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**Subject: State Aid SA.63328 (2021/N) – Hungary  
LIP – regional investment aid to SK On Hungary Kft.**

Excellency,

**1. PROCEDURE**

- (1) On 4 June 2021, Hungary pre-notified to the Commission its intention to grant regional aid to SK Battery Hungary Kft. (“SKBH”) for a large investment project consisting in setting up a new battery manufacturing plant in Iváncsa, located in Fejér county in Central Transdanubia (the “aid measure”). In the meantime, SKBH changed its name to SK On Hungary Kft. (“SKOH” or the “beneficiary”).
- (2) On 28 June 2021, a meeting took place between the Commission services, the Hungarian authorities, and representatives of the beneficiary. On 28 July 2021, the Commission requested further information from the Hungarian authorities, which Hungary provided on 30 September 2021. On 19 November 2021, the

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Commission sent a second request for information and thereby also invited the Hungarian authorities to notify the aid measure.

- (3) By electronic notification, registered on 16 December 2021, Hungary formally notified the aid measure to the Commission. As Hungary had indicated in the notification, Hungary supplemented the notification with further information by letter of 28 January 2022.
- (4) By letter of 11 February 2022, the Hungarian authorities agreed to waive their rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958<sup>1</sup> and have the present decision adopted and notified in the English language.

## **2. DETAILED DESCRIPTION OF THE AID MEASURE AND THE INVESTMENT PROJECT**

### **2.1. Objective of the aid measure**

- (5) Hungary intends to promote the economic development of a disadvantaged area by providing regional aid for a large investment project, code-named “Big Factory”. The project consists in the establishment of a new electric vehicle (“EV”) battery manufacturing plant in Ivánca (the “Investment Project”). Ivánca is a municipality located in the NUTS 3 region of Fejér, part of the NUTS 2 region of Central Transdanubia (HU 21 - Közép-Dunántúl), which is eligible for regional aid under Article 107(3)(a) TFEU, with a standard regional aid ceiling of 35 % under the Hungarian regional aid map 2014-2020<sup>2</sup>.
- (6) The Investment Project aims to create at least 1 900 direct jobs in the region. In addition, Hungary estimates that the Investment Project will create at least 950 indirect jobs.

### **2.2. The beneficiary**

- (7) The recipient of the aid is SKOH (previously SKBH), which is fully owned by SK On Co. Ltd. (“SKO”), a fully owned subsidiary of SK Innovation (“SKI”). SKI belongs to the energy and chemicals sector within the holding SK Corporation (“SK Group”), a global South Korean company active in energy and chemicals, semi-conductors and materials, information and communications technology, logistics and services and bio sectors. It holds 33.4 % of SKI’s shares. SKI acts and makes decisions independently from SK Group, which does not exercise direct control over SKI. SKI had 13 069 employees worldwide in 2020. The worldwide turnover of SKI as of 2020 was EUR 23.9 billion.
- (8) SKI’s activities include those in the field of battery manufacturing for EV. SKI started research and development of batteries for vehicles in 1992. It began with

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<sup>1</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

<sup>2</sup> Commission decision C(2014) 1298 final of 11 March 2014 in case SA.37718 (2013/N), OJ C 172, 6.6.2014, p. 1, as amended by Commission decision C(2016) 6427 final of 11 October 2016 in case SA.46346 (2016/N), OJ C 4, 6.1.2017, p. 1, and as prolonged by Commission decision C(2020) 6769 final of 7 October 2020 in case SA.58164 (2020/N), OJ C 430, 11.12.2020, p. 1.

energy storage battery business, which SKI thought was necessary to survive in the future given a decreasing attractiveness of petroleum business and increased environmental awareness. The first production of batteries started in 2006. The Hungarian authorities explained that SKI's technological prowess is highly recognised by major global automakers, and SKI has built solid relationships with Volkswagen AG, Daimler AG, BAIC Group, and Hyundai Motor Group. Of the currently three types of battery cells commonly used in the market, SKI has selected the production of pouch cell batteries. SKI pursues a global expansion strategy focussing on the main automotive production markets, i.e., Asia, Europe, and North America. A large part of the targeted production capacities for battery manufacturing will be located in Europe.

- (9) SKI owns SKO, which, since the spin-off of the battery business on 1 October 2021, now operates the battery business of SKI. SKOH forms part of this battery business, as a fully owned subsidiary of SKO.
- (10) The Investment Project is the third aided investment carried out by SKI in Hungary in recent years for EV battery plants. The first investment consisted in the establishment in 2017 of a first battery plant in Europe, in Komárom, through SKBH ("First Komárom Plant"). This investment was aided under the General Block Exemption Regulation ("GBER")<sup>3</sup>. In 2019, SKI established an additional battery manufacturing plant in Komárom ("Second Komárom Plant") through SK Battery Manufacturing Kft. ("SKBM") – a fully owned subsidiary of SKO. The aid for the Second Komárom Plant (located next to the first one) was approved by Commission Decision of 29 June 2021 in case SA.58633<sup>4</sup> ("SKBM Decision").
- (11) The Hungarian authorities confirmed that the beneficiary is not an undertaking in difficulty as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty<sup>5</sup>.

### **2.3. The investment project**

#### *2.3.1. The notified project*

- (12) The Investment Project consists in the establishment of a new manufacturing plant ("Third Battery Plant") that will be dedicated to the manufacturing of Lithium ion ("Li-ion") battery pouch cells and battery modules for use in EV<sup>6</sup>. Pouch cells allow for lighter and thinner cell fabrication and design flexibility in order to fit different capacities and space requirements for different EV models. Electric charge is stored in the cells by Li-ions, which glow to the graphite anode

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<sup>3</sup> Commission Regulation (EU) 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 (OJ L 187, 26.6.2014, p. 1).

<sup>4</sup> Commission Decision C(2021) 4495 final of 29 June 2021 in case SA.58633 (2020/N) – Hungary – LIP – regional investment aid to SKBM Hungary, OJ C 90, 25.2.2022, p. 1.

<sup>5</sup> OJ C 249, 31.7.2014, p. 1.

<sup>6</sup> While the plant will manufacture cells and assemble them into modules, the generic wording "battery plant" is used throughout this Decision.

when charged and back to the metal-oxide cathode by discharge. The production of Li-ion pouch cells takes place in three technical steps: (1) electrode manufacturing, (2) assembly, and (3) formation.

- (13) The Third Battery Plant will be located in Ivánca, which is about 100 km from Komárom where SKI's other Hungarian battery plants are located. The Third Battery Plant will produce batteries for the same EV manufacturer as the Second Komárom Plant (see recital (14)), and for other original equipment manufacturers ("OEM"s).
- (14) With a planned annual capacity of 30 gigawatt hours ("GWh"), the plant will be larger than the First Komárom Plant and the Second Komárom Plant. This planned capacity changed several times throughout the planning of the Investment Project. After the site selection process for the Second Komárom Plant was finalised end of February 2019, in March 2019, SKI started discussions with the same potential Joint Venture ("JV") partner (an OEM) as for the Second Komárom Plant, on the selection of a site in Europe for the construction of a third battery plant since an additional capacity of [5-10]\* GWh was needed for the remaining part of the JV partner's EV program. To secure economies of scale and in the light of SKI's discussions with several other OEMs to secure further production capacities, the initial target capacity of the third plant was [10-25] GWh/year.
- (15) The Investment Project then involved two strategic reassessments. A first strategic reassessment took place from [month in the fourth quarter of] 2019 to [month in the first quarter of] 2020, triggered by the need to allocate investment resources more efficiently. Following that first strategic reassessment, the envisaged annual production capacity of the Investment Project was increased from [10-25] GWh to [20-30] GWh.
- (16) Following the second strategic reassessment, from [month in the third quarter of] to [month in the fourth quarter of] 2020, the envisaged annual production capacity of the Investment Project was increased to 30 GWh<sup>7</sup>, in order to proactively respond to the rapidly growing European market demand. According to the Hungarian authorities, the annual capacity of [25-35] GWh represents the optimal scale ensuring investment efficiency because [...] costs<sup>8</sup> decrease per GWh. This positive effect stops to improve when the plant is bigger than 30 GWh.

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<sup>7</sup> Based on an initial estimate of [25-30] GWh by [...], which was increased at the end of [month in the fourth quarter of] 2020 after [...].

<sup>8</sup> [...].

- (17) Works on the Investment Project started on 1 April 2021, after the beneficiary introduced the relevant aid application. The Hungarian authorities presented the following timeline:

*Table 1: Timeline of the works on the Investment Project*

Date of application for the aid	13 January 2021
Start of works on the Investment Project	1 April 2021 <sup>9</sup>
Planned date of the start of production	[early 2024]
Planned date of full production capacity	[...]
Planned end date of the Investment Project	[...] 2028

### 2.3.2. Eligible investment costs

- (18) The total notified eligible investment costs for the Investment Project amount to HUF 592 630 million (EUR 1 623 million<sup>10</sup>) in nominal value, or HUF 556 387 million (EUR 1 524 million) in discounted value<sup>11</sup>. The eligible costs result from costs for buildings, plant, machinery, and other equipment.
- (19) The Hungarian authorities confirmed that only new assets are accepted as eligible expenditure and that the eligible costs do not include lease costs or intangible assets.

