logistiky*”; hereafter “the College”), located in Přerov (“*Statutární město Přerov*”). By letters dated 9 March 2006 and 21 June 2006, the Commission services requested the Czech authorities to provide additional information. By letters dated 27 April 2006 and 25 July 2006, the Czech Republic provided the requested information.
- (2) According to data provided by the Czech authorities, it appeared that part of the subsidy relating to the project was paid before the notification. Therefore, the file was passed to the registry of non notified aid. A letter in this regard was sent to the Czech authorities on 1 August 2006, which replied on 15 September 2006.

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## 2. Detailed description of the measure

- (3) According to the Czech authorities, a financial contribution of CZK 6.5 million (approximately EUR 229.000)<sup>1</sup> has been granted to the College by the municipality of Přerov (“*Magistrát města Přerova*”) for the purchase of educative equipments.

### *The College*

- (4) The College runs bachelor program for the graduate of high schools. It has currently 133 students and by 2007/2008, it plans to accept 90 full-time students per year, with 45 students for distant learning. The bachelor program covers three study fields: transport logistics, service logistics and information management.
- (5) According to the decision of the Ministry of Education Nr 16 040/2004 - 30 of 15 April 2004, the College has been granted a state agreement to act as a tertiary education establishment on a non- university base and an accreditation of Bachelor study programme.
- (6) The College central activity is “education and scientific research, development and other creative activities in the approved study program and operation of the university on the basis of the state approval and a given permit” of the Ministry of Education. The beneficiary cannot perform any other activity, which is not connected to its central activity.
- (7) The College is situated in the City of Přerov (47 000 inhabitants), which is within the region CZ 071 (Olomouc) - a NUTS 2 or lower level region. It has 16 internal and 19 external employees, and annual revenues of approximately CZK 6 million (EUR 0.2 million).

### *The investment project*

- (8) In order to modernize its infrastructures, the College has established an investment project of CZK 14 million (EUR 0.5 million), of which CZK 6.5 million (EUR 0.2 million) is to come from the budget of the City of Přerov and CZK 7.5 million (EUR 0.3 million) will be paid from the College’s own resources<sup>2</sup>. The ratio “contribution of the City / investment” would therefore be 46%.
- (9) The investments consist of laboratory equipments, auditoriums, library, IT infrastructure, including PC, software, servers etc.
- (10) The City of Přerov paid an amount of CZK 2 million (EUR 0.1 million) on the basis of a financial assistance contract dated 9 November 2005 and an amount of CZK 0.7 million (EUR 0.02 million) on the basis of a financial assistance contract of 15 December

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<sup>1</sup> In February 2006, the average exchange rate was 1 EUR = 28.4 CZK.

<sup>2</sup> These own resources come from tuition fees and from the College founders.

2005<sup>3</sup>. The remaining part of the contribution will be granted after the Commission's decision.

#### *The measure*

- (11) The Czech authorities note that they have filed a notification for the reason of legal certainty. They consider that the measure is not a State aid, notably because there is no advantage and there is no affectation of trade and competition.
- (12) Regarding the absence of any advantage, it is argued that the beneficiary is a not for profit institution. Moreover, profits, if any, can only be reinvested for the College central activity (see above), and cannot be distributed. Moreover, the College cannot keep shares in any other company or entity. Finally, the central activity – education - benefits to the public.
- (13) Regarding affectation of trade and competition, the Czech Republic argues that the study program is unique of this kind in the Czech Republic, with no competitors. Moreover, with its geographic location at the centre of the Moravian region in the east part of the Czech Republic, and its regional “reach”, there is no risk of attracting the foreign students from border areas.

### **3. Assessment of the measure**

#### *The College is not an economic operator*

- (14) State aid rules of the Treaty apply to undertakings. Whether an entity qualifies as an undertaking is determined by whether it engages in an ‘economic activity’, regardless of its legal status and the way in which it is financed<sup>4</sup>. An entity engages in an ‘economic activity’ when it is ‘offering goods or services on the market’<sup>5</sup>.
- (15) With regard to national education the European court of Justice ruled that the State, in establishing and maintaining such a system, is not seeking to engage in gainful activity but is fulfilling its duty towards its own population in the social, cultural and educational field<sup>6</sup>. Moreover, according to the Court, "*courses taught in a technical institute which form part of the secondary education provided under the national education system cannot be regarded as services within the meaning of Article 59 of the EEC Treaty (now Article 49 EC Treaty), properly construed*". The Commission considers that the College, which has been granted a state agreement to act as a tertiary technical education establishment, acts under the national education system. Furthermore, the College can

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<sup>3</sup> The Czech authorities note that the money already paid to the College remains below the *de minimis* threshold (see Commission Regulation No 69/2001 of 12 January 2001 on the application of Article 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10 of 13/01/2001, p. 30)). Therefore, they consider that the measure is still to be regarded as notified. The Commission does not consider this analysis relevant as the full amount of the measure supporting the investment project is well above the threshold.

<sup>4</sup> Judgment of the Court of 23/04/1991 in case C-41/90, Höfner and Elser / Macrotron, Rec.1991, p.I-1979, paragraph 21.

<sup>5</sup> Judgment of the Court of 22/01/2002 in case C-218/00, Cical, Rec.2002, p.I-691.

<sup>6</sup> Judgment of the Court of 27/09/1988 in case C263/86, Humble and Edel, E.C.R. 1988, p.5365, points 9-10; 15-18.

only have education and scientific research, development and other creative activities in the approved study program and operation of the university on the basis of the state approval and a the permit of the Ministry of Education. The College cannot perform any other activity, which is not connected to this central activity.

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- (16) Profits, if any, can only be reinvested for the College central activity, and cannot be distributed. In this context, the Commission considers that the College does not seek to make an economic profit. Its aim is not to offer a service for remuneration<sup>7</sup>.
  - (17) As a consequence, the Commission considers that the College does not conduct any economic activity but pursues an educational role of general interest.
  - (18) Therefore, the subsidy at stake is not a State aid in the meaning of Article 87(1) EC Treaty.

#### *No affectation of trade*

- (19) Even if the College were to be regarded as an economic operator, the Commission considers that the educational activity conducted by the College has a local/regional dimension: the number of students is limited (135 pupils, who are all Czech nationals), the courses are mainly held in Czech, the College is not located close to any border, while it has a regional reach.
- (20) Moreover, due to the geographical location of the school, its small size, and the relatively small amount of public support involved, it can not reasonably be expected that this support will lead students from other Member States to follow their scholarship in the College rather than a college in another Member State. The Commission can conclude that the State support has no effect on trade<sup>8</sup>.
- (21) Consequently, the subsidy at stake is not a State aid in the meaning of Article 87(1) EC Treaty.

#### **4. Decision**

The Commission has decided, on the basis of the foregoing assessment, to consider that the subsidy granted to the College is not a State aid.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen 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 the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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<sup>7</sup> See Judgment of the Court of 07/12/1993, in case C 109/92, Wirth / Landeshauptstadt Hannover (Rec.1993, p.I-6447).

<sup>8</sup> See Commission decision of 29 October 2003 on measures in favour of non-profit harbours for recreational crafts (OJ L 34 of 06/02/2004, p.63).

[http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/).

Your request should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
SPA 3 – 6/05  
B-1049 Brussels  
Fax No: 0032-2 296 12 42

Yours faithfully,  
For the Commission

*Neelie Kroes*  
Member of the Commission