EUROPEAN
COMMISSION

Brussels, 1.2.2016
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COMMISSION DECISION

of 1.2.2016

STATE AID
SA.36754- 2014/C (ex 2014/NN and 2013/N)
which Hungary has partly implemented and is planning to implement
in favour of AUDI HUNGARIA MOTOR Ltd.

(Text with EEA relevance)

(Only the Hungarian version is authentic)

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In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]		PUBLIC VERSION This document is made available for information purposes only.

THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

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

Whereas:

1. PROCEDURE

(1) By electronic notification registered on 16 September 2013 (SANI No 8899), corrected by communication of 25 September 2013, the Hungarian authorities notified pursuant to paragraph 65 of the Guidelines on national regional aid for 2007-2013[2] (hereinafter "RAG 2007-13") their intention to grant regional aid for a large

1 OJ C 418, 21.11.2014, p. 25

2 Guidelines on national regional aid for 2007-2013, OJ C 54, 4.03.2006, p. 13. On 28 June 2013 the Commission adopted the Guidelines on Regional State Aid for 2014-2020, in which it extended the period of application of the RAG until 30 June 2014 (paragraph 186); OJ C 209, 23.01.2013, p.1

investment project to be carried out in Győr by AUDI HUNGARIA MOTOR Ltd. (hereinafter "AHM").

(2) By letter dated 9 July 2014, the Commission informed Hungary of its decision to initiate the procedure laid down in Article 108(2) of the TFEU (hereinafter "the opening decision") in respect of the regional aid to be implemented in favour of the investment project by AHM, in view of carrying out an in-depth assessment on the basis of the Communication from the Commission on the criteria for an in-depth assessment of regional aid to large investment projects[3] (hereinafter "IDAC").

(3) Hungary submitted comments and the necessary information for the in-depth assessment by letter of 9 October 2014 (2014/101245).

(4) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* on 21 November 2014[4]. Third parties were invited to submit their comments.

(5) By letters dated 25 November 2014 (2014/119782), 28 July 2015 (2015/074087) and 24 August 2015 (2015/083208), the Commission requested further information, which was provided by Hungary by letters dated 13 February 2015 (2015/014716), 30 September 2015 (2015/096577) and 9 October 2015 (2015/100135).

(6) The Commission received no comments from interested parties.

2. DETAILED DESCRIPTION OF THE MEASURE/AID

2.1. Objective of the measure

(7) The Hungarian authorities intend to promote regional development by providing regional aid in the form of a direct grant and a corporate tax allowance to AHM for investments on AHM's location in Győr, situated in the region of Western Transdanubia (Nyugat-Dunántúl). Western Transdanubia is an assisted area eligible for regional aid pursuant to Article 107(3)(a) of the TFEU with a standard regional aid ceiling for large enterprises of 30% gross grant equivalent (hereinafter "GGE") in accordance with the Hungarian regional aid map 2007-2013[5].

2.2. The beneficiary

(8) The beneficiary of the aid is AHM, a wholly owned subsidiary of Audi Hungaria Services Zrt. Audi Hungaria Services Zrt. is a subsidiary of AUDI AG, which itself is a member of the Volkswagen Group (hereinafter "VW Group"). The seat of the VW Group is in Wolfsburg, Germany, and its business is divided into two divisions, the Automotive Division and the Financial Service Division. The Automotive Division comprises two business areas: "passenger cars" and "commercial vehicles, power engineering".

(9) The Automotive division of VW Group is made up of twelve brands: Volkswagen, AUDI, ŠKODA, SEAT, Bentley, Porsche, Bugatti, Lamborghini, Ducati, Volkswagen Commercial vehicles, Scania and MAN. Each brand has its own

[3] OJ C 223, 16.09.2009, p.3.

[4] OJ C 418, 21.11.2014, p. 25

[5] State Aid N 487/2006 – Hungary Regional State aid map 2007-2013 (OJ C 256, 24 October 2006) and prolonged by State aid No. SA.36879 (2013/N) – Hungary Prolongation of the Regional aid map 2007-2013 until 30 June 2014 (OJ C 69, 7 March 2014).

character and operates as an independent entity on the market. The Volkswagen Group manufactures cars ranging from small cars to luxury and commercial vehicles.

(10) In 2014, the Volkswagen Group operated a total of 118 factories worldwide[6] and delivered 10.1 million cars to customers, corresponding to a 12% share of the passenger car market in the world. Its revenue reached EUR 202 billion and it counted 592 586 employees[7].

(11) In 2014, the AUDI AG employed 79 483 people, delivered 1.7 million new vehicles to customers globally, and its revenue reached EUR 53 billion.

(12) In 2014 AHM produced 135 232 cars, counted 11 274 employees and its revenue reached EUR 7.2 billion.

2.3. The investment project

(13) AHM is producing engines and engine components in Győr. In addition, AHM was assembling cars on a platform-based approach before the notified investment project was completed at the end of 2014.

(14) The investment project had three objectives: increased flexibility and diversification in the assembly operation, increased output of assembled cars, and deepened vertical integration of the car production process.

(15) The first objective was to increase the flexibility of the assembly operation by replacing the earlier platform-based technology by the so-called module-based manufacturing process (Modularer Querbaukasten, hereinafter "MQB") technology. Whereas the platform-based technology used in Győr allowed only the assembly of cars using the same platform (mainly of the same or similar length, frequently belonging only to one segment), the newly installed MQB technology allows the assembly of cars of different lengths and belonging to a range of segments (in this case the A and B segments and, theoretically, also the A0 segment, […]) on the same manufacturing line. The new technology was installed in a new plant, while the old platform-based assembly activity was completely phased out in 2014, and the old assembly line was dismantled and removed. The whole car production in Győr is based on the MQB technology now. The MQB technology is based on the principle of modularity (standardization of the components of different models, belonging to different market segments), allowing for major cost savings. In view of the required standardization, and due to the physical distance (approximately 1.5 km) between the former and the new place of assembly, the old assembly line could not be integrated into the new production process. The new plant allows for the manufacturing of several models of Audi passenger cars: the new generations of the models assembled already in the past in Győr (Audi TT Coupé, TT Roadster and A3 Cabriolet) and a completely new member of the A3 model family with a four-door body (A3 Sedan). The successor models were subject to various changes regarding design and technical improvements. However, the continuity concerning quality, high cross-generational design standards and technical development, as well as maintenance of principal geometrical dimensions and equipment, resulted in an unchanged classification by POLK[8]. The Audi TT Coupé and TT Roadster remain in segment B, while A3

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[6] 72 in Europe and 46 in countries in America, Asia and Africa.

[7] Annual Report 2014 Volkswagen Group.

[8] R. L. Polk & Co. (also referred to as POLK) is a globally integrated organisation and a major market information and analytics provider in the automotive industry. On 16 July 2013, IHS Inc., the leading global source of critical information and analytics completed its acquisition of R. L. Polk & Co. With

Cabriolet remains in segment A and the new A3 Sedan is also to be listed in segment A.

(16) The second objective of the project was to increase the overall technical capacity of the assembly operation in Győr from [60.000-110.000] to [130.000-180.000] passenger cars per year. It is envisaged to use on average […]% of the new capacity for manufacturing cars of the A segment and […]% for manufacturing cars of the B segment. The increased capacity allows both assembling the additional product (A3) and a higher number of successor models.

(17) The third objective of the project aimed at deepening the vertical integration of the production activities in Győr. The earlier assembly operation is transformed into a fully integrated production plant for passenger cars: the investment into the new assembly plant is accompanied by the construction of a body shop, a paint shop and a press shop, which will serve predominantly the production of the above models. Only a small part (up to […]%) of the output of the new body and paint shop is shipped, in the form of body shells, to other car manufacturing plants of the VW Group outside the EEA. About […]% of the body parts manufactured in the new press shop are used to manufacture cars in Győr. The other […]% of the body parts produced in Győr are delivered to other production sites of the VW Group. Initially, it was planned that these body parts would be used in the production of vehicles belonging to the POLK B-segment. However, after the opening decision Hungary informed the Commission that due to changes in demand the […]% share of the output of the press shop could be used - in other production sites of the VW Group - for production of A0 to C cars.

(18) Work on the investment project started in February 2011 and was completed on 31 December 2014.

2.4. Costs of the investment project

(19) In the present case, the eligible expenditure consists of investments in buildings, machinery and equipment, but none in intangible assets. Used assets are excluded.

(20) The total eligible investment costs of the investment project in nominal value amount to HUF 342 936 million (EUR 1 144 million[9]). In present value[10] this amount is HUF 355 550 million (EUR 1 186 million). Table I provides a breakdown of the total eligible costs.

Table I: Eligible investment costs in nominal value (HUF million)

Years	2011	2012	2013	2014	Total
Building	[…]	[…]	[…]	[…]	[…]
Machinery / equipment	[…]	[…]	[…]	[…]	[…]

the addition of POLK, IHS Automotive provides expertise and predictive insight across the entire automotive value chain. POLK differentiates the car market along segments A000, A00, A0, A, B, C, D and E, where segment A000 means urban small cars and segment E is the ultra-luxury category. From segment A000 to E, the average price, size and the average engine performance of passenger cars gradually increase.

9 Figures expressed in EUR are given in this decision on the basis of an exchange rate of 299.67 HUF/EUR, applicable at the time of notification

10 The present values in this decision are calculated on the basis of a discounting rate of 5.62 percent, applicable at the time of notification. The base year for discounting purposes is 2013, i.e. the year of notification.

Intangible assets	-	-	-	-	0
TOTAL	[…]	[…]	[…]	[…]	**342 936**

2.5. Financing of the investment

(21) The Hungarian authorities confirm that the beneficiary's own contribution, free of any public support, exceeds 25% of the eligible costs.

2.6. Legal basis

(22) The national legal basis for the financial support is the following:

a. A direct grant will be provided in application of the provisions of the aid scheme XR 47/2007[11] which is exempted from notification pursuant to Commission Regulation (EC) No 1628/2006[12] (hereinafter "RAG BER") below the individual notification threshold, and which is based on the "Government Decree 8/2007 (I.24.) of the Minister of Economy and Transport on Investment Subsidies Granted by Individual Government Decision" (Kormány egyedi döntésével megítélhető támogatások nyújtásának szabályairól szóló 8/2007. (I. 24.) GKM rendelet).

b. A tax allowance will be granted in application of the provisions of the scheme "Development Tax Benefit" N 651/2006[13] which was established by "Act LXXXI of 1996 on Corporate Tax and Dividend Tax" and by "Government Decree 206/2006 (X.16.) on Development Tax Allowance" (a társasági adóról és az osztalékadóról szóló 1996. évi LXXXI. törvény és a fejlesztési adókedvezményről szóló 206/2006. (X.16.) Kormányrendelet).

