Subject: State aid SA.47662 (2017/N) - Poland - LIP – Aid to LG Chem Wrocław Energy Sp. z o.o.

Sir,

1. Procedure

(1) By electronic notification registered on 17 August 2017, Poland notified to the Commission regional aid of EUR 36 million (in present value) it had granted (under the suspensive condition of authorisation by the Commission) on 20 June 2016, 6 July 2016, and 4 November 2016 in favour of LG Chem Wrocław Energy Sp. z o.o. (hereinafter, "LG Chem").

(2) By letters of 2 October 2017, 9 January 2018, 4 April 2018, 7 June 2018, and 2 October 2018 the Commission requested supplementary information which was submitted by letters registered at the Commission on 16 November 2017, 14 February 2018, 29 May 2018, 3 August 2018, and 19 November 2018. Meetings and telephone conferences in which the case was further discussed between the Commission services and the Polish authorities, took place on 11 December 2017, 14 December 2017, 31 May 2018, 17 July 2018, 4 October 2018, and 21 November 2018. Further information was provided via email on 28 November 2018 and 20 December 2018. By letter of 14 February 2018, the Polish authorities agreed to have the present decision adopted and notified in the English language.
2. DESCRIPTION OF THE AID MEASURE

2.1. Objective of the aid measure

(3) Poland intends to promote the regional development of the Dolnośląskie region by providing regional aid to LG Chem for an initial investment to set up a new vertically integrated lithium-ion (Li-ion) batteries manufacturing plant. The Dolnośląskie region (NUTS-2, PL51) is an area eligible for regional aid under Art. 107(3)(a) TFEU, with a standard regional aid ceiling of 25% under the Polish regional aid map for the period from July 2014 to 2020¹ (hereinafter "Regional Aid Map").

(4) The investment project is located in the Special Economic Zone (hereinafter "SEZ") Tarnobrzeg Euro-Parl Wisłosan in Biskupice Podgórne, Wrocławski, Dolnośląskie region.

2.2. The beneficiary

(5) The recipient of aid is LG Chem, a fully owned subsidiary of LG Chem Ltd which is headquartered in Seoul, Korea. LG Chem Ltd is a large undertaking with almost 26000 employees globally and a turnover of about 15 billion EUR in 2015.

(6) LG Chem Ltd is composed of three distinct but legally dependent entities: (1) Basic materials and chemical, (2) IT and electronic materials and (3) the Energy solutions company. The Energy solutions company was responsible for the development of the investment project, in particular through its Advanced Automotive Battery Division.

(7) The company has eight factories in South Korea and a network of 31 business locations around the world. In Poland, LG Chem Ltd is already active in the field of polarizers for liquid crystal display (LCD) screens and plastic materials through its subsidiary LG Chem Poland sp. z o.o.

(8) The Polish authorities have confirmed that the beneficiary is not a company in difficulty in the meaning of the Community guidelines on State aid for rescuing and restructuring non-financial undertaking in difficulty².

2.3. The investment project

2.3.1. The notified project

(9) The project concerns a greenfield investment for the setting up of a new vertically integrated plant for the production of Li-ion batteries for electric vehicles (EV). The batteries can in principle also be used for energy storage systems (ESS). The investment project creates a capacity for the production of batteries for more than $[50 000 – 100 000]$ EVs per year. The investment is planned to serve the European Economic Area (EEA) market.

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¹ OJ C 210, 04.07.2014
* Confidential information
³ A 'high capacity' EV runs on battery with a capacity of ca. 90 kWh
In the EV battery production process, the electrode is coated with a special active material in high loading design ensuring maximum battery capacity. The electrode is then assembled into a polymer pouch type Li-ion battery cell using the LG Chem Ltd's patented "stack & folding" or "lami & stacking" technology. A patented separator ensuring maximum safety is also incorporated in the battery cell. The cells are incorporated into battery modules using a battery management system to control the functionality of each cell. Finally, a number of modules and various devices to enhance safety and performance are incorporated into battery packs. The main phases of the production process are illustrated in the picture below:

Figure 1: Illustration of the main phases of production of an EV battery

The notified project consists of investments in assets relating to the production units as well as the necessary facilities. More concretely, the project envisages construction of [...] buildings and the acquisition/installation of [...] electrode line, [...] high-speed battery cell assembly lines, [...] module lines, and [...] pack line.

Works on the investment project started on 7 July 2016, after the beneficiary introduced the relevant aid applications (see recital (16) of the present decision).

The production of cells, modules and battery packs started in [...] 2017 and the production of electrodes is expected to start in [...] 2019. Until that date, LG Chem Ltd plans to produce the electrodes in [Location 1] and ship them to Poland for assembly into battery cells. The works are expected to be completed by [...] 2019; full production capacity should be reached by [...] 2019.

2.3.2. Eligible investment costs

The notified total eligible investment costs of the project amount to PLN 1 352 408 000 (EUR 315 783 968)\(^4\) in nominal value. In discounted value\(^5\) the eligible expenditure is PLN 1 300 580 824 (EUR 303 682 494). The eligible cost result from costs for buildings, machinery and other equipment.

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\(^4\) Figures expressed in EUR are given in this decision on the basis of an exchange rate of 4.2827 EUR/PLN applicable on 13 April 2016, when the first granting authority calculated in advance the maximum permissible aid intensity for the project, as required by paragraph 92 of the RAG.

\(^5\) The present values in this decision are calculated on the basis of a discounting rate of 2.83%, applicable at the time of the notification (base rate 1.83% plus 100 basis points). Present values are discounted to 2016 which represents the year of the award (subject to Commission approval) of the aid.
Table 1: Breakdown of eligible investment costs (nominal and discounted in PLN)

<table>
<thead>
<tr>
<th>PLN</th>
<th>Nominal/discounted</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buildings</td>
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<td>Discounted</td>
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<tr>
<td>Plant/machinery/equipment</td>
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<td>Discounted</td>
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<tr>
<td>Total</td>
<td>Nominal</td>
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<td>[...</td>
<td>1 352 408 000</td>
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<tr>
<td></td>
<td>Discounted</td>
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<td>[...</td>
<td>[...</td>
<td>1 300 580 824</td>
</tr>
</tbody>
</table>

Table 2: Breakdown of eligible investment costs (nominal and discounted in EUR)

<table>
<thead>
<tr>
<th>EUR</th>
<th>Nominal/discounted</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>Total</th>
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<tbody>
<tr>
<td>Buildings</td>
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<td>Plant/machinery/equipment</td>
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<td>Total</td>
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<td>315 783 968</td>
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<td>Discounted</td>
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<td>303 682 449</td>
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</table>

(15) The Polish authorities confirmed that only new assets are accepted as eligible expenditure.

2.4. Forms of aid, aid granting authorities, and national legal basis for granting the aid

(16) The notified public support is given through an aid package relying on four different instruments:

(a) A non-refundable cash grant on the basis of a grant agreement between the Ministry of Economic Development and Finance and LG Chem signed on 4 November 2016. The national legal basis for the cash grant is the Program for supporting investments of major importance to the Polish economy for the years 2011-2023 and the Act on conducting of development policy of 6 December 2006. The cash grant represents an ad-hoc measure, and its payment is conditional upon State aid approval by the Commission.

(b) The aid in the form of a sale of land and related infrastructure at preferential price (EUR 1) is provided by Agencja Rozwoju Przemysłu ("ARP"). ARP is a public entity which owns the land plot and manages the Special Economic Zone (SEZ) in which the investment in carried out. The aid was granted following a joint tender (No. 4/KB/2016) announced by ARP on 13 April 2016 for the sale of the land and for the awarding of the permit to operate in the SEZ. On 6 July 2016, LG Chem and ARP concluded a preliminary land sale agreement, which constitutes

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6 Resolution of the Council of Ministers No. 122 of 5 July 2011, as amended by the Resolution of the Council of Ministers no. 60 of 8 June 2016 regarding the Program for supporting investments of major importance to the Polish economy for the years 2011-2023

7 Published in the Journal of Laws 2016, item 383
the aid granting, but which does not transfer the ownership of the land to LG Chem. The preliminary agreement contains a stand-still clause, which makes the conclusion of the final sale agreement conditional upon the approval of the State aid package by the European Commission. The national legal basis for the land sale is the Act on Special Economic Zones of 20 October 1994\(^8\), the Regulation of the Council of Ministers of 15 December 2008 on the Tarnobrzeg Special Economic Zone\(^9\), and the Regulation of the Minister of Economy of 2 July 2009 on the entrustment of the Agencja Rozwoju Przemysłu S.A. with the granting of permits for conducting business activity within the area of Tarnobrzeg Special Economic Zone EURO-PARK Wisłosan and for carrying out inspections of fulfilment of the conditions of such permits\(^10\). The sale of land and related infrastructure at preferential price (EUR 1) represents an ad-hoc measure.