*Table 2: Breakdown of eligible investment costs*

Eligible costs <i>in million</i>	Nominal		Discounted	
	HUF	EUR	HUF	EUR
Land	[...]	[...]	[...]	[...]
Buildings	[...]	[...]	[...]	[...]
Plant/machinery/equipment	[...]	[...]	[...]	[...]
<b>Total eligible cost</b>	<b>592 630</b>	<b>1 623</b>	<b>556 387</b>	<b>1 524</b>

## 2.4. Form of aid, aid granting authority and national legal basis for granting the aid

- (20) The aid measure will take the form of a non-refundable direct cash grant, on the basis of an incentive agreement between the Ministry of Foreign Affairs and Trade (granting authority) and SKOH. The national legal basis for this grant is the 210/2014. (VIII. 27.) Government Decree on Earmarked Scheme for Investment

<sup>9</sup> Date of the conclusion of the construction contract for the site preparation and piling works for the construction of the EV battery manufacturing plant.

\* Confidential information

<sup>10</sup> HUF conversions to EUR in this decision are indicative and rounded, based on an exchange rate of 1 EUR = 365.13 HUF, applicable as of 31 December 2020, which was the rate applicable when the incentive offer of aid to the beneficiary was drafted by the Hungarian authorities.

<sup>11</sup> The nominal amounts have been discounted to the 2021 value. The discount rate used is 2.94 %, applicable for Hungary on 1 December 2021, in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

*Promotion*, a regional aid scheme<sup>12</sup> implemented under the GBER, allowing aid for initial investments in a variety of economic sectors. The cash grant constitutes an individually notifiable case of application of that aid scheme. The amount of the cash grant has been decided individually by the Ministry of Foreign Affairs and Trade on the basis of the officially signed application form submitted to the Hungarian Investment Promotion Agency (hereinafter „HIPA”) that is responsible for the management of the incentive procedure. SKBH submitted the aid application to HIPA on 13 January 2021. The aid granting agreement was signed between the Ministry of Foreign Affairs and Trade and SKOH on 22 December 2021. It is conditional upon approval by the Commission.

- (21) The aid is financed by the general budget of the State.

## **2.5. Aid amount**

- (22) The notified aid amounts to HUF 76 362 million (EUR 209 million) in nominal value or HUF 71 097 million (EUR 195 million) in discounted value. The aid is planned to be paid out in several instalments over the period 2022-2029.

## **2.6. Aid intensity and cumulation with other investment aid**

- (23) The Hungarian authorities confirmed that SKI (at group level) did not receive aid for another initial investment in the same NUTS 3 region as the Investment Project over a period of three years from the date of start of works of the Investment Project.
- (24) For calculating the maximum aid amount of the notified investment, the Hungarian authorities applied the scaling-down mechanism for the adjusted aid amount according to paragraph 20(c) of the Guidelines on regional State aid for 2014-2020<sup>13</sup> (“RAG”)<sup>14</sup>. This formula results in a maximum aid amount of HUF 71 450 million (EUR 196 million) in 2021 discounted value, as shown in Table 3. On this basis, the Hungarian authorities submitted that the aid measure does not exceed the maximum aid amount. The aid intensity for the SKOH investment is 12.78 % (using discounted values).

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<sup>12</sup> SA.61023 (2021/X) as modified by SA.63819 (2021/X).

<sup>13</sup> Guidelines on regional State aid for 2014-2020, OJ C 209, 23.7.2013, p. 1, as prolonged by Communication from the Commission concerning the prolongation and the amendments of the Guidelines on Regional State Aid for 2014-2020, Guidelines on State Aid to Promote Risk Finance Investments, Guidelines on State Aid for Environmental Protection and Energy 2014-2020, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, Communication on the Criteria for the Analysis of the Compatibility with the Internal Market of State Aid to Promote the Execution of Important Projects of Common European Interest, Communication from the Commission – Framework for State aid for research and development and innovation and Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, C/2020/4355, OJ C 224, 8.7.2020, p. 2.

<sup>14</sup> The adjusted aid amount means the maximum permissible aid amount for a large investment project, calculated according to the following formula: maximum aid amount =  $R \times (50 + 0.50 \times B + 0.34 \times C)$ , 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.

Table 3: Maximum aid amount

<b>HUF (million)</b>	Up to EUR 50 million	Up to EUR 100 million	Above EUR 100 million	<b>Total</b>
	100 %	50 %	34 %	
Eligible costs (discounted)	18 257	18 257	519 874	<b>556 387</b>
Max aid amount	6 390	3 195	61 865	<b>71 450</b>

<b>EUR (million)</b>	Up to EUR 50 million	Up to EUR 100 million	Above EUR 100 million	<b>Total</b>
	100 %	50 %	34 %	
Eligible costs (discounted)	50	50	1 424	<b>1 524</b>
Max aid amount	18	9	169	<b>196</b>

- (25) The Hungarian authorities confirmed that the beneficiary will not receive further State aid for the Investment Project, and that the aid cannot be cumulated with other aid or *de minimis* aid to cover the same eligible costs.

### **2.7. Closure of other plants in the EEA and possible relocation**

- (26) The beneficiary confirmed that it has not closed down (at group level) the same or similar activity in the EEA in the two years preceding the aid application and it does not intend to close down the same or similar activity elsewhere in the EEA within a period of up to two years after the completion of the investment.

### **2.8. Contribution to regional development and territorial cohesion**

- (27) The Investment Project is being carried out in Central Transdanubia, which is a region eligible for regional aid under Article 107(3)(a) TFEU. The Hungarian authorities explained that the Investment Project will contribute to the regional development of Central Transdanubia for the following reasons:
- (a) the Investment Project will create at least 1 900 direct jobs in the region, out of which about [60-75] jobs ([3-4%]) concern employees with higher education (with a university or college degree). It is also estimated that the investment will create at least 950 indirect jobs, across the whole battery production value chain. This counteracts the population decline, the ageing of the population, and the employee emigration within the region. Moreover, the average salary of an operator at SKOH will be above the regional average gross salary, so this will generate significant additional regional household income;
  - (b) the Investment Project will facilitate the transfer to the European Union of the technical knowledge and necessary skill-set for the production of pouch cell batteries. The EV battery manufacturing sector is technology intensive, and, due to CO<sub>2</sub> regulation, is growing. This new sector requires skilled workers, but those special skills are not yet widely available. The beneficiary plans to offer comprehensive training in these skills to employees, which will be provided in cooperation with vocational schools;

- (c) the training provided by the beneficiary will also contribute to the creation of a qualified workforce within the region, while the creation of 1 900 direct jobs could help both to retain qualified workforce in the region, and attract qualified workforce from other regions. This would be beneficial to a region that is faced with significant labour emigration;
  - (d) the Investment Project will create synergy and spill-over effects, due to the proximity of the new manufacturing plant to several OEMs. The frequent mutual exchange of products and human resources is likely if supplier and customer are located within reach of each other. This will not only enhance technology transfer, but also promote the development of related industries, such as logistics and transportation. The investment concerns the establishment of the fifth EV battery manufacturing plant in Hungary and the third investment carried out by SKI in Hungary in recent years for EV battery plants, following the set-up of the First and Second Komárom Plants by SKBH (now SKOH) and SKBM, respectively, as described in recital (10). It will also bring synergies with regard to the expertise and technological knowledge throughout Central and Eastern Europe (“CEE”), in light of the location of an EV battery manufacturing plant and battery separator manufacturing company in Poland. Furthermore, in line with the objectives of the European Battery Alliance and the priority areas of the Strategic Action Plan on Batteries, the Investment Project will contribute to 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 electric vehicle batteries;
  - (e) the Investment Project will also contribute to environmental protection, by supporting the ongoing clean energy transition, through responding to the growing demand for EV batteries.
- (28) As mentioned in recital (20), the notification concerns an individual application for aid under a scheme. According to the Hungarian authorities, the aid also contributes to the scheme’s objectives. Through a foreign direct investment (“FDI”) strategy focused on modernisation, the region is highly dependent on foreign investments. Nevertheless, the stock of FDI in the region is still relatively low. It is expected, however, that the technology transfer and clustering effect from the Investment Project will attract further technology-driven FDI to the region.

## **2.9. Maintenance of the investment in the assisted region**

- (29) The Hungarian authorities confirmed that the aid is awarded under the condition that the beneficiary will maintain the investment in the assisted region for a minimum period of five years after completion of the Investment Project.

## **2.10. Own contribution by the aid beneficiary**

- (30) The Hungarian authorities confirmed that the beneficiary will provide a financial contribution of at least 25 % of the eligible investment costs, through its own resources (including external financing), i.e. free of any public support. This results from the Hungarian legislation applicable to the aid measure, namely Section 14(1)(e) of the Government Decree No. 210/2014 (VIII. 27.).



## **2.11. Environmental impact assessment**

- (31) The beneficiary committed to carry out an Environmental Impact Assessment for the Investment Project.

## **2.12. Appropriateness of the aid measure**

- (32) The Hungarian authorities indicate that State aid is needed, and non-financial means are not sufficient, as the region of Central Transdanubia is an area entitled to assistance under Article 107(3)(a) TFEU, and it has a gross domestic product (“GDP”) per capita below the national GDP per capita, and far below the EU-27 average. The Hungarian authorities are of the opinion that the aid in the form of a cash grant is an appropriate aid measure to achieve the above-mentioned objectives. The cash grant is needed to respond to the dependency on FDI, and to induce technology transfer. Since other aid instruments, for example tax instruments, pay off only later, they are not as attractive to investors. Furthermore, the aid in the form of a cash grant is necessary to compensate for the location disadvantage of Iváncsa, as compared to the alternative location in [city of the alternative location], [EEA country of the alternative location].
- (33) Hungary refers to the Commission decision in case C46/2008 - Dell Poland<sup>15</sup> where the Commission accepted the appropriateness of a direct grant in the light of the macroeconomic need of State aid for large investment projects in order to stimulate economic development at the regional level (in a region where unemployment was above the average and wage levels below the average). Hungary also refers to the Commission decision in case SA.48382 - MOL Petrolkémia Zrt.<sup>16</sup> where the Commission emphasised the necessity of State aid for assisted ‘a’ areas and the fact that non-financial means do not suffice to compensate location disadvantages incurred by investing in such an area.