2.7. The aid measure

(23) AHM applied for the direct grant on 5 March 2010, i.e. before the start of works on the investment project. On 26 March 2010, the Hungarian authorities confirmed that the investment project is in principle eligible for the aid applied for. The Hungarian authorities made an aid offer relating to the direct grant for the investment project (except for the press shop) on 8 September 2010, which was accepted by AHM on 1 October 2010. As regards the direct grant for the press shop the offer was made on 27 April 2011 and accepted on 4 May 2011.

(24) The beneficiary applied for the tax allowance (for which a legal entitlement subject to Commission approval exists) on 29 October 2010 (and as regards the press shop on 27 January 2011), i.e. before the start of works of the investment.

(25) The aid was awarded, subject to Commission approval, by a granting agreement signed on 6 July 2011 (and on 28 September 2011 for the press shop).

(26) Hungary intends to grant aid of HUF 39 952 million (EUR 133.3 million) in present value. Since the planned total eligible expenditure in present value for the project is HUF 355 550 million (EUR 1 186 million), the proposed aid intensity is 11.24 % GGE.

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[11] The summary information sheet on the scheme XR 47/2007 (A Kormány egyedi döntésével megítélhető támogatás) was published in OJ C 180, 02.08.2007, p. 6.

[12] 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.

[13] Commission decision of 10.05.2007 in case N 651/2006 concerning the Development tax benefit (amendment of N 504/2004), OJ C 152, 06.07.2007, p. 2. and modified by Commission decision of 30 April 2008 (N 646/2007, SA.24441), of 17 June 2008 (N 735/2007, SA.24683), of 6 May 2010 (N 132/2010, SA.30728) and of 23 February 2011 (N 685/2009, SA.29994).

(27) The Hungarian authorities confirm that the aid for the project will not be combined with aid received for the same eligible costs from other local, regional, national or Union sources; and that neither the approved maximum aid amount in present value nor the approved aid intensity would be exceeded if the amount of eligible expenditure deviates from the estimated amount.

(28) AHM received investment aid for earlier investment activities at Győr, which started before 2003 and in 2006.

(29) The notified aid is granted under the condition that the beneficiary maintains the investment in the assisted region for a minimum period of five years after its completion.

2.8. General provisions

(30) The Hungarian authorities undertook to submit to the Commission:

– 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);

– within six months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

3. GROUNDS FOR INITIATING THE PROCEDURE

(31) In the opening decision, the Commission noted that the aid project respects the standard compatibility criteria laid down in the RAG 2007-13, and that the proposed aid amount and aid intensity do not exceed the maximum allowable. Nonetheless, in view of the provisions of paragraph 68 of RAG 2007-13, the Commission was unable to confirm the compatibility of the aid with the internal market within the preliminary examination.

(32) Paragraph 68 of RAG 2007-13 requires that the Commission opens the formal investigation and proceeds to an in-depth assessment of the incentive effect, the proportionality, as well as the positive and negative effects of the aid, where the beneficiary's market share in the relevant product and geographic market exceeds 25% before or after the investment (hereinafter also “paragraph 68(a)-test”) or where the capacity created by the investment exceeds 5% of a market that is in relative or absolute decline (hereinafter also “paragraph 68(b)-test”).

(33) The Commission could not exclude in the preliminary examination that the market share threshold and the threshold relating to the capacity increase by the investment in an underperforming market were not exceeded in the relevant markets.

(34) More specifically, the Commission raised doubts about Hungary's proposal to define the relevant product market as the combined segments A0, A and B of the POLK classification and left the precise definition of the relevant product market open, and considered all plausible alternative market definitions, including in particular the narrowest segmentation for which data is available[14]. Since AHM will produce cars

[14] This approach is in line with the Commission's State aid decisions SA.30340 (Fiat Powertrain Technologies), Decision of 9.2.2011, (C(2011)612) in the case of SA.30340, OJ C 151, 21.5.2011, p.5;

as well as body parts for cars belonging to A and B segments, and theoretically to A0 segment, the Commission considered that these individual segments as well as the combined segments should all be considered as relevant plausible product markets for this case.

(35) With regard to a possible subdivision between Passenger Car Vehicles ("PCV") and Light Commercial Vehicles ("LCV"), the Commission took the view that PCVs and LCVs will not be considered separately.

(36) The Commission was also unable to take a definite view on the definition of the geographic market. It could not conclude whether the geographic market is the European Economic Area (hereinafter “EEA”), or, as suggested by Hungary, consists at least of the combined markets of all of Europe, North and South America and China.

(37) The analysis under paragraph 68 (a) of the RAG 2007-13 established that the applicable 25% market share threshold is exceeded in the individual and combined A and B segments in the EEA in all the years concerned, and in the combined A0 to B segment as from 2011.

(38) For the analysis under paragraph 68(b) the Commission established that the relevant product markets were underperforming in the EEA; therefore the Commission had to verify whether the capacities created by the project exceed 5% of the size of the relevant markets.

(39) The Commission considered that, for the application of the paragraph 68(b) test, the gross capacity increase approach is appropriate. The net capacity increase approach (i.e. deduction of existing capacity from the total planned capacity) would prevent the Commission from assessing the effect of state aid on markets in decline and suffering from structural overcapacities, whenever the assisted investment would not expand the existing capacity by more than 5% of the size of the market. However, the paragraph 68(b) test has been introduced with the very objective of identifying those situations where the market is in decline and the size of the assisted investment has a major impact on competitors.

(40) The analysis under paragraph 68(b) for the investment project (except the press shop) showed that the 5% threshold would only be exceeded if the total production capacity would be used for the manufacturing of B segment cars. Based on the production estimates as indicated by Hungary, it is highly unlikely that the 5% threshold will be exceeded for any of the plausible car market segmentations.

(41) With regard to the capacity created for the production of body parts by the press shop, the analysis under paragraph 68(b) shows that the 5% threshold might only be exceeded if the share of the B segment car production in Győr was significantly increased. Therefore, the Commission left the question open whether the press shop capacity exceeds 5% of the size of the market measured using apparent consumption data of the product concerned before the investment.

(42) As the Commission could not establish that the thresholds laid down in paragraph 68 (a) and (b) of the RAG 2007-13 were not exceeded, it decided to open the formal

SA. 32169 (Volkswagen Sachsen) Decision of 13.07.2011 (C(2011)4935) in the case of Sa.32169, OJ C 361, 10.12.2011, p. 17; N 767/07 (Ford Craiova) Decision of 30.4.2008 (C(2008)1613) in the case N 767/2007, OJ C 238, 17.9.2008, p. 4.; N 635/2008 (Fiat Sicily), Decision of 29.4.2009 (C(2009)3051) in the case N 635/2008, OJ C 219, 12.9.2009, p. 3; and N 473/2008 (Ford Espana) Decision of 17.6.2009 (C(2009)4530) in the case N 473/2008, OJ C 19, 26.1.2010, p.5.

investigation procedure. It stated in particular that if the comments received in reply to the opening of the formal investigation would not allow the Commission to conclude without any doubt that the relevant thresholds are not exceeded, it would carry out an in-depth assessment of the investment project on the basis of the IDAC. Hungary and interested third parties were invited to submit their comments.

4. COMMENTS FROM INTERESTED PARTIES

(43) No comments were submitted by interested third parties.

5. COMMENTS FROM HUNGARY

5.1. The relevant product market

(44) Hungary maintains its position that the product market should be defined as the combined segments A0 to B (POLK classification).

(45) The Hungarian authorities continue to be of the view that demand-side substitutability exists at the margins of each relevant individual passenger car segment as recognised by the Commission in its previous decisions[15]. Since there is the possibility of a demand side chain of substitution of A0 and B segments across the A segment, the Hungarian authorities consider the affected segments as a combined segment group.

(46) They also argue that it is the very purpose of the introduction of the MQB technology to increase supply-side flexibility, enabling the beneficiary to manufacture passenger cars for segments A0, A and B on the same MQB based production line, and allowing to shift production from one market to another; the effects of the aid can be felt on all of these markets.

5.2. The relevant geographic market

(47) Hungary maintains its view that the relevant geographic market for the automotive industry is the global market, reiterating the arguments submitted in the notification phase:

- The trade flows and the import and export quotas[16] of the EEA have reached a level which indicates that vehicle trading takes place in a global market.
- Concerning the trade barriers, there is a trend over recent years that regulatory barriers are falling, there are low trade barriers between many countries and the EEA, and there is a general movement toward a higher degree of harmonisation and integration.
- Prices that move similarly across regions are an important indicator for the existence of integrated markets. The results of the analysis of price indices[17]

15 See N 671/2008, Mercedes-Benz Hungary (overlap between the adjacent segments A and B), SA.32169 Volkswagen Sachsen, recital 60 ff and SA.32076 Ford Espana, recital 83 (demand-side chain substitutability of A0 and B segment cars and A segment cars).

16 Based on data provided in the Preliminary Economic Analysis of the Geographic Market, Dr. James A. Langenfeld, Navigant Economics (2011)., which shows that about 13% of the A segment cars and more than 25% of the B segment cars produced in the EEA between 2004 and 2010 were exported to other regions of the world. In terms of imports, more than 14% of A segment cars and more than 18% of B segment cars sold in the EEA were produced in other regions.

17 Preliminary Economic Analysis of the Geographic Market, Dr. James A. Langenfeld, Navigant Economics (2011).

based on pricing data for the EEA and the US, show that price indices for A and B segments move together and that the correlations between them are high. This allows the conclusion that at least the US and the EEA are part of the same geographic market.

- The costs of establishing a global distribution network are so negligibly small that they do not constitute an obstacle to profitable global sales of vehicles.
- As transport costs are decreasing, export and import levels of vehicles are continuously increasing. Every third car produced in the EU is exported and every fifth car sold in the EU is imported.
- The Volkswagen Group is a global car manufacturer facing global competition with other original equipment manufacturers (hereinafter "OEMs").
- The ten largest OEMs have a significant number of manufacturing sites all over the world. The Volkswagen Group operates 100 production plants, which are located in Europe, North America, South America, Africa and Asia. A high number of these production locations manufacture vehicles belonging to the A and B segments. The subsidiaries of large OEMs also compete internally in respect of location decisions.