(c) A Corporate Income Tax (CIT) exemption granted by ARP on 6 July 2016 through the permit No. 314/2016 which allows LG Chem to conduct business activities in the Tarnobrzeg Special Economic Zone EURO-PARK Wisłosan (the SEZ permit) and to invoke exemptions from corporate income tax for income from the investment. The SEZ permit was issued following the tender No. 4/KB/2016 announced by ARP on 13 April 2016 for the sale of the land and for the awarding of the permit to operate in the SEZ. The national legal basis for the CIT exemption is the Act on Special Economic Zones of 20 October 1994\(^11\), the Regulation of the Council of Ministers of 15 December 2008 on the Tarnobrzeg Special Economic Zone\(^12\), the Regulation of the Minister of Economy of 2 July 2009 on the entrustment of the Agencja Rozwoju Przemysłu S.A. with the granting of permits for conducting business activity within the area of Tarnobrzeg Special Economic Zone EURO-PARK Wisłosan and for carrying out inspections of fulfilment of the conditions of such permits\(^13\) and the Regulation of the Council of Ministers of 10 December 2008 on the State aid granted to entrepreneurs operating on the basis of a permit for conducting business activity in special economic zones\(^14\). The CIT exemption constitutes an individually notifiable case of application of the aid scheme SA.40523 (2015/X)\(^15\) which was put into effect under Commission Regulation No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty\(^16\) (General Block exemption Regulation, hereinafter "GBER").

(d) A Real Estate Tax (RET) exemption based on a confirmation, conditional upon State aid approval by the Commission, issued on 20 June 2016 by the Mayor of

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8 Published in the Journal of Laws 2015, item 282  
9 Published in the Journal of laws 2015, item 1306  
10 Published in the Journal of laws 113, item 941  
11 Published in the Journal of Laws 2015, item 282  
12 Published in the Journal of laws 2015, item 1306  
13 Published in the Journal of laws 113, item 941  
14 Published in the Journal of laws 2015, item 465  
15 SA.40523 Regional aid scheme for enterprises conducting business activity in the Special Economic Zones, on the basis of a permit issued in the period from 25 December 2014 to 31 December 2020.  
16 OJ C 209, 23.7.2013
the Municipality of Kobierzyce following an application by LG Chem introduced on 9 June 2016. The national legal basis for the RET exemption is the Local Taxes Act of 12 January 1991\textsuperscript{17}, the Regulation of the Council of Ministers of 9 January 2015 on the conditions for granting exemptions from property tax and tax on means of transport, accounting for regional investment aid, aid for culture and heritage conservation, aid for sports infrastructure and a multi-purpose recreational infrastructure and aid to local infrastructure\textsuperscript{18} and the Resolution no. VI/74/15 of the Council of the Kobierzyce of 27 March 2015 concerning real estate tax exemptions for supporting new investments in the framework of regional investment aid for small, medium and large enterprises conducting business activity in the Municipality of Kobierzyce\textsuperscript{19}. The RET exemption constitutes an individually notifiable case of application of the aid scheme SA.41495 (2015/X)\textsuperscript{20} which was put into effect under the GBER. The granting of the RET exemption is conditional upon the Commission's approval of the aid.

2.5. Aid amount

(17) The total notified aid amounts to PLN 169 562 749 (EUR 39 592 488) in nominal value and PLN 154 447 045 (EUR 36 063 008) in present value. The aid is planned to be paid out in annual instalments according to the following schedule:

Table 3: Breakdown of aid amount (nominal and discounted in thousand PLN, rounded)

<table>
<thead>
<tr>
<th>In thousand PLN (rounded)</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
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\textsuperscript{17} Published in the Journal of laws 2016, item 716
\textsuperscript{18} Published in the Journal of laws item 174
\textsuperscript{19} Published in the Official Journal of the Lower Silesia Region, item 1666
\textsuperscript{20} SA.41495 - Regulation of the Council of Ministers of January 9, 2015 on the conditions of granting real estate tax exemptions and exemptions from the tax on the means of transport, which constitute regional investment aid, aid for culture and preservation of cultural heritage, aid for sports infrastructure and multifunctional recreational infrastructure, and aid for local infrastructure
Table 4: Breakdown of aid amount (nominal and discounted in thousand EUR, rounded)

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<td>[...]</td>
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<td>1 830</td>
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<td>[...]</td>
<td>36 063</td>
</tr>
</tbody>
</table>

(18) The cash grant amounts to PLN 25 million (EUR 5.8 million) in nominal value and PLN 22.9 million (EUR 5.4 million) in present value.

(19) The aid in the form of the corporate income tax exemption gives the beneficiary the entitlement to reduce the amount of corporate income tax owed for the duration of the existence of the Tarnobrzeg Special Economic Zone up to the total cumulative amount of PLN 106.9 million (EUR 24.9 million) in nominal value and PLN 94.8 million (EUR 22.1 million) in present value.

(20) The aid in the form of a real estate tax exemption amounts to PLN 8.7 million (EUR 2.0 million) in nominal value and PLN 7.8 million (EUR 1.8 million) in present value.

(21) The aid resulting from the sale of land and related infrastructure at preferential price was quantified on the basis on an evaluation report prepared by an independent expert at the time when the preliminary real estate sales agreement was signed. The independent expert determined the market price of the land in question by comparing it to past transactions (over 2014-2016) of plots of land with comparable purpose, similar location and existing infrastructure.

(22) The aid element of the land sale transaction is determined by deducting the reduced price paid by LG Chem for the acquisition of the land from the market price. The reduced price paid by LG Chem is PLN 4.28 (1 EUR) for the entire plot of land with an area of 202 934 m². The expert report estimated the market value of the respective land at PLN 28 792 000 (ca. EUR 6 722 861). The price per m² is ca. PLN 142 (ca. EUR 33.10/m²). Therefore, the aid amount related to the sale of land and related infrastructure amounts to PLN 28 791 996 (EUR 6 722 860) in both nominal and present value.

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21 At the date of notification (17 August 2016) LG Chem was already leasing the land from ARP. Poland submits that the lease is on market terms and therefore does not involve additional State aid.
2.6. Aid intensity and cumulation with other investment aid
(24) On the basis of the total eligible costs of PLN 1 352 408 000 (EUR 315 783 968) in nominal value, and the expenditure breakdown per year, the Commission has established that the discounted value of the total eligible expenditure is PLN 1 300 580 824 (EUR 303 682 449). By applying the regional ceiling of 25% Gross Grant Equivalent (GGE) and the scaling-down rules\(^{22}\) of paragraph 86 and 20(c) of the RAG, the Commission has calculated that the corresponding maximum total aid for the investment project is PLN 154 447 045 (EUR 36 063 008) in discounted value, equivalent to a maximum aid intensity of 11.88%.

(25) The Polish authorities confirmed 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.

2.7. Own contribution of the aid beneficiary
(26) The Polish authorities confirmed that the aid beneficiary would contribute at least 25% of the total eligible costs free of any public support.

2.8. Maintenance of the investment in the assisted region
(27) LG Chem committed to maintain the investment in the assisted region for at least five years following the day of completion of the investment, and to maintain the newly created jobs (at least 729 direct jobs) for at least five years after they were created.

2.9. General provisions
(28) The Polish authorities undertook to publish on a central website or on single website retrieving information from several websites at least the following information on the notified measure: aid granting decision (or a link to it), granting authority, individual beneficiary, form and amount of aid, date of granting, and the region in which the beneficiary is located. The information will be kept for at least 10 years and will be available to the general public without restrictions.

3. Information submitted by Poland for the assessment of the compatibility of the aid on the basis of the common assessment principles

3.1. Contribution to regional development (cohesion) objective
(29) The Polish authorities argue that the aided project contributes to the regional development of the Dolnośląskie region for the following reasons:

- It creates 729 jobs in the plant and some 350 jobs with suppliers and service providers.

\(^{22}\) The adjusted aid amount means the maximum permissible aid amount for a large investment project, calculated according to the following formula: maximum aid amount = R x (50 + 0.50 x B + 0.34 x C), where R is the maximum aid intensity applicable in the area concerned, excluding the increased aid intensity for SMEs, B is the part of eligible costs between EUR 50 million and EUR 100 million and C is the part of eligible costs above EUR 100 million.
• It enhances the competitiveness of European manufacturers of electric vehicles, by facilitating their inventory and supply chain management and the exchange of experience in the application of EV batteries.