## **2.13. Incentive effect and proportionality of the aid measure**

### *2.13.1. Formal incentive effect*

- (34) The Hungarian authorities explained that the works on the Investment Project started on 1 April 2021, when the contract for the construction of the new EV battery manufacturing plant was signed between SKBH (now SKOH) and the construction company. The application for State aid dates from 13 January 2021.

### *2.13.2. Decision-making process*

- (35) The Hungarian authorities explained SKI’s internal decision-making process in general, as well as the actual decision-making steps regarding the Investment Project.

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<sup>15</sup> Commission Decision C (2009)6868 final of 23 September 2009 on the aid which Poland is planning to implement for Dell Products (Poland) Sp. z o.o., C 46/08 (ex N 775/07), OJ L 29, 2.2.2010, p. 8, paragraph 162 *et seq.*

<sup>16</sup> Commission Decision C(2017) 7034 final of 25 October 2017 in case SA.48382 (2017/N) – Hungary – LIP – Regional investment aid to MOL Petrolkémia Zrt, OJ C 80, 2.3.2018, p. 1, recitals 26 and 68 *et seq.*

### 2.13.2.1. The general decision-making process at SKI

- (36) In general, the decision-making process of SKI regarding the production and delivery of batteries comprises three major steps: (i) strategic business planning; (ii) [...]Committee (“[committee referred to in recital 36]”) approval; and (iii) approval of the Board of Directors (“BoD”).

#### *First step – strategic business planning*

- (37) In the context of the strategic business planning, SKI decides on [...]. In advance of an invitation to tender, OEMs send out Requests for Information (“RfI”), to obtain a first impression of possible offers. SKI reviews RfI, to see if it is feasible to support the needs of the OEM. Then, after receiving the RfI, the SKI [...] Team examines [...]. Strategic considerations have a significant impact in these deliberations.

#### *Second step – approval of the [committee referred to in recital 36]*

- (38) After winning a nomination for the production and delivery of batteries to an OEM, if the nomination requires an investment in additional production capacities, the approval of the [committee referred to in recital 36] is required (second step). At this stage, SKI develops a financial model for the investment. All relevant assumptions regarding capital and operational expenditure are ascertained. SKI applies input data from [...]. If several locations are taken into consideration, they are compared with each other to narrow down the list to the two or three most suitable potential locations. This financial model is reported to the [committee referred to in recital 36]. The most decisive criterion is the expected return on investment.

#### *Third step – final decision of the BoD*

- (39) Based on the approval of the investment by the [committee referred to in recital 36], the BoD then takes the final decision on the investment and its location (third step).

### 2.13.2.2. The actual decision-making process for the Investment Project

- (40) SKI decided first on the size of the third battery plant and then on its location. The Hungarian authorities explained that the economies of scale would occur regardless of the location of the site. Recitals (14) to (16) include more details regarding the SKI decision on the planned capacity of the new plant.
- (41) The timeline of the site selection process for the Investment Project is presented in Table 4. A detailed description of the major steps of the site selection process for the Third Battery Plant may be found further in the sections below.

Table 4: Timeline of the site selection process

Date	Event
March 2019	First discussions for site selection process
[month in the second quarter of] 2019	Launch of site selection process
[month in the second quarter of 2019] – [month in the third quarter of] 2019	Quantitative and qualitative assessments to narrow down the regions list
[month in the third quarter of] 2019	Selection of [20-40] regions in [3-6] countries ([EEA country of the alternative location], [...], Hungary and [...])
[month in the third quarter of] 2019	Pre-screening tour to preselect land plots in [EEA country of the alternative location], [...], Hungary and [...] Selection of [10-20] sites in [3-6] countries for further assessment; [...]
[month in the third quarter of] 2019	First on-site visits in [EEA country of the alternative location], [...] and [...]
[month in the third quarter of] 2019	First on-site visits in Hungary
[month in the third quarter of] 2019	Confirmation of the selection of [10-20] land plots in [3-6] countries
[month in the third quarter of] 2019	Technical and major risk analysis of all [10-20] land plots (based on requests for information sent to the authorities on the respective land plots)
[month in the third quarter] 2019	Selection of [3-7] land plots (and [...]) in [3-6] countries (Hungary, [EEA country of the alternative location] and [...]) Second on-site visits (to confirm the selection of the [3-7] land plots)
[month in the fourth quarter of] 2019 - [month in the first quarter of] 2020	First strategic reassessment
[month in the first quarter of] 2020	Relaunch of the site selection process Confirmation of previous selection and addition of two land plots ([...] [...])
[month in the second quarter of] 2020	Exchange with authorities
[month in the third quarter of] 2020	Third round of discussions with the authorities, excluding [...] and [...]
[month in the third quarter of 2020] – [month in the fourth quarter of] 2020	Second strategic reassessment
[month in the fourth quarter of] 2020	Relaunch of the site selection process
[month in the fourth quarter of] 2020	After excluding [...], Iváncsa and [city of the alternative location] remained
[month in the first quarter of] 2021	[committee referred to in recital 36] Decision
28 January 2021	BoD Decision

*(a) Site selection process between March 2019 to [month in the third quarter of] 2019 (before the first strategic reassessment)*

- (42) The Investment Project started from the requirement to secure the capacity needed in the context of the OEM programme for which the Second Komárom Plant was built. Indeed, SKI had decided to divide the establishment of the new production capacity into two plants (see recital 14 of the SKBM Decision). This explains the contribution of the potential JV partner in the site selection process (see also recital (55)).
- (43) The high-level site selection process included two complementary steps, which SKI referred to as the “quantitative region assessment” and the “qualitative country assessment”. On that basis, several sites were selected for site visits.

Quantitative region assessment

- (44) In [month in the second quarter of] 2019, SKI’s [...] Office launched the site selection process with a quantitative region assessment. A broad approach was taken to identify what other suitable regions may be identified outside of Hungary.
- (45) The site selection started with more than [150-400] regions (NUTS 2) across [20-40] countries in Europe. SKI then used the following key criteria to establish the candidate regions: location in a Member State of the Union, within [distance] from the potential JV partner, wage costs of [...] per year, close to a [...]<sup>17</sup> or [...]. Based on these criteria, the list of candidate regions was narrowed down to [40-60] regions<sup>18</sup> across [10-20] countries<sup>19</sup> (regions long list).
- (46) During [months in the second and third quarters of] 2019, SKI conducted further quantitative assessments in order to establish a shorter list of candidate regions (regions mid list), based on scoring and ranking results, considering the business and workforce environment, infrastructure access, factors for economic analysis, quality of life and cost of living. Hungarian regions were not included in the mid list of candidate regions ([15-25] regions in [4-8] countries) based on the quantitative region assessment but they were selected on the basis of the qualitative country assessment (see recital (47) and (48)).

Qualitative country assessment

- (47) In the qualitative country assessment, SKI took into account country-specific criteria and used the following parameters: [manufacturing environment], workforce ([...]), cost competitiveness ([...]), utilities and infrastructure network, [...], and proximity to [...]. Hungary, [EEA country of the alternative location], [...]ranked as the top [3-6] countries based on the qualitative assessment.

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<sup>17</sup> [...]

<sup>18</sup> [40-60] plus [...] regions that were added [...].

<sup>19</sup> [List of countries including Hungary and the EEA country of the alternative location]

### Outcome of the two assessments

- (48) On the basis of the results of the quantitative region assessment and qualitative country assessment, [20-40] regions in [3-6] countries ([...], Hungary, [EEA country of the alternative location] and [...]) were short-listed (regions short list). The land plot assessment then focussed on these [20-40] regions. A list of more than [40-70] land plots was determined.

### On site visits in [EEA country of the alternative location] [...], [...] and Hungary

- (49) At the beginning of [month in the third quarter of] 2019, SKI, in alignment with the potential JV partner assigned PwC to conduct a pre-screening tour in [EEA country of the alternative location] [...] and [...] to pre-select potential technically suitable land plots to be visited by SKI and the potential JV partner in [month in the third quarter of] 2019. The parameters that were considered included [...].
- (50) In parallel with the pre-screening tour conducted by PwC, SKI's [...] Unit visited [3-7] land plots in Hungary, located within [...] km from Budapest. The Ivánca site was identified as the most suitable land plot amongst the [3-7], considering criteria such as the location condition, the land plot condition ([...]), utilities condition, [...]. However, the selection of the Hungarian land plots had yet to be confirmed by [...].
- (51) On the basis of these pre-screenings and after the evaluation of the Hungarian land plots by [...], [10-20] land plots in “[...], Hungary and [EEA country of the alternative location]”<sup>20</sup> were selected for further assessment: [...]: [several locations]; Hungary: Ivánca; [EEA country of the alternative location]: [several locations in the EEA country of the alternative location, including the city of the alternative location]. On-site visits were conducted of all [10-20] land plots in [period of time in the third quarter of], which included meetings with the respective authorities.