(48) Therefore Hungary considers that the relevant geographic market is wider than the EEA, and includes at least all Europe, North and South America, and China.

(49) In addition, Hungary emphasises that Győr is worldwide the only production site for the AUDI TT Coupé, AUDI TT Roadster, AUDI A3 Cabriolet and thus addresses global demand. The Győr production of the A3 Sedan is also distributed globally (except for those manufactured exclusively for the Chinese market in Foshan, China).

5.3. Capacity considerations

(50) The Hungarian authorities maintain that the net capacity increase approach should be used in the paragraph 68(b) test. The objective of the investment project is among others the extension of the existing plant in Győr. The vertical integration of the production process implies that the former capacity ([60.000-110.000] vehicles per year of the segments A and B) will now be handled by the newly constructed assembly plant and newly created production facilities.

(51) Hungary argues that regardless of (i) whether a vehicle is only assembled in a given plant or manufactured within a vertically integrated production process or (ii) whether the new generation models might have different features, the end product remains in the same segment. Thus, the capacity of [60.000-110.000] vehicles per year that was produced (assembled) before the investment project will also be produced afterwards as a result of the investment project. In addition to this existing capacity, there will be a further production capacity of [60.000-80.000] vehicles.

(52) Thus, the net capacity increase would amount to a maximum of [60.000-80.000] vehicles per year in the same segment group (A to B) as before. This net capacity increase does not exceed the 5% threshold laid down in paragraph 68(b) of the RAG 2007-13.

(53) The Hungarian authorities considered that the […]% share of the output of the press shop which will be used in B segment vehicles manufactured in other production sites of the VW Group will not lead to an increase of the overall production of B segment cars within the VW Group, as they will solely replace the externally

purchased pressed body parts by self-produced ones. According to Hungary, the calculation method applied by the Commission in the opening decision would merely lead to a double counting of the production capacity created within the VW Group. In addition, as mentioned in recital 17 of this decision, due to changes of the beneficiary's plans these body parts would be used for the production of cars belonging to A0 to C segments.

5.4. Application of the IDAC

(54) The Hungarian authorities consider that based on the above presented arguments concerning the correct definition of the relevant product and geographic market as well as the application of a net capacity increase approach, the thresholds laid down in paragraph 68 of the RAG 2007-13 are not exceeded and the aid could be authorised without proceeding to an in-depth assessment of the aid.

5.5. In-depth assessment of the aid measure

(55) Nonetheless, Hungary provided information necessary to carry out an in-depth assessment.

5.5.1. Positive effects of the aid

(56) Hungary considers that the investment contributes to the regional development of Győr and Western Transdanubia for the following reasons:

- The investment project creates 2100 new direct jobs and keeps high-skilled employees in the Western Transdanubia region and will create further demand for such workforce. A significant part of the new employees will have a college or university degree.
- In addition, a large number of indirect jobs will be created in the region by suppliers and service providers. The employment multiplier is 2.5 indirect jobs at the supplier level[18] per direct job created, while the multiplier for jobs induced through the spending of the suppliers' employees is 2.2 jobs per direct job created. This results in the indirect creation of 9,870 jobs.
- The region will benefit from important knowledge spill-over effects: already before the investment the beneficiary has been actively cooperating with its university partners by carrying out 15 research and development (R&D) projects per year. After the completion of the investment, the yearly number of R&D projects is expected to double as AHM plans to extend its R&D cooperation with the University of Miskolc and the Óbuda University, and to deepen the existing relations with the Széchenyi István University in Győr and the Budapest Technical University[19].
- The beneficiary was a founding member of the Pannon Automotive Cluster (PANAC), which operates in the region and brings together automotive suppliers and other companies (advisory, financial, logistics etc.). The investment will trigger further positive cluster effects by attracting a large

[18] Hungary based the assumption of the 2.5 multiplier on a study, assessing the contribution of the motor vehicle supplier sector to the economies of the United States and its 50 states. The study was prepared for the Motor and Equipment Manufacturers Association by Economics and Business Group, Center of Automotive Research, 2007.

[19] Already existing are the AUDI HUNGARIA Vehicle Engineering Department Group with the Department of Internal Combustion Engines, Department of Material Science and Technology and the Department of Vehicle Manufacturing.

number of industrial suppliers and further investments. Clustering will contribute to the development of the Western Transdanubia region by achieving external economies of scale as a result of proximity, and creating a zone of innovation and infrastructural development.

- The beneficiary provides regular (in-house and external) training for its own employees, thus contributing to the know-how transfer into the region.

5.5.2. Appropriateness of the aid

(57) The Hungarian authorities explained that prior to making their aid granting decision, in view of furthering regional development of the Western Transdanubian region, other policy measures, for instance, to develop further the public infrastructure or to improve the education system had been considered. In previous years, however, the following general policy measures had already been taken:

- the construction of the M1 motorway that links Budapest and the Austrian-Hungarian border by crossing the region of Western Transdanubia,
- the establishment of a business park in Győr,
- the reconstruction work on the Budapest-Győr-Hegyeshalom railway line,
- certain developments in the field of education, such as granting a university rank to one of the local higher education institutions (Széchenyi István University).

(58) Despite the above mentioned developments, the region is still underdeveloped in comparison with certain neighbouring regions (Burgenland and Bratislava) and the average of the European Union in terms of GDP per capita, employment, infrastructure and education.

(59) It was concluded that state aid for this large investment project was a more efficient instrument to target and promote the development of the region. The Hungarian Authorities also point out that even if the aid can be regarded as a selective measure, it was provided on the basis of aid schemes that are also eligible to any other investors in Hungary if they fulfil the specific criteria set forth in the legislation.

5.5.3. Incentive effect/Counter-factual scenario

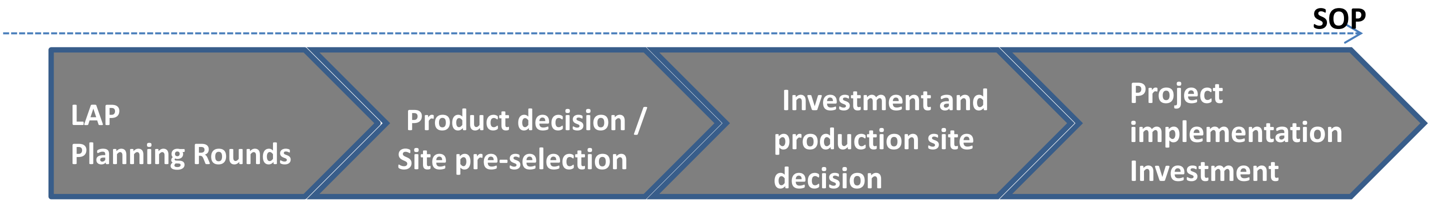
(60) Hungary offered information to prove that the aid falls under Scenario 2 of the IDAC, as it provides an incentive to the beneficiary to carry out the full investment in the Győr plant rather than locating it partly in [location 1 in a non-assisted area in the EEA] and partly in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU]. In particular, Hungary provided relevant, genuine and contemporary company documents which explain the multistage decision-making process concerning the location of the investment and provide financial data of the counterfactual scenario, both of which are described below.

The beneficiary's decision-making process

(61) At VW Group, investment decisions are prepared in a multistep decision-making process in which decision-makers analyse various sites in a competitive comparison process. The major phases are: (1) Long-term Sales Planning (LAP) and planning rounds, (2) Product development, product decision and site pre-selection and (3) Investment and location decision.

(62) The decision-making process regarding the notified investment followed this general process. As it concerns an investment of the legally independent AUDI brand, the relevant decisions had to be taken at brand and to be confirmed at group level.

(63) The introduction of new products within the VW Group follows the so called product creation process (PEP) which ranges from product planning to the start of production (SOP). The PEP consists of the four major phases described in the diagram below:



(1) Long Term Sales Planning and planning rounds

(64) The point of departure is the Long Term Sales Planning phase in which forecasts of the market development and of potential demand as well as market fluctuations are analysed. The LAP schedules product developments for […] years ahead and identifies which additional production capacities have to be built, or which adjustments to existing capacities are necessary. The LAP is mirrored by the annual planning rounds (PR), which the Group Supervisory Board concludes and which contain the financial framework of the scheduled investments.

(65) At AUDI AG planning is based on the consolidated LAP of the VW Group. Already in the [20xx] planning round, the Group identified the need for increased production capacities for vehicles in the A0 and A segments. At this stage these additional capacities were not attributed to any specific site.

(66) In view of the already high utilisation rates of installed production capacities in existing vehicle production plants, the LAP indicated that existing capacities would in the long term be insufficient to cover the needs arising from forecasted sales volume growth.

(2) Product development, product decision and site pre-selection

(67) During this phase, several departments of AUDI, the VW Group and the production sites concerned work together to prepare both the product decision and the site pre-selection. The Group controlling department […] takes the central and consolidating role during this phase.

(68) The first step in this second phase is the product development process, which according to the beneficiary's internal rules starts at least […] in advance of the envisaged start of production date. As the notified project includes four models, the decision on project feasibility was taken at different times with different planned start of production dates for these models.[20]

(69) The product decision, i.e. the decision to produce a product proposed in the LAP, requires that the product development reaches a pre-defined feasibility target. The

[20] The start of production of the A3 Cabriolet and the A3 Sedan was scheduled for November 2012 and March 2013, while the start of production of the TT Coupé and TT Roadster for February and September 2014, respectively.

expected revenues generated by the new product are compared with the necessary production (including investment) costs. In order to determine the expected cost of production, first a particular location is set hypothetically as planning assumption (location premise). The location premise is employed in order to determine a first cost structure and framework for the project. It does not predetermine a specific production site, but serves as baseline for the assessment of expected production costs.

(70) […]; for an entirely new product […] the location premise is usually based on performance indicators, i.e. the location with the best performance figures will be selected as first hypothesis. In practice, additional criteria, such as free capacities or suitable structures, are taken into consideration as well. While for the calculations regarding the product decision the product profitability is of utmost importance, the possible alternative locations are also being developed and analysed.