• It contributes to knowledge transfer into a disadvantaged region, and introduces adequate training and the creation of qualified workforce in the region. LG Chem also plans to launch an internship program (the R&D laboratory program) for students from selected local universities23.

• The investment project will create additional business opportunities for manufacturers of core components of battery modules and packs which will be sourced locally.

• Finally, the project will generate additional regional household income; in addition, the expected average salaries of LG Chem workers [...] local salary averages24.

3.2. Appropriateness

(30) The Polish authorities argue that the mix of measures described in recital (16) is designed to address the specific handicap of the project, namely the structural cost disadvantage of Poland compared to the alternative investment in [Location 1]. The aid package directly addresses this viability gap. The Polish authorities submit that the same goal cannot be achieved by less distortive measures such as guarantees or Government backed loans since the issue at hand is not a lack of access to finance but a structural cost disadvantage between the alternative possible locations.

(31) Furthermore, given that the project is of strategic importance25 for the Polish economy, ad-hoc aids are considered appropriate because they are customized precisely to provide the necessary incentive to the investor to locate the project in Poland rather than [Location 1] and therefore increase the innovation and competitiveness of the region in which the investment is located.

(32) Finally, the Polish authorities emphasize that the beneficiary will receive the full benefit of the aid only if the aided investment project generates profits which are equal to or higher than the entitlement to corporate income tax exemption (which accounts for the largest part of the aid) during the existence of the Tarnobrzeg Special Economic Zone, therefore providing an additional incentive to ensure that the investment is viable and profitable, and maintained in the region.

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23 Such as Wroclaw University of Technology, Wroclaw School of Business, the University Of Wroclaw, the International University of Logistics and Transport Wroclaw, etc.

24 4 551 PLN in September 2016 for the Lower Silesian region.

25 The project contributes to the aims of the Program for supporting investments of major importance for the Polish economy. The program was adopted on 5 of July 2011 through the Resolution of Council of Ministers No. 122/2011, further amended by the Resolutions of the Council of Ministers no. 39 of 20th of March 2012, no. 143 of 13th of August 2013, no. 143 of 22nd of July 2014, no. 212 of 27th of October 2014, and no. 60 of 8th of June 2016.
3.3. Incentive effect

3.3.1. Formal incentive effect

Poland explained that LG Chem submitted the formal application for the acquisition of land at preferential price and the corporate tax exemption on 8 June 2016, for the real estate tax exemption on 9 June 2016, and for the cash grant on 29 June 2016. Works on the investment project started on 7 July 2016, i.e. shortly after the applications for aid had been submitted.

3.3.2. Counterfactual scenario

The Polish authorities explained that without the aid that allowed to attract the investment to Biskupice, the investment project would have been implemented in [Location 1], where the beneficiary already has another EV batteries manufacturing site which offered sufficient land for expansion and had unoccupied infrastructure (buildings). At an early stage of planning, also a greenfield investment in a location in the Czech Republic (benefitting from the same aid intensity ceiling as Biskupice) had been considered. However, the Czech location was not further pursued as its expected production costs exceeded the expected production costs of the Polish location (which had the additional advantage of being close to the location of the plant of LG Chem Poland sp. z o.o., referred to in recital (7) of this decision). A potential location in [Asia], where LG Chem Ltd had already built an EV battery production facility, was also ruled out [...].

Poland argues that the targeted market (i.e. EEA) could be served both from Poland and [Location 1] and that the production levels and the customer base would be identical.

According to the Polish authorities, the beneficiary compared the economic feasibility of both locations, taking into account the total costs of the investment, the planned production costs and revenues over a reference period of [6 to 10] years, and the terminal value of the investment (calculated as the book value of the assets) at the end of that period.

The investment costs are higher in Poland than in [Location 1], as LG Chem Ltd could use existing infrastructure and idle production capacities in its [Location 1] plant: Poland claimed in particular that in [Location 1] (1) no new building for [...] needed to be built since the existing facility had enough space to host the planned assembly lines, and (2) only [...] (in Poland: [...]) cell assembly lines would have to be built. Furthermore, since most machines and equipment are produced in [Location 1], the associated investment costs would be higher in Poland because machinery would need to be fully assembled, inspected, and tested in [Location 1], before being disassembled and shipped to Poland, and being reassembled there. The schedule of depreciation is assumed identical in both locations ([40 to 70] years for buildings, [5 to 8] years for machinery and [3 to 6] years for tooling). Since investment costs are higher in Poland, the depreciation costs and the terminal value of the investment are also higher in Poland.

26 [...]
Poland claims that the production costs are also higher in Poland than in [Location 1]. Whilst the volumes of materials needed for the production of battery cells are the same in both site locations, Poland is at a cost disadvantage because different custom duties, logistic costs, and yield rates apply. First, since a part of the raw materials used for the manufacturing of battery cells are sourced in Japan, custom duties need to be applied to the purchasing price in the Polish investment scenario, which would not apply if manufacturing takes place in [Location 1]. Second, logistic costs for the packaging and transport of the input materials are also higher in Poland as a result of longer distances from suppliers to the battery manufacturing plant. Third, the quality of production in [Location 1] will be higher than in Poland because of the longer experience of its engineers and workforce; therefore slightly higher product yield rates (lower scrapping rates) are used for [Location 1].

Poland has a significant cost advantage as regards labour costs. However, while average salaries are substantially higher in [Location 1], the required workforce (staff headcount) is assumed to be lower than in Poland due to the fact that for certain overhead functions (engineers, administrative and management personnel) existing staff available in [Location 1] can be used at no extra costs. Furthermore, performance differences between the staff in Poland and the staff in [Location 1] are factored in since in Poland it would be impossible to recruit employees with experience in the electric vehicle lithium battery industry and therefore all newly hired staff would be considered unskilled. Despite the higher staff headcount, overall labour costs in Poland are significantly lower than in [Location 1] due to the low average wages.

Poland has lower public utility costs because the local prices for the main energy inputs in the manufacturing process (electricity and liquid natural gas) are lower in Poland than in [Location 1].

Finally, Poland has lower costs of packaging and transportation of finished products because the location is in closer proximity to the potential final customers located in Europe.

Despite the longer life-expectancy of the production lines, costs and revenues were calculated only over a [6 to 10]-year period: the Polish authorities claim that it would be inappropriate to calculate them over a longer time horizon due to the unavoidable uncertainty of the evolution of the battery technology to be applied in the future and of the prices of the raw materials which constitute an important part of the running costs.

The expected revenues resulting from the operation are independent from the location of the investment. The Polish authorities explained that LG Chem Ltd discussed business cases with EU based car manufacturers considering different locations out of which to supply, including [Location 1] and Poland. While proximity of production to

27 At the time of the investment decision, the negotiations for the trade agreement between the EU and Japan had not yet been concluded. For more information please see: http://ec.europa.eu/trade/policy/in-focus/eu-japan-economic-partnership-agreement/
the European clients would be desirable, it was not a requirement when LG Chem Ltd was selected as supplier.\(^{28}\)

(44) Taking the above assumptions into account, the comparisons submitted by the Polish authorities show that, on the basis of a project lifetime of [6 to 10] years and a discounting rate of [...] applied for both locations, the net present value of the project in \([\text{Location 1}]\) is EUR 63.5 million higher than in Poland.

### 3.3.3. Decision-making process

(45) Poland explained that the decision making process within LG Chem Ltd with respect to the notified investment project involved four steps of approval by four different corporate bodies, each with different competencies.

(46) As required by LG Chem Ltd's Corporate Investment Guidelines, the investment plan was prepared by the Automotive Battery Division, and was submitted in a first step for review to the President of the Energy Solutions Company. The President of the Energy Solutions Company examined the data regarding both investment locations proposed in the report, as well as the feasibility of the project itself, and approved the project to be further proceeded during a meeting held on 22 January 2016.

(47) In a second step, the feasibility of the project was examined by LG Chem Ltd's Chief Financial Officer (CFO) who conducted a deep examination of the project's financials and profitability and approved it following a meeting held on 29 February 2016 on the condition that the project would receive the maximum state aid available in Poland.

(48) In a third step, the investment report was submitted to LG Chem Ltd's Corporate Investment Committee (CIC) where the project was discussed on 3 March 2016: the CIC approved the project with respect to its feasibility and its location in Poland, on the condition of obtaining the maximum available State aid which was considered necessary to both improve the project's profitability and decrease its financial disadvantage compared to the alternative \([\text{Location 1}]\) scenario. The decision of the CIC to locate the investment project in Poland was final, and constituted the basis for the final investment proposal which was submitted in the fourth and final step to LG Chem Ltd's Board of Directors which gave on 18 March 2016 the final greenlight to carry out the investment project on condition that the project would receive the maximum available State aid.