### [...] analysis – selection of [3-7] land plots

- (52) In [month in the third quarter of] 2019, SKI conducted a [...] analysis for the selection of most suitable land plots. The criteria that were used concerned the location condition ([...]), plot features ([...]), surroundings, ownership, zoning, height difference, lack of obstacles) infrastructure ([...]) and utility-access ([...]).
- (53) Following this analysis, a short list of [3-7] land plots in [3-6] countries was selected for second on-site visits: [city of the alternative location] and [...], Ivánca in Hungary and [...] and [...].
- (54) After the second round of on-site visits mid-[month in the third quarter of] 2019, SKI confirmed these sites as the most suitable land plots. However, because of the aforementioned first strategic reassessment, the site selection process

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<sup>20</sup> No suitable land plot was identified in [...]: two suggested plots were not taken into consideration due to difficulties to [...] and another one could not be aligned with [...].

remained on hold from [month in the fourth quarter of]2019 to [month in the first quarter of] 2020.

*(b) Site selection process between [month in the first quarter of] 2020 to [month in the third quarter of] 2020 (after the first strategic reassessment)*

- (55) After the first strategic reassessment, SKI and the OEM decided to [...]. However, in order to [...], SKI decided to resume the site selection process in [month in the first quarter of] 2020 without the OEM.
- (56) The site selection process was resumed in [month in the first quarter of] 2020 for a plant with an annual capacity of [20-30] GWh. With restrictions on site visits caused by the COVID-19 pandemic, the previously selected [3-7] land plots were confirmed and two more land plots at locations where SKI is already present were added for reconsideration: [...] <sup>21</sup> and [...] <sup>22</sup>.
- (57) In [month in the second quarter of] 2020, SKI initiated a direct exchange with authorities, investment agencies and utility suppliers. On those grounds, SKI conducted an in-depth assessment on the land plots. The discussions with the respective governments focused on the surrounding [...] investment conditions at the sites.
- (58) Following the results of this assessment, in [month in the third quarter of] 2020, SKI deselected [two of the selected [3-7] land plots mentioned in recital 56]. [The first of these land plots] was eliminated mainly because of the associated risks [...], due to the difficulty to estimate [...], which could have a negative impact on the schedule of the Investment Project. [The second of these land plots] was disqualified for not meeting the logistics requirements ([...]) and because [...].
- (59) SKI continued with the assessment of the remaining [3-7] land plots: Iváncsa and [...], [...] and [city of the alternative location] in [EEA country of the alternative location]. Due to the aforementioned second strategic reassessment, the site selection process was put on hold again during [month in the third quarter of 2020]and [month in the fourth quarter of] 2020.

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<sup>21</sup> The [...] site was considered only in [month in the first quarter of] 2020 because SKI started developing new investment scenarios including a scenario for a separate [3-7] GWh investment for which [the site at stake] was a suitable option. It was not considered before because it was not a suitable option for the original investment scenario due to its size as it could not accommodate a manufacturing plant with a production capacity of [15-25] GWh as envisaged.

<sup>22</sup> [...] was also only considered at this stage of the selection process ([month in the first quarter of] 2020) because it was only during the time of the first strategic reassessment that SKI learnt about the availability of [that] site as a potential land plot. It was decided to be included in the assessment also due to the possibility of mitigating construction risks because of existing construction experiences. It was also a suitable land plot to build the envisaged production plant with an annual capacity of [20-30] GWh.

(c) *Site selection process between [month in the fourth quarter of] 2020 to [month in the first quarter of] 2021 (after the second strategic reassessment)*

- (60) The assessment of the previously selected [3-7] land plots, including exchanges with stakeholders, was resumed in [month in the fourth quarter of] 2020. The target was to establish a factory with a scaled up annual capacity of 30 GWh. The site specifications included the following requirements: annual plant capacity of 30 GWh with potential expansion with an additional [2-10] GWh per annum; a land plot size of more than [30-80] ha with a [10-40] ha expansion potential; timely availability of electricity/gas/water/sewage at the site; construction permits to be granted in [...]; access to affluent available labour force preferred ([...]); and competitive costs ([...]).
- (61) Although the [second of the two sites mentioned in recital 56 where SKI is already present] had seemed to be suitable for a [20-30] GWh production plant, it was not so for the planned 30 GWh because of [...]. Following exchanges with the [...] authorities at the end of 2020, it also became clear that the [...] site could not fulfil SKI's [...] requirements. On that basis, the site was deselected.
- (62) [The first of the two sites mentioned in recital 56 where SKI is already present] was kept as a viable option only for a [...] investment scenario, as it could not accommodate a plant with a production capacity of the magnitude expected from the Investment Project (see footnote 21).
- (63) In [month in the last quarter of] 2020, the land plots in Iváncsa (Hungary) and [city of the alternative location] ([EEA country of the alternative location]) were selected as the two most suitable investment locations for the third battery plant. Consequently, SKI carried out financial business case calculations comparing the two locations over [10-15] years. [city of the alternative location] ([EEA country of the alternative location]) was evaluated to be superior to Iváncsa (Hungary) in terms of net present value (NPV), as detailed in Table 5.

*Table 5: NPV (in million EUR) comparing the alternative locations*

[alternative location]	Iváncsa (Hungary)	Disadvantage of Iváncsa	Iváncsa with subsidy	Disadvantage of Iváncsa with subsidy
[350-360]	126	[220-240]	290	[60-70]

- (64) The main input factors for the comparison are the capital expenditure (“CAPEX”) required, labour and utility costs, taxes and, for Iváncsa, also State aid<sup>23</sup>. Applying a discount factor of [7-8] %<sup>24</sup>, the cost disadvantage of Iváncsa without aid is EUR [220-240] million (NPV). Taking into consideration the aid offered by the Hungarian government of EUR [160-170] million (NPV) the cost disadvantage is reduced to EUR [60-70] million (NPV). The remaining cost

<sup>23</sup> Hungary noted that State aid offered by [EEA country of the alternative location] has not been included in the comparison.

<sup>24</sup> [7-8] % is the beneficiary’s weighted average cost of capital (WACC), to be used in NPV calculations.

disadvantage could be outbalanced through qualitative factors such as the established relations with the Hungarian authorities, which have been developed in the course of the earlier investment, as well as the possibility of an alignment with the existing plant (Komárom and Ivánca are about 100 km apart, only 75 minutes by car) and sharing of know-how and HR knowledge.

- (65) Taking into account that Ivánca's lower NPV could to a large extent be offset with the Hungarian government's incentive offer received on 19 January 2021 and the above-mentioned qualitative factors, on 20 January 2021, the [committee referred to in recital 36] recommended the Hungarian location in Ivánca for the investment.
- (66) Subsequent to the [committee referred to in recital 36] decision, a request for approval was submitted to the BoD on 28 January 2021. Based on the comparative calculations, including the Hungarian aid offer, and the qualitative factors presented to the [committee referred to in recital 36] before, the BoD approved the investment in Ivánca.

### 2.13.3. Counterfactual scenario

- (67) The Hungarian authorities invoke a scenario 2 situation (location decision) under paragraph 61(b) of the RAG to demonstrate the existence of an incentive effect<sup>25</sup>.
- (68) Without the aid, the investment would have taken place in [city of the alternative location] in [EEA country of the alternative location]. The alternative location is situated within the NUTS 2 region of [NUTS region of the alternative location], which is eligible for regional aid under Article 107(3)(a) TFEU, with a standard regional aid ceiling of 25 % under the [EEA country of the alternative location] regional aid map 2014-2020<sup>26</sup>, which is lower than the 35 % ceiling of Ivánca.
- (69) The Hungarian authorities provided a counterfactual analysis, from which it appears that, without State aid, the Ivánca (Hungary) site is at a cost disadvantage of EUR [220-240] million (in terms of NPV), as compared to [city of the alternative location] ([EEA country of the alternative location]). With the notified State aid, the disadvantage of the Ivánca location would be reduced to about EUR [60-70] million (NPV), as shown in Table 5. The Hungarian authorities provided further details and figures on the calculation of the NPV of the investment in the target area and the NPV of the investment in the alternative location. SKI took into account different parameters for their analysis, such as initial investment costs (construction, utilities, IT, logistics, insurance), working capital expenditure, EBITDA, taxes (corporate, property, local business), sales volumes and revenues, labour costs, and an analysis of the discount rate. Overall, the costs of the Hungarian land plot were lower, but the CAPEX was higher than in [EEA country of the alternative location]. Operational costs would be lower in [EEA country of the alternative location] than in Hungary, in particular due to

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<sup>25</sup> Paragraph 61(b) RAG: "... the aid gives an incentive to opt to locate a planned investment in the relevant area rather than elsewhere because it compensates for the net disadvantages and costs linked to a location in the area concerned..."

<sup>26</sup> Commission decision [...].



lower labour and utilities costs<sup>27</sup>. In that regard, labour costs in [EEA country of the alternative location] were regarded as representing only [60-80] % of the labour costs in Hungary. The corporate tax rate would be lower in Hungary than in [EEA country of the alternative location], as detailed in Table 6.

