COMMISSION

COMMISSION DECISION

of 8 September 2006

on State aid C 45/04 (ex NN 62/04) in favour of the Czech steel producer Třinecké železárny a.s.

(notified under document number C(2006) 5245)

(Only the Czech text is authentic)

(Text with EEA relevance)

(2007/319/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to Protocol 2 on the restructuring of the Czech steel industry to the 2003 Accession Treaty,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1],

Whereas:

1. PROCEDURE

(1) On 12 November 2003 the Commission received information that the Czech Government had adopted the 'Resolution concerning the finalisation of the restructuring of the steel sector and proposing a solution for Třinecké železárny, a.s.' (hereinafter referred to as TŽ). The Resolution indicated that the Government planned to grant State aid amounting to around CZK 1,9 billion (approximately EUR 67 million) [2] to TŽ.

(2) In the Resolution the Czech Government gave its consent to the following transactions:

— the Czech Government acquires from TŽ, through the Czech Consolidation Agency (CCA), the 10,54 % stake held by TŽ in the steel company ISPAT Nová Huť (INH). The price for these shares will be determined by the Ministry of Finance in agreement with the Ministry of Industry and Trade,

— the CCA transfers 10 000 bonds with a nominal value of CZK 1 billion (EUR 35 million), issued by TŽ and currently held by CCA, back to their issuer, TŽ, for a total price of CZK 100 million (EUR 3,5 million), i.e. only 10 % of their nominal value.

(3) The Resolution also stipulates that both transactions can only come into force after receiving a positive decision of the Czech Office for the Protection of Competition (OPC) issued following consultation with the European Commission.

(4) By letter dated 26 November 2003, the Commission requested information concerning the above mentioned transactions.

(5) On 10 December 2003 and 7 January 2004 meetings were held between the Czech Prime Minister and Minister of Trade and Industry and the Commissioner for Competition. It was agreed that the last statement of the Resolution would be respected (see point 3).

(6) On 20 February 2004 the Commission received a description of all the projects for which the Czech Government intended to grant State aid to TŽ. On 17 March 2004 a technical consultation between the Commission departments, the representatives of the Czech authorities and the company took place in Brussels.

(7) On 29 March and 29 April 2004 the Commission sent comments to the Czech authorities indicating that on the basis of the information provided it could not be excluded that the planned acquisition by the Czech Government of the INH shares held by TŽ would be done above the market price, thereby involving State aid in favour of the latter, and that State aid financing different TŽ projects did not seem to be compatible with the current Community State aid rules.

(8) On 22 and 30 April 2004 the Czech Office for the Protection of Competition authorised the State aid to TŽ.

[1] OJ C 22, 27.1.2005, p. 2.

[2] The currency conversion used in this Decision is EUR 1 = CZK 28,43 (as at 20 September 2006) and is provided for information only.

(9) By letter dated 14 December 2004 the Commission informed the Czech Republic that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measures and requested certain information.

(10) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ([3]). The Commission invited interested parties to submit their comments on the measure. No comments were received.

(11) By letters of 31 January 2005, registered as received on 1 February 2005, the Czech Republic replied to some questions raised in the decision to initiate the formal investigation procedure.

(12) By letter of 18 April 2005, the Commission requested additional information, which was provided by letter of 16 May 2005, registered as received on 18 May 2005.

(13) By letter of 4 July 2005, the Commission requested a copy of certain documents quoted by the Czech authorities, which were submitted by letter of 21 July 2005, registered as received on 25 July 2005.

(14) By electronic mail of 10 August 2005, the Czech authorities informed the Commission about new elements.

(15) By letter of 28 September 2005, the Commission requested additional information, which was submitted during a meeting with the Czech authorities on 29 September 2005 and by letter of 18 October 2005, registered as received on 19 October 2005.

(16) By letter of 15 December 2005, the Commission requested further information, which was submitted by letter of 20 March 2006, registered as received on 21 March 2006. In this letter, the Czech authorities indicated that they would not pay the closure aid as TŽ had modified its business strategy.