### 3.4. Proportionality of aid

(49) The Polish authorities point out that the viability gap between the two locations has been quantified by the beneficiary at EUR 63.5 million (in present value) which is almost twice as large as the proposed aid package of EUR 36 million (in present value). The aid is proportionate as it does not exceed the minimum necessary to incentivise LG Chem to locate the investment in Poland. Poland explained that LG Chem is prepared to bear the remaining cost disadvantage in view of certain qualitative and strategic factors in favour of Poland, such as a first mover advantage in Europe and the proximity to customers.

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\(^{28}\) At the time of the investment decision, out of [...] European clients, the supply contracts/nominations for [...] did not mention a production site, while [...] mentioned \([\text{Location 1}]\).
3.5. Avoidance of undue effects on competition and trade

(50) The Polish authorities suggest that the market for Li-ion batteries is the global market. As the investment would take place in any event, even without the aid, the aid and the location of the investment has no effect on competition. In any event, the global and EEA markets for EV batteries are set for exponential growth in the next decade. Therefore, whatever the definition of the geographic market, the aid is unlikely to negatively affect dynamic incentives or to unduly impede exit or entry on the market.

(51) The Polish authorities also emphasize that the alternative investment location is not in the EEA. Therefore, the aid would not displace investments from alternative EEA locations. The location in the Czech Republic (in a region with the same aid intensity ceiling as the Polish location) which was considered in an early phase was less viable than the investment in Poland; the aid therefore has no counter-cohesion effect in the meaning of paragraph 121 of the RAG.

(52) Finally, the Polish authorities informed that the beneficiary confirmed that, at group level, it has not closed down the same or similar activity in the EEA in the two years preceding the aid application and does not intend to close down the same or similar activity elsewhere in the EEA in the two years after the completion of the investment. The aid therefore does not lead to the relocation of activities affecting other EEA Member States.

4. ASSESSMENT OF THE AID MEASURE

4.1. Existence of aid

(53) The public support awarded by Poland in the form of a cash grant, land sale at preferential price, a real estate tax exemption and a corporate income tax exemption is given by the Member State and through State resources within the meaning of Article 107(1) TFEU.

(54) As the public support is granted to a single company, LG Chem, the measure is selective.

(55) The public support given to LG Chem will relieve LG Chem from costs which it normally would have to bear itself, and therefore the company benefits from an economic advantage over its competitors.

(56) The measure is likely to affect trade between Member States as trade between Member States exists in the EV battery sector.

(57) As the measure favours LG Chem, competition is distorted or is threatened to be distorted.

(58) Consequently, the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) TFEU.
4.2. **Legality of the aid measure**

(59) If the regional investment aid amount to be granted from all sources exceeds the notification threshold laid down in Article 4(1)(a) of the GBER, the aid is not covered by the exemption provided for by the same GBER, and has thus to be notified individually to the Commission. In the Dolnoślaskie region, the applicable threshold is EUR 18.75 million. The aid package described in recital (16) of this decision exceeds this amount, and therefore the planned aid measure cannot be exempted from notification.

(60) By making the award and disbursement of the aid conditional upon Commission approval, and by notifying the aid package the Polish authorities have respected their obligations under Article 108(3) TFEU and Article 4(1)(a) of the GBER.

4.3. **Assessment of the aid measure**

(61) As the objective of the measure is to promote regional development in an area designated in accordance with Article 107(3)(a) TFEU, and the aid is to be granted in the period between 1 July 2014 and 31 December 2020, the legal basis for its assessment is Art. 107(3)(a) TFEU, as interpreted by the RAG 2014-20.

(62) In line with the provisions of the RAG, the Commission will first establish whether the notified investment project can be found eligible for regional aid. The Commission will then verify the compatibility of the notified aid in application of the Common Assessment Principles laid down in the RAG.

4.3.1. **Eligibility of the notified project**

(63) The notified investment project is carried out in Biskupice Podgórne in the Dolnoślaskie region, an area eligible for regional aid pursuant to Article 107(3)(a) TFEU ("a-area") in accordance with the Polish Regional Aid Map. Pursuant to paragraph 34 of the RAG, in a-areas initial investments by large undertakings may benefit from regional investment aid.

(64) The investment involves setting up of a new establishment consisting in a new vertically integrated Li-ion batteries manufacturing plant.

(65) Pursuant to paragraph 20(h) of RAG an initial investment means an investment in tangible and intangible assets related to (i) the setting-up of a new establishment, (ii) the extension of the capacity of an existing establishment, (iii) the diversification of the output of an establishment into products not previously produced in the establishment, or (iv) a fundamental change in the overall production process of an existing establishment.²⁹ As the project involves the setting-up of a new establishment, it represents an initial investment within the meaning of paragraph 20(h) of RAG.

²⁹ According to paragraph 20(h)(b) of the RAG, an initial investment can also be “an acquisition of assets directly linked to an establishment provided the establishment has closed or would have closed if it had not been purchased, and is bought by an investor unrelated to the seller. The sole acquisition of shares of an undertaking does not qualify as an initial investment”.

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According to paragraph 20(e) of the RAG, and within the limits defined in that paragraph, the costs for new assets for LG Chem’s investment are in principle eligible for regional aid.  

Therefore the Commission considers that the notified project is eligible for regional aid, provided that all compatibility criteria of the RAG are met.

4.3.2. Compatibility of the aid measure

The Commission communication on state aid modernisation of 8 May 2012 called for the identification and definition of common principles applicable to the assessment of the compatibility of all aid measures. In their section 3, the RAG define and operationalise these "Common Assessment Principles" (CAP) for the purposes of regional aid.

The assessment under the CAP of the RAG takes place in three steps:

- in a first step, it is checked whether **minimum requirements** regarding credibility of counterfactual scenario, appropriateness, incentive effect, and proportionality of the aid and its contribution to regional development are met (see RAG, sections 3.2-3.6);

- in a second step, it is verified, that the aid does not lead to **manifest negative effects on competition or trade** (blacklist) that would prohibit the granting of aid, e.g. aid creating overcapacity in a sector in absolute decline, exceeding the allowable maximum aid intensity ceiling, attracting an investment that would have gone without the aid to another region with a similar or worse off socio-economic situation, or causal for the closure of activities elsewhere in the EEA (see RAG, section 3.7.2);

- in a third step, for not blacklisted aid projects meeting the minimum requirements, a **balancing test** is carried out to ensure that the contribution to regional development outweighs the negative effects on trade and competition (see RAG, sections 3.7.1 and 3.7.4).

4.3.3. Minimum requirements

4.3.3.1. Contribution to a regional objective

The RAG require the Member State to prove in concrete terms the real and sustained contribution of the aided investment to the regional development of the target region. To help Member States in this task, Section 3.2.2. of the RAG lists a number of indicators that Member States may use in order to demonstrate the regional contribution of individual investment aid notified to the Commission. To prove the real and sustained contribution, the Member State also has to show that the viability of

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30 Pursuant to paragraph 20(e) of the RAG eligible costs means, for the purpose of investment aid, tangible and intangible assets related to an initial investment, or wage costs.

31 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on EU State Aid Modernisation (SAM), COM/2012/0209 final
the project is demonstrated by a financial contribution of the aid beneficiary of at least 25% of the eligible costs\(^{32}\), provided through its own resources or by external financing, in a form that is free of any public financial support. In addition, the investment (the aided assets) has to be is maintained in the area concerned for a minimum period of five years (three years for SMEs) after completion of the investment\(^{33}\).

(71) The Dolnoślaskie 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 the Polish authorities (see section 3.1 of this decision) and considers that in particular the direct and indirect job creation effects and the knowledge transfer into the region represent a significant contribution to the development of the region and to the achievement of the EU cohesion objective.

(72) The Commission notes that the beneficiary will contribute at least 25% of the eligible costs, and commits to keep the investment for 5 years after completion of the project in the area concerned (see recitals (26) and (27) of this decision).

4.3.3.2. Need for State intervention

(73) According to Section 3.3 of the RAG, in order to assess whether State aid is necessary to achieve the objective of common interest, it is necessary to first diagnose the problem to be addressed. State aid should be targeted towards situations where aid can bring about a material improvement that the market cannot deliver itself.

(74) As established in paragraph 49 of the RAG, state intervention is considered justified for the development of the areas included in the regional aid map. The Commission notes that Biskupice Podgórne (situated in the Dolnoślaskie region) is eligible for regional aid pursuant to Article 107(3)(a) of the TFEU, which is in line with Section 3.2. of the RAG.