(71) At brand level, the VAP (Products Committee) and PSK (Product Strategy Committee) of AUDI AG took decisions confirming the project feasibility for all four models. The decisions identified as preliminary location premises [location 3 in a non-assisted area in the EEA] for the A3 Cabriolet and the body parts of A3 Sedan, and Győr for the A3 Sedan, TT Coupé and TT Roadster. These decisions were then confirmed at Group level by K-VAP/K-PSK.

3) Investment and location decision

(72) Once the product decision is taken, the next step is the selection of the most suitable location for the project (i.e. location decision). [Group Controlling] typically starts from the entirety of Volkswagen production sites and narrows this list down to those locations that seem suitable for the investment.[21] As a result of this process, the investment and production scenarios for each realistic site are specified and summarised in a decision recommendation.

(73) Hungary explained that in principle, when identifying suitable locations, the integration of additional capacities in only partly used facilities or the extension of existing sites is preferable to a greenfield investment since additional costs (for e.g. linking the new plant with public infrastructure, integration of the new site into the Group's logistics network etc.) are avoided. In the case at hand, the possibility of a greenfield investment in Eastern Europe was considered at an early stage of the decision-making process, but was not concretised and abandoned in the further course of the product decision process at the level of the AUDI brand.[22] Therefore, in the screening process for suitable locations, [Group Controlling] focused on existing sites of the group.

(74) If the location assessment does not concern a greenfield investment, the two main criteria for identifying suitable locations are whether additional capacities can still be installed at an existing plant (i.e. "room for enlargement or adjustment"), and

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21 Whilst during the product development and planning phase the site-preselection had been limited to AUDI locations, i.e. [location 3 in a non-assisted area in the EEA] and Győr, in this phase the location premises were challenged at group level and alternative scenarios were developed. Already three months before the product decision on the new A3 Sedan was taken in […] 2010, [Group Controlling] started comparisons of different locations and various investment scenarios.

22 In 2008, AUDI considered conceptually the idea of a greenfield investment in Eastern Europe, which was not developed in the further planning phases. In the decision recommendation prepared by the [Group Controlling] and AUDI and presented to the Group Management Meeting of […] 2010, a greenfield investment was presented as a non-realistic option due to the investment framework and time constraints set by the envisaged production dates.

whether the existing facilities at that site are compatible with the planned project (i.e. "compatible structure").

(75) In application of these criteria, [Group Controlling] identified four possible locations. Based on company documents provided by Hungary, the preliminary status of [Group Controlling] assessment of the four investment scenarios was discussed by AUDI and the Group in […] 2009.[23]

Table II: Investment options

Option	Description of the option
Option A ([location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [location 3 in a non-assisted area in the EEA] , Győr)	Production of A3 Sedan in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU]; body construction and painting of Audi TT[24] and A3 Cabriolet in [location 3 in a non-assisted area in the EEA] and delivery of painted bodies to Győr (HU) for assembly
Option B ([location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [location 1 in a non-assisted area in the EEA], [location 3 in a non-assisted area in the EEA])	Production of A3 Sedan in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU]; Production of A3 Cabriolet in [location 1 in a non-assisted area in the EEA] and production of Audi TT in [location 3 in a non-assisted area in the EEA]
Option C ([location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [location	Production of A3 Sedan and Audi TT in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU]; Production of A3 Cabriolet in [location 1 in a non-assisted area in the EEA]

23 Hungary submitted information showing all existing sites of the VW Group located in a region with 30 % or higher aid intensity (i.e. the same as or higher aid intensity than the one of Győr). However, none of these locations could be considered as those did not fulfil the criteria "room for enlargement or adjustment" and/or of "compatible structure”. None of these sites had sufficient free space to accommodate the investment project.

24 The product decisions on AUDI TT Coupé and TT Roadster were taken on […] 2011 at the Brand level and confirmed by the Group on […] 2011. Before that, in all company documents, it was referred to a TT-successor model.

1 in a non-assisted area in the EEA])	
Option D (Győr)	Production of A3 Sedan, A3 Cabriolet and Audi TT in Győr (HU)

(76) The company documents include and compare for these Options the location-specific production costs which consist of the investment costs and the production costs which will be incurred over the reference period.

(77) In view of these production costs - and taking into account the fact that [location 3 in a non-assisted area in the EEA] had reached its limits in terms of production capacity, and that any additional production would have required major structural expenditure - the Group Management Board decided on […] 2010, as documented by the submitted minutes of the meeting, to exclude Options A and B from the further planning, and instructed AUDI (i) to carry out further planning for vehicle production at the Győr site; (ii) to prepare decision recommendations for the Supervisory Board of VW and of AUDI as well as for the K-VAI[25] (iii) and to take the necessary steps to obtain State aid.

(78) Based on a recommendation by [Group Controlling] comparing updated calculations for Options C and D and taking into account the possible regional state aid from the Hungarian state, K-VAI decided on 14 December 2010 to locate the investment in Győr (i.e. Option D). Hungary provided evidence of the considered counterfactual analysis which is described in Annex 1 to this decision, but not published for business secret reasons, and submitted a copy of the minutes of the meeting.

5.5.4. Proportionality of the aid

(79) To prove proportionality of the aid, Hungary based itself on the calculations used for the incentive effect.

(80) The final calculation used by Hungary to explain the counterfactual scenario and to demonstrate incentive effect show that compared to Option C, Option D has a cost disadvantage of EUR 143.3 million (present value at the time of the beneficiary's investment and location decision, i.e. present value in 2010).

(81) This cost disadvantage amounts to EUR 153.8 million in 2013 prices[26], which is the year applicable for the calculation of the aid, and therefore also for the proportionality.

(82) Despite the maximum allowable aid of EUR 133.3 million (in present value of 2013)[27], there is still a cost disadvantage of EUR 20.5 million for Option D.

25 At group level, the Board of Management takes decisions about investment projects and their location via the K-VAI (Investment Board Committee) on the basis of the analysis prepared by [Group Controlling].

26 It is necessary to determine the value of the disadvantage in 2013 prices in order to be able to compare it with the possible state aid (which is established in 2013 prices), and by that to determine the net disadvantage of Győr. For this calculation it seems appropriate to use the discount rate applicable in the EURO zone at the moment the investment decision was taken (December 2010, i.e. 2.45%), as the investment decision was taken in EUR terms - taking into account estimated costs in EUR - by a company of which the headquarters is located in the EURO zone.

27 This aid amount is based on the planned eligible investment cost of EUR 1,186 million. Hungary explained during the course of implementation and approval, there were further changes to the planned

(83) Hungary considers that the aid is proportionate as it does not fully compensate the location disadvantage.

5.5.5. Negative effects of the aid on competition and trade

(84) Hungary emphasises that the regional aid serves solely to compensate for the additional costs of Option D (expansion of the production site in Győr) relative to Option C (production in the existing plants of [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU] and [location 1 in a non-assisted area in the EEA]). The aid is proportionate and does not have any effect on competition, as the investment project, and its resulting effects on competition and trade, would have happened in any event.

5.6. Hungary's comments regarding the legality of the measure

(85) The Hungarian authorities hold on to their opinion that the aid cannot be classified as unlawful aid within the meaning of Article 1 (f) of Council Regulation (EU) No 2015/1589 (hereinafter 'the Procedural Regulation')[28]. In this context, the Hungarian authorities explain the following:

(86) Article 108 (3) of the TFEU obliges Member States to notify planned aid measures to the Commission. By adopting the Block Exemption Regulation for regional investment aid (hereafter "RAG BER")[29], the Commission had limited this obligation to measures exceeding the notification threshold. The Hungarian authorities have interpreted this provision as meaning that aid measures, below the notification threshold and under an existing scheme can in all cases be granted and put into effect within the competence of the Member States.

(87) Hungary further argues that this interpretation is also in line with the provisions of the IDAC, which in their view confirms that Member States retain the possibility to grant aid up to the level which corresponds to the maximum allowable amount that an investment with eligible expenditure of EUR 100 million can receive under the applicable rules, even when the Commission adopted a negative decision[30].

(88) Moreover this approach and the interpretation have never been questioned by the Commission both within the present notification procedure and in the previous notifications carried out by the Hungarian authorities[31] and further it seems to

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costs and the investment agreement was finally signed taking into account the planned eligible costs of EUR 1,186 million in present value.

28 Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9-29). Of course, at the time that Hungary submitted its comments, the relevant provision was Article 1 (f) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

29 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, 1.11.2006, p. 29).

30 Footnote 1 to the recital 56 of the IDAC

31 The practice followed by the Hungarian authorities is also in line with the Commission's previous case-practice, see point (28) and point (110) of the decision on the IBIDEN where the aid had already been granted (prior the notification to Commission) to IBIDEN HU on the basis of the existing regional aid schemes up to the individual notification threshold, and only the remaining aid amount was subject to Commission approval. In the IBIDEN case, the aid was granted and partially put into effect for IBIDEN on 25 February and 3 March 2005. The national authorities notified the grant measure to the Commission on 1 April 2005 and 30 August 2006. In that procedure the Commission concluded that the aid subject to the notification is not compatible with the common market, however, the Commission through its decision confirmed that Hungarian authorities were acting in accordance with the regulations when it partially paid out the grant.

Hungary that the Commission interpreted the notification obligation by Member States in a similar way like the Hungarian authorities in the past[32].

(89) In addition, the Hungarian authorities also highlight that following the established jurisprudence of the European Courts[33] Member States who comply with their notification obligation under Article 108(3) of the TFEU cannot be in a more detrimental position compared to those who are in breach of the duty to notify as this would be adverse to the basic aim of Article 108(3) of the TFEU. Hence, an interpretation which does not allow Member States to grant the aid up to the individual notification threshold would also contradict the jurisprudence with a far reaching negative consequence both on Member States and beneficiaries.

(90) In line with the above provisions the Hungarian authorities decided to put forward the exempted aid in favour of AHM based on an existing aid scheme (XR 47/2011). However, the granted amount did not exceed the applicable notification threshold, whereas the part of the aid exceeding the threshold was granted conditional on the Commission's final decision. The Hungarian authorities confirm that no aid above the notification threshold was paid out, nor will be paid out without Commission approval.

(91) The Hungarian authorities therefore consider that they have fully complied with their obligation to notify to the Commission the aid amount above the notification threshold; hence the aid in favour of AHM does not constitute "unlawful aid".