*Table 6: Comparison of costs between the locations in Hungary and in [EEA country of the alternative location]*

<i>Costs (in EUR)</i>	Iváncsa (Hungary)	[alternative location]
<b>Land costs</b> (EUR/m <sup>2</sup> )	[...]	[...]
<b>Electricity</b> (EUR/kWh)	[...]	[...]
<b>Gas</b> (EUR/Nm <sup>3</sup> )	[...]	[...]
<b>Water</b> (EUR/m <sup>3</sup> )	[...]	[...]
<b>Sewage</b> (EUR/m <sup>3</sup> )	[...]	[...]
<b>CAPEX (building)</b> (EUR/m <sup>2</sup> )	[...]	[...]
- [...]		
- [...]		
<b>Taxes</b>		[...][...]
- corporate tax	9 %	
- property tax	(-)	

- (70) The Hungarian authorities explained that, based upon the counterfactual analysis, it would not be a financially sound decision to construct the plant at Iváncsa without State aid. Without State aid, SKI would have decided to construct the plant at [city of the alternative location]. The prospect of State aid amounting to EUR 209 million included in the indicative offer received from the Hungarian authorities was decisive for the final location decision. The aid compensates, for a large part, the profitability disadvantage associated with Iváncsa, and decreases the cost disadvantage to about EUR [60-70] million in NPV. SKI acknowledges certain non-quantifiable and strategic advantages to the Hungarian site, which make this difference acceptable.
- (71) The Hungarian authorities explained why the cost disadvantage of EUR [60-70] million (after aid) was accepted by SKI.
- (72) A first element was the possibility of sharing operations know-how and HR knowledge, gained from the experience of operating a manufacturing plant in the Hungarian business environment in Komárom. This can allow an easier deployment of skilled workers (operators) for setting up the processes in the new plant. Operational risks, like delays in production, can be thereby be mitigated. Furthermore, SKI considered that such experience would also ease the hiring process of qualified workforce.
- (73) Secondly, SKI considered that the risk of delays and shortages in [...], which is inherent to the establishment of a new manufacturing plant, can be mitigated if the manufacturing plant is aligned with an already existing one (increased flexibility).
- (74) Thirdly, SKI valued its already established network with Hungarian local providers as regards [...]. Thus, the existing experience and network can mitigate

<sup>27</sup> Reflecting price levels of 2019/2020.

risks regarding the planned date for start of production. In [EEA country of the alternative location], SKI would have to conduct research to identify adequate providers.

- (75) In addition, providers in Hungary already have experience in the batteries business. Thus, no additional time or effort is required in that regard, which is important to SKI, in view of the tight project schedule.
- (76) Finally, the administrative efficiency and political stability, which SKI experienced during their establishment and operation of their plants in Hungary contribute to SKI's confidence that the project schedule can be met.

#### *2.13.4. Proportionality*

- (77) According to the Hungarian authorities, the State aid is proportionate, as it does not exceed either the maximum permitted aid intensity after applying the scaling-down formula (see recital (24)), nor the cost disadvantage incurred due to investing in Ivánca instead of [city of the alternative location].

### **2.14. Effects on competition and trade**

#### *2.14.1. No relocation*

- (78) SKI confirmed (in the subsidy application for the Hungarian aid) that it has not closed down and does not intend to close down the same or any similar activity (NACE code 27.20) in the EEA in the two years preceding the aid application and in the two years following the completion of investment.
- (79) SKI also confirmed that the planned State aid does not result in a substantial loss of jobs.

#### *2.14.2. Definition of the relevant market*

- (80) Without the aid the investment would have taken place in [city of the alternative location] in [EEA country of the alternative location], located in [NUTS region of the alternative location] – an assisted area with an aid intensity fixed at 25 %. Hungary submitted that the alternative location belongs to the same geographical market.
- (81) The Hungarian authorities provided information on the definition of the relevant market. SKOH will manufacture Li-ion battery pouch cells and battery modules, which are designated for the production of EV for the duration of the 'reference period' (time period during which the plant will produce battery cells i.e. [...]). The Li-ion battery pouch cells fall under the Prodcom<sup>28</sup> code 27.20.23: nickel-cadmium, nickel metal hydride, lithium-ion, lithium polymer, nickel-iron and other electric accumulators. SKI does not expect to reduce or close the manufacturing capacity of any of its other battery manufacturing plants. The investment, therefore, adds to SKI's already existing production capacities, and is in line with SKI's global expansion strategy.

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<sup>28</sup> Prodcom provides statistics on the production of manufactured goods carried out by enterprises on the national territory of the reporting countries. See <https://ec.europa.eu/eurostat/web/prodcom>.

- (82) According to the Hungarian authorities, the relevant product market is the market for battery cells for EV. The Investment Project concerns the production of Li-ion battery cells and modules, which will be directly sold to OEMs. Battery modules can be directly sold to OEMs, or possibly further assembled into battery packs and then sold to OEMs. Those OEMs decide whether SKI should supply them with battery cells, modules, or packs. However, the battery cell production constitutes the most substantial part of the value added to the final product, and the battery cell is an appropriate proxy for the downstream products of battery modules and battery packs, as they follow the same market trends<sup>29</sup>. With regards to the demand side, the global EV Li-ion battery market is a key segment of the global EV battery market that includes also various other batteries, such as nickel metal hydride batteries and lead-acid batteries. For the supply side, aside from the application for EV, Li-ion batteries can find other uses, notably in battery energy storage systems (“ESS”). Battery cells for ESS can be generally manufactured at little additional cost in the same facility as cells for the automotive sector. The capacity of the plant, however, is assigned to the production of EV batteries, for the whole reference period.
- (83) The Hungarian authorities consider that the relevant geographical market is global, as the product can feasibly be shipped at low cost through road, ocean, or air transport. SKI has production sites in Europe, the USA, and Asia, and supplies car-manufacturing plants all over the world. Moreover, according to market research<sup>30</sup>, there is a global demand for Li-ion batteries, and their components are also traded internationally. In any event, even if the geographical market would be considered as the EEA market, both Ivánca and the counterfactual location would belong to the same geographical market.

#### *2.14.3. Market power and market trends*

- (84) The Hungarian authorities note that the global EV Li-ion battery market is experiencing high growth rates. The competition among producers is intense, due to the large volume of sales and partnerships between automotive manufacturers<sup>31</sup>. As the market consists of limited buyers ordering in large volumes, those buyers possess a certain power. Li-ion batteries are one of the key components of EVs, and the battery accounts for most of the total manufacturing cost<sup>32</sup>. Li-ion battery production is largely dependent on raw materials. At present, the raw materials are considered as abundant, and are offered by multiple suppliers<sup>33</sup>. Since batteries are designed specifically for each OEM’s programme,

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<sup>29</sup> Commission decision C(2019) 338 final of 28 January 2019 in case SA.47662 (2017/N) – Poland – LIP – Aid to LG Chem Wroclaw Energy Sp. z o.o., OJ C 93, 20.3.2020, p. 1, recital 128, and Commission decision C(2019) 7238 final of 14 October 2019 in case SA.48556 (2019/C) (ex 2018/N) – Hungary – Regional investment aid to Samsung SDI, OJ C 112, 3.4.2020, p. 12, recital 165.

<sup>30</sup> Mordor Intelligence, Report: Global lithium-ion battery market outlook 2018 – 2023, pp. 12, 20; statista, Lithium-ion batteries worldwide, pp. 10 – 13.

<sup>31</sup> Technavio, Global EV Li-ion battery market 2018 – 2022, p. 77.

<sup>32</sup> *Idem*, p. 39.

<sup>33</sup> *Idem*, p. 40.

OEMs cannot frequently switch vendors, and there is high loyalty between OEMs and manufacturers.

- (85) A key driver of global sales of Li-ion battery cells is the increasing demand in the EV industry. As of 2018, there were 1.5 million EV on the road<sup>34</sup>. This number will increase to 12 million EV by 2027. Global market forecasts project demand for Li-ion batteries to grow to up to 485 GWh by 2023, 967 GWh by 2027, and up to 4 000 GWh by 2040<sup>35</sup>. As the global market size increases, Europe is forecast to develop a capacity of 87 GWh by 2023, while European demand for EV batteries alone would be around 294 GWh by 2027<sup>36</sup>. As a result, demand in Europe is much higher than European battery makers' own production capacity.
- (86) The Hungarian authorities further provided data on the market share of SKI. As regards EV battery sales, SKI's market share in such sales (at group level) was estimated at [5-10] % in 2020, with [5-15] GWh at global level, and [0-5] GWh at EEA level. By 2024, it is estimated that this market share will increase to [10-15] %, with [90-110] GWh at global level, and [20-30] GWh at EEA level. SKI plans to have at least [200-250] GWh global EV Li-ion battery production capacity by 2025, and eventually [450-550] GWh global production capacity by 2030. The maximum production capacity of the Third Battery Plant will be 30 GWh.

## 2.15. Transparency and monitoring

- (87) Hungary indicated that the following information will be published by means of the EU Transparency Award Module <http://tvi.kormany.hu/kozvetetel>: the individual aid granting decision and its implementing provisions, or a link to it; the identity of the granting authorities; the identity of the individual beneficiary, the aid instrument and amount of aid; the objective of the aid, the date of granting, the type of undertaking; the Commission's aid measure reference number; the region where the beneficiary is located and the principal economic sector of the beneficiary.
- (88) Hungary undertakes to annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589<sup>37</sup> and maintain for at least 10 years from the date of award of the aid detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on a written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request.

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<sup>34</sup> IHS Markit.

<sup>35</sup> Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank on the Implementation of the Strategic Action Plan on Batteries: Building a Strategic Battery Value Chain in Europe, COM 2019 (176) final, p. 5.

<sup>36</sup> IHS Markit.

<sup>37</sup> 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.