4.3.3.3. Appropriateness of regional aid / the aid instrument

(75) According to paragraph 50 of the RAG, the notified aid measure must be an appropriate policy instrument to address the policy objective concerned; the paragraph underlines that an aid measure will not be considered compatible if other less distortive policy instruments or other less distortive types of aid instruments are available. Section 3.4 therefore introduces a double appropriateness test. Under the first appropriateness test, Member States have in particular to identify the bottlenecks to regional development and the specific handicaps of firms operating in the target region, and to clarify to what extent bottlenecks to regional development could also successfully be targeted by non-aid measures. Under the second appropriateness test, the Member State has to indicate why – in view of the individual merits of the case - the chosen form of regional investment aid is the best instrument to influence the investment or location decision.

(76) The Commission notes that the neediness of the Dolnoślaskie region in general is confirmed by its status as a region eligible for regional aid in accordance with Article

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\(^{32}\) See paragraph 38 of the RAG

\(^{33}\) See paragraph 36 of the RAG
The Dolnośląskie region, which had a GDP per capita of 65.33% of the EU average remains amongst the disadvantaged regions of the EU. The Commission considers that infrastructural developments and other general measures alone are insufficient to reduce the given regional disparities. In this kind of economic situation, state aid has already been acknowledged by the Commission's case practice as an appropriate means to address the economic shortcomings (e.g. in the Mondi SCP decision under RAG, as well as in the AUDI decision under comparable provisions of the Communication from the Commission on the criteria for an in-depth assessment of regional aid to large investment projects).

The aid is granted in the form of a direct grant combined with land sale at preferential price and corporate income tax credit and real estate tax exemption. The aid equivalent embedded in other forms of aid, e.g. guarantees or soft loans would not be sufficient to bridge the viability gap between the two alternative investment locations and thus to offer the necessary incentive to attract the investment to the underdeveloped area. The Commission accepts that the chosen aid package constitutes an adequate combination of aid instruments to achieve the desired objective, namely to provide the amount of aid necessary to bridge the viability gap between the locations [Location 1] and Biskupice Podgórze (Poland). The Commission notes in particular that the beneficiary will receive the full benefit of the corporate income tax credit, which represents the largest part of the aid, only if the project is sufficiently profitable, as explained in recital (32) of the present decision.

Therefore, the Commission accepts that the regional investment aid measure provided in the form of a direct grant combined with land sale at preferential price, a corporate income tax credit and a real estate tax exemption represents an appropriate form of support to achieve the cohesion objective for the area concerned.

4.3.3.4. Incentive effect and proportionality of the aid amount

Incentive effect and credibility of the counterfactual scenario

According to section 3.5 of the RAG, regional aid can only be found compatible with the internal market if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in a way that it engages in additional activity contributing to the development of an area which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner or in another location. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.

Paragraphs 64-65 of the RAG set out the formal incentive effect requirements, which stipulate that works on an individual investment can start only after the application
form for aid has been formally submitted. As the beneficiary applied for aid on 8 June 2016 (for the land sale at preferential price and the corporate tax exemption), on 9 June 2016 (for the real estate tax exemption) and on 29 June 2016 (for the non-reimbursable cash grant), i.e. before start of works on the investment (7 July 2016), this condition has been respected. There is also no indication that the relevant location decision would de facto already have been irreversibly taken – e.g. in a binding agreement with a worker’s council, or in similar situations - before the company formally applied for aid. Hence, the formal incentive effect is proven.

(81) As there are many valid reasons for a company to locate its investment in a certain region, even without any aid being granted, the RAG require the Commission to verify in detail that the aid is necessary to provide a substantive incentive effect for the investment that can be proven in two possible manners (see Paragraph 61 of the RAG), that is to say that without the aid the investment would not be sufficiently profitable in any location (scenario 1), or the investment would take place in another location (scenario 2).

(82) As set out in section 3.5.2 of the RAG, the Member State must provide clear evidence that the aid has a real impact on the investment choice or on the choice of investment location. To that end, the Member State must provide a comprehensive description of the counterfactual scenario in which no aid would be granted to the beneficiary. The Commission has to verify that these alternative scenarios are realistic and credible.

(83) Paragraph 71 of the RAG indicates that for scenario 2 – which is invoked by the Polish authorities in the present case (see section 3.3.2 of this decision) - the Member State could provide the required proof of the incentive effect of the aid by providing contemporary company documents that show that a comparison has been made between the costs and benefits of locating the investment in the assisted region selected with alternative locations. For that purpose, the Member State is invited by paragraph 72 of the RAG to rely on official board documents, risk assessments, financial reports, internal business plans, expert opinions, other studies and documents that elaborate on various investment scenarios.

(84) To verify the viability of the project in a scenario 2 context, all relevant costs and revenues\(^\text{39}\) have to be taken into account, with the exception of possible subsidies available in the alternative location, where this alternative location is in the EEA.

(85) The Commission notes that the Polish authorities submitted the required information in form of comprehensive, contemporary and genuine evidence documenting the decision-making process of the beneficiary (LG Chem Ltd) concerning the investment and location decision (see section 3.3.3 of this decision). In line with LG Chem Ltd's Corporate Investment Guidelines, this process involves four steps of approval (or "gate reviews") by four corporate bodies (the President of the Energy Solutions company, LG Chem Ltd's CFO, the Corporate Investment Committee, and LG Chem Ltd's Board of Directors), each having different competences. The Commission notes that the final decision on the location of the investment takes place at the third gate review, when LG Chem Ltd's Corporate Investment Committee (CIC) examines the project and its alternative locations, and submits – based on their assessment of the project - a concrete and final investment proposal to the Board of Directors. The

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\(^{39}\) See paragraph 80 of the RAG: The revenues can be neglected if they are the same in both locations.
Board of Directors then decides on whether or not to carry out the investment in the already decided location.

(86) The provided documents confirm that the investment and location decision were taken subject to the award of aid, and that the counterfactual situation described as scenario 2 applies. The documents explain the counterfactual scenario comparing a greenfield site in Biskupice in a Polish assisted region with an existing production site of LG Chem Ltd located in [Location 1].

(87) The Commission notes that in the notification, the Polish authorities claim that the Polish location is at a cost disadvantage ("viability gap") of EUR 63.5 million compared to the [Location 1] location. The notified viability gap is calculated on the basis of a Net Present Value (NPV) of the investment project of EUR -69.4 million in Poland and of EUR -5.9 million in [Location 1].

(88) The Commission notes that there are inconsistencies between the NPVs of the two investment scenarios as presented in 2017 in the notification, and the NPVs presented in early 2016 in the reports prepared by LG Chem Ltd's staff and submitted to LG Chem Ltd's corporate bodies as basis for the investment and location decisions.

(89) According to paragraph 68 of the RAG, a counterfactual scenario is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision.

(90) The Commission considers that the relevant NPVs reflecting the real viability gap between the two alternative investment locations prevalent at the time of the decision are the ones presented at the level of the 3rd gate review (see table 5 below) when the final location decision was made. The report presented to the CIC contains two different NPV figures for the implementation of the project in Poland which are in part inconsistent with the figures presented by the Polish authorities in the notification. The NPV figure for Poland contained in the body of the CIC report is the same as in the notification (EUR -69.4 million), while the NPV presented in the Appendix to the CIC report is EUR 11 million lower (i.e. EUR -58.4 million). Furthermore, the NPV in [Location 1] is only presented in the appendix to the CIC report and is quantified at EUR -12.3 million, differing from the NPV for [Location 1] of EUR -5.9 million presented in the notification. Only the appendix of the CIC report contains a comparison of the two alternative locations.
Table 5: The main steps of LG Chem's decision making process

<table>
<thead>
<tr>
<th>&quot;Gate review&quot;</th>
<th>Decision competence</th>
<th>NPV values presented for</th>
<th>Viability gap</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Poland</td>
<td>[Location 1]</td>
</tr>
<tr>
<td>Review by the President of the Energy Solution Company, January 2016</td>
<td>- review of location and economic feasibility</td>
<td>EUR -60.9 mil (in the body of the report)</td>
<td>EUR -46.1 mil (in the appendix to the report);</td>
</tr>
<tr>
<td></td>
<td></td>
<td>EUR -58.4 mil (in the appendix to the report);</td>
<td>EUR -12.3 mil (in the appendix to the report);</td>
</tr>
<tr>
<td>Review by the CFO of LG Chem, February 2016</td>
<td>- review of economic feasibility</td>
<td>EUR -69.4 mil</td>
<td>No information</td>
</tr>
<tr>
<td>Review by the Corporate Investment Committee (CIC)</td>
<td>- final location decision</td>
<td>EUR -69.4 mil (in the body of the report)</td>
<td>EUR 46.1 mil (in the appendix to the report);</td>
</tr>
<tr>
<td></td>
<td></td>
<td>EUR -58.4 mil (in the appendix to the report);</td>
<td>EUR -12.3 mil (in the appendix to the report);</td>
</tr>
<tr>
<td>Final decision by the Board of Directors (BoD)</td>
<td>- YES/NO decision</td>
<td>EUR -69.4 mil (in the body of the report)</td>
<td>EUR -5.9 mil</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No information</td>
<td>No information</td>
</tr>
</tbody>
</table>