6. ASSESSMENT OF THE MEASURE/AID

6.1. Existence of aid

(92) The financial support in the form of a direct grant and a corporate tax allowance was/will be given by the Hungarian authorities and is financed through the general budget of the state. The support is thus given by a Member State and through State resources within the meaning of Article 107(1) of the TFEU.

(93) As the aid is granted to a single company, AHM, the measure is selective.

(94) The financial support in the form of a corporate tax allowance relieves the company from costs it normally would have had to bear itself. The financial support in the form of a direct grant provides to the company an advantage that it would not have under normal market conditions. Therefore, the company benefits from an economic advantage over its competitors.

(95) The financial support was/will be given for an investment in the car sector, which is subject to intensive trade between Member States, and which is partially replacing supplies of intermediate goods from other Member States. Therefore, the measure affects trade between Member States.

(96) The favouring of AHM and its production means that competition is distorted or threatened to be distorted.

(97) Consequently, the Commission considers that the envisaged measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

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32 Only the part above the notification threshold is subject to Commission's approval as mentioned in the article on "State aid to IBIDEN Hungary" by Evelina TUMASONYTĖ, Živilė DIDŽIOKAITĖ and András TARI in the Competition Policy Newsletter, 2008 Number 2, p. 69.

33 See Judgement C-301/87. French Republic v. Commission (Boussac) point 33 [ECR 1990, I-307. p.].

6.2. Legality of the aid measure

(98) The Commission notes that the Hungarian authorities notified the entire aid package to AHM but only the amount exceeding the notification threshold was granted conditional on Commission approval whereas the amount below the notification threshold had been paid out on the basis of a block-exempted aid scheme. The Commission considers that this approach is in breach of Article 108(3) of the TFEU and the aid is therefore unlawful, as defined in Article 1(f) of the Procedural Regulation.

(99) The Commission disagrees with the arguments put forward by the Hungarian authorities regarding the interpretation of the RAG BER. According to Article 7(e) of the RAG BER regional aid remains subject to the notification obligation under Article 108(3) of the TFEU, if the total amount of aid **from all sources** exceeds 75 % of the maximum amount of aid an investment with eligible expenditure of EUR 100 million could receive, applying the standard aid ceiling in force for large undertakings in the approved regional aid map on the date the aid is to be granted. This provision, which corresponds to paragraph 64 of the RAG 2007-13, was taken over in Article 6(2) of the Commission Regulation (EC) No 800/2008[34] ("GBER").

(100) The aid schemes used by the Hungarian authorities for the aid package to AHM refer to Article 7(e) of the RAG BER and to paragraph 64 of the RAG 2007-13.

(101) The eligible expenditure of the investment exceeds EUR 100 million, and the combined aid amount (grant and tax allowance) is above the notification threshold. For the calculation of the notification threshold aid from all sources needs to be taken into account. This position has been confirmed by the Commission in a previous case (SA.32036 - Mondi Swiecie case[35]). Once this threshold is exceeded, the aid package, in its entirety[36], falls outside the RAG BER and needs to be notified to the Commission that will assess its compatibility on the basis of the applicable guidelines. In this context, the Commission assessed the aid package notified by the Hungarian authorities on the basis of the general compatibility criteria of RAG 2007-13 and concluded in its opening decision that while those criteria have been respected, it had doubts as regards the respect of the market thresholds provided for in paragraph 68 of the RAG 2007-13. Thus, it would be contrary to the applicable rules to apply the compatibility conditions of the RAG 2007-13 to the notified aid package but to consider that the amount below the notification threshold can be legally granted on the basis of the existing schemes and the provisions of the RAG BER before the Commission takes a decision on the notified aid measure.

(102) Concerning the footnote to paragraph 56 of the IDAC, the Commission has previously rejected the argument that its authority to examine the compatibility of an aid measure under IDAC is limited to the portion of the requested aid amount which is above the notification threshold.[37] The Commission must recall its obligation to verify, on the basis of a more detailed assessment, the incentive effect and proportionality of aid measures to which that in-depth assessment is applicable, i.e.

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34 Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) OJ L 214, 9.8.2008, p. 3.

35 SA.32063 (2010/N) – LIP – Mondi Swiecie S.A. – Poland (OJ C 305, 10.10.2012, p.8)

36 As stated in paragraph 68 of the Mondi Decision: "Therefore, the aid granted […] should be notified in its entirety to the Commission if it exceeds the notification threshold".

37 SA.32009 (2011/C) – State aid granted to BMW AG for a large investment project in Leipzig

notifiable regional aid granted to large investment projects that meet the relevant conditions laid down in the RAG 2007-13.

(103) As regards the possibility to grant aid up to the notification threshold laid down in Article 6(2) of the GBER, it is important to note that the wording of the footnote to paragraph 56 of the IDAC merely states that the Member State retains the possibility to grant aid up to the notification threshold. The logic of the architecture of the applicable rules (RAG BER, RAG 2007-13, IDAC) is that when the aid amount from all sources is limited to the notification threshold, the Member State does not need to submit the project for a detailed assessment by the Commission and can implement the aid measure in line with the conditions laid down in the block exemption Regulation. However, as soon as the Member State decides to grant an aid package that exceeds the notification threshold, the entire amount is subject to the notification obligation and its compatibility will be assessed on the basis of the applicable guidelines. This is exactly what is expressed also in Recital 7 of the GBER when it states that "State aid within the meaning of Article 87(1) of the Treaty not covered by this Regulation should remain subject to the notification requirement of Article 88(3) of the Treaty. This Regulation should be without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation. Such aid will be assessed by the Commission in particular on the basis of the conditions set out in this Regulation and in accordance with the criteria laid down in specific guidelines or frameworks adopted by the Commission wherever the aid measure at stake falls within the scope of application of such specific instrument".

(104) Before the Commission takes a decision on the notified aid, the Member State can withdraw the notification and grant the aid on the basis of the applicable block exemption regulation, if the aid amount is reduced to or below the notification threshold, and all provisions of the applied block exemption are respected.

(105) The Hungarian authorities invoke earlier Commission decisional practice[38]. The Commission considers that the circumstances in the quoted Ibiden case are not comparable to the present case, as it was taken on the basis of a different legal basis (RAG 2000-2006) and MSF 2002[39], and not in application of the RAG BER and the RAG 2007-13. In any event, the Commission developed a different decisional practise over the last years (e.g. in the Mondi and BMW decisions mentioned above).

(106) Finally, the above conclusions are not altered by the argument that the case-law established that Member States who comply with their notification obligation under Article 108(3) of the TFEU cannot be placed in a more detrimental position than those who had breached the obligation to notify. The Commission notes that in the quoted judgment[40], this argument was made with regard to the compatibility assessment of an aid measure which was implemented in breach of the obligations under Article 108(3) of the TFEU. The court concluded that an additional requirement to take into consideration the real effects of the aid already put into effect would incentivise Member States to notify investment projects to the Commission only once they had been completed and would deprive the prohibition

[38] Commission decision of 30 April 2008 in state aid case No C 21/2007 (ex No N 578/2006) – Hungary MSF 2007 – Individual aid in favour of IBIDEN Hungary Gyártó Kft.

[39] Communication from the Commission: Multisectoral framework on regional aid for large investment projects; OJ C70/8, 19.3.2002

[40] Judgment C-301/87 French Republic v. Commission (Boussac), ECR 1990, I-307.

under Article 108(3) of the TFEU of its effectiveness. Therefore, the Commission considers that the case law invoked by the Hungarian authorities is not relevant as regards the notification obligation under Article 108(3) of the TFEU.

(107) In view of the above, the Commission concludes that the aid granted to AHM is unlawful. This conclusion does not however influence the assessment of its compatibility with the internal market.

6.3. Legal basis for the assessment

(108) The objective of the aid is to promote regional development. As the granting agreement for the investment without the press shop was signed on 6 July 2011 (for the press shop on 26 September 2011), only subject to Commission approval, the Commission considers that the aid was awarded before July 2014 and thus has to be assessed – pursuant to paragraph 188 of the RAG 2014-20 – on the basis of the RAG 2007-13, and in particular its provisions on regional investment aid for large investment projects laid down in paragraph 68. If the comments received in reply to the opening of the formal investigation within the prescribed period do not allow the Commission to conclude without any doubt in the formal investigation that the thresholds laid down in paragraph 68(a) and paragraph 68(b) of the RAG 2007-13 are not exceeded, it is required to proceed to an in-depth assessment based on the criteria laid down in the IDAC.

(109) The Commission needs to conduct its assessment in three steps:

– first, it has to confirm that the measure is compatible with the general provisions of the RAG 2007-13;

– second, it has to verify whether or not it can exclude without doubt that the tests under paragraph 68(a) and (b) of the RAG 2007-13 do not require an in-depth assessment;

– third, depending on the outcome of the assessment in the second step, it may have to conduct an in-depth assessment.[41]

6.4. Compatibility of the measure with standard compatibility criteria of the RAG 2007-13

(110) The Commission established already in paragraph 54 of the opening decision that the aid meets the general compatibility criteria laid down in the RAG 2007-13. The formal investigation did not reveal any elements that would put into question this assessment. The Commission notes in particular the following:

- The aid is granted in application of a block-exempted scheme (grant on the basis of the aid scheme XR 47/2007) and of an approved aid scheme (tax allowance on the basis of the aid scheme N 651/2006). Both schemes respect the standard compatibility criteria of the RAG 2007-13.

- The project to be supported is situated in Győr, in the region of Western Transdanubia (Nyugat-Dunántúl), an area eligible for regional investment aid, as defined by the applicable Hungarian regional state aid map.

[41] Of course, in any event and thus irrespective of the thresholds of paragraph 68 of the RAG 2007-13, the Commission has to balance the positive and negative effects of the aid before concluding on its compatibility with the internal market. See the General Court's judgment in case T-304/08 *Smurfit Kappa Group v Commission* EU:T:2012:351, para. 94.

- There is no indication that the VW Group in general, or AHM in particular, would be a firm in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty[42]. Therefore, the aid beneficiary is eligible for regional aid in accordance with paragraph 9 of the RAG 2007-13.