### **3. ASSESSMENT OF THE AID MEASURE**

#### **3.1. Existence of aid**

- (89) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the aid measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the aid measure must distort or threaten to distort competition and affect trade between Member States.
- (90) The public support awarded by Hungary in the form of a cash grant is imputable to the State, as it is granted by the Ministry of Foreign Affairs and Trade and is based on a national legal basis (recital (20)). It is financed through State resources within the meaning of Article 107(1) TFEU, since it is financed by public funds (recital (21)).
- (91) As the aid takes the form a direct grant (recital (20)), it provides SKOH with an advantage that it would normally not have in market conditions. Therefore, SKOH benefits from an economic advantage over its competitors.
- (92) As the public support is granted to a single undertaking, SKOH, the aid measure is selective. SKOH is an undertaking offering goods (Li-ion pouch cells) on a market where there is competition.
- (93) The aid measure is likely to affect trade between Member States, as trade between Member States exists in the Li-ion EV battery and battery cells sector.
- (94) As the aid measure strengthens the competitive position of SKOH, competition is, or is threatened to be distorted.
- (95) Consequently, the Commission considers that the aid measure constitutes State aid within the meaning of Article 107(1) TFEU.

#### **3.2. Lawfulness of the aid measure**

- (96) 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 block-exempted under the GBER, and has thus to be notified individually to the Commission. In Central Transdanubia, the applicable notification threshold is EUR 26.25 million (HUF 8 291.59 million). The nominal aid amount of HUF 76 362 million (EUR 209 million) as described in recital (22) exceeds this amount. Therefore, the planned aid measure cannot be exempted from notification.
- (97) By making the award and disbursement of the aid conditional upon Commission approval, and by notifying the aid measure, the Hungarian authorities have respected their obligations under Article 108(3) TFEU and Article 4(1)(a) of the GBER.

#### **3.3. Compatibility of the aid measure**

- (98) In derogation from the general prohibition of State aid laid down in Article 107(1) TFEU, aid may be declared compatible if it can benefit from one of the

derogations enumerated in the TFEU. The Hungarian authorities invoke Article 107(3)(a) TFEU, as interpreted by the RAG, as the basis for the assessment of the compatibility of the aid measure.

- (99) The Commission observes that, according to established case practice, the appropriate legal basis for assessing compatibility of regional State aid may be Article 107(3)(a) TFEU, which stipulates that “*aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation*” may be found compatible with the internal market.
- (100) As the objective of the aid measure is to promote regional development in an area designated in accordance with Article 107(3)(a) TFEU, and the aid granting agreement was signed on 22 December 2021, conditional only on Commission State aid approval (recital (20)), the legal basis for its assessment is Article 107(3)(a) TFEU, as interpreted by the RAG, applicable from 1 July 2014 to 31 December 2021<sup>38</sup>.
- (101) In line with Article 107(3)(a) TFEU, the Commission examines whether the aid is to “promote the development of areas where the standard of living is abnormally low, or where there is serious underemployment, and of the regions referred to in Article 349 TFEU, in view of their structural, economic, and social situation. That examination is carried out by reference to the criteria laid down in the RAG.

*3.3.1. Objective of promoting regional development in an area designated in accordance with Article 107(3)(a) TFEU*

- (102) The Investment Project is carried out in Ivánca in Közép-Dunántúl (Central Transdanubia), NUTS 2 code HU21, an area eligible for regional aid pursuant to Article 107(3)(a) TFEU (‘a’ area) in accordance with the Hungarian regional aid map<sup>39</sup>. Pursuant to paragraph 34 of the RAG, initial investments by large undertakings in ‘a’ areas may benefit from regional investment aid.

*3.3.1.1. Real and sustained contribution to regional development*

- (103) 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. Section 3.2.2 of the RAG lists, on a non-exhaustive basis, a number of indicators that Member States may use in order to demonstrate the regional contribution of individual investment aid notified to the Commission. As a rule, an investment can only be considered as a real and sustained contribution if it is viable. To ensure that the investment concerned is regarded as viable by the beneficiary itself or by third parties, that beneficiary must provide an own contribution of at least 25 % of the eligible costs<sup>40</sup>, through its own resources or

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<sup>38</sup> The RAG were prolonged until 31 December 2021 (see footnote 13). The new Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1) will be applicable only to “notifiable regional aid awarded or intended to be awarded after 31 December 2021” (paragraph 197 of the new guidelines).

<sup>39</sup> See footnote 2.

<sup>40</sup> See paragraph 38 of the RAG.

by external financing, in a form that is free of any public financial support. In addition, the investment (the aided assets) is only considered as a real contribution to regional development if it is sustained. That is why it must be maintained in the area concerned for a minimum period of five years (three years for SMEs) after completion of the investment<sup>41</sup>.

- (104) Central Transdanubia is eligible for regional aid pursuant to Article 107(3)(a) TFEU. The Commission takes note of the investment's positive regional effects, as presented by the Hungarian authorities (see recital (27)). It considers that, in particular, the direct and indirect job creation effects, the retention of qualified workforce in the region and the knowledge and technology transfer into the region represent a significant contribution to the development of the region and to the achievement of the Union's cohesion objective.
- (105) The Commission further notes that the beneficiary will contribute with at least 25 % of the eligible costs, and commits to keep the investment for five years after completion of the project in the area concerned (see recitals (29) and (30)).

#### 3.3.1.2. Incentive effect

- (106) 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.

##### Formal incentive effect

- (107) Paragraphs 64 and 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. SKOH applied for aid on 13 January 2021, whilst works on the Investment Project only started on 1 April 2021 (see recital (17)). Therefore, the formal incentive effect is proven.

##### Substantive incentive effect

- (108) As there are many valid reasons for an undertaking 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).

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<sup>41</sup> See paragraph 36 of the RAG.

- (109) 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 must verify that this alternative scenario is realistic and credible.
- (110) Paragraph 71 of the RAG indicates that for scenario 2 – which is invoked by the Hungarian authorities in this case (see recital (67)) – the Member State could prove 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 the investment in the assisted region, and the costs and benefits of locating the investments in the alternative location(s). Such documents should be contemporary to the decision making process concerning the investment or its location. For that purpose, the Member State is invited, at paragraph 72 of the RAG, to rely on official board documents, risk assessments, financial reports, internal business plans, expert opinions, and other studies and documents that elaborate on various investment scenarios.
- (111) To verify the viability of the project in a scenario 2 context, all relevant costs and revenues<sup>42</sup> 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.
- (112) The Hungarian authorities submitted detailed information on the decision-making process concerning the Investment Project. In this case, in addition to the steps usually carried out by SKI, the decision making process was influenced by two strategic reassessments (see section 2.13.2). The Commission in particular takes into account the following steps:
- a) In the pursuit of the site selection process, as of March 2019, SKI carried out an extensive assessment of regions and land plots across European countries, including two rounds of on-site visits in [months in the third quarter of] 2019, and a technical and major risk analysis.
  - b) As a result of the detailed site selection process and following two strategic reassessments<sup>43</sup>, in [month in the fourth quarter of] 2020 the land plots in Iváncsa (Hungary) and [city of the alternative location] ([EEA country of the alternative location]) were selected as the two most suitable investment locations for the Investment Project<sup>44</sup>.
  - c) SKI carried out a detailed comparison between the two locations. The financial business case calculations comparing the two locations indicated that [city of the alternative location] was superior to Iváncsa in terms of economics: the NPV of the Iváncsa investment was calculated at EUR 126

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<sup>42</sup> See paragraph 80 of the RAG.

<sup>43</sup> The first from [month in the fourth quarter of] 2019 to [month in the first quarter of] 2020 and the second from [month in the third quarter] to [month in the fourth quarter of] 2020.

<sup>44</sup> [The first of the two sites mentioned in recital 56 where SKI is already present] was kept as an option for additional – smaller – separate expansion (recital (62)).



million (without aid), while for the [city of the alternative location] investment it was calculated at EUR [350-360] million (without aid).

- d) Based upon the counterfactual analysis, SKI considered that it would not be a financially sound decision to construct the plant at Ivánca without State aid. Without State aid, SKI would have decided to construct the plant at [city of the alternative location]. The prospect of State aid amounting to EUR 209 million, in nominal value, included in the indicative offer received on 19 January 2021 from the Hungarian authorities, was decisive for the final location decision. The aid would compensate, for a large part, the profitability disadvantage associated with Ivánca, and would decrease the cost disadvantage from EUR [220-240] million to about EUR [60-70] million in NPV.
  - e) In addition, SKI considered qualitative factors when selecting Ivánca, such as the established relations with the Hungarian authorities, which have been developed in the course of the earlier investment as well as the possibility of an alignment with the existing plant and sharing of know-how and HR knowledge.
  - f) Taking into account that Ivánca's lower NPV could, to a large extent, be offset with the Hungarian government's incentive offer of 19 January 2021 and the qualitative factors mentioned above, the [committee referred to in recital 36] recommended, on 20 January 2021, the Hungarian location in Ivánca for the investment and the BoD approved the investment in Ivánca on 28 January 2021.
- (113) The Commission notes that the Hungarian authorities submitted the required information in form of comprehensive, contemporary and genuine evidence documenting the decision-making process of SKI (see section 2.13.2). The provided documents include minutes of company-internal meetings, presentations, comprehensive reports and location comparison tables. They confirm that the investment and location decisions 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 Ivánca with a greenfield site in [city of the alternative location], [EEA country of the alternative location].
- (114) 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 by the beneficiary regarding the investment. The Commission notes that the calculations and cost estimates for the two locations 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. SKI calculated all the costs, expenditures and revenues expected over the useful lifetime of the Investment Project ([10-15] years) for both the Hungarian and the [EEA country of the alternative location] locations. Then, it discounted the expected cash flows to 2021 present value and compared the two locations.
- (115) The newly built plant in either location (Hungary or [EEA country of the alternative location]) would produce the same products, at the same capacity, for the same geographical market, using the same technology, and the products

would be sold at the same price. Consequently, sales revenues are the same for the two location options.