(91) To clarify this inconsistency, the Polish authorities explained that the appendix to the CIC report had failed to reflect the correct NPV figure for Poland, as due to an oversight, the appendix had not been updated to reflect the changes agreed during the previous gate reviews. The changes had been reflected only in the body of the report, and the correct NPV figure for Poland of EUR -69.4 million was presented in the 2nd, 3rd (in the body of the report), and 4th and final gate review. As regards the differences in the NPV figures for [Location 1] in the report (appendix) submitted to the CIC and the notification, it was explained that certain changes regarding production costs (resulting in an increase of the NPV of the project in [Location 1] from EUR -12.3 million to EUR -5.9 million) were introduced after the CIC took the final location decision but before the Board of Directors confirmed the final investment decision, so in between the 3rd and 4th gate review.

(92) The Commission accepts the explanations of the discrepancies between the NVP figure for Poland identified in the appendix to the CIC report and the equivalent NPV figures presented in the notification and in the body of the CIC report. The Commission considers therefore that the NPV figure for Poland shown in the body of the CIC report is correct, and not the one presented in the appendix. This appears justified because both at the preceding gate review (CFO) and the following gate review (LG Chem Ltd's Board of Directors) LG Chem's decision makers were presented with the same NPV for the Polish investment scenario as presented in the body of the report. Therefore, the Commission decides that the genuine NPV figure for Poland is EUR -69.4 million, as presented in the notification.

(93) As regards the NPV of the project in [Location 1], the Commission considers that the NPV which reflects the genuine assessment of the costs and benefits of the investment at the moment when the location decision was taken is EUR -12.3 million, as this is the only value presented to LG Chem's Corporate Investment Committee (in the
appendix to the CIC report). The changes introduced after the third gate review and presented in the notification could not have had an influence on the location decision, which had been already taken by the CIC.

(94) Therefore, the Commission considers that by taking into account a NPV in Poland of EUR -69.4 million and a NPV in [Location 1] of -12.3 million, the resulted reconstructed genuine viability gap (difference between the genuine NPVs for the two locations) is of EUR 57.1 million.

(95) The Commission also notes that the calculations and cost estimates for the two options were carried out at the same level of accuracy and are based on the same types of cost items and characteristics of the investment project. Details of these cost calculations - which constitute business secrets - both for investment and operating costs, were made available and explained to the Commission.

(96) According to the RAG, the Commission is required to verify whether the underlying parameters are realistic.

(97) The Commission notes that a comparative analysis of the investment costs for the two counterfactual scenarios shows considerable differences between the levels of capital expenditures between the two alternative scenarios. While capital expenditures in Poland amounts to EUR [300 to 400] million, they are only EUR [150 to 250] million in [Location 1]. To justify this difference of EUR 125 million, the Polish authorities explained (see section 3.3.2 of this decision) that the costs of most production lines are slightly higher in Poland because they are produced and tested in [Location 1] and then disassembled and shipped to Poland. In addition, in [Location 1] the beneficiary can use free land and unused (parts of) buildings available on their existing [Location 1] site. The investment costs for the land and buildings have already been incurred and are therefore disregarded by the beneficiary in the [Location 1] scenario. The Commission considers that these claims, which together explain about EUR 85 million of the difference in investment costs, are realistic. The Commission notes in particular that the beneficiary has provided appropriate proof of the existence of sufficient unoccupied land and floor space in existing buildings to accommodate the implementation of the investment project.

(98) The remaining part of the difference in investment costs (about EUR 40 million) was explained by the Polish authorities with the argument that the beneficiary's plant in [Location 1] has idle production capacities corresponding to at least the production capacity of [...] cell assembly line. The notification documents show that the capacity utilization rate of LG Chem's EV battery factory in [Location 1] which had [...] cell assembly lines in 2016, was expected to grow progressively from [60 to 80%] in the second quarter of 2016 to [65 to 85%] by the end of 2020. Therefore, whilst the beneficiary would have to build [...] cell assembly lines in Poland, only [...] additional cell assembly lines would have to be installed in [Location 1], which would allow LG Chem to reduce its investment costs by about EUR 40 million.

(99) The Commission noted that the claims of spare production capacity presented in the notification (and described in recital (98) above) are not supported by genuine internal company documents presented to LG Chem's internal bodies. These genuine
documents instead show that the capacity utilization rates of the factory were expected to reach 85 to 100% by the end of 2020, leaving no room to avoid an investment into [...] assembly line.

(100) The Polish authorities invoked the argument that the identified discrepancies between the capacity utilization figures presented in the notification (65 to 85% by 2020) and to LG Chem Ltd's internal decision making bodies (85 to 100% by 2020) exist as the relevant estimates relied on different assumptions. More specifically, Poland explained that the (lower) capacity utilization rates presented in the notification were based on the assumption that the company would implement in its plant two measures, namely:

(i) Debottlenecking of existing capacities, by introducing overall efficiency and equipment rationalization enhancing measures, which would allow increasing capacity of the plant without adding cell assembly lines, at no extra costs;

(ii) Converting [...] of the existing [...] cell assembly lines in [Location 1] from one-way manufacturing to two-way manufacturing. The [...] one-way manufacturing assembly lines present in the plant at the time of the notification were seriously underutilised (30 to 60% capacity utilization). The corresponding conversion costs, consisting mainly in the re-tooling of the assembly lines, are quantified by the Polish authorities at about EUR 20 million [...] These costs were however not included in the investment costs for the [Location 1] counterfactual investment scenario.

(101) The Commission considers that the presented counterfactual scenario – relying on the hypothesis of spare production capacities in LG Chem's plant - can only be considered realistic and credible if the investment costs needed to implement the two measures described above - and estimated to amount to about EUR 20 million – are factored in into the calculation of the investment costs for [Location 1]. The Commission considers that in the absence of these measures, the location would not have the spare capacity claimed in the notification and therefore the project would not be able to generate the levels of production and revenues estimated.

(102) In conclusion, the Commission considers that the underlying parameters for the estimation of the investment costs of the location are realistic only if they include the costs associated with the implementation of measures (i) and (ii) described under recital (100) above. The investment costs in [Location 1] have therefore to be increased by about EUR 20 million. The correction on the reconstructed viability gap of EUR 57.1 million (as described in recital (94) above) would result roughly in a reduction by the same amount of EUR 20 million.


41 One-way manufacturing is used to produce battery cells for hybrid and plug-in vehicles.

42 Two-way manufacturing is used to produce battery cells for pure electric vehicles.

43 In order to produce cells for the EU clients, two-way manufacturing is needed; one-way manufacturing cannot be applied. All cell assembly lines in the Polish investment scenario are based on two-way manufacturing.
The Commission considers that the other cost elements underlying the comparison of the two alternative investment scenarios appear realistic and credible:

First, since investment costs are overall higher in Poland than in [Location 1], so are the total depreciation costs. As a consequence, the terminal value of the assets at the end of the [6 to 10]-year period would also be higher in Poland.

Second, the production costs (calculated over a [6 to 10] year period) would be on the whole higher in Poland than in [Location 1]. The cost disadvantage in Poland is mainly due to higher costs of the materials used, for the reasons presented by Poland and described in recital (38) of this decision. On the other hand, as submitted by Poland (see recitals (39), (40), and (41) of this decision) Poland has a cost advantage as regards labour costs, energy costs, as well as for outbound logistics costs (packaging and transportation of the finished products).

Finally, the Commission accepts that the revenues from the investment do not differ between the two locations, and notes the evidence provided that proximity of production was not required by European car manufacturers when LG Chem Ltd decided on the location.

Therefore, the Commission concludes that a realistic reconstructed corrected viability gap to the detriment of Biskupice Podgórne which reflects the prevalent factors at the moment of the investment decision would be of about EUR 37.1 million in present value.

The Commission considers that the internal detailed calculations of the company - corrected as proposed above - show that [Location 1] is a realistic and – in the absence of aid - more viable location.