- The project comprises an initial investment within the meaning of paragraph 34 of the RAG 2007-13. Initial investment is defined in paragraph 34 of the RAG 2007-13 as an investment in material and immaterial assets relating to (i) the setting up of a new establishment, (ii) the extension of an existing establishment, (iii) diversification of the output into new additional products and (iv) a fundamental change in the overall production process of an existing establishment. The investment project concerns an investment in an existing establishment and involves elements of (1) fundamental change of the production process (replacement of the platform-based assembly technology by the MQB technology), combined with increased standardisation and vertical integration of the production process (fully integrated car manufacturing plant, instead of an assembly plant), (2) diversification of the output of the establishment (new A3 Sedan, body parts from the press shop), as well as (3) the extension of the assembly capacities.

- In conformity with paragraph 40 of the RAG 2007-13, AHM is obliged to maintain the investment in the region for a minimum of five years after completion of the project.

- The beneficiary provides, in conformity with paragraph 39 of the RAG 2007-13, a financial contribution of at least 25% of the eligible costs in a form which is free of any public support.

- The formal requirements in respect of the incentive effect, laid down in paragraph 38 of the RAG 2007-13, are respected.

- The costs eligible for investment aid (see Table II above) are defined in line with the RAG 2007-13, and the rules on cumulation are respected.

- Earlier investments fall outside the 3-year period defining a single investment project.

- The planned total eligible expenditure in present value for the project is HUF 355 550 million (EUR 1 186 million) discounted to the date of notification. According to the scaling down mechanism laid down in point 67 of the RAG 2007-13, this leads to a maximum allowable aid intensity of 11.24% GGE (Gross Grant Equivalent) for the project.

- Since the intensity of the proposed aid (HUF 39 952 million; EUR 133.3 million in present value; 11.24% aid intensity) does not exceed the maximum allowable aid intensity, the proposed aid intensity for the project complies with the RAG 2007-13. Hungary confirmed that no other aid than the notified aid will be granted to support the investment project.

(111) In view of these considerations, the Commission considers that the standard compatibility criteria of the RAG are met.

[42] OJ C 244, 1.10.2004, p. 2.

6.5. Application of the tests laid down in the provisions of paragraph 68 of the RAG 2007-13

(112) The Commission stated in recital 105 of the opening decision that if the comments received in reply to the opening of the formal investigation do not allow the Commission to conclude without any doubt that the thresholds laid down in the paragraph 68(a) and (b) tests are not exceeded, the Commission will carry out an in-depth assessment of the investment project on the basis of the IDAC. The Commission has to assess whether the comments received allow this conclusion.

– Product concerned

(113) In paragraph 65 of its opening decision the Commission considered that for the purposes of paragraph 68 of the RAG 2007-13, the products concerned by the investment project are passenger cars belonging to the market segments A0, A, and B in accordance with the segmentation by POLK.

- Relevant product market

(114) In recital 80 of the opening decision the Commission left the precise definition of the relevant product market open and considered all plausible alternative market definitions, including in particular the narrowest segmentation for which data is available. Since AHM will produce cars as well as body parts for cars belonging to A and B segments, and since it could produce, theoretically, for cars belonging to segment A0, the Commission considered that these individual segments, as well as the combined segment A0 to B and A to B should all be considered as relevant plausible product markets for this case.

(115) In its comments to the opening decision (as described in recitals 44 to 46 of this decision), Hungary maintained its position already reflected in the opening decision, without adding any comments or information not yet presented in the preliminary examination phase. In particular, Hungary maintained its view that the relevant product market should be defined as a combined segment group of the vehicles belonging to the A0, A, and B segments and that the geographic market should be defined as including at least the combined market of all Europe, North and South America, and China (and not only the EEA market).

(116) As to the **product market**, the Commission considers the following: the decision to carry out an in-depth assessment does not prejudge the outcome of the resulting in-depth compatibility assessment. However, before approving the aid, the Commission has to be satisfied that the positive contribution resulting from the aid measure will compensate in any event its negative effects on trade and competition. Therefore, for the purpose of deciding on whether an in-depth assessment on the compatibility of an aid measure is to be carried out or not, the product market definition should be as narrow as possible, taking account of the specific characteristics of the cars to be manufactured.

(117) The practice of using the narrowest market definition based on individual segments in the car industry is well founded in comparable decisions, including final decisions[43].

[43] See for example, the final Commission decision in the Porsche case (adopted in July 2014) when it left open the question of market definition and applied the traditional approach of examining all "plausible market definition defining individual car segments (including the narrowest segmentation for which data are available)". See recital 34 of this decision, citing a range of cases, including Fiat Powertrain

(118) This case practice is founded in competition relevant economic considerations as it is based on the view that competitors in all market segments, including the smallest possible segment, deserve protection from players with market dominance.

(119) More specifically, this approach is based on the theory that demand side substitutability between two products exists if they are considered to be substitutes by consumers in view of their characteristics, price and intended use. Through its practice of examining market shares also in the smallest possible car market segment for which information is available, the Commission follows exactly this logic: i.e. it considers that substitutability in view of price, characteristics and intended use is the strongest between products belonging to the same segment. In this sense, the application of the narrowest possible market segment as one plausible market reflects the logic of point 28 of the Horizontal Merger Guidelines[44] which states that "Products may be differentiated within a relevant market such that some products are closer substitutes than others. The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. […] The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes (…)"

(120) This is also why conventional cars are traditionally divided into segments, and why the automotive industry assigns models to the various well known segments. This is the consideration that has driven the Commission's practice in defining the relevant market in automotive cases also in terms of the individual segments and this is the reason why Hungary presented the relevant market related arguments in this as well as in other cases in the past in terms of segments.

(121) Hungary did not submit any additional arguments which would contradict this view. In addition, the Commission did not receive any information from third parties during the formal investigation that would allow a better understanding of the segmentation of the market. The Commission therefore maintains its approach to leave open the exact definition of the relevant product market and to apply an approach of plausible alternative market definitions, defining individual car segments (including the narrowest segmentation for which data are available). Thus, the Commission continues to consider that the individual segments of A0, A and B, as well as the combined segment A0 to B and A to B should all be considered as relevant plausible product markets for this case[45].

- Geographic market

(122) As to the **geographic market** the Commission maintains its initial assessment in the opening decision (see recital 87 of the opening decision) that the relevant market is the EEA or a larger market; the Commission cannot exclude that the geographic market is limited to the EEA market.

(123) The Commission notes that Hungary maintains the arguments brought forward already in the preliminary examination, but did not submit further elements or information during the formal investigation (see recital 47 of this decision). The

technologies, SA.30340: Decision of 9.2.2011, (C(2011)612), OJ C 151, 21.5.2011, p.5; SA. 32169 Volkswagen Sachsen: Decision of 13.07.2011 (C(2011)4935), OJ C 361, 10.12.2011, p. 17.

44 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, (OJ C 31, 05.02.2004, p. 5).

45 As recital 140 of this decision shows, the issue of the segmentation does not have practical implications, as it does not affect the outcome of the 68(a) test.

Commission finds that these arguments are insufficient to diffuse the concern that the geographic market could be limited to the EEA market. In particular, the Commission considers the following:

Global competition

(124) The fact that large car producers are internationally active and in global competition is not a sufficient proof that the individual markets are integrated and constitute a single worldwide market (or a combined market of all Europe, North and South America, and China). The same applies to the argument that the ten largest OEMs have manufacturing sites and distribution systems all over the world. In fact, the Commission considers that exchange rate instability could be named as one factor that has led OEMs to build production plants closer to regional demand; and the same may hold for policies of effective protection (high tariffs on imports of final producers, low tariffs on intermediate products, giving an incentive for local production/assembly). A third argument for the existence of globalised production structures, despite not integrated markets, is the fact that certain states allow imports only if joint ventures for local production are created in parallel. The global presence of major players as manufacturers is therefore not by itself an indication of the existence of a global (or wider than the EEA) market. Similarly, the existence of distribution systems that extend across the world does not constitute proof that the market is global (or wider than the EEA) from a competition perspective. The fact that AUDI AG/VW Group intends to serve the world market for three of the four car models, and to serve the world market excluding China with the A3 Sedan models from only one site, is also not sufficient to support a conclusion that the geographic market is wider than the EEA.

Trade flows

(125) Also the argument that a high level of trade flows, e.g. the fact that about 13% of A segment cars and more than 25% of B segment cars of the EEA production are exported to other regions of the world, is insufficient to prove the existence of a global (or here wider than the EEA) market. The Commission considers that, whereas trade flows can give insight into the degree of integration of different geographic areas by looking at the importance of imports and exports relative to local production and consumption levels, the existence of trade flows itself is not a sufficient proof to consider that an integrated geographic market exists. In fact, there may be shipments between the EEA and other regions, but that does not mean that markets are integrated in the sense that market conditions (e.g. prices) in one market influence market conditions in the other. This holds in particular where the observed shipments relate primarily to shipments by the manufacturers themselves, as opposed to shipments by independent importers and exporters engaging in price arbitrage. Pricing may be entirely market specific (e.g. high in one market, low in another), and not aligned to the conditions to an alleged integrated market. Trade flow analysis does not address the principal question in market definition, namely whether imports or exports could defeat a price increase in the local market. The Commission notes that Hungary did not submit further empirical material that would prove the existence of correlated price movements, or the reactivity of net imports to changes in relative prices.

Trade barriers

(126) The Commission acknowledges that the importance of trade barriers is diminishing over time. Nonetheless, the Commission is convinced that one of the main factors for

overseas production, and relocation decisions of EU car manufacturers are market access barriers in the target markets. High tariff barriers still seriously hamper access for EU exporters, notably in Asia. Non-tariff barriers, including burdensome and discriminatory certification requirements, additional testing requirements excise taxes etc., have a strong impact on EU vehicle exports to the South-East Asian, Chinese, and South American markets. The Commission admits that the United States is by far the most important destination for the EU overall car exports. However, the EU and the US have strongly divergent approaches to regulation and market surveillance. Such regulatory divergence is probably even today the most significant access barrier for EU automotive exports to the US.

(127) The Commission has further taken due note of the arguments put forward in relation to the decreasing transport costs. The Commission is not fully convinced in this respect. The future developments with regard to decreasing transport costs cannot be clearly confirmed in the current economic situation where fuel costs are fluctuating. Therefore, the mentioned future decrease in costs cannot be taken for granted.

Price correlations

(128) The Hungarian authorities have also provided a correlation analysis of car prices in the US and an average car price for a sample of ten European countries for the A and B-segments in the period between 2005Q1 and 2010Q2, as well as an analysis of correlations between three pairs of European countries, namely Germany and France, Germany and Italy, and Germany and the United Kingdom in the same period. This analysis is intended to show that the correlation between prices in North America and the average price of the ten selected EEA countries is comparable to the correlation between car prices of Germany, France, Italy and United Kingdom. They conclude that the analysis supports the conclusion that North America and the EEA should be regarded as a single geographic market. Given that it is not disputed that these latter countries are in the same geographic market, a fortiori it means that also North America and EEA should be in the same geographic market.

(129) The Commission notes that the dataset on which the analysis submitted by the Hungarian authorities has been carried out, is based, for each of the market segments considered (A and B-segments), and for each of the above identified six geographic areas, i.e. Northern America, sample of ten EEA countries, Germany, France, Italy, and United Kingdom on a dataset of 22 data points which cover the period from 2005Q1 to 2010Q2. The correlation analysis has been done on the index level and on the index differences. [46]

(130) The above correlation analysis has been performed on the basis of the Fisher chained index. The Fisher chained index, like general price indexes, has the purpose to evaluate the evolution of prices of a given basket of products in a given region for a given interval of time. It does so by computing a normalised weighted average of prices. The average price is thus taking into account the relative consumption of the goods in the basket and it is scaled down against one period of reference.[47] There are

[46] In time series analysis, differentiating the data, i.e. taking differences between subsequent data points, is a methodology used to address non-stationarity of the data, i.e. the presence of time trends in the time series. The differentiated time series is thus a new series of data from which the time trend has been removed. It is thus likely stationary.

[47] For the sake of clarity, the weights used for the averages are given by the quantity consumed for each good included in the basket. Therefore the average price will follow proportionally more the movement of the price of the good that is sold more. The normalisation is just a mathematical procedure in order to

several ways to compute an index and in the economic literature several indexes have been constructed. The Fisher index is a derived index, because it is the (geometric) average of two other indexes known as the Paasche and Laspeyres indexes. In this specific case, the Hungarian authorities also propose a version of the Fisher index that is "chained". This means that the price change is not relative to period immediately before, but is relative to the period of reference selected for the normalisation.

(131) The results obtained for segment A are as follows: the correlation between the Northern America price index and the price index for the sample of ten selected EEA countries amounts to 0.94. This study found this to be similar to the correlation between the price indices for Germany and France, Italy and UK ranging from 0.90 to 0.95.

(132) First, the Commission does not object to the use of the index and in particular the use of the Fisher chained index. However, the Commission has doubts on the underlying data that were used in order to compute such index. In fact, it cannot be excluded that spurious correlation might arise from some composition effect due to similar (common) developments in consumption patterns (determining the weights in the index, e.g. a shift towards more expensive models in the segment) instead of through developments in actual prices.

(133) Second, the Commission notes that the analysis is conducted on simple index levels while typically a correlation analysis should take care of the existence of common developments in price (e.g. driven by common cost developments) in order to exclude them and to avoid spurious correlation. This is called partial correlation. This analysis has not been done, therefore all such correlation values might be spurious.

(134) Third, it is worth noting that a seemingly high level of correlation (like in this case) can also be spurious if the time series are non-stationary, i.e. when there is a time trend. It is well known that when two time series are not stationary the level of correlation is artificially high. Good practice says that correlation analysis is meaningful when time series are stationary. Therefore, no evidentiary value should be given to correlation values resulting from non-stationary time series. In this case, both index series are non-stationary exhibiting a clear trend. This casts doubt on the validity of the correlation results. It is worth mentioning that the Hungarian authorities recognise this and explain that it is therefore better first to render the series stationary by taking differences (i.e. elimination of the time trend) and compute correlations on these modified time series. They come to the conclusion that the correlation values are comparable and therefore the scope of the geographic market should include North America.

(135) The Commission does not follow this analysis. In fact, the correlation results of the modified time series of prices (after elimination of the time trend), are respectively, for North America and the sample of ten selected EEA countries, Germany and France, Germany and Italy and Germany and UK 0.39, 0.60, 0.60 and 0.55. The correlation between North America and the sample of ten selected EEA countries is thus overall quite low (0.39) and in particular substantially lower than the benchmark correlations computed on changes of the chained Fisher price index between Germany and France, Germany and Italy, and Germany and the UK.

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scale down the value of prices against one period of reference. Different indexes have different reference periods.

(136) This evidence does not seem to support the conclusion that the relevant geographic market for the A segment includes also North America. Moreover, the correlation analysis seems to be resting on some simplified assumptions that have not sufficiently been recognised or tested, e.g. absence of common shocks and existence of potentially different time trends. In addition, the results of the correlation test, if reliable, would rather support the hypothesis of the narrower scope of the geographic market.

(137) As the market share of the aid beneficiary on the EEA market for the A segment exceeds 25%, the threshold of the paragraph 68(a) test above which an in-depth assessment is required, is in any event exceeded. It is therefore not necessary to look into the results for the B-segment. Hungary did not submit correlation results for the A0 segment.

Conclusion on the geographical market

(138) In light of the above, and as the Commission did not receive any additional information during the formal investigation enabling it to conclude that the relevant geographical market is wider than the EEA, it maintains its conclusion that the relevant geographic market – independent from the product market definition chosen – is either the EEA or larger. Again, the Commission emphasises that it is required to verify that the positive contribution resulting from the aid measure will compensate in any event its negative effects on trade and competition. Therefore, for the purpose of deciding on whether an in-depth assessment on the compatibility of an aid measure is to be carried out or not, the geographic market definition should be as narrow as possible, taking account of the specific characteristics of the car(s) to be manufactured.

6.5.1. Conclusion on the paragraph 68(a) test

(139) The Commission has carried out the test laid down in point 68(a) of the RAG in all plausible product and geographic markets to verify whether the beneficiary's market share exceeds 25% before and after the investment.

(140) In view of the fact that a single relevant product and geographic market could not be established, the results of all plausible markets had to be taken into account. The market share of the VW Group accounts for more than 25% in the individual and combined A and B segments in the EEA in all the years concerned. In the combined segment of A0, A and B in the EEA, the 25% threshold is exceeded as from year 2011. The Commission therefore concludes that the threshold laid down in paragraph in 68(a) is in any event exceeded, whatever the product market definition is, and that it is hence not necessary to decide on a definite product market definition.

6.5.2. Conclusion on the paragraph 68(b) test

(141) As the result of the paragraph 68(a) test requires already proceeding to the in-depth assessment of the aid, it is not necessary to take a definite view on the outcome of the paragraph 68(b) test.

6.5.3. Conclusion

(142) As the relevant threshold of the 68(a) test is exceeded, the Commission decided to conduct a detailed verification, following the opening of the procedure provided for in Article 108(2) of the TFEU, that 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 effects on trade between Member States.

6.6. In-depth assessment of the aid measure

(143) The in-depth assessment is conducted on the basis of the IDAC.

6.6.1. Positive effects of the aid

6.6.1.1. Contribution to the development of the region

(144) The Western Transdanubia region is eligible for regional aid pursuant to Article 107(3)(a) of the TFEU. The Commission takes note of the investment's positive regional effects, as presented by Hungary (see recital 56), and considers that in particular the direct and indirect job creation effects, the potential to attract additional suppliers and service providers, the knowledge transfer into the region and the improvement of the regional skills base represent a significant contribution to the development of the region and to the achievement of the EU cohesion objective.

6.6.1.2. Appropriateness of the aid instrument

(145) Paragraphs 17 and 18 of the IDAC underline that State aid in the form of investment subsidies is only one of the means to overcome market failures and to promote economic development in disadvantaged regions. Aid constitutes an appropriate instrument if it provides specific advantages compared with other policy measures. In accordance with paragraph 18 of the IDAC, only "measures for which the Member State considered other policy options, and for which the advantages of using a selective instrument such as State aid for a specific company are established, are considered to constitute an appropriate instrument".

(146) Hungary explained that general measures to support economic development at national and regional levels through investment in basic infrastructure and productive factors have already been taken, but the region remains amongst the disadvantaged regions of the EU. The Commission considers that infrastructural developments and other general measures alone are insufficient to reduce regional disparities.

(147) Hungary also based its explanation for appropriateness of the aid instrument on the economic situation in the Western Transdanubia region and provided evidence demonstrating that the region is disadvantaged in comparison with the bordering regions in Austria (Burgenland) and Slovakia (Bratislavský kraj). At the same time, the economic indicators of Western Transdanubia are around the average of Hungary. Nonetheless, the Commission notes that - as the status of Western Transdanubia as a region eligible for regional aid in accordance with Article 107(3)(a) of the TFEU with an aid intensity ceiling of 30% shows - the socio-economic situation of Western Transdanubia is under the level of the EU average.

(148) In view of the above, the Commission concludes that the aid measure is an appropriate instrument to pursue the regional development objective in the assisted region concerned.

6.6.1.3. Incentive effect/Counterfactual scenario

(149) As there are many valid reasons for a company to locate its investment in a certain region, even without any aid being granted, the IDAC requires the Commission to verify in detail that the aid is necessary to provide an incentive effect for the investment. The objective of this detailed assessment is to determine whether the aid

actually contributes to changing the behaviour of the beneficiary, so that it undertakes (additional) investment in the assisted region concerned. In this context, the Member State is also required to give a comprehensive description of the counterfactual scenario in which no aid would be granted to the beneficiary. The scenarios have to be deemed realistic by the Commission. This verification of the substantive incentive effect goes beyond the verification of whether the formal requirements in respect of the incentive effect laid down in the RAG 2007-13 are met (see paragraph 68 of the RAG 2007-13).

(150) Paragraph 22 of the IDAC states that the (substantive) incentive effect can be proven in two possible scenarios: in the absence of aid, no investment would take place at all since without the aid, the investment would not be profitable for the company at any location (scenario 1); in the absence of aid, the investment would take place in another location of the EU (scenario 2).

(151) The IDAC requires the Member State to demonstrate to the Commission the existence of the incentive effect of the aid and provide clear evidence that the aid effectively had an impact on the investment choice or the location choice. It thus places the burden of proof regarding the existence of an incentive effect on the Member State. Paragraph 25 of the IDAC indicates that the Member State could provide proof of the incentive effect of the aid by providing company documents that show that a comparison has been made between the costs and benefits of locating in the assisted region selected for the investment with an alternative location. The Member State is invited to rely on financial reports, internal business plans and documents that elaborate on various investment scenarios.

(152) The Commission notes that the Hungarian authorities submitted the required information (see recital 60) in form of comprehensive contemporary and genuine evidence documenting the multi-stage decision-making process of the VW Group and AUDI AG concerning the investment and location decision, stating that the aid to AHM falls under scenario 2, and explaining a counterfactual scenario involving, in addition to Győr, several alternative locations (location combinations), which are situated in [country 1 and country 2 of the EEA].

(153) These locations involve the existing sites in Győr, [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [location 1 in a non-assisted area in the EEA] and [location 3 in a non-assisted area in the EEA]. While Győr and [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU] are located in assisted regions (with 30% and 15% aid intensity ceilings respectively, at the date of notification), [location 1 in a non-assisted area in the EEA] and [location 3 in a non-assisted area in the EEA] are situated in non-assisted regions in [country 2 of the EEA].

(154) The calculations and cost estimates for the four options were carried out at the same level of accuracy. The options involving the sites of [location 3 in a non-assisted area in the EEA] (Option A and B) were excluded already in […] 2010, as the [location 3 in a non-assisted area in the EEA] plant had reached its limits in terms of production capacity and the investment would have required major structural expenditure resulting into higher total costs. Thus, only Option C (production of A3 Sedan and Audi TT models in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], and production of A3 Cabriolet in [location 1 in a non-assisted area in the EEA]) and Option D (production of all four models in Győr) remained as competitive options.

(155) In the further planning process, several calculations and cost estimates were carried out. The documents provided show that these calculations were based on the same assumptions and Hungary explained that throughout the decision making process the cost estimates of Option C and Option D were kept at the same accuracy level. The documents also indicate that these calculations were comparable.

(156) The Commission notes that AUDI AG explored the possibility of State aid already at early stages of the investment and location decision making phase. Aid application by the beneficiary on 5 March 2010, confirmation of Hungary of 26 March 2010 that the investment is in principle eligible for aid as well as the initial aid offer of Hungary of 30 March 2010 happened before any of the options would have been eliminated. The cost estimates presented to the Group Management Board on […] 2010 already included the potential state aid to be granted by Hungary. At that point in time, a potential aid from [country 1 of the EEA]. was also taken into account, but later dismissed, as it would not have been realistic to receive the aid in [country 1 of the EEA].[48].

(157) As described in recital 80 of this decision, the final estimates for production costs attributable to the location resulted in a cost disadvantage of EUR 143.3 million for Option D (Győr) compared to Option C ([location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], and [location 1 in a non-assisted area in the EEA],) at the time when the two investment and location options were presented for a final decision to be taken by K-VAI on 14 December 2010. As documented by the minutes of the K-VAI meeting, on the basis of that counterfactual analysis, and of certain qualitative criteria, as well as on the basis of the availability of State aid, the K-VAI decided to locate the investment project in Győr on 14 December 2010.

(158) The Commission reaffirms its view (see recital 110 of this decision), taken already in the opening decision, that the formal requirements in respect of the incentive effect laid down in paragraph 38 of the RAG 2007-13 were met: (i) with regard to the grant – as explained in recital 23 of this decision - the beneficiary submitted an application for aid and the authority responsible for administering the scheme subsequently confirmed in writing that, subject to detailed verification, the project in principle met the conditions of eligibility laid down by the scheme, before works on the project started; (ii) concerning the tax allowance, as described in recital 24 of this decision, the beneficiary applied for it well before the start of works, and as for the tax allowance there is a legal entitlement - subject to Commission approval - there was no need for the beneficiary to wait for any preliminary eligibility confirmation from the Hungarian authorities.

(159) The Commission considers with regard to the substantive incentive effect that the aid effectively had an impact on the investment's location choice: VW Group's decision to locate the investment project in question in Győr was taken only after

[48] Paragraph 53 of the IDAC states that under scenario 2, where evidence has to be given of an alternative location, an assessment that without aid the investment would have been located to a poorer region (higher max. regional aid intensity) or to a region that is considered to have the same regional handicap as the target region (same max. regional aid intensity) will constitute a negative element in the overall balancing test that is unlikely to be compensated by any positive element. This meant concretely for this case, that as Győr has a higher regional aid intensity (i.e. it is considered to be less developed) than [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [country 1 of the EEA] would not be in the position to grant aid to this investment.

confirmation that the investment project would be eligible for State aid and supported by public authorities and the K-VAI (the body responsible for taking the final decision about the investment and the location) approved the location subject to the availability of State aid. Therefore, the Commission considers, in accordance with paragraph 23 and 25 of the IDAC that the counterfactual scenario presented by Hungary is realistic and supported by genuine and contemporary evidence. The aid therefore has a real (substantive) incentive effect. By reducing the viability gap in favour of Győr, the aid contributed to changing the location decision of the beneficiary company. Without the aid, the investment would not have taken place in Győr.

6.6.1.4. Proportionality of the aid

(160) For the aid to be proportional, the amount and intensity of the aid must be limited to the minimum needed for the investment to take place in the assisted region.

(161) In general, regional aid is considered to be proportional to the seriousness of the problems affecting the assisted regions if it respects the applicable regional aid ceiling, including the automatic, progressive scaling-down of the regional aid ceiling for large investment projects (which is already part of the applicable regional aid map). The applied aid intensity in this case is not higher than the regional aid ceilings corrected by the scaling-down mechanism, as already established in recital 110 of this decision.

(162) In addition to the general principle of proportionality contained in the RAG 2007-13, the IDAC requires a more detailed assessment to be carried out. Under scenario 2 of the IDAC, the aid is considered proportionate if it equals the difference between the net costs for the beneficiary to invest in the assisted region and the net costs to invest in the alternative location.

(163) The Commission considers on the basis of the documentation submitted (see recital 79 to 82) that the aid was limited to the amount necessary, because it does not exceed the difference in costs between Option D (locating the investment in Győr) and Option C (locating the investment in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU] and [location 1 in a non-assisted area in the EEA]). The calculation done at the time of the counterfactual analysis shows that without the aid, Győr was by EUR 144.3 million more expensive (in present value of 2010) than the location combination of [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU] and [location 1 in a non-assisted area in the EEA].

(164) This cost disadvantage amounts to EUR 153.8 million in 2013 terms, which is the year applicable for the calculation of the aid, and therefore also for the proportionality.

(165) The gap due to the higher one-time expenditure could be narrowed by the possible State aid. Considering the aid of EUR 133.3 million in present value of 2013, Option D still has a cost disadvantage of EUR 20.5 million relative to Option C. The Commission notes that the remaining cost disadvantage was acceptable by Volkswagen Group due to certain, non-quantifiable advantages of Győr, e.g. the possibility to produce all four MQB derivatives in a single plant of AUDI, and considers that the proportionality of the aid is demonstrated.

6.6.2. Negative effects of the aid on competition and trade

(166) Paragraph 40 of the IDAC states that “if […] the counterfactual analysis suggests that without the aid the investment would have gone ahead in any case, albeit possibly in another location (scenario 2), and if the aid is proportional, possible indications of distortions such as a high market share and an increase in capacity in an underperforming market would in principle be the same regardless of the aid.”

(167) As the aid measure supports a scenario 2 investment decision and the aid is limited to the minimum, no negative effects on competition could be identified. The investment would have been carried out in another location, resulting in the same level of distortion of competition in any event. Therefore, the Commission considers that the aid has no negative effects on competition.

(168) In accordance with paragraph 53 of the IDAC, if, without aid, the investment would have been located in a poorer region (more regional handicaps – higher maximum regional aid intensity) or in a region that is considered to have the same regional handicaps as the target region (same maximum regional aid intensity), this would constitute a negative element in the overall balancing test that is unlikely to be compensated by any positive elements, because it runs counter the very rationale of regional aid.

(169) As Hungary confirmed that the theoretical possibility of setting up a new production plant in Eastern Europe was discarded by AUDI in the early stages of the decision-making process and that none of the existing sites with higher or same aid intensity was considered as a feasible location (see footnote 23), the Commission considers that the aid has no anti-cohesion effect that would run counter the very rationale of regional aid.

6.7. Balancing of positive and negative effects of the aid

(170) Having established that the aid provides an incentive for carrying out the investment in the region concerned and is proportionate, it is necessary to balance the positive effects of the aid with its negative effects.

(171) The assessment confirmed that the aid measure has an incentive effect attracting an investment which offers an important contribution to the regional development of a disadvantaged region which is eligible for regional aid pursuant to Article 107(3)(a) of the TFEU, without depriving from the investment any region with the same or a higher aid intensity ceiling (no anti-cohesion effect). The Commission considers that attracting an investment to a poorer region is more beneficial for cohesion within the Union than if the same investment had been located in a more developed region. As stated in paragraph 53 of the IDAC, the Commission considers that "the positive effects of regional aid which merely compensate for the difference in net costs relative to a more developed alternative investment location […], will normally be considered, under the balancing test, to outweigh any negative effects in the alternative location for new investment".

(172) In view of the above, the Commission finds that, given that the aid is proportional to the difference in net costs for carrying out the investment in the selected location, as compared to a more developed alternative location, the positive effects of the aid, in terms of its objective and appropriateness, as demonstrated above, outweigh the negative effects in the alternative location.

(173) In accordance with paragraph 68 of the RAG 2007-13, and in light of the in-depth assessment conducted on the basis of the IDAC, the Commission concludes that 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 negative effect on trade between Member States.

7. CONCLUSION

(174) The Commission finds that Hungary has unlawfully implemented regional aid in favour of the investment project by AHM in breach of Article 108(3) of the TFEU. However, the Commission concludes that the regional investment aid in favour of AUDI HUNGARIA MOTOR Ltd. - awarded before 1 July 2014 under the condition that it is partly subject to Commission approval - fulfils all the conditions laid down in the RAG 2007-13 and in the IDAC and can therefore be considered compatible with the internal market in accordance with Article 107(3)(a) of the TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Hungary has implemented for AUDI HUNGARIA MOTOR Ltd. amounting to a maximum of HUF 39 952 million (discounted to the date of notification) in present value and representing a maximum aid intensity of 11.24% in gross grant equivalent is compatible with the internal market within the meaning of Article 107(3)(a) of the TFEU.

Article 2

This Decision is addressed to Hungary.

If the decision 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 the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Fax: +32 2 296 12 42
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Done at Brussels, 1.2.2016

For the Commission

Margrethe VESTAGER
Member of the Commission