- (116) In the counterfactual scenario, SKI would establish the plant in [city of the alternative location], [EEA country of the alternative location]. The Hungarian authorities provided detailed calculations on the comparison of Iváncsa with the counterfactual scenario (recital (69)). To the advantage of the [EEA country of the alternative location] location are lower operating costs, in particular due to lower labour and utilities costs. The Hungarian location, on the other hand, benefits from reduced costs of land plot and lower corporate income tax rate.
- (117) The Commission confirms the credibility of the counterfactual scenario and accepts that the calculations and the underlying parameters, as provided by the Hungarian authorities are realistic. Hungary also provided the required documentary evidence. It follows that [city of the alternative location], [EEA country of the alternative location]– in the absence of aid – can be confirmed to be a more viable location. In line with paragraph 69 of the RAG, the counterfactual scenario does not assume the grant of aid in the alternative location in [city of the alternative location] (recital (64)).
- (118) Hence, with regard to the substantive incentive effect, the Commission considers – based on genuine, contemporary, and realistic evidence submitted by the Hungarian authorities – that the aid effectively has an impact on the choice of location of the investment. By reducing the viability gap in favour of [city of the alternative location], [EEA country of the alternative location], the aid was decisive in triggering the location decision in favour of Iváncsa, Hungary.
- (119) In view of the above, the Commission considers that the aid meets the formal incentive effect requirement and has real, substantive, incentive effect.

#### 3.3.1.3. Conclusion

- (120) Therefore, in light of the considerations set out above, the Commission considers that the aid measure has the objective of promoting regional development in an area designated in accordance with Article 107(3)(a) TFEU.

#### 3.3.2. *Eligibility of the Investment Project and eligible costs*

- (121) Pursuant to paragraph 34 of the RAG, ‘initial investments’ of large undertakings (such as the beneficiary) in ‘a’ areas may benefit from regional investment aid. The Investment Project is carried out by a large undertaking (the beneficiary) in an ‘a’ area. The Investment Project concerns an investment in tangible assets related to the ‘setting up of a new establishment’, which is an ‘initial investment’ pursuant to paragraph 20(h)(a) of the RAG. The Investment Project is thus eligible for regional investment aid.

- (122) According to paragraph 20(e) of the RAG, and within the limits defined in that paragraph, the costs for new assets for the beneficiary's investment are in principle eligible for regional aid.<sup>45</sup>

### 3.3.3. *Need for State intervention*

- (123) According to section 3.3 of the RAG, in order to assess whether State aid is necessary to promote regional development, 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.
- (124) 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 Iváncsa (situated in Central Transdanubia) is eligible for regional aid pursuant to Article 107(3)(a) of the TFEU under the Hungarian regional aid map, so that there is a need for State intervention.

### 3.3.4. *Appropriateness of the aid measure*

- (125) According to paragraph 50 of the RAG, the notified aid measure must be an appropriate policy instrument to promote regional development. The RAG underline 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 of the RAG therefore introduces a double appropriateness test. Under the first appropriateness test, Member States, in particular, have 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.
- (126) As regards the first test, of whether State aid is an appropriate policy instrument to achieve the development sought, the Commission notes that the hardship of Central Transdanubia, in general, is confirmed by its status as a region eligible for regional aid in accordance with Article 107(3)(a) TFEU. With a GDP per capita of 56.33 % of the EU average<sup>46</sup>, the region was identified 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<sup>47</sup>, LG Chem<sup>48</sup>, Toray,<sup>49</sup> SKBM<sup>50</sup> and Volta<sup>51</sup> decisions).

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<sup>45</sup> 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.

<sup>46</sup> As shown in Annex 1 of the RAG.

<sup>47</sup> Commission decision C(2017) 4879 final of 13 July 2017 in case SA.45584 (2016/N) – LIP – Investment aid to Mondi SCP, OJ C 400, 24.11.2017, p. 1.

- (127) As regards the question of whether a cash grant constitutes an appropriate aid instrument, the Hungarian authorities argue that investment aid in the form of a direct pecuniary advantage (direct grant) is necessary to incentivise the beneficiary to carry out the investment in Hungary, rather than in the alternative counterfactual location in [EEA country of the alternative location]. The aid in the form of a direct pecuniary advantage (cash grant) allows the beneficiary to increase the competitiveness of the Ivánca (Hungary) establishment, when compared to the alternative investment site in [city of the alternative location]([EEA country of the alternative location]).
- (128) The Commission considers that, as argued by the Hungarian authorities and in line with previous Commission practice<sup>52</sup>, with other forms of aid, e.g. guarantees or soft loans, it would, indeed, be more difficult to bridge the viability gap of EUR [220-240] million, between the two alternative investment locations and, thus, to offer the necessary incentive to attract the investment to the ‘a’ area in question. The Commission accepts that the chosen aid is adequate to achieve the desired objective, namely to provide the amount of aid necessary to bridge the viability gap between the two locations and thus support an investment contributing to the development of the ‘a’ area concerned.
- (129) Therefore, the Commission accepts that the regional investment aid measure provided in the form of a direct grant represents an appropriate form of support to achieve the regional development objective for the area concerned.

### 3.3.5. *Proportionality of the aid amount*

- (130) 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.
- (131) 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 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

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<sup>48</sup> Commission decision C(2019) 338 final of 28 January 2019 in case SA.47662 (2017/N) – Poland – LIP – Aid to LG Chem Wrocław Energy Sp. z.o.o.), OJ C 93, 20.3.2020, p. 1.

<sup>49</sup> Commission decision C(2020) 4362 final of 2 July 2020 in case SA.54226 (2019/N) – Hungary - Regional investment aid to Toray Industries Kft., OJ C 214, 4.6.2021, p. 1.

<sup>50</sup> See footnote 4.

<sup>51</sup> Commission decision C(2022) 23 final of 7 January 2022 in case SA.59516 (2021/N) – Hungary - regional investment aid to Volta Energy Solutions Kft., not yet published.

<sup>52</sup> See in particular, Commission decision of 2 July 2020 in case SA.54226 (2019/N) - Hungary – Regional investment aid to Toray Industries Kft., recital 94. See also Commission decision C(2017) 3216 final of 24 May 2017 in case SA.45359 (2016/N) - Slovakia – Regional investment aid to Jaguar Land Rover – LIP, OJ C 422, 8.12.2017, p. 21, recital 163.

NPV of the investment in the target area with the NPV in the alternative location, while taking into account all relevant costs and benefits. However, where the alternative location is in the EEA, subsidies granted in that other location are not to be taken into account.

- (132) The Commission notes that the Hungarian authorities submitted the required genuine documentation, and considers that, on the basis of the viability gap (described in recital (112)) the proportionality test is met. The notified aid of HUF 76 362 million (EUR 209 million) in nominal value represents EUR [160-170] million in present value using the beneficiary's discount rate of [7-8 %]. The comparative calculations concluded that an investment in Ivánca would incur a cost disadvantage in comparison to an investment in [city of the alternative location] of about EUR [220-240] million (NPV). The aid therefore does not exceed the calculated cost disadvantage of EUR [220-240] million between the two possible locations. Moreover, in line with paragraph 80 of the RAG, the comparison does not take into account any aid offered in the alternative location in [city of the alternative location](recital (64)).
- (133) In addition, according to paragraph 107 of the RAG, the aid intensity must not exceed the permissible adjusted aid intensity, calculated on the basis of eligible costs. 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<sup>53</sup>. 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<sup>54</sup> and no leasing costs<sup>55</sup> or intangible assets<sup>56</sup> are taken into account. The investment concerns an initial investment in the form of the setting-up of a new establishment. Thus, the Commission notes that the eligible costs are established in accordance with the RAG (see also recital (122)).
- (134) The applicable regional aid ceiling for large undertakings in Central Transdanubia is 35 % (recital (5)). 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 described at paragraph 20(c) of the RAG. As indicated in recital (24), the maximum possible aid amount for the Third Battery Plant is HUF 71 450 million (EUR 196 million) in discounted value and corresponds to an aid intensity of 12.78 %. The notified aid amounts to HUF 71 097 million (EUR 195 million) in discounted value. It therefore does not exceed the maximum aid amount that results from applying the scaling down mechanism and the maximum aid intensity applicable in the region.
- (135) The aid intensity does not exceed the maximum allowed, and is applied to eligible expenditure established in line with the relevant rules. The Hungarian authorities also confirmed that the cumulation of the notified aid with other aid is excluded

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<sup>53</sup> 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.

<sup>54</sup> See paragraph 94 of the RAG.

<sup>55</sup> See paragraph 98 of the RAG.

<sup>56</sup> See paragraph 100 of the RAG.

(see recital (25)). Therefore, the basic requirement identified in paragraphs 107 of the RAG – maximum aid intensities not exceeded – is met. Thus, the level playing field required by paragraph 81 of the RAG is ensured. Moreover, 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) with the allowable ceilings is also respected. The Commission thus considers that the proportionality of the aid is demonstrated.