Hence, with regard to the substantive incentive effect, the Commission considers - based on genuine, contemporary, and realistic evidence submitted by the Polish authorities - that the aid effectively has an impact on the investment’s location choice. By reducing the viability gap in favour of [Location 1] the aid was decisive in triggering location decision in favour of Biskupice Podgórne, Poland.

In view of the above, the Commission considers that the aid meets the formal incentive requirements and has real (substantive) incentive effect.

Proportionality of the aid amount

According to section 3.6 of the RAG, the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned. For scenario 2 situations, according to paragraph 106 of the RAG, the Member State must demonstrate the proportionality on the basis of documentation such as that referred to in paragraph 72 of the RAG.

As a general rule, notified individual aid will be considered to be limited to the minimum, if the aid amount corresponds to the net extra costs ("net-extra cost"

44 At the moment of the investment and location decision, out of [...] European clients signed by LG Chem, the supply contracts/nominations for [...] did not mention a production site and [...] mentioned [Location 1].
approach) of implementing the investment in the area concerned, compared to the
counterfactual scenario in the absence of aid. Pursuant to paragraph 80 of the RAG, in
scenario 2 situations (location incentives), the aid amount should not exceed the
difference between the net present value of the investment in the target area with the
net present value in the alternative location, while taking into account all relevant
costs and benefits.

(113) The Commission notes that the Polish authorities submitted the required genuine
documentation, and considers that, on the basis of the reconstructed and corrected
viability gap (described in recital (107) of this decision) the proportionality test is met,
because the notified aid of EUR 36 million in present value does not exceed the
calculated cost disadvantage of EUR 37.1 million between the two possible locations. The
viability gap due to the higher costs would be almost fully covered by the notified
aid.

(114) As the cap resulting from the "net extra-cost" approach is not exceeded, the
Commission considers that the proportionality of the aid is demonstrated45.

4.3.3.5. Conclusion as to the respect of the minimum requirements

(115) The assessment in recitals (70) to (114) of this decision allows concluding that all
minimum requirements laid down in sections 3.2 to 3.6 of the RAG are met.

4.3.4. Manifest negative effects on competition and trade

(116) Section 3.7.2 of the RAG explicitly list a series of situations where the negative
effects on trade and/or competition manifestly outweigh any positive effects, and
where regional aid is prohibited:

4.3.4.1. Manifest negative effect on trade: The (adjusted) aid intensity ceiling
is exceeded

(117) A manifest negative effect would exist according to paragraph 119 of the RAG where
the proposed aid amount exceeds, compared to the eligible (standardised) investment
expenditure46, the maximum (adjusted) aid intensity ceiling that applies for a project
of the given size, taking into account the required "progressive scaling down"47.

(118) The applicable regional aid ceiling for large undertakings in the Dolnośląskie region
area is 25%. In view of the expected higher distortion of competition and trade, the
maximum aid intensity for large investment projects must be scaled down using the
mechanism as per paragraph 20(c) of the RAG. The planned total eligible expenditure
in present value for the notified investment project is EUR 303 682 449 million. In
application of the scaling down mechanism of paragraph 20(c), this leads to a

45 The Commission carried out the "double cap" analysis in this decision, which is the combination of the next
extra cost approach ("aid limited to the minimum necessary", see paragraph 79 of the RAG) and the
maximum allowable ceilings (see paragraph 107 of the RAG). The analysis in recital (118) of this decision
shows that the maximum allowable aid intensity is also not exceeded.

46 The standardised eligible expenditure for investment projects by large firms is described in detail in section
3.6.1.1 and 3.6.1.2 of the RAG 2014-20.

47 See paragraph 86 and 20(c) of the RAG
maximum allowable aid intensity of 11.88% GGE (Gross Grant Equivalent) for the project. The notified aid has an aid intensity of 11.88% which is thus not higher than the regional aid ceilings corrected by the scaling-down mechanism.

(119) Sections 3.6.1.1 and 3.6.1.2 of the RAG explain which investment costs can be taken into account as eligible costs. In the present case, section 3.6.1.1 applies as the eligible costs for the proposed investment aid are calculated on the basis of investment costs. The acquired assets will be new and no leasing costs or immaterial assets are taken into account. The investment concerns an initial investment in the form of setting-up of a new establishment.

(120) Thus, the Commission notes that the eligible costs are established in accordance with the RAG.

(121) As the aid intensity does not exceed the maximum allowable and is applied to eligible expenditure established in line with the relevant rules, and as the notification excludes the combination of the notified aid with other aid, the basic requirement identified in paragraphs 107 and 119 of the RAG - that the maximum aid intensities are not exceeded - is met; thus the level playing field required by paragraph 81 of the RAG is ensured. Moreover, in view of recitals (112) and (113) above, the double cap condition laid down in paragraph 83 of the RAG, resulting from the combination of the net extra cost approach ("aid limited to the minimum necessary", see paragraph 80 of the RAG and section 4.3.3.4 of this decision) with the allowable ceilings is also respected.

4.3.4.2. Manifest negative effect on competition: The aid creates overcapacity in a market in absolute decline

(122) According to paragraph 120 of the RAG, a manifest negative effect arises also where the investment aid creates capacity in a market in absolute decline, as such aid is likely to crowd out competitors, or to prevent low cost firms from entering, and risks weakening incentives for competitors to innovate. This results in inefficient market structures which are also harmful to consumers in the long run.

(123) This verification is however only necessary where additional capacity is created on the relevant geographic market by the aid. Where the investment would have happened in any event ("scenario 2") in the same geographical market, the aid – provided it is limited to the minimum necessary to change the location decision - influences only the location decision, and additional capacity would have come on the relevant geographic market independent of it. Therefore, this verification will normally be required only in Scenario 1 situations or in those Scenario 2 situations where the alternative locations (i.e. the target region and the more viable region for the

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48 Pursuant to paragraph 20(e) of the RAG, eligible costs means for the purpose of investment aid, tangible and intangible assets related to an initial investment or wage costs.

49 See RAG, paragraph 94.

50 See paragraph 98 of the RAG

51 See paragraph 100 of the RAG

52 See paragraph 120 of the RAG
implementation of the investment project) are situated in different geographic markets\(^53\).

(124) In order to determine whether this verification is necessary in the case at hand, the Commission has to assess and establish whether the two alternative locations are situated in different geographical markets. If the locations under consideration are in fact situated in different geographical markets, or if the Commission leaves open the question whether the two locations are situated on the same or different geographical markets, the "overcapacity in a declining market" test needs to be carried out.

(125) To verify whether the investment addresses a market in absolute decline – if the test is necessary - the relevant product and geographic market needs to be defined. A market is in absolute decline\(^54\) if it shows over an appropriate reference period a negative growth rate. The average growth rate of the market concerned (apparent consumption data or sales data) is normally measured over the last three years before the start of the project or on the basis of projected growth rate in the coming three to five years.

**Product concerned**

(126) The product concerned is normally the product covered by the investment project. However, when the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be the downstream product.

(127) In the case at hand, the Commission considers that the products concerned by the investment project are the battery cells. These can be sold directly to car makers, or they can be first assembled into battery modules and possibly further into battery packs, and then sold to the car makers.

(128) Given that it is the customers who decide whether LG Chem should supply them with battery cells or modules or packs, and given that battery cell production constitutes the most substantial part of the value added of the final product, it appears reasonable to focus on the market of battery cells only. In any event, the market for battery cells is an appropriate proxy for the downstream products of battery modules and battery packs that follow the same market trends.

(129) Therefore, the Commission considers that the battery cells represent the product concerned by the investment, and will assess the competition effects of the aid at the level of the market for battery cells.

**Relevant product market**

(130) The Polish authorities submit that besides the application in the automotive industry (for electric vehicles), Li-ion battery cells can find other uses, most notably in battery

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\(^{53}\) See paragraph 139 the RAG

\(^{54}\) It might also be necessary to verify whether an absolute decline is not hidden behind the effects of business cycle effects on the product market concerned, or caused by other exceptional effects that would bias the results of the standard approach. Constantly sinking product prices might be an indicator for a situation of absolute decline, or simply the result of substantial and continuous technical progress allowing to reduce per unit production costs.
energy storage systems (ESS). Battery cells for energy storage systems (ESS) can be generally manufactured, at little additional costs, in the same facility as the cells for the automotive segment, thus the capacity LG Chem intends to install in Poland could be used to supply cells for the ESS market as well. However, the Polish authorities explained that LG Chem has no specific plans to this effect. Furthermore, the planned installed capacity of LG Chem in Poland was already almost fully contracted to supply the automotive sector for the entire reference period of the project. Therefore, the Commission considers for the purpose of the state aid assessment for this decision that the relevant product market is the market for battery cells for electric vehicles (measured in GWh).