(17) By letter of 18 July 2006, the Commission requested further information, which was submitted by letter of 16 August 2006.

([3]) See footnote 1.

(a) **Measures adopted in April 2004**

(18) On 14 April 2004 the Government of the Czech Republic passed a resolution specifying that a purchase price of CZK 1 250 per share would be paid to TŽ for the 1 306 920 INH shares in its possession, representing 10,54 % of the capital of this latter company. On 22 April 2004 the OPC considered that this transaction did not involve State aid within the meaning of Article 87(1) of the EC Treaty. The transaction was executed at the end of that month.

(19) On 30 April 2004 the OPC authorised State aid in favour of TŽ provided in the form of a transfer of bonds in the total nominal value of approximately CZK 576,7 million (EUR 20 million) for environmental, research and development, training and closure projects for the years 2004-06. Part of this was aid of CZK 44 088 300 (EUR 1,5 million) for training projects and CZK 4 152 500 (EUR 0,14 million) for a closure project.

(b) **Information about the company**

(20) TŽ was privatised in the mid-1990s and has been fully restructured without State support.

(21) The main scope of business of TŽ is metallurgical (steel) production with a closed metallurgical cycle. Apart from production of coke, crude iron and steel, the main products of the company are the products produced by rolling mills, i.e. blooms, slabs, billets, rolled wire, reinforcing steel, and light, middle and heavy section steel. TŽ is the only producer of rails in the Czech Republic.

2. **GROUNDS FOR INITIATING THE PROCEDURE**

(22) The Commission decision to initiate the formal investigation procedure concerned three of the measures taken by the State in favour of TŽ, namely the shares purchase, the training aid, and the closure aid. The other aid measures (R&D and environmental protection) were found to comply with the relevant rules and are not the subject of the present procedure ([4]). In its decision to initiate the procedure, the Commission expressed doubts that these three measures implemented by the Czech Republic before accession involved disguised restructuring aid to TŽ, which would be in contradiction with Protocol 2 to the 2003 Accession Treaty (hereinafter Protocol 2).

([4]) The Czech authorities informed the Commission by letter of 20 March 2006 that they might consider changes in these projects. The Commission understands that such changes would be notified in compliance with Article 88(3) of the Treaty.

(23) Regarding the training aid and the closure aid, the Commission had doubts that they complied with all the requirements of the corresponding Community State aid rules in force at the time the aid was granted ([5]). The documents submitted to the Commission in February and March 2004 were not clear about the objective and the conditions of these two aid measures. The vague information provided in the decisions of the OPC did not allow checking whether this aid had indeed been granted in line with the relevant rules.

(24) Regarding the purchase of the INH shares held by TŽ, the Commission doubted whether the price of CZK 1 250 per share paid by the State would have been acceptable to a market economy investor and was free of aid in favour of the seller. Indeed, in March 2004 the Czech Securities Commission (CSC) authorised INH to buy back its own shares on the stock market at a price of CZK 550. In its submission to the CSC, INH underpinned the proposed price by the valuation report of an expert. The Commission observed that the State did not take into account the much lower price approved by the CSC a few weeks before and accepted to pay the price calculated by its own expert (KPMG).

(25) The title of Resolution of the Government of the Czech Republic No 1126 adopted on 12 November 2003, which stated that this resolution 'concerns the finalisation of the restructuring of the steel sector and proposes a solution for Třinecké železárny, a.s', reinforced the Commission's doubts.

(26) The Commission therefore decided to investigate whether these three measures constituted disguised restructuring aid to the steel producer TŽ and thus were in contradiction with Protocol 2.

3. COMMENTS FROM THE CZECH REPUBLIC

Training aid

(27) The Czech authorities submitted to the Commission copies of all the projects of TŽ for training of employees in the period 2004-06, which were assessed by the OPC and on the basis of which the State aid was granted. Moreover, they explained in details all activities covered by general and specific training and indicated how the training aid would improve and update the skill levels of the company's workforce and thus its employability in the light of the new challenges of the market.

(28) The training projects, to be carried out from 2004 to 2006, consist of a comprehensive training programme of many different courses (personal development, communication, marketing, management training, auditing, new technologies, engineering, quality etc.). The total eligible costs of these projects amount to CZK […] (*). The total aid amounts to CZK 44 088 300 (EUR 1,5 million).

Closure aid

(29) In their letter of 20 March 2006, the Czech authorities indicated that they would not be paying the closure aid, amounting to CZK 4 152 500 (EUR 0,14 million), covering part of the redundancy payments to employees of the closeddown furnace because TŽ had changed its business strategy.

Purchase of INH shares held by TŽ

(30) The Czech authorities assert that they acted like a market economy investor in not taking into account the price of CZK 550 approved by the CSC and consecutively negotiating the price with the seller — TŽ — only on the basis of their expert's report (KPMG report). In support of this assertion, the Czech authorities have put forward several elements, including the following.

(31) First, they claim that a market economy investor knows that the interest of a company (INH in this case), when buying back its own shares, is to pay the lowest price possible. Therefore, during the negotiation of the price of the shares with the seller, the rational investor will not consider the price proposed within the framework of the buy-back offer as constituting the market value.

(32) Second, the Czech authorities claim that it cannot be concluded from the fact that the price proposed by INH was underpinned by an expert report and was approved by the CSC that it represented the market value of the shares:

(a) indeed, regarding the expert report, the market economy investor knows that the expert is chosen and paid by INH, which was particularly interested in setting a low purchase price. Therefore the impartiality of the expert report could be questioned and a tendency to set a lower price suspected;

([5]) The other aid measures granted fully comply with the Community Guidelines on State Aid for Environmental Protection (OJ C 37, 3.2.2001, p. 3) and the Community Framework for State Aid for Research and Development (OJ C 45, 17.2.1996, p. 5).

(*) Business secret.

(b) regarding the fact that the price was approved by the CSC, the Czech authorities stress that, contrary to the hypothesis of the Commission expressed in the opening decision, the CSC assesses the bid on the basis of the applicable law and its internal methodology on 'Expert reports for setting the price of participating securities within a mandatory take-over bid and within a public offer to purchase shares' and it does not have the competence to set the price of the shares itself or to replace the expert valuation report by its own analysis. The CSC decided only whether all legal requirements for the tender offer to buy back the companys shares and for the expert valuation report were satisfied.

(33) Third, in addition to the last consideration, the Czech authorities indicate that, before eventually granting its approval in March 2004, the CSC had already rejected one submission by INH and one by LNM (the majority shareholder of INH). Indeed, in both cases the expert report which formed the basis for the price proposed contained serious deficiencies with regard to the regulatory requirements for an expert report. INH then made a new submission on the basis of a valuation report respecting all the regulatory requirements. The CSC no longer had any grounds to reject this last submission and consequently approved it. According to the Czech authorities, a market economy investor would have interpreted this earlier double rejection by the CSC as confirming its expectation that INH and LNM were trying, through these deficiencies identified by the CSC in the expert reports, to undervalue the company in order to pay the lowest possible price for the shares they planned to buy back.

(34) Fourth, the Czech authorities indicate that a market economy investor will consider that the price of CZK 550 is underestimated given the fact that it corresponds to an exaggeratedly low price-earnings ratio (P/E). This ratio is obtained by dividing the price of a share by the net profit per share. On the basis of the net profit of INH for 2003, which could be estimated at the beginning of 2004 when the transaction was performed, a price per share of CZK 550 gives a P/E equal to around 1,25. A price of CZK 1 250 per share gives a P/E of 2,8, which was at the extreme bottom of the range of P/E observable for the steel producers quoted on a stock exchange. In other words, the price calculated by INHs expert corresponds to a very low valuation of the company, which was not reconcilable with the valuation by the financial markets of the companies operating in the steel sector at that time.

(35) Finally, the Czech authorities point out that the public offer by INH to buy back its shares at a price of CZK 550 met with very little response. The large majority of the eligible investors decided not to sell their shares at this price. Several of them have even lodged complaints alleging breach of their rights.

4. ASSESSMENT OF THE AID

4.1. Applicable law

(36) Protocol 2 allows the granting of restructuring State aid to the Czech steel industry in connection with its restructuring in the period between 1997 and 2003 of up to a maximum of CZK 14 147 million (EUR 453 million). The Protocol combines the granting of State aid with several conditions, *inter alia*, with re-establishing viability and the commitment to reduce capacity.

(37) Point 1 of Protocol 2 provides that 'notwithstanding Articles 87 and 88 of the EC Treaty, State aid granted by the Czech Republic for restructuring purposes to specified parts of the Czech steel industry shall be deemed to be compatible with the common market' if, *inter alia*, the conditions set out in the Protocol are met.

(38) Point 3 of Protocol 2 provides that 'only companies listed in Annex 1 shall be eligible for State aid in the framework of the Czech steel restructuring programme.' TŽ is not mentioned in Annex 1.

(39) The last sentence of point 6 of Protocol 2 prohibits granting any additional aid for the purpose of restructuring to the Czech steel industry. To this end, point 20 gives the Commission the power to take 'appropriate steps requiring any company concerned to reimburse any aid granted in breach of the conditions laid down in this Protocol' should the monitoring of the restructuring show non-compliance by way of granting 'additional incompatible State aid to the steel industry'.

(40) The grace period for granting restructuring aid to the Czech steel industry under the Europe Agreement was extended by the Council until 31 December 2006. This arrangement was recognised by Protocol 2. In order to achieve this objective, the Protocol covers a timeframe extending before and after accession. More precisely, it authorised a limited amount of restructuring aid for the years 1997-2003 and forbids any further State aid for restructuring purposes to the Czech steel industry between 1997 and 2006. In this respect, it clearly differs from other provisions of the 2003 Accession Treaty, such as the interim mechanism set out in Annex IV (the 'existing aid procedure'), which only concerns State aid granted before accession in so far as it is 'still applicable after' the date of accession. Protocol 2 can, therefore, be regarded as a *lex specialis* which, for the matters that it covers, supersedes any other provision of the Accession Treaty.

(41) Consequently, while Articles 87 and 88 of the EC Treaty would not normally apply to aid granted before accession, which is not applicable after accession, the provisions of Protocol 2 extend State aid control under the EC Treaty to any aid granted before accession for the restructuring of the Czech steel industry between 1997 and 2006.

(42) Protocol 2 does not apply to other State aid measures granted to the Czech steel industry for specific purposes that can be declared compatible on other grounds, such as research and development aid, environmental protection aid, training aid, closure aid, etc. These aid measures do not fall under the scope of Articles 87 and 88 if they are granted before accession and are not applicable after accession. In any event, the Protocol does not limit the possibility to grant other kinds of aid to the Czech steel companies in accordance with the Community *acquis*. Of course, it does not limit the possibility to adopt measures that do not qualify as aid, e.g. capital injections in accordance with the market economy private investor test. On the other hand, a measure concerning Czech steel companies which constitutes State aid and which cannot be held to be compatible with the common market under other rules is to be considered as restructuring aid — given the residual character of this qualification — or, in any event, as aid related to restructuring of the Czech steel sector and will therefore be subject to Protocol 2.

(43) Therefore, in accordance with its constant practice and with point 20 of Protocol 2, the Commission can thus assess the measures in a formal investigation procedure under Article 88(2) of the EC Treaty where it suspects that the Czech authorities have granted aid to steel companies that is not compatible with the common market on grounds other than restructuring and that, therefore, Protocol 2 is not being complied with by the Czech Republic. Also Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 ([6]) applies.

4.2. **Existence of aid**

Training aid

(44) Training subsidies in favour of TŽ constitute State aid within the meaning of Article 87(1) of the EC Treaty. They are financed by the State or through State resources. These additional financial means are liable to distort competition in the Community by giving TŽ an advantage over competitors not receiving aid. Lastly, there is extensive trade between the Member States in the steel sector in which TŽ is a non-negligible player, so the aid is likely to affect trade between Member States.

Closure aid

(45) The Czech authorities will not pay to TŽ the closure aid covering part of the redundancy payments to employees of the closeddown furnace because of a change in the business strategy of TŽ. The company will therefore not receive the grant of CZK 4 152 500 (EUR 0,146 million) promised to it subject to certain conditions. This measure of the Czech authorities has therefore become inoperative.

Purchase of INH shares held by TŽ

(46) The Commission will analyse, in the order in which they appear in the preceding section 'Comments from the Czech Republic', the elements put forward by the Czech authorities to underpin their assertion that they acted like a market economy investor ([7]) is not taking into account, within the framework of the negotiation with the seller, the price of CZK 550 submitted by INH and approved by the CSC.

(47) The Commission accepts the first claim of the Czech authorities that a market economy investor, as well as the seller, knows that the interest of a company (i.e. INH in this case), when buying back its own shares, is to pay the lowest price possible. Therefore, during their negotiation of the price of the shares, the rational investor and the seller will treat with suspicion the price proposed within the framework of such a buy-back offer. They will only consider it as constituting a reflection of the market value if this price is underpinned by additional elements. For instance, if the buy-back offer is completed and has been a success among investors, meaning that a significant percentage of investors are ready to sell their shares at that price, the market economy investor will normally take this price into account. However, in the present case, the buy-back offer was still running at the time of the transaction and there was no information available indicating that it would be a success.

([6]) OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

([7]) The market economy investor principle has long been recognised by the Court of Justice. See, for instance, Case C-305/89 *ALFA Romeo*, ECR [1991], p. I-603, (points 19 *et seq.*).

(48) As regards the second assertion of the Czech authorities, the Commission would emphasise that the specificities of the case need to be analysed. First, there was no stock market price which could be used as a clear and indisputable basis for the market value of the company ([8]). Consequently, in order to value the company, it was necessary to make forecasts of future cash flows or dividends and then calculate their present value. Second, the company to be valued was going through a deep reorganisation. The company had recently been sold by the State, which was controlling it until that day, to a large private steel group. The latter undertook to modernise the company and to make substantial investments. Considering this dramatic change in the company and in its management, past financial data could not be considered a reliable guide to future performance. Forecasts about future cash flows or dividends could not be based on observable existing series. In conclusion, the valuation of the company was dependant on forecasts, for which no indisputable base could be used. The Commission agrees that, in these particular circumstances, it cannot be concluded from the fact that the price proposed by INH was underpinned by an expert report and had been approved by the CSC that it represented the market value of the shares:

(a) the Commission accepts that, regarding the expert report, the market economy investor and the seller know that the expert is selected and paid by INH. Given the fact that the valuation of the company INH could only be derived from hypotheses about future developments, which given the recent privatisation were difficult to verify, and not from observable indicators, the hired consultant can make a conservative hypothesis about the future developments in order to arrive at the price expected by the ordering company without committing any formal mistake and endangering its reputation. The Commission observes that the forecasts made by the expert selected by INH were indeed conservative (see below);

(b) on the basis of the information submitted by the Czech authorities, the Commission observes that the CSC did not produce its own expert report on the value of the shares, which would replace the expert valuation report presented by INH. The CSC decided only whether all legal requirements for the tender offer to buy back the companys shares and for the expert valuation report were satisfied. In the present case the Commission would observe that the valuation had to be derived from hypotheses on the development of a company undergoing dramatic changes, and not from factors such as the stock market price or past financial data which can be formally verified by the CSC. The Commission would note that it follows from the information provided by the Czech authorities that, if the expert valuation contains no deficiencies and incoherencies, the CSC cannot reject it simply because it is based on 'conservative' hypotheses and consequently arrives at a low price for the valued shares.

([8]) In the opening decision, the Commission acknowledges that, while the stock market price normally constitutes the best indicator of the value of shares, the price observable on the Prague Stock Exchange for INH shares does not constitute a reliable indicator of the value of a 10 % stake in INH capital. Indeed, monthly and yearly statistics show that the value of the trades is very limited. The stock market price, therefore, does not result from the interaction of a substantial number of significant investors.

(49) The Commission accepts the third element put forward by the Czech authorities, namely that a market economy investor would have interpreted the prior double rejection by the CSC as confirming its expectation that INH and LNM (the majority shareholder of INH, which is the driving force behind this operation since it will buy from INH the shares that the company has bought back) were trying to undervalue the company in order to pay the lowest possible price for the shares they wished to buy back.

(50) As regard the fourth assertion of the Czech authorities, the Commission would observe that, at the time of preparation of the valuation reports respectively ordered by INH and the State in the first quarter of 2004, INH's profit for the full year 2003 was not yet known but could be estimated on the basis of the figures of the first quarters which were already known. Accordingly, the forecast net profits for the full year 2003 included in both valuation reports are of similar magnitude. On the basis of the net profit they forecast for 2003, a price per share of CZK 550 gives a P/E equal to around 1,5. (The Czech authorities calculated the P/E ratio of 1,25 on the basis of the effective profit, which was not known at that time and which turned out to be better than forecast by both experts, hence the lower P/E ratio.) The latter figure is very low. A market economy investor will value a company at such a depressed price only if he has exceptionally negative expectations for the growth of the net income in the future. The Commission would observe that the expert hired by INH indeed considers that the net profit achieved in 2003 is very exceptional and anticipates that profits will decrease by two thirds over the coming years. In other words, this expert anticipates for the years after 2003 a nearly complete return to the 2002 profit level (CZK 0,9 billion), a period when INH was still suffering from weak management and a lack of investment following from State ownership. The expert forecasts low sales growth and limited cost reductions. The Commission would observe that the valuation report does not clearly explain why LNM, which took control of INH at the beginning of 2003, would be inefficient at restructuring the company, at reducing the operating and input costs, and at developing more profitable products and business relations. In comparison, the price of CZK 1 250 calculated by the expert hired by the State, KPMG, gives a P/E between 3 and 3,5. This is at the bottom

of the P/E range observed on the financial markets at that time for steel producers. This low ratio reflects a prudent forecast for the growth of profit. KPMG indeed foresees a (limited) decline in profit after 2003. KPMG therefore acknowledges, like the expert hired by INH, the favourable situation on the steel market in 2003 and its cyclical nature. However, KPMG also anticipates that, under the control of LNM, the operational restructuring of the formerly State-owned company will continue, cheaper sources of inputs will be found thanks to the integration in a large steel group, and production will be reoriented towards higher-added-value products. In conclusion, the Commission agrees that a market economy investor would have considered the price of CZK 550 as underestimated given the fact that it corresponds to an exceptionally low P/E, which is difficult to justify on the basis of the expected improvement in the financial performance of the company which could reasonably be expected following its privatisation and the investment and restructuring programme launched by its new private shareholder.

(51) The Commission concludes that the combination of the four foregoing elements helps to explain why, at the time of the Government purchase, the price of CZK 550 proposed by INH within the framework of the buy-back operation and endorsed by the CSC would not have been seriously taken into account by a market economy investor and could not constitute a serious bargaining tool to force the seller to decrease its price. In the absence of any other available reference price, a market economy investor would therefore have negotiated with the seller on the basis of the price calculated by its expert ([9]). As the price paid by the Czech Government is in the price range calculated by KPMG, these State resources have been invested in a way acceptable to a market economy investor. Accordingly, the Commission considers that the shares purchase does not constitute State aid within the meaning of Article 87(1). The Commission wishes to stress that this conclusion is totally dependent on the particular circumstances of the present case.

(52) Finally, regarding the fifth element put forward by the Czech authorities, namely the fact that the public offer by INH to buy back its shares at a price of CZK 550 met with very little response, the Commission acknowledges that it was not known at the time of the transaction analysed and therefore concludes that this fact cannot justify why the proposed price was not taken into account by the State.

([9]) Insofar as the experts valuation report does not contain deficiencies. However, in its decision to initiate the formal investigation procedure, the Commission did not express doubts about the plausibility of the views expressed in this report. Nor does the above analysis indicate that its conclusions are unreasonable.

4.3. **Compatibility of the aid**

(53) As explained in recitals 42 and 43, the Commission has to assess the potential compatibility with the applicable regulations of the measure found to be State aid, in order to ensure that it does not constitute restructuring aid, which is forbidden under the Protocol 2.

(54) Training aid is assessed on the basis of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ([10]).

(55) The distinction between specific training and general training actions is drawn under Article 2 of the Regulation. Specific training is defined in Article 2(d) of the Regulation as training involving tuition directly and principally applicable to the employee's present or future position in the assisted firm and providing qualifications which are not, or only to a limited extent, transferable to other firms or fields of work.

(56) General training is defined in Article 2(e) of Regulation (EC) No 68/2001 as training involving tuition which is not applicable only or principally to the employee's present or future position in the assisted firm, but which provides qualifications that are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee.

([10]) OJ L 10, 13.1.2001, p. 3. Regulation as last amended by Regulation (EC) No 1976/2006 (OJ L 368, 23.12.2006, p. 85).

(57) The Czech Republic has provided detailed information on the proposed training courses. On the basis of this information, the Commission was able to verify that the distinction between general and specific training applied by the Czech Republic was in conformity with Article 2 of Regulation (EC) No 68/2001. Thus, the courses described as general training relate to qualifications, such as management, personal development, communication, marketing and auditing skills, that are largely transferable to other firms or fields of work. On the same basis, courses which relate particularly to products, new technologies, engineering, technical projects, environmental management, quality improvement, and thus had limited applicability to other functions, were described as specific training, in line with Article 2(d) of the Regulation. According to the information submitted to the Commission, the training aid was necessary to achieve the envisaged objectives.

(58) Article 4(7) of Regulation (EC) No 68/2001 defines the eligible costs of a training project and requires the information on costs to be transparent and itemised. The Czech Republic has supplied to the Commission detailed information on the costs related to the project, itemised in such a way that it was possible to identify these costs with those set out in Article 4(7) of the Regulation. This information was found to be in conformity with the requirements of Article 4(7) of the Regulation.

(59) Further, the aid intensities applied by the Czech Republic were found to be in conformity with the maximum aid intensities allowed under Article 4(2) and (3) of Regulation (EC) No 68/2001. Thus, the aid intensities proposed correspond to those allowed under the Regulation for specific and general training, respectively, with regard to a large enterprise located in areas which qualify for regional aid under Articles 87(3)(a) of the EC Treaty.

(60) In conclusion, the aid is in line with the requirements laid down in Regulation (EC) No 68/2001.

5. **CONCLUSION**

(61) The Commission concludes that the training aid of CZK 44 088 300 (EUR 1,55 million) in favour of TŽ complies with Regulation (EC) No 68/2001.

(62) The closure aid of CZK 4 152 500 (EUR 0,14 million) will not be paid to TŽ as TŽ has changed its business plan.

(63) The purchase of the INH shares held by TŽ does not constitute State aid.

(64) Accordingly, these three measures do not constitute disguised restructuring aid to TŽ, which would have been in contradiction with Protocol 2,

HAS ADOPTED THIS DECISION:

Article 1

The training aid of CZK 44 088 300 in favour of Třinecké železárny, a.s. complies with the criteria laid down in Regulation (EC) No 68/2001 and it does not constitute restructuring aid within the meaning of Protocol 2 to the 2003 Accession Treaty.

The purchase of the shares of ISPAT Nová Huť held by Třinecké železárny, a.s. does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

This Decision is addressed to the Czech Republic.

Done at Brussels, 8 September 2006.

For the Commission

Neelie KROES

Member of the Commission