### 3.3.6. *Avoidance of undue negative effects on competition and trade*

- (136) The Commission further analysed whether the aid has undue negative effects on competition and trade. Section 3.7.2 of the RAG explicitly lists a series of situations where the negative effects on trade and/or competition are unlikely to outweigh any positive effects that a regional aid measure might have.

#### 3.3.6.1. No manifest negative effect on trade: Adjusted aid intensity ceiling is not exceeded

- (137) 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 expenditure<sup>57</sup>, the maximum (adjusted) aid intensity ceiling that applies for a project of the given size, taking into account the required 'progressive scaling down'<sup>58</sup>. As assessed in recitals (133) to (135), the aid amount does not exceed the maximum aid intensity, taking into account the relevant requirements (progressive scaling down, net extra cost approach); there is thus no manifest negative effect in that regard.

#### 3.3.6.2. No manifest negative effect on competition: Aid does not create overcapacity in a market in absolute decline

- (138) 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.
- (139) This verification is, however, only necessary where the aid creates additional capacity on the relevant geographical market. 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 geographical market independent of it. Therefore, this verification will normally be required only in 'scenario 1' situations<sup>59</sup> or in those 'scenario 2' situations where the alternative locations (i.e. both regions considered for the

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<sup>57</sup> The standardised eligible expenditure for investment projects by large firms is described in detail in sections 3.6.1.1 and 3.6.1.2 of the RAG.

<sup>58</sup> See paragraphs 86 and 20(c) of the RAG.

<sup>59</sup> See paragraph 120 of the RAG.

implementation of the investment project) are situated in different geographical markets<sup>60</sup>.

- (140) 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. To determine whether the two alternative locations are situated in different geographical markets, the relevant product market needs first to be defined.

Product concerned and relevant product market

- (141) 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.
- (142) In the case at hand, the Commission considers that the products concerned by the Investment Project are battery cells and battery modules. Cells can be sold directly to OEMs, or they can be first assembled into battery modules and possibly further into battery packs, then sold to the OEMs (recital (82)).
- (143) Given that it is the customers that decide whether SKI should supply them with battery cells or modules or packs, and given that battery cell production constitutes the most substantial part of the added value 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, which follow the same market trends.
- (144) 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.
- (145) As mentioned in recital (82), the Hungarian authorities submit that, besides the application in the automotive industry (for EV) Li-ion battery cells can find other uses, most notably in battery ESS. Battery cells for ESS can, generally, be manufactured at little additional cost, in the same facility as the cells for the automotive sector. Thus, the capacity SKI intends to install in Ivánca could, in theory, be used to supply cells for the ESS market as well. However, the Hungarian authorities explained that SKI has designated the capacity of the plant for the production of EV batteries for the entire reference period. Although the battery cells can be used for ESS, in practice the production capacities for the manufacturing plant are already contracted or are to be contracted to OEMs. 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 EV (measured in GWh).

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<sup>60</sup> See paragraph 139 of the RAG.

### Relevant geographic market

- (146) The Hungarian authorities submit that the relevant geographic market is global, as SKI has production sites in the USA, Europe, and Asia, and the product can be shipped easily, and with low transport costs, by road, ocean, and air. SKI supplies car-manufacturing plants all over the world. Moreover, there is global demand for Li-ion batteries, and their components are also traded internationally (recital (83)).
- (147) For the purpose of this decision, the Commission has decided to leave the question of the exact definition of the geographic market open (EEA or worldwide). In any event, even if the geographic market would be limited to the EEA, the OEM would be supplied from one of the two possible locations of the scenario 2, which are both located in the EEA and thus belong to the same geographical market. Since the aid is also limited to the minimum, possible outcomes in terms of overcapacity in a declining market would in principle be the same regardless of the aid<sup>61</sup>. The Commission therefore considers that the overcapacity in a declining market test does not have to be carried out.
- (148) In any event, as argued by the Hungarian authorities (see recital (84)), the Commission considers that the markets at stake are not in absolute decline<sup>62</sup> and are rather in a situation of undercapacity, even after the Investment Project, so that the aid could not contribute to or reinforce the creation of overcapacity in a market in absolute decline and have a manifest negative effect on competition in this respect.

#### 3.3.6.3. No manifest negative effect on trade: No counter-cohesion effect

- (149) Paragraphs 121 and 139 of the RAG prohibit an EEA region with a lower project-specific viability to participate in ‘subsidy races’ to the detriment of equally weak or worse-off regions<sup>63</sup>.
- (150) As reflected in the genuine contemporary company documents, the beneficiary considered in the final decision-making process only one other alternative location for the Investment Project, namely [city of the alternative location], [EEA country of the alternative location]<sup>64</sup>. [city of the alternative location] has a lower maximum aid intensity rate than Ivánca (recital (68)). Therefore, the Commission considers that the aid has no anti-cohesion effect.

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<sup>61</sup> See paragraph 139 of the RAG.

<sup>62</sup> A market is in absolute decline 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 the projected growth rate in the coming three to five years (see paragraph 136 of the RAG).

<sup>63</sup> 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.

<sup>64</sup> [The first of the two sites mentioned in recital 56 where SKI is already present] was kept as an option for additional – smaller – separate expansion (recital (62)).



#### 3.3.6.4. No manifest negative effect on trade: No relocation

- (151) 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.
- (152) The Hungarian authorities and the aid beneficiary declared that the latter 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.

#### 3.3.6.5. No negative effect on trade: Market power

- (153) Pursuant to paragraph 115 of the RAG, aid may also have distortive effects in terms of increasing or maintaining substantial market power on the part of the beneficiary. However, as for the “overcapacity in a market in absolute decline test” (section 3.3.6.2), paragraph 139 of the RAG states that “*if the counterfactual analysis suggests that without the aid the investment would have gone ahead in another location (scenario 2) which belongs to the same geographical market considering the product concerned, and if the aid is proportional*” possible outcomes in terms of substantial market power “*would in principle be the same regardless of the aid*”. As the two possible locations belong to the same geographical market (recital (147)), the test does not need to be carried out.

#### 3.3.6.6. Conclusion on the avoidance of undue negative effects on competition and trade

- (154) In view of the above, the aid has no manifest negative effect on competition or trade within the meaning of section 3.7.2 of the RAG.

#### 3.3.7. *Balancing of positive and negative effects of the aid*

- (155) The assessment of the above requirements showed that State intervention is needed, that the aid is appropriate, that the counterfactual scenario presented is credible and realistic and that the aid has incentive effect and is limited to the amount necessary to change the location decision of the beneficiary. By triggering the location of the investment in an assisted region, the aid contributes to the regional development of Central Transdanubia. 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 manifest counter-cohesion effect, and it is not causal for the closure of activities elsewhere and their relocation to Ivánca.
- (156) Undue negative effects on competition that are to be taken into account in the remaining balancing test if the investment takes place in a scenario 2 context in two distinct geographic markets are identified in paragraphs 114 and 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). Since the investment would

have taken place, with or without aid, in the same geographical market, the aid is not causal for such undue negative effects and it is not necessary to carry out these additional tests.

- (157) In the light of the above considerations, and as the aid 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, the Commission considers that the aid has no undue negative effect on competition.
- (158) As the aid respects the applicable regional aid ceiling, and the aid measure has no counter-cohesion or relocation effects, the Commission considers that its effects on trade are limited and not contrary to the common interest.
- (159) The aid however has substantial positive effects on the regional development of Central Transdanubia, in particular through the employment (job creation) and knowledge and technology transfer (see recital (104)).
- (160) As the aid meets all minimum requirements, has no manifest negative effects nor 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 Central Transdanubia, and in particular the employment, knowledge and technology transfer clearly outweigh any negative effects.

#### 3.3.8. *Transparency*

- (161) In view of the Transparency Communication<sup>65</sup>, the Hungarian authorities confirmed that the following information will be published on a single national or regional website<sup>66</sup>: the full text of the approved individual aid granting decision and its implementing provisions, or a link to it; the identity of the granting authority; the identity of the individual beneficiary, the aid instrument and amount of aid granted to the beneficiary; the objective of the aid, the date of granting, the type of undertaking; the Commission's aid measure reference number; the region where the beneficiary is located (at NUTS level 2) and the principal economic sector of the beneficiary (at NACE group level).
- (162) The Hungarian authorities also confirmed that this information will be published after the granting decision has been taken, will be kept for at least 10 years and will be available for the general public without restrictions (paragraph 141 RAG).

#### 3.3.9. *No relevant breach of EU law*

- (163) It does not result from the notification that the aid or the conditions attached to it, or the economic activities facilitated by the aid, could entail a violation of a

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<sup>65</sup> Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, OJ C 198, 27.6.2014, p. 30.

<sup>66</sup> <http://tvi.kormany.hu/kozzetétel>.

relevant provision of Union law<sup>67</sup>. In particular, the Commission has not sent a reasoned opinion to Hungary on a possible infringement of Union law that would bear a relation to this case and the Commission has not received any complaints or information that might suggest that the State aid, the conditions attached to it or the economic activities facilitated by the aid might be contrary to relevant provisions of Union law.

### *3.3.10. Conclusion on compatibility of the aid measure*

(164) The Commission therefore concludes, that the notified aid measure is compatible with the internal market pursuant to Article 107(3)(a) TFEU.

## **4. CONCLUSION**

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.

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:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
*Executive Vice-President*

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<sup>67</sup> See paragraph 28 of the RAG.