(131) On this basis, the Commission verified whether the aid creates overcapacity in a market in absolute decline in this particular market.

Relevant geographic market

(132) The Polish authorities submit that the relevant geographic market is global, as LG Chem Ltd has been able to negotiate contracts globally with a substantial number of car manufacturers, including many European ones. Some of these European clients are to be supplied out of Poland, while others from the other LG Chem Ltd battery manufacturing facilities in [Asia] and [Location 1]. Furthermore, the product itself can be shipped easily which constitutes an additional argument militating in favour of a global geographical market.

(133) For the purpose of the present decision, the Commission decided to leave the question of the exact definition of the geographic market open, and to proceed with the assessment of two plausible markets, the EEA market and the global market. 55 Thus, the Commission has to verify whether the aid creates overcapacity in a market in absolute decline at the level of the market for EV battery cells of the EEA, and at global level.

Testing whether the aid creates overcapacity in a market in absolute decline

(134) The Polish authorities submit that there is a widespread agreement that the demand for EV batteries will grow exponentially, both globally and in the EEA, in the following 5-10 years, driven to a large extent by environmental regulations aimed at curbing greenhouses gases and/or local pollutants, as well as related government subsidies and incentive programs.

(135) On the basis of a 2015 report by the B3 Corporation, the Polish authorities argue that the global demand for EV batteries (measured in terms of total battery capacity) has increased almost tenfold between 2010 and 2015 and is expected to grow by a further factor of five until 2020 and by a factor of eight or nine until 2025.

(136) The Commission also notes that the forecast of EEA demand provided by the Polish authorities in 2018 expects an increase by a factor of 20 from 2016 to 2020 and by a further factor of 3 by 2023.

55 In fact, a definite definition of the geographic market is not necessary in the given case in view of the general evolution of the global and the EEA market for battery cells for EV use.
Therefore, the Commission concludes that – whatever the definition of the geographic market - the aid does not contribute to, or reinforces the creation of overcapacity in a market in absolute decline, thus it does not have a manifest negative effect on competition.56

4.3.4.3. Manifest negative effect on trade: Counter-cohesion effect

Paragraph 121 of the RAG prohibits an EEA region with a lower project-specific viability to participate in "subsidy races" to the detriment of equally weak or worse-off regions.57

Poland confirms – and this is reflected in the genuine contemporary company documents - that the aid beneficiary considered in the final decision making process only one other alternative location for the investment project, namely [Location 1], which is not in the EEA. At an early stage of planning, also a greenfield investment in a location in the Czech Republic (same aid intensity ceiling) had been considered. However, the Czech location was not further pursued as its expected economic viability was lower than that of the Polish location. Therefore, the Commission considers that the aid has no anti-cohesion effect.

4.3.4.4. Manifest negative effect on trade: Closure of activities elsewhere/relocation

Pursuant to paragraph 122 of the RAG, where the beneficiary has concrete plans to close down, or actually closes down the same or a similar activity in another area in the EEA and relocates that activity to the target area, if there is a causal link between the aid and the relocation, this will constitute a negative effect that is unlikely to be compensated by any positive elements.

The Polish authorities and the aid beneficiary declared that the beneficiary has not closed down the same or similar activity in the EEA in the two years preceding the application for aid, and does not have any concrete plans to do so within two years after completion of the investment. The Commission therefore considers that the aid is not causal for any closure and relocation.

56 The market for battery cells for ESS shows also substantive growth, both at EEA and global level. The Polish authorities provided market data which shows that the ESS global market is expected to grow in value from EUR 0.8 billion in 2015 to EUR 4 billion in 2020. In terms of installed ESS capacity, the global market is expected to grow from 2 GWh to 9.3 GWh, and the EEA market is expected to grow from 0.4 GWh to 4 GWh, from 2015 to 2020. Therefore, a wider definition of the product market, to include cells for EV and ESS, would lead to the same result that the market is not in absolute or relative decline, and thus that the aid – independent of the definition of the geographic market as EEA or global market, has no undue negative effect on competition

57 According to paragraph 121 of the RAG, the counter-cohesion effect resulting from aid to the detriment of a weaker or similarly weak EEA region 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.
Conclusion as to the existence of manifest negative effects on competition and trade

(142) The assessment in recitals (116) to (141) of this decision allows for the conclusion that the aid has no manifest negative effect on competition or trade in the meaning of section 3.7.2. of the RAG.

4.3.5. Balancing of positive and negative effects of the aid

(143) Paragraph 112 of the RAG lays down the following: "For the aid to be compatible, the negative effects of the measure in terms of distortion of competition and impact on trade between Member states must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest. Certain situations can be identified where the negative effects manifestly outweigh any positive effects, meaning that aid cannot be found compatible with the internal market."

(144) The assessment of the minimum requirements showed that the aid measure is appropriate, that the counterfactual scenario presented is credible and realistic, that the aid has incentive effect and is limited to the amount necessary to change the location decision of the beneficiary, even when taking into account the corrections to the viability gap calculations introduced by the Commission in the present decision. By triggering the location of the investment in assisted region, the aid contributes to the regional development of the Dolnośląskie region. The assessment also showed that the aid has no manifest negative effect: it does not lead to the creation or maintenance of overcapacity in a market in absolute decline, or to excessive effects on trade, it respects the applicable regional aid ceiling, it has no counter-cohesion effect, and it is not causal for the closure of activities elsewhere and their relocation to Biskupice Podgórze.

(145) Undue negative effects on competition - other than contribution to the creation of overcapacities in a market in absolute decline - that are to be taken into account in the remaining balancing if the investment takes place in a scenario 2 context in two distinct geographic markets are identified in paragraphs 114, 115 and 132 of the RAG and concern the creation or reinforcement of a dominant market position or the creation or reinforcement of overcapacities in an underperforming market (even if this market is not in absolute decline).

(146) According to paragraph 132 of the RAG, a source of potential negative effects on product markets can be in the cases where the aid beneficiary holds substantial market power.

(147) According to paragraph 138 of the RAG, in order to evaluate the existence of substantial market power, the Commission will take into account the position of the beneficiary over a period of time before receiving the aid and the expected market position after finalising the investment.

(148) LG Chem Ltd’s market share both worldwide and in the EEA lies at present below 25%, and is not likely to exceed that threshold. In view of the fierce competition between the players in the sector, and ongoing investment by all players, there is no indication that LG Chem Ltd could achieve a dominant market position in the global or EEA market. In any event, as the investment would take place independent of the aid, and as the sales flowing from the investment target the same clients that would
have been targeted absent the aid, there is no risk that the aid could lead to, or reinforce a dominant market position of LG Chem.

(149) There is also clear evidence that the market is not in relative decline but growing exponentially (see recitals (135) and (136) of the present decision). Therefore, the Commission considers that there is no risk that the aid could lead to the creation or reinforcement of overcapacities in an underperforming market.

(150) In the light of the above considerations, and as the aid amount is limited to the amount necessary to change the location decision and thus does not make available more resources to the aid beneficiary than needed to trigger the location decision ("free money"), the Commission considers that the aid has no undue negative effect on competition.

(151) As the aid respects the applicable regional aid ceiling, and the measure has no counter-cohesion or relocation effects, the Commission considers that its effects on trade are minor and not contrary to the common interest.

Conclusion as to the overall balancing

(152) As the aid meets all minimum requirements, has no manifest negative effects, and the analysis in recitals (116) and (141) shows that it has no undue negative effect on competition, and only very limited effects on trade, the Commission considers that the substantial positive effects of the aid on the regional development of the Dolnośląskie region, and in particular the employment, knowledge transfer, and income generation effects of the investment, clearly outweigh any negative effects.

4.3.6. Transparency

(153) In view of para.II.2 of the Transparency Communication from the Commission Member States must ensure the publication on a comprehensive State aid website, at national or regional level, of a full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it; the identity of the granting authority or authorities; the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME/large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level). Such information must be published after the decision to grant the aid has been taken, must be kept for at least ten years and must be available to the general public without restrictions.

(154) The Commission notes that the Polish authorities confirmed that all requirements concerning transparency set out in para.II.2 of the Transparency Communication will be respected.

5. CONCLUSION

(155) The Commission has accordingly decided:

- not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(a) of the Treaty on the Functioning of the European Union.

The Commission reminds the Polish authorities of their commitment to fulfil the reporting obligations.

The Commission further reminds the Polish authorities that all plans to modify that aid measure must be notified to the Commission.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:


Your request should be sent electronically to the following address:
European Commission,
Directorate-General Competition
State Aid Registry
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission