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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>	<p style="text-align: center;">PUBLIC VERSION</p> <p style="text-align: center;">WORKING LANGUAGE</p> <p style="text-align: center;">This document is made available for information purposes only.</p>
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Subject: State aid C ../2011 (ex N 38/2010) – Poland – LIP – Fiat Powertrain Technologies Poland

Sir,

The Commission wishes to inform Poland that, having examined the information supplied by your authorities on the aid measure referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("TFEU").

1. PROCEDURE

- (1) By electronic notification registered on 28 January 2010 at the Commission (SANI 4035), the Polish authorities notified their intention to grant regional aid under the Guidelines on national regional aid (hereinafter "RAG")¹ to Fiat Powertrain Technologies Poland Sp. z o.o. for its investment project in Bielsko-Biała in the Silesia region (*województwo śląskie*) of Poland.
- (2) By letters of 24 March 2010 (D/6312), 10 August 2010 (D/8641), and 9 November 2010 (D/9979) the Commission requested supplementary information on the notified aid measure. The Polish authorities submitted the requested

¹ OJ C 54, 04.03.2006, p. 13.

Pan Radosław SIKORSKI
Minister Spraw Zagranicznych
Al. Szucha 23
PL – 00 – 580 Warszawa

additional information by letters registered at the Commission on 10 June 2010 (A/9689), 30 September 2010 (A/12850), and 8 December 2010 respectively.

2. DESCRIPTION OF THE PROJECT AND THE AID MEASURE

- (3) The Polish authorities intend to promote regional development by providing regional aid to Fiat Powertrain Technologies Poland Sp. z o.o., in the form of a direct grant and tax allowance, for the establishment of new manufacturing facilities for the production of a new generation of engines in Bielsko-Biała, which is an assisted region under article 107 (3)(a) TFEU.

2.1. The beneficiary

- (4) The beneficiary of the aid is Fiat Powertrain Technologies Poland ("FPT Poland" or "Beneficiary"), a subsidiary of the Italian Fiat Powertrain Technologies S.p.A. ("FPT"), which itself is a member of the Fiat Group. Until 1 January 2011, Fiat Group used to be divided into five divisions: Automobiles, Trucks and Commercial Vehicles, Agricultural and Construction Equipment, Components and Production Systems, and Publishing and Communications. On 1 January 2011 a de-merger took place and Fiat Group was divided into Fiat Industrial SpA (the mother company of Fiat's industrial divisions) and Fiat SpA (regrouping the remaining divisions). Consequently, the group structure of Fiat SpA ("Fiat SpA" or "Fiat Group") as from 1 January 2011 is the following:

Table 1: The new organization of Fiat Group

Fiat SpA			
Automobiles	Fiat Powertrain Technologies Passenger&Commercial Vehicles	Components	Other Assets
100% of Fiat Group Automobiles	100% of Fiat Powertrain Technologies	100% of Magnetti Marelli	100% of Itedi
100% of Maserati		84.8% of Teksid	
85% of Ferrari		100% of Comau	
25% of Chrysler			

- (5) The car brands belonging to the FIAT Group are Fiat, Lancia, Alfa Romeo, Abarth and Fiat Professional. Maserati and Ferrari brands are also part of the FIAT Group.

- (6) Under terms approved by the U.S. Bankruptcy Court of New York and the various regulatory and antitrust authorities, the company formerly known as Chrysler LLC formally sold all of its assets in 2009 except for certain debts and liabilities to a new corporation that operates under the name Chrysler Group LLC.
- (7) Chrysler Group LLC assigned Fiat Group a stake in the new company of 20% on a fully diluted basis. Fiat Group also entered into a series of agreements needed for the transfer of certain specific technologies, platforms and power plants to the new Chrysler.
- (8) Fiat Group's ownership stake will increase in increments up to a total of 35% provided that certain goals contemplated by the agreement are reached. Currently Fiat's stake in Chrysler is 25% but has important decision rights.
- (9) FPT covers the manufacturing of parts and accessories for motor vehicles and their engines. The main products of FPT are engines and gearboxes. Through its controlled companies FPT employs over 20 000 people and is present in 7 countries. Additionally, the complex dealers and services centres grid ensures brand and products presence in over 100 countries.

Table 2: Companies owned by FPT

Name	Location	Share
F.M.A. Fabbrica Motori Automobilistici S.r.l.	Italy	100%
Fiat Powertrain Technologies (Shanghai) R&D Co. Ltd.	China	100%
SAIC Fiat Powertrain Hong Yan Co. Ltd.	China	30%
Fiat-GM Powertrain Polska Sp. z.o.o.	Poland	50%
Fiat Powertrain Technologies Poland Sp.z o.o.	Poland	100%

- (10) FPT's client portfolio covers FIAT Group entities and unrelated companies.
- (11) FPT Poland was incorporated on 20 July 2008. It was registered in the commercial register held by the Regional Court in Bielsko-Biała and runs its activities in the Special Economic Zone of Katowice (*Katowicka specjalna strefa ekonomiczna*).
- (12) The Polish authorities confirmed that FPT Poland is not a company in difficulty in the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty².

² OJ C 244, 1.10.2004, p. 2.

2.2. The investment project

2.2.1. The notified project

- (13) The investment project consists of building of a production line for innovative internal combustion Small Gasoline Engines ("SGE"). The Polish authorities demonstrate that the new twin-cylinder internal combustion SGE has fundamentally new characteristics compared to the 4-cylinder fire engines currently produced by FPT in Termoli (Italy). The new twin-cylinder SGE is a small unit with a capacity of about 900 cm³, and is, according to the Polish authorities, the most technologically advanced in the world. Thanks to the "multi-air" system, compared to older engines, the power is increased by 10% with a 10% reduction of fuel consumption. Variable valve timing replaces the throttle.
- (14) The SGE to be produced as a result of the investment project can also be equipped with a double fuel system, combining lead free petrol and compressed natural gas ("CNG"). Depending on the version and turbocharging, the engine will reach the power of 65, 80, 85 or 105 hp. It can therefore easily be installed in various car segments. At present, however, Fiat plans to install these engines on cars in the segments A, B, MPV-B, C, and CDV (according to the Global Insight³ segmentation). The engines will only be sold intra-group and will be installed in car brands produced by Fiat Group (i.e. Fiat, Lancia, and Alfa Romeo).
- (15) FPT Poland at the time of carrying on the investment project plans to invest approx. EUR 250 million between 2008 and 2014 and create 400 new workplaces. These investments will relate mainly to the purchase of fixed assets, both new and used (the used fixed assets are not eligible costs of the project). The project will embrace in particular the machines and equipment of the manufacturing plant, typical expenditures for the starting up of the new plant and the devices used outside the plant by the subcontractors (vendor tooling). The company plans to implement the most advanced production technologies, among others: automated roughing and finishing machining of the cylinder head and engine body, high class machines (computer controlled lathes, grinders, weighing and polishing machines) for manufacturing crankshaft.
- (16) In addition to FPT Poland, the following companies operate on the plot belonging to Fiat Auto Poland S.A. in Bielsko-Biała, and conduct activities within the Katowice Special Economic Zone ("KSEZ"):
- Fiat-GM Powertrain Polska Sp. z o.o.: this joint-venture between Fiat and General Motors produces on an area of approx. 50 000 m² a novel turbo diesel engine 1.3 SDE. The company has received the approval to operate in the KSEZ on 30/11/2000.
 - Fiat Services Polska Sp. z o.o.: this company provides accounting and data management services. The company has received the approval to operate in the KSEZ on 31/03/2005.
 - Magneti Marelli Suspension Systems Bielsko Sp. z o.o.: This company produces parts and accessories for cars. It has received the permit to operate in the KSEZ on 20/06/2006.

³ Global Insight, along with POLK, is one of the major service providers analysing the car market.

FPT Poland uses Fiat services Polska Sp. z o.o. as the provider of accounting and personnel services, and Fiat GM Powertrain Polska as the provider of management services. FPT Poland does not collaborate with Magneti Marelli.

- (17) Due to the fact that FPT Poland plans to run its business on the plot belonging to Fiat Auto Poland S.A. (renting the buildings and the area), the project does not include the construction of new buildings and manufacturing halls. The manufacturing plant will be located in the building labelled 3D placed in the industrial property in Bielsko-Biała. Most of the area of the 3D building has not been used for manufacturing activity since 2003. Only approx. 30% of the area now rented by Fiat Powertrain Technologies Poland Sp. z o.o. was previously used by Magneti Marelli Suspension Systems Bielsko Sp. z o.o. This company still uses a part of the building, but has undergone reorganisation in order to use a smaller area than before.
- (18) Neither FPT Poland nor Magneti Marelli have received any State aid in the previous 3 years. Even though in view of the permit to operate in the KSEZ the other abovementioned companies located on the same plot might benefit from fiscal exemption, the Commission considers that their activities do not form a single investment project ("SIP") with FPT Poland's present investment.

2.2.2. *New capacity and Fiat's strategy*

- (19) As a result of the investment FPT Poland will start the production of the new twin-cylinder SGE. This engine will be produced in parallel with the 4-cylinder fire engines of volumes 1.1, 1.2 and 1.4 litre produced by FPT in Termoli (Italy). However, the new engine will replace the old type of engine on the EEA market, while the fire engines currently produced will be installed in cars that in the future will only be sold outside the EEA, where the ecological emission norms are not as restrictive (among others in Turkey, Russia, Asia and Africa). In addition to that, it should be mentioned that the SGE will not replace the small diesel engines produced in Bielsko-Biała by the joint-venture Fiat-GM Powertrain Polska Sp. z.o.o. The Polish authorities further informed that up to 10% of the quantity of the engines produced will be installed in cars that will be sold in South America.
- (20) In view of the foregoing, and considering the fact that the new SGE can be installed in cars of various segments, the Polish authorities submitted the following expected distribution of the total capacity to be created by the project over the different car segments.

Table 3: Capacity created by the project

Segments/year	2007	2010	2011	2012	2013
s					
A	0	[...]*	[...]	[...]	180 000- 200 000

* Confidential information, which has been removed, is indicated in this decision by [].

B	0	[...]	[...]	[...]	180 000-200 000
MPV-B	0	[...]	[...]	[...]	15 000-20 000
C⁴	0	[...]	[...]	[...]	35 000-50 000
CDV	0	[...]	[...]	[...]	3 500-5 000
Total	0	[...]	[...]	[...]	450 000

(21) The Polish authorities confirmed that from a technical point of view the engines to be installed in cars in the different segments are very similar. There are very few components that differ in the various applications, among them the clutch kit and the wire harness. They therefore confirmed that despite these differences the volume of engines going into each of the segments can easily be changed. Notwithstanding the foregoing, in view of the available Global Insight predictions as to the growth trends on the car market, the above indications are considered to be the maximum volumes each car segment can absorb.

(22) As already mentioned, the engines will be produced in two versions: petrol only and bi-fuel (i.e. petrol/CNG). The estimated share of bi-fuel engines is on average [...] % of the production in the period 2011-2015. This is illustrated in the table below.

Table 4 Engine types

Type of alimentatio n	2011	2012	2013	2014	2015
Petrol	[...]	[...]	[...]	[...]	[...]
Bi-fuel: Petrol/CNG	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	450 000	450 000	450 000

2.2.3. *Timing of the new investment project and application for State aid*

(23) Works on the investment project started on 10 October 2008 and should be completed by 31 December 2014. The maximum production capacity will be installed in 2012, so that the full production in the plant will be reached in 2013.

⁴ In the present case the C-segment only comprises C1 and C2 cars, according to the Global Insight segmentation.

- (24) Aid is granted under the condition that the beneficiary will maintain the investment in the assisted region for a minimum period of five years after completion.
- (25) Upon its incorporation FPT Poland has received (after agreement of the competent committee on 28 July 2008) the right to conduct business in the Katowice special economic zone ("KSEZ"). This agreement allows FPT Poland to automatically profit from a tax exemption.
- (26) On 11 August 2008 FTP Poland submitted a grant request under state aid scheme X 136/2009 (as amended by X 659/2009) regarding the Operational Programme Innovative Economy ("OP"). The letter of intent, confirming in principle the eligibility of the project for aid under the OP was emitted on 1 September 2008.
- (27) Finally, FPT Poland presented its investment plans in an application for aid to the Polish Government on 2 September 2008. By letter of 8 October 2008 the Polish authorities confirmed that FPT Poland will in principle be entitled to obtain a direct grant as incentive for the realisation of the investment.
- (28) None of the aid has been paid out yet and its granting is suspended pending the approval of the European Commission.

2.3. Eligible costs

- (29) The project's total estimated investment costs in nominal value amount to approximately EUR 250 million. A part of these investment costs, which will be borne by FPT Poland, relates to vendor tooling. The tools, that will remain the property of FPT Poland, will be used by its suppliers on their premises (within EEA and outside) in the production process of the components supplied to produce the new engine. According to data held by the Polish authorities the suppliers concerned do not benefit from public aid.
- (30) The total eligible investment costs are EUR 180 million (for the purpose of the State aid application these costs are converted to PLN at the applicable exchange rate and hence amount to PLN 732.7 million⁵) in nominal value. The eligible costs are made up as follows:
- machinery and equipment for cylinder head production, for EUR [...]million;
 - machinery and equipment for cylinder block production, for EUR [...]million;
 - machinery and equipment for crankshaft production, for EUR [...]million;
 - machinery and equipment for assembly line, for EUR [...]million;
 - other machinery and equipment, for EUR [...]million.

All the equipment and machinery to be bought, which is included in the eligible costs, will be new.

⁵ The exchange rate used for the calculation is 1 EUR = 4.0705 PLN, applicable at the time of notification.

- (31) In present value⁶ the eligible costs reach EUR 179 894 655 (PLN 732 261 195). Table 5 below provides a breakdown of the total eligible costs of the project by year.

Table 5 Eligible costs

Costs	2010	2011	2012	2013	2014	Total
Machinery and equipment (in millions EUR)	[...]	[...]	[...]	[...]	[...]	180.0
Machinery and equipment (in millions PLN)⁷	[...]	[...]	[...]	[...]	[...]	732.7

2.4. Financing of the investment

- (32) The Polish authorities confirm that the own contribution by the beneficiary, which is free of any public support, exceeds 25 per cent of the eligible costs..

2.5. Regional aid ceiling

- (33) Bielsko-Biała is situated in the Silesia region (*województwo śląskie*) of Poland, which is an assisted area by virtue of Article 107(3)(a) of the TFEU with a standard regional aid ceiling for large enterprises of 40 per cent Gross Grant Equivalent (GGE) according to the Polish regional aid map 2007-2013⁸.

2.6. Legal basis

- (34) The indicated national legal bases for the financial support to FPT Poland are described in more detail below.
- (35) The *investment grant and the employment aid* will be based on an *ad hoc* aid agreement between FPT Poland and the Polish authorities.
- (36) *Fiscal aid* is granted on the basis of the fiscal scheme put in place for the Polish Special Economic Zones ("SEZ"). This was scheme XR 98/2007, in place from 1 January 2007. In the course of 2009 this aid scheme was amended, because the

⁶ The present values in this decision are calculated on the basis of a discounting rate of 5.49%, applicable at the time of notification. The base year for discounting purposes is 2010, i.e. the year of notification.

⁷ The eligible costs were set in Euro. In the aid agreements signed between FPT Poland and the Polish authorities the exchange rate of EUR = 3.714 PLN was used to convert the Euro amount into PLN, for information purposes. The Polish authorities, however, have not indicated that the exchange rate used would have been a fixed exchange rate. Therefore, the exchange rate used here is the one of the day of notification, i.e. 1 EUR = 4.0705 PLN.

⁸ Commission decision of 13.09.2006 State aid N 531/2006 – Poland – Regional aid map 2007-2013, OJ C 256, 24.10.2006, p. 7.

Polish executing acts were modified in order to quote the Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty (General block exemption Regulation) (hereinafter: "GBER") as the legal basis (instead of the Commission Regulation (EC) No 1628/2006⁹ (hereinafter: "RAG BER"). Consequently, the scheme XR 98/2007 ended its application on 31 December 2008, and from 1 January 2009 was replaced by the scheme X 193/2009.

The national legal bases for the fiscal aid scheme (both XR 98/2007 and X 193/2007) are:

- The (general) law on SEZ (*Ustawa z dnia 20 października 1994 r. o specjalnych strefach ekonomicznych*), as amended;
- Law on income tax for legal persons (*Ustawa z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych*), as amended;
- Law on income tax for natural persons (*Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych*), as amended;
- Ministerial Decrees regulating the different SEZ.

(37) As the FPT Poland project is located in Bielsko-Biała, the specific rules relating to the Katowice SEZ, i.e. the Katowice SEZ Ministerial Decree (*Rozporządzenie Rady Ministrów z dnia 2 listopada 2006 r. w sprawie katowickiej specjalnej strefy ekonomicznej*) are applicable to the project.

(38) **Aid under the Operational Programme Innovative Economy** ("OP") is granted on the basis of an aid scheme. This was X 136/2009, in place from 14 April 2008. In the course of 2009 this aid scheme was amended. This amendment was incorporated under state aid scheme X 656/2009 and is in force for the period 20 May 2009 – 31 December 2013.

The national legal bases for the aid scheme are:

- The Operational Programme Innovative Economy 2007-2013, as approved by the Commission;
- Detailed description of the priorities of the OP, emitted by the Minister of Regional Development on 29 January 2009;
- Law of 6 December 2006 on the rules for the development policy (*Ustawa z dnia 6 grudnia 2006 r. o zasadach prowadzenia polityki rozwoju*), as modified;
- Guidelines on eligible costs in the context of the OP, emitted by the Minister for Regional Development on 05 June 2008.

(39) Any aid granted under scheme X 656/2009 (and prior to that under scheme X 136/2009), has to be in line with the Ministerial Decree on aid under the OP (*Rozporządzenie Ministra Gospodarki w sprawie udzielania pomocy finansowej dla nowych inwestycji o dużym znaczeniu dla gospodarki w ramach Programu Operacyjnego Innowacyjna Gospodarka 2001-2013*). This Decree was emitted on 02 April 2008, and thereafter amended on 08 May 2009.

⁹ Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid, OJ L 302, 01.11.2006, p. 29.

2.7. Aid amount

- (40) The Polish authorities intend to grant total aid for the project in Bielsko-Biała in the form of grants and fiscal exemption. The (ad hoc) investment grant and employment aid will be paid in tranches in the years 2011-2013. The aid under the OP and fiscal aid will be paid in tranches in the years 2010-2014.

Table 6 Aid amount

Aid instruments	Nominal value (PLN)	Present value (PLN)
Investment grant	13 464 00	13 117 045
Employment aid	1 240 000	1 207 831
Aid under the OP	100 277 700	100 213 007
Fiscal aid	51 420 340	48 348 572
Total	166 402 040	162 886 455

- (41) The Polish authorities confirmed that the notified aid amount and the aid intensity, as calculated in this letter, will not be exceeded, even in case of higher or lower eligible costs.
- (42) The Polish authorities also confirm that the rules on cumulation contained in points 71 to 75 of the RAG will be respected during the whole duration of the investment project.

2.8. Contribution to regional development

- (43) The Polish authorities indicated that because of the investment project 400 new direct jobs will be created in Bielsko-Biała. Approximately 110 additional indirect jobs will be created in the vicinity of the investment project. This job creation will have a positive influence on keeping the unemployment rate in the region low¹⁰.
- (44) In view of the job creation, the maintenance of the existing co-operation with local partners and the high environmental standards, the projects fits well in the strategic plan for economic improvement approved by the Commission.
- (45) The project is also in line with the Polish Country Development Strategy 2007-2015, and more specifically with its first objective, namely the increase of the level and quality of life of the inhabitants of Poland through increased competitiveness and innovation content of the economy, increase of employment and improvement of its quality, as well as through regional development and increased territorial cohesion. FPT Poland's investment project will hence lead to an increased competitiveness of the Polish regions and, in particular, of the Silesia region.

2.9. General provisions

- (46) The Polish authorities have committed to submit to the Commission:

¹⁰ According to the data of the GUS (Polish Statistical Office), the unemployment rate in the Bielsko-Biała sub-region was 8.3% in July 2009.

- within two months of granting the aid, a copy of the relevant acts concerning this aid measure;
- on a five-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant) if the project will not be ended by the end of 2014;
- within six months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

3. ASSESSMENT OF THE AID MEASURE AND COMPATIBILITY

3.1. Existence of aid

- (47) The financial support to FPT Poland, to be given by the Polish authorities in the form of direct grants and a fiscal exemption, is financed through the budget of the State. The support can thus be considered as given by the Member State and through State resources within the meaning of Article 107(1) TFEU.
- (48) As the aid is granted to a single company, FPT Poland, the measure is selective.
- (49) The financial support given to FPT Poland will relieve the company from costs which it normally would have had to bear itself in setting up the new production unit and therefore the company benefits from an economic advantage over its competitors.
- (50) The financial support from the Polish authorities will be given for an investment resulting in the production of engines for vehicles. Since motor vehicles are subject to intensive trade between Member States, the support given is likely to affect trade between Member States.
- (51) The favouring of FPT Poland and its production by the Polish authorities means that competition is distorted or threatened to be distorted.
- (52) Consequently, the Commission considers that the notified measure constitutes State aid to FPT Poland within the meaning of Article 107(1) TFEU.

3.2. Legality and compatibility of the aid measure

- (53) By notifying the planned aid measure before putting it into effect and by imposing a condition that the award of the notified aid is subject to the Commission's approval, the Polish authorities respected their obligations under Article 108(3) TFEU.
- (54) As the measure concerns regional investment aid, the Commission is under the obligation to assess its compatibility with the Internal Market on the basis of the RAG; more specifically, the provisions of section 4.3 of the RAG relating to aid for large investment projects, since the aid exceeds the thresholds defined in point 64 of the RAG.

3.3. Compatibility with the general provisions of the RAG

- (55) The Commission has verified that the project comprises initial investment within the meaning of the RAG and that no replacement investment is involved.
- (56) An initial investment is defined under point 34 of the RAG as investment in material and immaterial assets relating to the setting up of a new establishment, the extension of an existing establishment, the diversification of the output of an establishment into new, additional products, or a fundamental change in the overall production process of an existing establishment.
- (57) The Commission notes that the investment will result in the setting-up of a new establishment in Bielsko-Biała with a plant production capacity of 450 000 Small Gasoline Engines per year (as from 2013 on). The Commission thus considers that the notified project constitutes an initial investment within the meaning of the RAG (point 34 thereof).
- (58) The aid is for a large part granted on the basis of aid schemes. Fiscal aid is granted on the basis of the fiscal scheme put in place for the Polish Special Economic Zones ("SEZ"), namely X 193/2009. Aid under the OP is granted on the basis of the aid scheme X 656/2009. The direct investment grant and the employment aid that are granted as additional ad hoc aid, represent 8.9% of the total aid package in nominal terms. The project will have a positive impact on the area of Bielsko-Biała and the region of Silesia, as it will create 400 direct and 110 indirect jobs. In view of the maintenance of the existing co-operation with local partners and the high environmental standards, the projects is in line with the strategic plan for economic improvement approved by the Commission, as well as the Polish Country Development Strategy 2007-2015. Therefore, the notified project is in line with point 10 of the RAG.
- (59) The costs eligible for investment aid (see table in point 2.3 above) are defined in line with points 4.1 and 4.2 of the RAG, and the rules on cumulation are respected.
- (60) Furthermore, FPT Poland applied for aid before starting work on the project and the Polish authorities agreed to grant State aid subject to the Commission's approval, as noted in paragraph 53 above. This is in line with point 38 of the RAG.
- (61) FPT Poland also has the obligation to maintain the investment in the region for a minimum of five years after completion of the project.
- (62) The beneficiary provides a financial contribution of at least 25% of the eligible costs in a form which is free of any public support.
- (63) FPT Poland is not a firm in difficulty in the meaning of the Rescue and Restructuring Guidelines, and therefore is not excluded, in application of point 9 of the RAG, from the scope of application of the RAG.
- (64) The Commission therefore considers that the aid complies with the general compatibility criteria laid down in the RAG.

3.4. Assessment under the provisions for aid to large investment projects

3.4.1. Aid intensity (point 67 of the RAG)

- (65) The planned total eligible expenditure of the project in Bielsko-Biała in present value¹¹ is EUR 179 894 655 (PLN 732 261 195)¹². This leads to a maximum aid intensity allowed of 22.72 % gross grant equivalent (GGE).
- (66) The planned total aid amount in present value is PLN 162 886 455 (EUR 40 016 326)¹³. Therefore, the aid intensity (GGE) is 22.24 %. Since the total aid intensity for the project is lower than the maximum aid intensity allowed, the proposed aid intensity for the project complies with the RAG.

3.4.2. Respect for the thresholds set out in subparagraphs (a) and (b) of point 68 of the RAG

- (67) The Commission's decision to allow regional aid to large investment projects falling under point 68 of the RAG depends on the market power of the beneficiary before and after the investment and on the capacity created by the investment. To carry out the relevant tests under subparagraphs (a) and (b) of point 68 of the RAG, the Commission has first to establish appropriate product and geographical market definitions.

Product concerned

- (68) As a result of the investment FPT Poland will produce engines to be built in cars belonging to segments A, B, MPV-B, C, and CDV on the basis of the segmentation standards set by Global Insight.
- (69) According to point 69 of the RAG, the product concerned is normally the product covered by the investment project. However, when the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be the downstream product. In Decision 2002/781/EC the Commission considered that "*the relevant market for engine production by a vehicle manufacturer is the vehicle market for which the engines are built*".¹⁴ This is also the line taken in the Commission Decision 2003/647/EC¹⁵, Commission Decision 2008/1613/EC¹⁶ and more recently in the Decision 2009/8131/EC¹⁷. In

¹¹ Present value, reference rate (28/01/2010): 4.49% (http://ec.europa.eu/competition/state_aid/legislation/reference_rates.html).

¹² Considering that the eligible costs were set in Euro, and only converted into Polish Zloty for the purpose of the aid agreements signed between FPT Poland and the Polish authorities (at an exchange rate of 1 EUR = 3.7140), the exchange rate used here for the sake of the calculation of the aid intensity, is the one of the day of notification, i.e. 1 EUR = 4.0705 PLN.

¹³ The exchange rate used for the calculation is 1 EUR = 4.0705 PLN, applicable at the time of notification

¹⁴ Commission Decision of 20 December 2001 on the State aid which Germany is planning to implement for Daimler Chrysler AG in Kölleda (OJ L 282, 19.10.2002, p. 23.), paragraph 35.

¹⁵ Commission Decision of 27 May 2003 on the State aid which Austria is planning to implement for BMW Motoren GmbH in Steyr (OJ L 229, 13.9.2003, p. 23), paragraph 61.

¹⁶ Commission Decision of 30.4.2008 (C(2008)1613) in the case N 767/2007, Ford Craiova, OJ C 238, 17.9.2008, p. 4, paragraph 76 and 77.

¹⁷ Commission Decision of 28.10.2009 (C(2009)8131) in the case C 31/2009 (ex N 113/2009), Audi Hungaria Motor Kft., OJ C 64, 16.03.10, p. 15.

the case at hand all the engines manufactured by FPT Poland will be sold within the Fiat Group.

- (70) As a consequence, for the purposes of point 69 of the RAG, the Commission considers motor vehicles (passenger cars) to be the product concerned in this decision.

Relevant product market

- (71) Point 69 of the RAG stipulates that the relevant product market includes the product concerned and its substitutes considered to be such either by the consumer (by reason of the product's characteristics, prices and intended use) or by the producer (through flexibility of the production installations).
- (72) The Commission recognised in its merger decisions that, although the car market has traditionally been segmented on the basis of a number of objective criteria like engine size or length of car, the boundaries between segments are blurred by other factors. These factors include price, image and the amount of extra accessories. Therefore, until now all merger decisions left open the question whether, for the purposes of the competitive analysis, the passenger car segment should be considered as one product market or should be further subdivided.
- (73) The Commission notes that Prodcom codes¹⁸ are not relevant for a further segmentation in this case, among others because there are too many overlaps and the classification is not generally used in the industry to assess markets.
- (74) Several other classifications could be considered, such as the ones used by the European Association of Manufacturers (ACEA), the European New Car Assessment Programme (NCAP), the US department of energy, and other large car manufacturers on their website.
- (75) These classifications differ because they are used for different purposes (crash tests for example), because of geographical differences (US market is more dominated by large cars) and because no generally agreed classification exists.
- (76) There are a number of service providers analysing the car market. Among the most renowned and acknowledged providers are Global Insight and POLK. Global Insight, a major forecasting consultancy, proposes a segmentation of passenger cars (27 segments). From segment A to F, the average price, size and the average engine performance of passenger cars gradually increase. POLK differentiates the car market along 8 segments.
- (77) The Polish authorities have chosen Global Insight for the purpose of the notification, because the Fiat Group operates all its long-term strategic planning and competitor analyses on the conceptual base of this data provider. The Commission considers at this stage that the Global Insight market classification can be considered as an appropriate and sufficiently detailed reference and applies this segmentation for the purposes of the assessment of the aid project at hand.

¹⁸ 34.10.12.00, 34.10.13.00, 34.30.11.00 and 34.30.12.00

- (78) The Commission notes that some possibility for demand-side substitution at the margins of each segment exists, for example, between A-segment and B-segment cars or between the luxury segments. It considered the possibility of a chain of substitution¹⁹ on the demand-side across the different segments. However, it might be difficult to argue for the substitutability of vehicles at the extreme ends of the possible segmentations, for example, the cheapest passenger cars are not direct substitutes for more expensive passenger cars.
- (79) Producers of passenger cars are generally present in many of the different segments. Producers can switch from one type of passenger car to another because many cars are based on the same platform. Passenger car segments overlap.
- (80) In the case at hand the engines will be integrated into cars that belong to A segment (500, Panda), B segment (MiTo, Punto, Ypsilon), MPV-B (Idea, Musa), C segment and CDV (Fiat Panda Van, Fiat Punto Van) segment. The Polish authorities explain that Fiat Panda Van and Fiat Punto Van (CDV segment) are only derivatives of A and B segment cars. The Polish authorities do not take a position if the CDV belongs to passenger car vehicle (PCV) segment or to light commercial car vehicle (LCV).
- (81) The Commission notes that the market segmentation into PCV and LCV does not seem to be clearly defined. Vehicles with the same equipment can thus be classified as PCV in one EU Member State and as LCV in another. In addition, automakers offer model variants with certain equipment features, allowing the customer to opt for a version as a PCV or LCV according to the definition valid in the respective Member State. The car manufacturers' production lines are designed in such a way as to be able to manufacture the PCV as well as the LCV variants with equipment specific to the country.
- (82) Against this backdrop, PCVs and LCVs are not considered separately in this decision but are allotted to the respective car segments in their entirety. The Commission invites third parties to submit comments on this aspect.
- (83) The Polish authorities propose to consider the combined segments (i.e. segments A, B, MPV-B, C and CDV taken together) as the relevant product market and not to look into each individual segment. They argue that the engines produced can be used in each of the above segments without major changes and/or costs to FPT Poland, and that in view of the power of the engine it can be easily switched from one aforementioned car segment to another. Furthermore, even though FPT Poland indicated the expected number of the newly produced engines to be installed in cars of each segment (determined based on the expected demand), the company cannot commit to not exceeding that maximum amount of engines per segment (see Table 3 in paragraph 20 above) .
- (84) In view of the doubts already expressed in the Audi Hungaria case (see footnote 23), the Commission questions if the relevant product market could be considered as a combination of the relevant car segments, as proposed by Poland.

¹⁹ See paragraphs 57-58 of the Commission notice on the definition of relevant market for the purposes of Community competition law, OJ C 372, 9.12.1997, p.5.

- (85) The Commission doubts that the relevant market consists of A, B, MPV-B, C and CDV considering that only as from 2013 [5%-15%] of the engines may be installed in cars belonging to the C segment and that cars belonging to CDV are only derivatives of the A and B segments. At this stage, for the present case, the Commission leaves the precise definition of the relevant product market open and will consider all plausible alternative market definition (including the narrowest segmentation for which data is available), respectively including LCV. This approach is in line with the Commission's State aid decisions N 767/07 (Ford Craiova)²⁰, N 635/2008 (Fiat Sicily)²¹ and N 473/2008 (Ford Espana)²², and C 31/2009 (Audi Hungaria)²³. Therefore, the Commission might consider also "segments A and B taken together" as the relevant product market, in view of the fact that [80%-90%] of the foreseen engine production will be installed in cars of such combined A+B segment. Alternatively, the Commission could consider the small car segment (i.e. A+B+MPV-B segments taken together) as the relevant product market, as they will account for [85%-95%] of the cars on which the new engine will be installed.
- (86) In view of the above, for the calculations required under point 68, subparagraphs (a) and (b) of the RAG, the Commission has used all the possible segmentations, including the narrowest segmentation possible and combinations of segments taken together, as the relevant product market.

Relevant geographical market

- (87) According to point 70 of the RAG, , markets should normally be defined at EEA level for the purposes of carrying out the tests under point 68, subparagraphs a) and b) of the RAG.
- (88) In line with recent decisions the Commission is of the opinion, that from a supply side perspective, production in the car sector is at least EEA wide or even global. Considering the argument that the major car manufacturers are global players having manufacturing facilities and distribution systems in different continents and countries, the Fiat Group is at least a European player.
- (89) From a customer perspective, conditions of competition have significantly improved in the EU, in particular as regards technical barriers and distribution systems, although differences in prices and taxation systems are still limiting factors and penetration rates of major competitors differ across Member States and in particular continents. Low transportation costs and the presence of all major manufacturers in almost all Member States and the largest countries worldwide are indicators of an EEA or even worldwide market.

²⁰ Decision of 30.4.2008 (C(2008)1613) in the case N 767/2007, OJ C 238, 17.9.2008, p. 4.

²¹ Decision of 29.4.2009 (C(2009)3051) in the case N 635/2008, OJ C 219, 12.9.2009, p. 3.

²² Decision of 17.6.2009 (C(2009)4530) in the case N 473/2008, OJ C 19, 26.1.2010, p. 5.

²³ Decision of 28.10.2009 (C(2009)8131) in the case C 31/2009 (ex N 113/2009), OJ C 64, 16.03.10, p. 15

- (90) For the purpose of State aid decisions on aid to production facilities, which assess the effects of aid on distortions of competition between manufacturers and on trade between Member States, the manufacturing aspects are decisive.
- (91) The Polish authorities advanced the opinion that in the present case the geographically relevant market for the Fiat Group is the global market. According to Poland Fiat Group intends to export up to 10% of the engines produced in Bielsko-Biala to South America, which would be an indication of a global market.
- (92) Alternatively, Poland states that, in case the Commission maintains its position that the narrowest possible product market segmentation should be used, Poland should get the possibility to use a different relevant geographical market for each of the individual segments concerned. In this context, according to Poland, it is very important to take into consideration the introduction of Fiat 500 on the USA (and generally the American) market, which is the result of the business analysis made by Fiat Group, which took account, among others, of:
- the opening of the USA market towards "small" cars (A segment);
 - the policy of the USA to encourage its citizens to protect the environment and use less fuel;
 - the currently greater visibility of Fiat Group in the USA as a result of the agreement closed with Chrysler and its first positive effects.
- (93) Entering the USA market is hence the result of the expectation of Fiat's analysts that the sales of A-segment cars in the USA, where they were historically very limited, will substantially increase. For this reason, coupled with the fact that 10% of the engines will be exported to South-America, the Polish authorities advocate that at least for the A-segment, where the Fiat Group is recognised as the world leader, not the EEA market, but worldwide market should be considered as the relevant geographical market.
- (94) The Commission doubts that in the given case the arguments put forward by the Polish authorities could justify considering exclusively the worldwide market as the relevant geographical market.
- (95) In decision N635/2008 – Italy – Fiat Sicily the Commission defined the passenger car market "*for the purposes of that decision as EEA-wide*".²⁴ In other recent decisions on state aid to the benefit of the automotive industry the Commission did not have to take a decision on the question whether the EEA or the global market should be taken into consideration.²⁵ In these decisions the tests under subparagraphs a) and b) of point 68 of the RAG were carried out for both alternatives.
- (96) In particular, in a recent state aid decision N671/2008 – Hungary – Aid to Mercedes Benz Manufacturing Hungary²⁶ the Commission stated that from a

²⁴ State aid N635/2009 – Italy – LIP – Aid to Fiat Sicily, OJ C 219, 12.09.2008, p. 3 (para. 82).

²⁵ State aid N767/07 – Romania – LIP – Ford Craiova, OJ C 238, 17.09.2008, p. 4 (para. 108); State aid N473/2008 – Spain – LIP – Ford España, OJ C 19, 26.01.2010, p. 5 (para. 83); State aid N671/2008 – Hungary – LIP – Aid to Mercedes-Benz Manufacturing Hungary, OJ C 28, 4.02.2010, p. 2 (para. 85).

²⁶ State aid N671/2008 – Hungary – LIP – Aid to Mercedes-Benz Manufacturing Hungary, OJ C 28, 4.02.2010, p. 2 (para. 82 et seq.).

supply side perspective, production in the car sector is at least EEA wide or even global. The major car manufacturers are global players. They have manufacturing facilities and distribution systems in different continents and countries. Daimler AG is at least a European player. It is selling on all European markets, and regarding the new production plant, Daimler AG estimates that ca. [65-100] % of the production will be sold in EEA countries. From a customer perspective, conditions of competition have significantly improved in the EU, in particular as regards technical barriers and distribution systems, although differences in prices and taxation systems are still limiting factors and penetration rates of major competitors differ across Member States and in particular continents. Low transportation costs and the presence of all major manufacturers in almost all Member States and the largest countries worldwide are indicators of an EEA or even worldwide market.

- (97) It cannot be inferred from this decision, however, that the Commission has accepted to consider exclusively the worldwide market as relevant geographical market for all cases concerning aid to production facilities in the car sector. The decision rather shows that, in spite of certain indications in favour of a global market the, the Commission still assumes, in line with point 70 of the RAG, that the EEA should normally be considered the relevant geographical market..
- (98) Furthermore, the case at hand is not comparable to recent state aid decisions in which the Commission accepted the global market as relevant geographical market. For example in State aid decision N409/2006 – Aid to HighSi GmbH²⁷ the Commission considered that the relevant geographical market for solar modules is worldwide. In this case the Commission could refer to different independent studies in the photovoltaic sector as regards production locations, import data, transport costs, trade barriers, etc. Finally, regarding the photovoltaic sector the Commission's opinion was also in line with previous merger and state aid decision, what is not the case in the present procedure.
- (99) In State aid decision N810/2006 – AMD Dresden²⁸ the Commission also assumed that that the relevant geographical market for the production of microprocessors is worldwide. The decision mentions that microprocessors for computers are produced and traded throughout the world. Both the producers and the consumers of microprocessors are located worldwide. No state laws or administrative regulations restrict the international trade and transport costs only pay a minor role in the total manufacturing costs. Previous state aid and merger decisions concerning the sector confirmed the Commission's view.
- (100) The differences between these cases and the given case are obvious. Not only the volume and the weight of the product is completely different, but also the development of the markets as such. While on the one hand dynamic and relatively young markets were assessed, in the case at hand a traditional and in the long term developed market has to be evaluated.

²⁷ State aid N409/2006 – Germany – MSF 2002 – Aid to HighSi GmbH, OJ C 77, 5.04.2007, p. 4 (para. 52 et seq.).

²⁸ State aid N810/2006 – Germany – MSF 2002 – AMD Dresden, OJ C 160, 14.07.2009, p. 1 (para. 82 et seq.).

- (101) Accordingly, and in line with the recent Audi Hungaria case²⁹, at this stage of the procedure the Commission doubts that the global market can be considered as the sole relevant geographical market. Therefore, the Commission has calculated the market shares for the relevant car segments both at the EEA and worldwide levels. The capacity increase generated by the investment for the relevant car segments has been calculated only for the EEA market, in line with point 68(b) and 70 of the RAG and the Commission's past decision-making practice³⁰.
- (102) In view of the above, the Commission invites third parties to provide comments on the appropriateness of the product and geographical segmentation proposed by Poland.

Market shares

- (103) Point 68(a) of the RAG requires the Commission to analyse the market share of the aid beneficiary before and after the investment and check whether this market share exceeds 25%.
- (104) The beneficiary's market share is assessed at group level in the relevant product and geographical markets. As the new investment project of FPT Poland started in 2008 and full production is foreseen to be reached in 2013, the Commission will examine the market share of the Fiat Group (including all the brands belonging to the group) on the relevant markets between 2007 and 2014.
- (105) As confirmed by the Polish authorities, the data submitted does not take account of the relevant business and marketing agreements regarding the manufacturing and sales of vehicles between Fiat Group and Chrysler LLC, as these agreements have no impact on the relevant product markets.
- (106) Taking into consideration the significant differences in production costs and prices of different passenger cars and the difficulties in obtaining reliable price estimates, volume data are commonly used in the sector to define markets and market evolutions. The Polish authorities provided the Commission with the following market share volume data:

Table 7: Market shares of the Fiat Group on the basis of single passenger car segments (including LCVs)

Segment A								
	2007	2008	2009	2010	2011	2012	2013	2014
EEA	30.1%	33.0%	29.7%	26.9%	28.1%	27.3%	26.9%	24.9%

²⁹ Decision of 6.7.2010 (C(2010)4474) in the case C 31/2009 , OJ C 243, 10.9.10, p. 4

³⁰ E.g. the Commission Decision of 30.4.2008 (C(2008)1613) in the case N 767/2007, OJ C 238, 17.9.2008, p. 4.

WW	6.8%	8.3%	8.8%	6.4%	7.1%	7.5%	7.3%	6.7%
Segment B								
	2007	2008	2009	2010	2011	2012	2013	2014
EEA	10.8%	9.1%	9.5%	10.0%	11.1%	13.2%	12.8%	12.0%
WW	10.6%	9.6%	10.2%	10.3%	10.5%	11.0%	10.4%	10.2%
Segment MPV-B								
	2007	2008	2009	2010	2011	2012	2013	2014
EEA	12.9%	12.3%	10.2%	7.0%	6.7%	8.3%	9.6%	9.3%
WW	8.9%	7.0%	5.9%	5.2%	5.1%	5.9%	6.4%	6.1%
Segment C								
	2007	2008	2009	2010	2011	2012	2013	2014
EEA	4.2%	4.4%	3.9%	5.3%	5.0%	4.6%	4.1%	4.4%
WW	1.5%	1.5%	1.5%	1.9%	1.8%	1.9%	1.9%	2.0%
Segment CDV								
	2007	2008	2009	2010	2011	2012	2013	2014
EEA	12.9%	13.9%	13.6%	13.2%	13.3%	12.2%	11.4%	10.7%
WW	14.4%	15.8%	15.6%	15.1%	15.6%	15.0%	14.5%	13.8%
Combined A+B Segment								
	2007	2008	2009	2010	2011	2012	2013	2014
EEA	14.8%	15.1%	15.2%	14.3%	15.6%	17.0%	16.4%	15.4%
WW	9.3%	9.2%	9.7%	8.9%	9.3%	9.7%	9.4%	9.0%
Small passenger car segment (A+B+MPV-B)								
	2007	2008	2009	2010	2011	2012	2013	2014
EEA	21.7%	21.0%	20.1%	22.0%	24.2%	24.9%	23.7%	14.9%
WW	9.3%	9.0%	9.4%	8.7%	9.0%	9.5%	9.2%	8.8%
Combined segments (A+B+MPV-B+C+CDV)								
	2007	2008	2009	2010	2011	2012	2013	2014

EEA	10.8%	11.1%	11.3%	10.8%	11.3%	11.9%	11.4%	11.0%
WW	6.2%	6.1%	6.4%	6.0%	6.2%	6.5%	6.2%	6.1%

- (107) On the basis of the above figures, in certain instances market shares exceed the 25% threshold. This is the case for the figures at EEA level regarding the A-segment for the period 2007-2013, with the market share in the year 2014 coming very close to the threshold at 24.9%.
- (108) As indicated above, the Polish authorities suggest that market shares should be calculated at the level of the combined segments. As a result, the market share of the Fiat Group at the EEA level (and world-wide level) would not exceed the 25% threshold.
- (109) Additionally, the Polish authorities suggested that the relevant geographical market should be not the EEA, but the world-wide market, if not for the combined segments and all the individual segments, then at least for the individual A-segment. The consideration of the world-wide market as the relevant geographical market would lead to the 25% market share threshold being respected for each of the segments and combinations of segments indicated above, including the A-segment.
- (110) The Commission doubts whether it is justified to calculate the market shares only on the basis of combined segments. The Commission's practice to consider all plausible alternative market definitions (including the narrowest segmentation for which data is available), has been recently reaffirmed in the following State aid decisions : N 767/07 Ford Craiova³¹, N 635/2008 Fiat Sicily³² and N 473/2008 Ford España³³ . In these decisions, the project did not raise concerns even on the narrowest plausible market so the exact market definition could be left open (even if, as acknowledged in these decisions, there might be some degree of substitutability between different segments). In addition to the foregoing, as explained above, the Commission doubts that the global market can be considered as the sole relevant geographical market
- (111) The Commission considers at this stage that the aided project may influence Fiat Group's market position in the individual (narrowest) segments – and more specifically in the A-segment – and therefore, it seems possible and justified to calculate market shares at this narrowest level and not at the level of the all the segments of the car market in which the engine may be installed.
- (112) The fact that the aid beneficiary would account for more than 25 % of the sales of the product concerned on one of the narrowest plausible markets, i.e. the market for A-segment cars, can be taken as a 'worst case scenario' (see table 7 above). Therefore, it should be noted that FTP Poland exceeds the thresholds set out in point 68(a) of the RAG on the EEA market for the A-segment only. The Commission invites third parties to provide comments on the proposed approach.

³¹ Decision of 30.4.2008 (C(2008)1613) in the case N 767/2007, OJ C 238, 17.9.2008, p. 4.

³² Decision of 29.4.2009 (C(2009)3051) in the case N 635/2008, not yet published.

³³ Decision of 17.6.2009 (C(2009)4530) in the case N 473/2008, not yet published.

Production capacity

- (113) Point 68 (b) of the RAG requires the Commission to verify whether the capacity created by the project is less than 5% of the size of the market measured using apparent consumption data of the product concerned, unless the average annual growth rate of its apparent consumption over the last five years is above the average annual growth rate of the EEA's GDP.
- (114) The Commission should thus first assess if the market is underperforming in the EEA based on the average annual growth rate of the apparent consumption of the product concerned. Poland only submitted apparent consumption data regarding the market segments concerned between the years 2003 and 2008. Considering, however, that the investment project started in 2008, the Commission should calculate the average growth rates in the segments concerned by the capacity increase generated by the project for the period 2002-2007. Therefore, the Commission has used the data available internally within the Commission³⁴ for this purpose. The results of the calculations are the following:

Table 8: Market performance on the EEA passenger car market (2002-2007)

Segment concerned	Compound annual growth rate (CAGR) 2002-2007	Underperforming market?
A-segment	3.19%	
B-segment	0.14%	YES
MPV-B-segment	53.01%	
C-segment	-1.89%	YES
CDV-segment	2.70%	
Combined segment (A+B)	0.73%	YES
Small passenger car segment (A+B+MPV-B)	2.23%	YES
Combined segment (A+B+C+MPV-B+CDV)	0.66%	YES
	Real EEA GDP: 2.36%	

- (115) On the basis of the above data it can hence be concluded that two of the individual segments concerned by the investment (B and C segments), as well as all the combined segments which potentially could be considered to form the relevant market, must be deemed "underperforming" within the meaning of point 68(b) of the RAG.

³⁴ The data referred to have been obtained by the Commission from Global Insight, like the data presented by Poland. Moreover, the data available at the Commission for the relevant segments concerned for the years 2003-2007 are in line with those provided by Poland for the same period in the context of the present case.

- (116) As regards the extent of the capacity created, Poland first of all confirmed that that the new engines will be produced in addition to the small gasoline fire engines currently produced in Termoli (Italy) and the small diesel engines currently produced in Bielsko-Biała (Poland). The Polish authorities, however, also stated that the small gasoline fire engines, currently installed on cars sold within the EEA, will in the future be destined only for the world market outside the EEA (among others Russia, Turkey, Asia and South-America).
- (117) Poland further indicated that the full net capacity increase created by the project (in 2014) will be 450 000 units. At the same time, the Commission notes that the foreseen increase of Fiat Group worldwide car sales in the corresponding segments (Global Insight figures) for the period 2007-2014 is smaller, at approximately 380 000 units. In order to explain this discrepancy, the Polish authorities pointed out that Fiat Group worldwide car sales increase in the corresponding segments would reach approximately 480 000 in the period 2009 to 2014 (2009 being the year before real start of production, assembly into the cars and sales of the new engine in the market). In view of the above explanations provided by Poland the Commission considers that the net capacity increase generated by the project will equal 450 000 units.
- (118) In addition to the foregoing it should be recalled that Poland argues that the full capacity increase generated should be considered on the overall combined segments (i.e. A, B, MPV-B, C and CDV taken together), being the relevant product market.
- (119) The Polish authorities confirmed that from a technical point of view the engines installed in cars of various segments are very similar. There are very few engine components which differ in various applications, among them the clutch kit and the wire harness. The Polish authorities further indicated that despite the above mentioned differences the volume of engines produced going into each of segments indicated can be easily changed, and that they cannot commit to not exceeding the amounts/percentages of the total capacity increase indicated per car segment. However, according to the Polish authorities, Global Insight figures regarding car sales are considered to be the maximum volumes of cars each segment can absorb, especially in view of the current European and global economic situation, so that the indications given per segment are not likely to be exceeded.
- (120) At the same time, the Commission recalls in this respect that in the case N 767/2007 – Romania – LIP – Ford Craiova, it was possible to estimate in what proportion the engines to be produced at the aided plant will be installed in the different individual segments, and the amount indicated by the Member State concerned was used by the Commission for the sake of the capacity increase calculations.
- (121) In view of the above, the Commission notes that considering the full capacity increase (i.e. 450 000 units) as the maximum potential capacity increase in each of the individual car segments concerned would represent the "worst case scenario", which does not seem realistic. Contrary to the foregoing, however, the Commission thinks at this stage that a viable alternative might be to consider that the full capacity increase would be installed in the combined A+B segment and/or the small car segment (i.e. A+B+MPV-B taken together), in view of the fact that

according to Poland's predictions respectively [80%-90%] and [85%-95%] of the engines are to be installed in this combined segment. Another possibility would be to only take into account, for each individual segment, the volume of engines that would, according to Poland's predictions, be installed on cars of each individual segment. The last alternative would be to use the solution proposed by Poland, i.e. to only consider the total increase in capacity in the combined segments.

(122) The Commission has made the corresponding capacity increase calculations for each of the scenarios listed above, and the results are the following:

Table 9: Capacity increase in underperforming market segments on the EEA passenger car market (2002-2007)

Segment concerned	Capacity all manufacturers (cars) before start of the project (2007)	Capacity created by the project (engines – all production 2014)	Increase based on all production (%)	Capacity created by the project (engines – expected proportion per segment 2014)	Increase based on expected proportion per segment (%)
B-segment	4 418 239	450 000	10.19%	[180 000-200 000]	[0-5%]
C-segment	3 829 831	450 000	11.75%	[35 000-50 000]	[0-5%]
Combined A+B segment	5 582 682	450 000	8.06%	[350 000-400 000]	[5%-10%]
Small passenger car segment (A+B+MPV-B)	6 075 046	450 000	7.41%	[350 000-400 000]	[5%-10%]
Combined segments (A+B+MPV-B+C+CDV)	10 673 766	450 000	4.22%	450 000	4.22%

(123) When taking the full potential capacity increase (i.e. 450 000 units) as the maximum increase possible for each underperforming individual car segment and/or combination of segments, the project would result in a capacity increase of more than 5% for segment B, C, the combined A+B segment and the small car segment. Hence the conditions of the "capacity increase in an underperforming market"-test (point 68(b) RAG-test) for opening the formal investigation would be fulfilled in all these instances.

(124) On the other hand, if the capacity increase expected by Poland for each individual segment is calculated for the underperforming markets, the capacity increase would be higher than 5% for the combined A+B segment and the small car segment, and thus the threshold of point 68(b) RAG would be exceeded.

(125) It should also be noted that for the underperforming B-segment the capacity increase is close to 5%, at 4.38%. This, coupled with the fact that the Polish authorities stated that they cannot commit to not exceeding the forecasted percentages/amounts of engines that will be installed on cars of each individual

segment, gives rise to doubts whether the threshold of the "capacity increase in an underperforming market"-test (point 68(b) RAG-test) will not be exceeded for the B-segment as well.

(126) In view of the above, and considering that the market definition should normally be the same for the purposes of paragraph 68(a) and (b) of the RAG, the Commission invites interested parties to submit their observations on the appropriateness of the approach for the capacity increase calculations suggested by Poland.

3.5. Doubts and grounds for opening

(127) For the reasons set out above, the Commission, after a preliminary assessment of the measure, has doubts as to whether the investment to be supported by the notified aid respects the thresholds set out in subparagraphs (a) and (b) of point 68 of the RAG.

(128) In this respect, the Commission recalls the doubts it has expressed in the present decision as to whether the market delineation proposed by Poland can be accepted and whether the beneficiary does not account for more than 25 % of the sales of the product concerned on the market concerned and whether the capacity created does not exceed 5 % in case the relevant market is underperforming.

(129) The Commission notes the disagreement with the Polish authorities as regards the definition of the relevant product market for passenger cars. At this stage, the Commission has doubts whether the combined segments (i.e. all individual segments concerned by the investment), as opposed to individual passenger car segments according to the Global Insight classification and/or any other combinations of segments concerned, can be considered the relevant product market for the purposes of applying points 68(a) and 68(b) of the RAG. Moreover, the Commission has also doubts at this stage as regards the joint treatment of passenger cars and Light Commercial Vehicles (and more specifically the CDV). Furthermore, at this stage of the procedure the Commission doubts that the global market can be considered as the sole relevant geographical market for the purposes of applying points 68 (a) and (b) of the RAG and/or as the sole relevant geographical market for A-segment cars.

(130) In addition to the foregoing, the Commission has doubts whether in the present case the capacity increase expected by Poland for each individual segment can reliably be used for the individual segments – especially B-segment – as the maximum net capacity increase generated by the project. In this context the Commission also questions whether for certain combinations of segments the full potential capacity increase (i.e. 450 000 units) should not be considered to represent the maximum net capacity increase.

(131) It is recalled that, according to point 70 of the RAG, the burden of proof that the situations to which point 68(a) and (b) of the RAG refer do not apply lies with the Member State.

(132) Consequently, the Commission is under duty to carry out all the required consultations and, therefore, to initiate the procedure under Article 108(2) of the TFEU, if the initial investigation does not enable the Commission to establish that

the measure is in line with point 68 of the RAG. This would give the opportunity to third parties, whose interest may be affected by the granting of the aid, to comment on the measure. In the light of both the information notified by the Member State concerned and that provided by any third parties, the Commission will assess the measure and will take its final decision.

- (133) In the event that the information provided in the course of the formal investigation procedure does not make it possible to confirm that the thresholds set out in point 68 of the RAG are respected, the Commission also has to investigate whether the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effect on trade between Member States. The Commission therefore requests the Member State and third parties to provide any available evidence which would allow the Commission to substantiate its assessment of the measure.
- (134) In footnote 63 of the RAG, the Commission announced its intention to "draw up further guidance on the criteria it will take into account during this assessment". This announcement has been implemented by the adoption of the Commission Communication on Criteria for an In-Depth Assessment of Regional Aid to Large Investment Projects³⁵ which will serve as the basis of the in-depth assessment. In particular, the following criteria will be considered: objective of the aid, appropriateness of the aid instrument, incentive effect, proportionality of the aid, crowding out of private investment and effects on trade. At this stage, it appears that competition could be distorted especially in the A-segment, where the market share of the beneficiary exceeds 25 % and in the segments, where the capacity increase would exceed 5% in an underperforming market, i.e. the combined A+B segment, the small passenger car segment and potentially the B and C segments.
- (135) In view of this in-depth assessment, interested parties are invited in particular to provide all information necessary to establish the economic incentive effect of the aid, i.e. whether (1) the aid gives an incentive to adopt a positive investment decision because an investment that would otherwise not be profitable for the company at any location can take place in the assisted region or (2) the aid gives an incentive to opt to locate a planned investment in the relevant region rather than elsewhere because it compensates for the net handicaps and costs linked to a location in the assisted region. Whether scenario (1) or (2) is applicable determines the counterfactual situation (i.e. what would happen in the absence of aid) and thus the possible distortion of competition and trade caused by the aid.
- (136) On the basis of the evidence submitted concerning the above mentioned issues, the Commission will perform a balancing exercise of the positive and the negative effects of the aid, conducting an overall assessment of the impact of the aid in each of the markets concerned, in such a way as to allow the Commission to close the formal investigation procedure.

³⁵ Communication from the Commission concerning the criteria for an in-depth assessment of regional aid to large investment projects, OJ C 223, 16.09.2009, p.3.

4. DECISION

- (137) In light of the foregoing considerations, the Commission, acting pursuant to the procedure laid down in Article 108(2) of the TFEU, requests Poland to submit its comments and to provide all such information as may help to assess the aid measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.
- (138) The Commission wishes to remind Poland that Article 108(2) of the TFEU has suspensory effect, and would draw its attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.
- (139) The Commission warns Poland that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All interested parties will be invited to submit their comments within one month of the date of such publication.

If this letter contains confidential information which should not be published, 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 publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Fax (32-2) 296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission