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(Ogłoszenia)

POSTĘPOWANIA ZWIĄZANE Z REALIZACJĄ POLITYKI KONKURENCJI

KOMISJA

POMOC PAŃSTWA — WĘGRY

Pomoc państwa SA.63470 (2022/C) (ex 2021/N) — Regionalna pomoc inwestycyjna na rzecz Rubin NewCo 2021 Kft.

Zaproszenie do zgłaszania uwag zgodnie z art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej

(Tekst mający znaczenie dla EOG)

(2023/C 336/09)

Pismem z dnia 27 października 2022 r., zamieszczonym w autentycznej wersji językowej na kolejnych stronach, Komisja powiadomiła Węgry o swojej decyzji o wszczęciu postępowania określonego w art. 108 ust. 2 Traktatu o funkcjonowaniu Unii Europejskiej (TFUE) dotyczącego wyżej wspomnianej pomocy.

Zainteresowane strony mogą zgłaszać uwagi na temat pomocy, w odniesieniu do której Komisja wszczyna postępowanie, w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i towarzyszącego mu pisma na następujący adres lub numer faksu:

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Otrzymane uwagi zostaną przekazane władzom węgierskim. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie klauzulą poufności ich tożsamości lub fragmentów zgłaszanych uwag.

TEKST STRESZCZENIA

Opis pomocy, w odniesieniu do której Komisja wszczyna postępowanie

W dniu 2 grudnia 2021 r., po wstępnym zgłoszeniu z dnia 11 czerwca 2021 r., Węgry zgłosiły zamiar przyznania regionalnej pomocy inwestycyjnej w wysokości 43,76 mln EUR (wartość zdyskontowana) w formie dotacji pieniężnej i korzyści podatkowej na rzecz przedsiębiorstwa Rubin NewCo 2021 Kft. („Rubin”) na utworzenie nowego zakładu produkcji części samochodowych („projekt inwestycyjny”). Zgłoszony projekt inwestycyjny jest zlokalizowany na północy Węgier, na obszarze kwalifikującym się do pomocy regionalnej na podstawie art. 107 ust. 3 lit. a) TFUE. Standardowy pułap pomocy regionalnej w przypadku tego obszaru wynosi 50 % na podstawie węgierskiej mapy pomocy regionalnej na

okres od lipca 2014 r. do grudnia 2021 r.⁽¹⁾ oraz na podstawie węgierskiej mapy pomocy regionalnej na okres od stycznia 2022 r. do grudnia 2027 r.⁽²⁾ Projekt inwestycyjny połączy zdolności produkcyjne dwóch istniejących zakładów produkcyjnych w [...] (*) Europie. Rubin jest dużym przedsiębiorstwem, należącym w całości do Eachairn Aerospace Holdings Limited, członka Melrose Group („Melrose”). Rubin zostanie włączony do działu motoryzacyjnego Melrose jako część GKN Automotive Limited („GKN Automotive”).

Ocena zgodności pomocy z rynkiem wewnętrznym

Podstawą prawną oceny zgodności przedmiotowej pomocy państwa z rynkiem wewnętrznym jest art. 107 ust. 3 lit. a) TFUE, zgodnie z wykładnią wytycznych w sprawie pomocy regionalnej na lata 2014–2020⁽³⁾ („wytyczne w sprawie pomocy regionalnej z 2014 r.”) oraz wytycznych w sprawie pomocy regionalnej mających zastosowanie od dnia 1 stycznia 2022 r.⁽⁴⁾ („wytyczne w sprawie pomocy regionalnej z 2022 r.”) (łącznie „wytyczne w sprawie pomocy regionalnej”).

Zgodnie z wytycznymi w sprawie pomocy regionalnej⁽⁵⁾ pomoc regionalna może zostać zatwierdzona tylko wtedy, gdy projekt objęty pomocą przyczynia się do rozwoju regionalnego, a pomoc wywołuje efekt zachęty. Musi ponadto istnieć potrzeba interwencji państwa, a pomoc musi być odpowiednia i proporcjonalna i nie powinna prowadzić do nadmiernych negatywnych skutków dla konkurencji i wymiany handlowej, które to negatywne skutki przeważałyby nad pozytywnymi skutkami pomocy.

Zgodnie z sekcją 3.5 wytycznych w sprawie pomocy regionalnej z 2014 r. i sekcją 5.2 wytycznych w sprawie pomocy regionalnej z 2022 r. pomoc regionalna może zostać uznana za zgodną z rynkiem wewnętrznym, tylko jeśli wywołuje efekt zachęty. Efekt zachęty występuje, gdy pomoc zmienia zachowanie przedsiębiorstwa w taki sposób, że prowadzi ono dodatkową działalność przyczyniającą się do rozwoju obszaru, której w przypadku nieprzyznania pomocy nie prowadziłoby lub którą prowadziłoby jedynie w ograniczonym lub innym zakresie lub w innym miejscu. Pomoc nie może subsydiować kosztów działalności, którą przedsiębiorstwo i tak by prowadziło, i nie może rekompensować zwykłego ryzyka związanego z prowadzeniem działalności gospodarczej. W pkt 61 wytycznych w sprawie pomocy regionalnej z 2014 r. i pkt 59 wytycznych w sprawie pomocy regionalnej z 2022 r. stwierdzono, że istnienie (istotnego) efektu zachęty można dowieść, gdy zachodzi jedna z dwóch możliwych sytuacji: gdy bez pomocy inwestycja nie byłaby wystarczająco rentowna w żadnej lokalizacji (scenariusz 1) albo gdy bez pomocy inwestycja zostałaby zrealizowana w innej lokalizacji (scenariusz 2). Węgry powołują się na scenariusz 2 i twierdzą, że pomoc jest uzasadniona koniecznością wyrównania ocenionej na kwotę 66,7 mln EUR różnicy netto między kosztami lokalizacji inwestycji na Węgrzech w porównaniu z alternatywną lokalizacją inwestycji w Eskişehir, Turcja.

Na obecnym etapie Komisja nie jest w stanie stwierdzić, czy proponowana pomoc będzie miała efekt zachęty. Wstępnie Komisja jest zdania, że przedsiębiorstwo Melrose podjęło już decyzję o inwestycji na Węgrzech w grudniu 2020 r. poprzez zatwierdzenie „wniosku o wydatki kapitałowe”; wcześniej GKN Automotive rozważało zlokalizowanie inwestycji w Polsce lub na Słowacji zamiast Węgier, a Turcji jako realnej alternatywy ani jakiegokolwiek pomocy nie brano pod uwagę. Węgry twierdzą, że decyzję w sprawie lokalizacji inwestycji podjęto dopiero w grudniu 2021 r. i wybrano Węgry (zamiast Turcji) z uwagi na możliwość uzyskania pomocy państwa. Dokładniej rzecz ujmując, zdaniem Węgier w grudniu 2020 r. przedsiębiorstwo Melrose jedynie zatwierdziło inwestycję co do zasady, przyjmując lokalizację na Węgrzech za hipotezę roboczą. Węgry twierdzą również, że kilka dni przed podpisaniem „wniosku o wydatki kapitałowe” przedsiębiorstwo Melrose zażądało poprawy założeń finansowych dotyczących inwestycji na Węgrzech w celu skrócenia okresu zwrotu z inwestycji z [5,4–7] lat w ramach projektu do poniżej [4,5–5,4] roku, co zdaniem Węgier stanowi decydujący próg dla polityki inwestycyjnej Melrose. Na tej podstawie GKN Automotive przeanalizowało możliwość przeprowadzenia inwestycji w Turcji, ale w styczniu 2021 r. podjęło wstępną decyzję o lokalizacji na Węgrzech, pod warunkiem otrzymania pełnej kwoty zachęt na Węgrzech, a w grudniu 2021 r. przyjęło ostateczną decyzję dotyczącą lokalizacji na Węgrzech.

Komisja zastanawia się, w jakim stopniu GKN Automotive, próbując osiągnąć cel finansowy narzucony przez Melrose, miała swobodę zmiany lokalizacji przedstawionej we wniosku o wydatki kapitałowe. Jeżeli GKN Automotive działała w ramach zatwierdzonego opisu projektu, Komisja wstępnie stoi na stanowisku, że Turcja została przedstawiona jako alternatywna lokalizacja dla inwestycji jedynie w celu umożliwienia GKN Automotive wykazania efektu zachęty, a tym samym otrzymania pomocy regionalnej na inwestycję, a nie jako rzeczywisty scenariusz alternatywny, w przypadku gdyby projekt inwestycyjny był realizowany bez pomocy.

(1) Decyzja Komisji z dnia 11 marca 2014 r. w sprawie SA.37718 (2013/N) (Dz.U. C 172 z 6.6.2014, s. 1), zmieniona decyzją Komisji z dnia 11 października 2016 r. w sprawie SA.46346 (2016/N) (Dz.U. C 4 z 6.1.2017, s. 1) oraz przedłużona (do dnia 31 grudnia 2021 r.) decyzją Komisji z dnia 7 października 2020 r. w sprawie SA.58164 (2020/N) (Dz.U. C 430 z 11.12.2020, s. 1).

(2) Decyzja Komisji z dnia 16 września 2021 r. w sprawie SA.63934 (2021/N) (Dz.U. C 410 z 8.10.2021, s. 2).

(*) Informacje poufne.

(3) Wytyczne w sprawie pomocy regionalnej na lata 2014–2020 (Dz.U. C 209 z 23.7.2013, s. 1).

(4) Wytyczne w sprawie pomocy regionalnej (2021/C 153/01) (Dz.U. C 153 z 29.4.2021, s. 1).

(5) Sekcja 3.1 wytycznych w sprawie pomocy regionalnej z 2014 r. i pkt 39 wytycznych w sprawie pomocy regionalnej z 2022 r.

Komisja ma poważne wątpliwości, czy zwrot kosztów w ciągu maksymalnie [4,5 – 5,4] roku stanowił czynnik decydujący, przeważający w momencie inwestycji, dla decyzji o lokalizacji. Komisja nie zidentyfikowała żadnych aktualnych dokumentów potwierdzających taką politykę. Węgry nie przedstawiły ponadto żadnych dowodów na poparcie twierdzenia, że przedsiębiorstwo Melrose zwróciło się o poprawę okresu zwrotu z inwestycji na Węgrzech.

Komisja zauważa również, że nie jest jasne, na jakiej podstawie wybrano Turcję jako jedyny rozważany scenariusz alternatywny, a innych lokalizacji o niskich kosztach nie wzięto pod uwagę.

Nawet jeżeli w okresie od grudnia 2020 r. do grudnia 2021 r. Turcję analizowano jako rzeczywistą alternatywę, nie jest jasne, czy GKN Automotive lub Melrose zdecydowałyby się na ten scenariusz alternatywny w grudniu 2021 r. w przypadku braku pomocy państwa ze strony Węgier.

GKN Automotive wykluczyło Turcję jako potencjalną lokalizację do utworzenia nowego zakładu pod koniec 2019 r., ponieważ postrzegало ją jako stwarzającą ryzyko polityczne. Komisja uważa, że Węgry nie uzasadniły w wystarczającym stopniu, w jaki sposób ryzyko polityczne, ocenione jako czynnik odstraszaający w 2019 r., zmieniło się w grudniu 2020 r., kiedy to Turcję ponownie zaczęto brać pod uwagę jako alternatywną lokalizację. Węgry nie przedstawiły szczegółowej analizy ryzyka, sprawozdania ani żadnego innego dokumentu dotyczącego oceny ryzyka politycznego i operacyjnego w Turcji z 2019 r., 2020 r. i stycznia 2021 r., ani wystarczających wyjaśnień, dlaczego Melrose lub GKN Automotive uważały sytuację polityczną za mniej niestabilną w grudniu 2020 r./styczniu 2021 r. w porównaniu z 2019 r. Biorąc pod uwagę opinię GKN Automotive na temat niestabilności politycznej i gospodarczej w Turcji pod koniec 2021 r. oraz zwiększone postrzegane ryzyko, Komisja ma wątpliwości, czy Turcja była realistyczną opcją inwestycyjną, i wstępnie uważa, że GKN Automotive i tak zainwestowałoby na Węgrzech.

Ponadto ocenę proporcjonalności kwoty pomocy wymaganą na podstawie sekcji 3.6 wytycznych w sprawie pomocy regionalnej z 2014 r. i sekcji 5.5.1 wytycznych w sprawie pomocy regionalnej z 2022 r. można przeprowadzić dopiero wtedy, gdy scenariusz alternatywny zostanie uznany za wiarygodny. Na obecnym etapie postępowania wydaje się, że pomoc nie była konieczna, aby zapewnić lokalizację inwestycji na Węgrzech, ponieważ tak czy inaczej miałoby to miejsce. Nawet przy założeniu, że scenariusz alternatywny zakładający lokalizację w Turcji był wiarygodny, Komisja zastanawia się nad wielkością inwestycji.

W sekcji 3.7.2 wytycznych w sprawie pomocy regionalnej z 2014 r. i w sekcji 5.6.2 wytycznych w sprawie pomocy regionalnej z 2022 r. wyraźnie wymieniono szereg sytuacji, w których oczywisty negatywny wpływ na wymianę handlową lub konkurencję wyraźnie przewyższa wszelkie pozytywne skutki, co oznacza, że jest mało prawdopodobne, aby pomoc została uznana za zgodną z rynkiem wewnętrznym. Na obecnym etapie postępowania, w szczególności biorąc pod uwagę wątpliwości co do prawdziwości scenariusza alternatywnego, Komisja nie mogła ustalić, czy pomoc nie jest związana przyczynowo z zamknięciem działalności w innym miejscu i z jej przeniesieniem na Węgry, i nie mogła stwierdzić, że pomoc nie mogła przyczynić się do powstania nadwyżki mocy produkcyjnych na rynku w fazie bezwzględnego spadku ani wzmocnić tego procesu. Pomoc może ponadto mieć negatywne skutki w przypadku tworzenia zdolności produkcyjnych na nierentownym rynku, jednak odnośnego testu nie można przeprowadzić przed potwierdzeniem scenariusza alternatywnego.

Z powyższych powodów Komisja wyraża poważne wątpliwości co do zgodności omawianej pomocy z rynkiem wewnętrznym.

Zainteresowane strony proszone są o przedstawienie uwag na temat pomocy, a zwłaszcza na temat kwestii wskazanych bardziej szczegółowo w załączonym piśmie skierowanym do władz węgierskich.

PISMO

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

1. THE PROCEDURE

- (1) On 11 June 2021, Hungary pre-notified to the Commission its intention to grant regional aid (‘the measure’) in favour of Rubin NewCo 2021 Kft. (‘the beneficiary’ or ‘Rubin’) for the setting-up of a new establishment for production of automotive components in Miskolc, Hungary (‘the Investment Project’). On 30 June 2021, a virtual meeting took place between the Commission services, the Hungarian authorities and representatives of the beneficiary. On 23 July 2021, the Commission requested supplementary information, which Hungary submitted on 27 August 2021. On 21 September 2021, a second virtual meeting took place between the Commission services, the Hungarian authorities and representatives of the beneficiary. On 30 September 2021, the Commission requested supplementary information, which Hungary submitted with the notification.
- (2) On 2 December 2021, the Hungarian authorities formally notified the measure. On 1 February 2022, the Commission requested further information, which the Hungarian authorities provided on 29 March, 11 April and 4 May 2022. The Commission requested additional information on 13 May and 15 July 2022 and the Hungarian authorities replied, respectively, on 17 May and 23 August 2022.
- (3) By letter of 23 August 2022, the Hungarian authorities agreed to waive their rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 ⁽¹⁾ and to have the present decision adopted and notified in the English language.

2. DETAILED DESCRIPTION OF THE MEASURE**2.1. Objective of the measure**

- (4) Through the measure, the Hungarian authorities intend to promote regional development by providing regional investment aid (in the form of a cash grant and a tax benefit) for the setting-up of a new establishment for the production of automotive components (sideshafts, propshafts and sub-components such as joints) in Felsőzsolca industrial zone in Miskolc, Borsod-Abaúj-Zemplén County (NUTS 3 code HU311), situated in the Northern Hungary region (NUTS 2 code HU31). This area was eligible for regional aid under Article 107(3)(a) TFEU on the basis of the Hungarian regional aid map for the period from July 2014 to December 2021 (‘regional aid map 2014’) ⁽²⁾ and remained eligible on the basis of the Hungarian regional aid map for the period from January 2022 to December 2027 (‘regional aid map 2022’) ⁽³⁾. Both maps established the standard regional aid ceiling for that area at 50 %.

2.2. The beneficiary

- (5) The recipient of the aid is Rubin, a legal entity founded in January 2021. Rubin is fully owned by Eachair Aerospace Holdings Limited, a member of the Melrose Group ⁽⁴⁾. Melrose Group operates in a number of geographical regions and sectors, such as aerospace, automotive, powder metallurgy, and air management. Hungary submits that it is expected that the 100 % ownership of Rubin will be transferred to the automotive division of the Melrose Group, i.e. to GKN Automotive Limited, (‘GKN Automotive’), which — like Eachair Aerospace Holdings Limited — is 100 % indirectly owned by Melrose Industries PLC. The beneficiary is a large enterprise ⁽⁵⁾.
- (6) The Hungarian authorities confirmed that neither the beneficiary nor the Melrose Group is an undertaking in difficulty as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽⁶⁾.

⁽¹⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

⁽²⁾ Commission decision of 11 March 2014 in case SA.37718 (2013/N) (OJ C 172, 6.6.2014, p. 1), as modified by Commission decision of 11 October 2016 in case SA.46346 (2016/N) (OJ C 4, 6.1.2017, p. 1), and as prolonged (until 31 December 2021) by Commission decision of 7 October 2020 in case SA.58164 (2020/N) (OJ C 430, 11.12.2020, p. 1).

⁽³⁾ Commission decision of 16 September 2021 in case SA.63934 (2021/N) (OJ C 410, 8.10.2021, p. 2).

⁽⁴⁾ Eachair Aerospace Holdings Limited is 100 % indirectly owned by the holding company of the Melrose Group, Melrose Industries PLC.

⁽⁵⁾ That is: it does not meet the criteria to qualify as a small or medium-sized enterprise within the meaning of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

⁽⁶⁾ OJ C 249, 31.7.2014, p. 1.

2.3. The Investment Project

2.3.1. General description

- (7) According to the Hungarian authorities⁽⁷⁾, the Investment Project is part of GKN Automotive's long-term restructuring plan defined in 2019 (the 'Strategy'). The Strategy aims at safeguarding GKN Automotive's competitiveness in an increasingly competitive market environment by consolidating its inefficient and scattered European production footprint and shifting its production capacity towards more cost-effective locations. GKN Automotive's manufacturing operations in Europe are spread across more than ten sites, the majority of which are located in Western Europe, in locations with high production costs. Furthermore, these sites are largely fragmented and supply each other with intermediate products thereby resulting in inefficiencies through increased transport and stock holding costs.
- (8) The Strategy is structured into multiple waves of which the first and the third — which involve the [transfer of business]^(*) of certain sites — are already in the process of being implemented (recital (40)).
- (9) The Investment Project (under the so called 'New wave three' of the Strategy, recital (40)) concerns the setting-up of a production facility for automotive components that will integrate the capacity, without increasing it, of two existing GKN Automotive production facilities in [...] Europe⁽⁸⁾ into a new integrated plant in Hungary.
- (10) The new production facility in Hungary will have a production capacity of around [5,5 — 7,5] million units of sids shafts and [0,5 — 2,5] million units of prop shafts. In addition, the site will produce joints and other components (capacity of [17,5 — 21] million units) to be assembled on site into sids shafts and prop shafts, but also to supply other GKN Automotive assembly sites. The beneficiary concluded the purchase of the land on 10 March 2022, following a preliminary land plot purchase agreement signed on 14 December 2021.
- (11) The Investment Project is expected to create approximately 1 500 new direct jobs.
- (12) The Hungarian authorities submitted that the start of works on the Investment Project, within the meaning of paragraph (20)(v) of the Regional Aid Guidelines 2014-2020⁽⁹⁾ ('RAG 2014') occurred on 28 April 2022, after the beneficiary submitted the relevant aid applications (i.e. 8 April 2021 for the cash grant and 31 March 2021 for the tax benefit). Production is planned to start in 2023, reaching full production capacity in 2026.

2.3.2. Eligible investment costs

- (13) The eligible investment costs are summarised in Table 1:

Table 1

Total eligible costs of the Investment Project

Total eligible costs in thousands	Nominal		Discounted ⁽¹⁰⁾	
	HUF	EUR ⁽¹¹⁾	HUF	EUR
Land	[...]	[...]	[...]	[...]
Buildings	[...]	[...]	[...]	[...]
Plant/machinery/equipment	[...]	[...]	[...]	[...]
Intangible assets	[...]	[...]	[...]	[...]
Total eligible costs	51 919 548	142 742	50 112 011	137 773
<i>of which eligible costs for 2022</i>	[...]	[...]	[...]	[...]

⁽⁷⁾ Hungary provided several internal GKN Automotive documents further detailing the Strategy.

^(*) Confidential information

⁽⁸⁾ According to the Hungarian authorities, the [transfer of business] of such two sites will be subject to appropriate consultation and co-determination as required by law.

⁽⁹⁾ Guidelines on regional State aid for 2014-2020 (OJ C 209, 23.7.2013, p. 1).

⁽¹⁰⁾ Discount rate 1,80 %, date of discounting: April 2021, in line 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).

⁽¹¹⁾ HUF conversions to EUR are indicative and rounded, based on an exchange rate of EUR 1 = HUF 363,73 (official exchange rate of the National Bank of Hungary on 31 March 2021, the last day of the month preceding the aid applications).

Total eligible costs in thousands	Nominal		Discounted ⁽¹²⁾	
	HUF	EUR ⁽¹³⁾	HUF	EUR
of which eligible costs for 2023	[...]	[...]	[...]	[...]
of which eligible costs for 2024	[...]	[...]	[...]	[...]
of which eligible costs for 2025	[...]	[...]	[...]	[...]

- (14) Hungary confirmed that the assets to be acquired under the Investment Project are new.
- (15) Hungary confirmed that the costs of intangible assets meet the conditions set out in paragraphs 100 to 102 of RAG 2014, which are fully reflected in Article 18(5) of Government Decree No 210/2014 (VIII.27.) 'on the earmarked scheme for investment promotion' which provides that, in order to be eligible for the calculation of the investment costs, intangible assets: (a) must be used exclusively by the investor in the establishment receiving the aid; (b) must be depreciated; (c) must be purchased under market conditions from third parties unrelated to the buyer; (d) must be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is granted for at least five years (three years for small and medium-sized enterprises); furthermore (e) for large enterprises, costs of intangible assets are eligible only up to a limit of 50 % of the total eligible costs for the project. Similar provisions are also included in the cash grant incentive agreement (recital (17)).

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

- (16) The aid includes two different aid instruments, i.e. a cash grant and a development tax benefit, financed by the general budget of the State.

2.4.1. The cash grant

- (17) The cash grant is provided based on Government decree No 210/2014 (VIII.27.) 'on the earmarked scheme for investment promotion', a regional aid scheme ⁽¹⁴⁾ implemented under Commission Regulation (EU) No 651/2014 ('GBER') ⁽¹⁵⁾, 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 since the total aid amount (cash grant and development tax benefit) exceeds the notification threshold laid down in Article 4(1)(a) of the GBER (recital (106)). The cash grant incentive agreement (the 'Incentive Agreement') was signed on 22 December 2021 between the Ministry of Foreign Affairs and Trade (responsible authority) and the beneficiary, and is conditional upon the Commission's approval of the aid.

2.4.2. The development tax benefit

- (18) The development tax benefit ('tax benefit'), by the Ministry of Finance (granting authority) is based on Act LXXXI of 1996 'on Corporate Tax and Dividend Tax' ⁽¹⁶⁾ and Government Decree No 165/2014 'on Development Tax Incentive (VII.17.)' ⁽¹⁷⁾, an aid scheme ⁽¹⁸⁾ implemented under the GBER, allowing aid in the form of tax benefits for certain investments. The tax benefit constitutes an individually notifiable case of application of the above-mentioned aid scheme since the total aid amount (cash grant and development tax benefit) exceeds the notification threshold laid down in Article 4(1)(a) of the GBER (recital (106)). The annual amount of the tax benefit to be utilised may not exceed 80 % of the annual payable corporate tax of the beneficiary. The available tax benefit may be utilised in thirteen consecutive fiscal years at most, but no later than in the sixteenth fiscal year (tax year) after the fiscal year when the application is submitted.
- (19) Hungary considers that it awarded the tax benefit on 12 December 2021, which is the date on which the Government adopted a decision ⁽¹⁹⁾ according to which it 'allow(s) the Company to benefit from the development tax advantage for its investment...'. Such decision refers to a subsequent act setting specific conditions for the granting: 'The

⁽¹²⁾ Discount rate 1,80 %, date of discounting: April 2021, in line 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).

⁽¹³⁾ HUF conversions to EUR are indicative and rounded, based on an exchange rate of EUR 1 = HUF 363,73 (official exchange rate of the National Bank of Hungary on 31 March 2021, the last day of the month preceding the aid applications).

⁽¹⁴⁾ SA.61023 (2021/X) as modified by SA.63819 (2021/X).

⁽¹⁵⁾ 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).

⁽¹⁶⁾ <https://net.jogtar.hu/jogszabaly?docid=99600081.tv>

⁽¹⁷⁾ <https://net.jogtar.hu/jogszabaly?docid=A1400165.KOR>

⁽¹⁸⁾ SA.61029 (2021/X), amending SA.49983.

⁽¹⁹⁾ The Commission was provided with an undated decision by the Government, which Hungary confirmed was adopted on 12 December 2021.

development tax benefit shall be granted in accordance with the conditions laid down in the decision of the Government to be published on the basis of the decision of the European Commission'.

2.5. Aid amount

- (20) The total notified aid amounts to HUF 15 917,4 million (EUR 43,76 million) in discounted value. The aid is planned to be paid out as provided in Table 2.

Table 2

Aid amount supporting the Investment Project

Aid amount in thousands	Nominal		Discounted	
	HUF	EUR	HUF	EUR
Cash grant (total)	16 280 555	44 760	15 644 299	43 011
to be received in 2022	[...]	[...]	[...]	[...]
to be received in 2023	[...]	[...]	[...]	[...]
to be received in 2024	[...]	[...]	[...]	[...]
to be received in 2025	[...]	[...]	[...]	[...]
to be received in 2026	[...]	[...]	[...]	[...]
Tax benefit (total)	—	—	273 102	751
to be received in ...			273 102	751
Total amount			15 917 401	43 762

- (21) The cash grant, with an overall nominal value of HUF 16 280,56 million (EUR 44,76 million), will be paid over the period 2022-2026, which, according to the projections in Table 2 would result in a discounted value of HUF 15 644,30 million (EUR 43,01 million). The Hungarian authorities explained that the exact amount of the tax benefit in present value will be calculated after the cash grant is paid out. The actual amount in present value of the cash grant will be then deducted from the present value amount of the total aid and the remaining amount will be used as a tax benefit and applied in compliance with the rules as outlined in recital (18). Based on the current calculations and projections of the disbursements of the cash grant, the projected amount of the tax benefit is HUF 273,10 million (EUR 0,75 million) in discounted value.

2.6. Aid intensity and cumulation with other investment aid

- (22) The Hungarian authorities calculated the maximum aid amount and the maximum aid intensity for the Investment Project by applying the scaling-down mechanism⁽²⁰⁾ to the total eligible investment costs in discounted value. Based on that mechanism, the maximum aid amount cannot exceed HUF 15 976 million (EUR 43,9 million) in discounted value i.e. the maximum aid intensity allowed for the Investment Project is⁽²¹⁾ 31,88 %. The notified aid amount, as indicated in recital (20), is below the maximum and corresponds to an aid intensity of 31,76 %.

⁽²⁰⁾ See paragraphs 86 and 20(c) of the RAG 2014 and paragraphs 90 and 19(3) of the Regional Aid Guidelines applicable as from 1 January 2022 (see footnote 52). 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 small and medium-sized enterprises, 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.

⁽²¹⁾ According to paragraph 20(m) of the RAG 2014, 'maximum aid intensities' means the aid intensities in gross grant equivalent for large undertakings as laid down in subsection 5.4 of the RAG and reflected in the relevant regional aid map. According to paragraph 20(f) of the RAG 2014, 'gross grant equivalent' (GGE) means the discounted value of the aid expressed as a percentage of the discounted value of the eligible costs, as calculated at the time of award of the aid on the basis of the reference rate applicable on that date. According to paragraph 19(19) of the Regional Aid Guidelines applicable as from 1 January 2022 (see footnote 52), 'maximum aid intensity' means the aid intensity reflected in the regional aid maps set out in subsection 7.4, including the increased aid intensity for SMEs. According to paragraph 19(10) of the Regional Aid Guidelines applicable as from 1 January 2022 'gross grant equivalent' means the discounted amount of the aid equivalent to what it would amount to if provided in the form of a grant to the aid beneficiary, before taxes or other charges, as calculated at the date of award of the aid or at the time the aid is notified to the Commission, whichever is earlier, on the basis of the reference rate applicable on that date.

- (23) In light of provisions of the Incentive Agreement, neither the approved maximum aid amount in recital (20), nor the approved aid intensity (recital (22)) would be exceeded if, for instance, the amount of eligible expenditures deviates from the estimated amount. This is because, according to the Incentive Agreement (i) even if the actual investment costs of the investment increase compared to the eligible costs set out in the Incentive Agreement, the beneficiary will only be entitled to the cash grant maximum aid amount specified in the agreement; (ii) it is the Commission's decision that determines the aid intensity of the total State aid that may be granted to the investment (including the tax benefit); and (iii) no amendment affecting the essential content of the Commission decision is possible under the Incentive Agreement without a prior notification to the Commission.
- (24) The Hungarian authorities confirmed that the aid cannot be cumulated with other State aid or *de minimis* aid covering the same eligible costs.

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

- (25) The Hungarian authorities explained that within the waves under implementation mentioned in recital (8), the beneficiary (at group level) has already closed several sites and has concrete plans to [transfer the business of] two further sites in [...] Europe, after the production capacity of those sites has been transferred to the new Hungarian plant.

2.8. Contribution to regional development and territorial cohesion

- (26) The Investment Project is being carried out in the Northern Hungary region (NUTS 2 code HU31). This area was eligible for regional aid under Article 107(3)(a) TFEU on the basis of the regional aid map 2014 and remains eligible on the basis of the regional aid map 2022. The Hungarian authorities explained that the investment will contribute to the regional development of Northern Hungary for the following reasons:
- (a) The Investment Project is intended to create approximately 1 500 new direct jobs by 2026, out of which 25 % will require employees with higher education. The Investment Project is also expected to create a similar number of indirect jobs in the wider local economy (e.g. supply chain, services providers).
- (b) The Investment Project will contribute to the increased revenue of the automotive industry in Northern Hungary and will help major automotive original equipment manufacturers ('OEMs') in the region to have local supplier capability. Rubin is considering becoming a member of the North Hungarian Automotive Cluster, which currently has 77 members, the mission of which is to enhance co-operation among members, promote the exchange of information and ultimately facilitate development of the automotive sector.
- (c) The beneficiary plans to cooperate with the University of Miskolc, the largest university in the region and one of the largest in Hungary in the field of IT and engineering, and with other universities across Hungary, particularly around joint research projects. Such cooperation is expected to result in better academic training and create job opportunities for students on the one hand and highly skilled graduates meeting the labour demand of enterprises on the other hand.
- (d) The Investment Project will contribute to technology and knowledge transfer through the creation of a research and development ('R&D') centre, which is part of that project, with around 40 R&D employees. To operate the R&D centre as well as the technological production processes of the new facility in Hungary, the beneficiary will provide employees of the Hungarian site with hands-on training in [other existing sites].
- (e) The investment will also contribute to environmental protection since the new integrated plant will be built following the latest environmental standards. The plant will perform significantly better in terms of environmental efficiency as compared to the current GKN Automotive European sites, which were built in the 1970s. At least 25 % of the energy needs will be met from renewable sources (i.e. heat being extracted from geothermal sources). With the establishment of the new site, GKN Automotive will be able to significantly increase the vertical integration of its manufacturing processes by combining component machining and assembly into a single facility. This is expected to decrease manufacturing complexity, reduce inter-company transportation (resulting in an associated CO₂ reduction) and increase the overall manufacturing efficiency. As a result of the new plant, GKN Automotive will be able to serve its extensive customer base in a more efficient and environmentally conscious way.

2.9. Maintenance of the assisted activity

- (27) Section 14(1)(d), of Government Decree No 210/2014 and Section 4(3) of Government Decree No 165/2014 provide that the cash grant and the tax benefit can only be applied and maintained if the investment is maintained in the area concerned for at least five years after its completion. The Incentive Agreement also includes an equivalent obligation on the beneficiary until the end of the monitoring period, which is set at five financial years after 31 December 2026, the deadline for the completion of the investment ⁽²²⁾.

2.10. Own contribution

- (28) Hungary confirmed that the beneficiary will provide a financial contribution of at least 25 % of the eligible costs through its own resources or by external financing, in a form that is free of any public financial support. This results from the Hungarian legislation applicable to the two aid measures forming the notified aid, namely Section 4(7) of Government Decree No 165/2014 (VII. 17.) and Section 14(1)(e) of Government Decree No 210/2014. The Incentive Agreement also obliges the beneficiary to use at least 25 % of its own resources to cover the eligible costs of the Investment Project.

2.11. Environmental impact assessment

- (29) Hungary confirmed that the beneficiary has committed to carry out an Environmental Impact Assessment ('EIA') for the Investment Project and aims at attaining a sustainability certification for master planning projects, infrastructure and buildings.

2.12. Appropriateness of the measure

- (30) The Hungarian authorities are of the opinion that the notified aid in the form of direct pecuniary advantages (cash grant and tax benefit) is an appropriate aid measure. Hungary refers to the Commission decision in case C-46/2008 Dell Poland ⁽²³⁾ explaining that in such case the Commission accepted the appropriateness of a direct grant in light of the macroeconomic need for State aid for large investment projects, in order to stimulate economic development at the regional level (in a region where the gross domestic product per capita and the wage levels are below the national average and the unemployment rate is higher than the national average). Hungary also submits that the non-repayable cash grant is appropriate as it is necessary to bridge the net present value ('NPV') gap between the alternative location and Miskolc (recital (87)).

2.13. Incentive effect and proportionality

2.13.1. Formal incentive effect

- (31) The Hungarian authorities explained that the works on the Investment Project started on 28 April 2022, i.e. after the applications for aid had been submitted (on 8 April 2021 for the cash grant and on 31 March 2021 for the tax benefit).

2.13.2. Substantive incentive effect

- (32) The Hungarian authorities invoke a scenario 2 situation (location decision) under paragraph 61(b) of the RAG 2014, to demonstrate the existence of a substantive incentive effect ⁽²⁴⁾. They argue that, without the aid, the investment would have taken place in Türkiye (Eskişehir) because it would have been more profitable (higher NPV of the investment) to invest in that Turkish location as compared to the Hungarian location.
- (33) To support the credibility of that counterfactual scenario, the Hungarian authorities provided a description of the relevant decision-making process. That process was structured in three main phases:
- a first phase (Section 2.13.2.1) concerning the design of the Strategy (recital (7)) encompassing, among others, the Investment Project, and an initial country selection (September — November 2019);
 - a second phase (Section 2.13.2.2), during which the beneficiary performed an initial site selection process for the Investment Project resulting in an initial decision to implement the third wave of the Strategy and in a business case approval. This business case was challenged and Türkiye was introduced in the process (November 2019 — November/December 2020);

⁽²²⁾ The Incentive Agreement defines the completion of the investment as the date of capitalisation of the last capitalised asset, which cannot be later than the deadline for completion of the investment, that is, 31 December 2026.

⁽²³⁾ Commission Decision 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), recitals 171 et seq.

⁽²⁴⁾ Paragraph 61(b) RAG 2014: '... 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 ...'

- (c) a third phase (Section 2.13.2.3) including preparatory activities in both Türkiye and Hungary, a comparison of the two options and the adoption of the final location decision (December 2020 — December 2021).
- (34) In general, the Hungarian authorities explained that the decision-making process followed the investment policy of GKN Automotive, the automotive division of Melrose. Such investment policy does not provide for any specific procedure for the design of restructuring plans or for the preparation of business cases for investments (including the concrete workflows to select a location for the said business cases), nor does it identify competent bodies for such activities. According to the Hungarian authorities, Melrose's approval/ratification is nevertheless necessary for certain high-level decisions such as those relating to the release of funding for investments of an important value (i.e. capital expenditure higher than GBP [...]) or those on property transactions. The Hungarian authorities, however, have not specified which corporate entity within the Melrose group is competent to give such approvals.
- (35) More specifically, in the case of the Strategy and the resulting site selection, Hungary explained that the GKN Automotive Executive Team⁽²⁵⁾ ('GKN Automotive ET') took the lead in all phases of the decision making process, keeping Melrose informed via informal updates (during e.g. business reviews meetings, weekly touchpoints between the Chief Executive Officer of GKN Automotive and Melrose) and via formal approval meetings with Melrose for the ratification of certain funding requests (recital (34)).

2.13.2.1. First phase (September 2019 to November 2019): design of the Strategy

- (36) The initial part of the process (September 2019 to November 2019) involved members of the GKN Automotive ET (as part of a steering committee)⁽²⁶⁾ and a core project team composed of senior managers of GKN Automotive ('Strategy core project team'). According to Hungary, decisions were taken at the level of the steering committee. The Commission notes that it is not clear from the submissions of the Hungarian authorities whether this steering committee was an *ad hoc* entity specifically established for the definition of the Strategy and (if the steering committee had already existed before) what role and powers it had, in general, in the framework of the GKN Automotive decision-making procedures.
- (37) The Strategy core project team, together with a team of external consultants, conducted an in-depth analysis of the GKN Automotive businesses and footprint in Europe, prepared decision proposals and discussed the relevant results in the steering committee. The footprint analysis resulting from a 'working team meeting' presentation of 26 November 2019 and a final presentation of 29 November 2019, showed that the majority of GKN Automotive's sites were located in Western Europe, in locations with high production costs and that the interaction between several sites required many inefficient transfers of sub-components, such as half shafts, joints, tulips and tripods. On this basis, it was considered necessary to work on a long-term strategy to reduce the complexity of GKN Automotive's network and thereby improve its operating cost base.
- (38) The presentations referred to in recital (37) show that the Strategy provided for the [transfer of business] of several GKN Automotive sites to optimise GKN Automotive's overall production capacity by concentrating capacity in a smaller number of new integrated plants to be located in locations offering greater cost efficiency. According to Hungary, the Strategy was adopted by the steering committee in late November 2019. Hungary explained that at the starting point of the footprint transformation, GKN Automotive had substantial overcapacity. Hence, the Strategy also aimed at balancing capacity with expected demand. The Strategy, as summarised in the 29 November 2019 final presentation, consists in a restructuring plan divided into six phases ('Waves one to six') with an overall payback period⁽²⁷⁾ of [3,5 — 5] years. The presentation does not show a specific payback by wave but notes that '*some individual waves currently look unattractive from a payback perspective. However, the full benefits of achieving the Industrial Strategy will not be achieved from a piecemeal approach to projects*'. The Hungarian authorities noted that on 13 November 2019 Melrose approved the overall approach to GKN Automotive's transformation and outlined the preferred direction of the footprint in Europe. To substantiate this point, however, the Hungarian authorities referred to the above-mentioned presentation dated 26 November 2019.
- (39) According to the Hungarian authorities, the Strategy defined a possible target footprint for GKN Automotive's European production network based on a short-term top down evaluation. However, Hungary clarified that '*At no point was a decision taken that all waves were to be implemented exactly as outlined in 2019*' and that the agreement on the Strategy did not constitute an actual decision by GKN Automotive to implement all of the waves as outlined therein. The Hungarian authorities explained that the decision to pursue a certain wave within the Strategy (for example, a

⁽²⁵⁾ Including the Chief Executive Officer, Chief Financial Officer, Chief Commercial Officer, Chief Procurement Officer, Chief HR Officer, Chief Communications Officer, President Driveline, President e-Powertrain and President China.

⁽²⁶⁾ The composition of the steering committee was as follows: GKN Automotive Chief Executive Officer, GKN Automotive Chief Financial Officer, GKN Automotive Chief Commercial Officer, President Driveline GKN Automotive, President e-Powertrain, Chief Human Resources Officer GKN Automotive and the Chief of Staff GKN Automotive.

⁽²⁷⁾ The payback period is calculated on the basis of one-off costs divided by annual savings/value. One-off costs include severance, building, capital expenditure, other. Savings include direct labour, other variable costs, fixed costs (people) and other fixed costs.

decision on the [transfer] and/or transfers of production capacity and on the setting-up of new sites, where needed) should be considered as having been taken only once a project is subject to a more detailed feasibility analysis (bottom-up) and a business case is prepared for approval of the relevant funding release.

- (40) This was the case for Wave one, Wave two and Wave three that were all selected for implementation.
- Wave one, which sought to balance GKN Automotive's capacity with expected demand, consisted of the closure of certain sites and transferring their manufacturing operations to already existing European sites with spare capacity.
 - Wave two concerned the setting-up of a new production facility for products different to those under the Investment Project (recital (10)) in the most cost-effective location.
 - Wave three, as originally planned in the Strategy (November 2019) and initially taken into account for implementation, provided for the [transfer of business] of two [...] European sites transferring their capacity to two integrated sites to be established in two countries that were most cost-effective. Those new production sites would also cover production capacity from other existing production sites to be [transferred] under the following waves. This wave was amended in July 2020 ('New Wave three', recitals (47) and (48)). In New Wave three the relevant production would be integrated into only one integrated site (as provided under the Investment Project, recital (9)).
- (41) While the implementation of Wave one and New Wave three is currently ongoing, the Hungarian authorities explained that the implementation of Wave two was formally suspended in the period September/October 2021, at an advanced stage of preparation of the project, due to execution concerns and challenges to develop a viable business case during the more detailed project planning.
- (42) Hungary further explained that no business case activities were undertaken for Waves four, five and six, which did not advance further than the conceptual stage of the Strategy, and for which no further steps towards implementation were taken. At the date of the present decision, those waves are on hold and should they be resumed at a later stage, their scope would need to be revised due to interdependencies with ongoing projects.
- (43) Together with the preparation of the Strategy, the Strategy core project team and external consultants carried out an initial country assessment to identify the countries-of-interest for setting up the two new integrated plants. Documents dated 13 November 2019 show that seven countries-of-interest were identified in Eastern Europe (Czech Republic, Bulgaria, Hungary, Poland, Romania, Slovakia and Slovenia) with Poland, Hungary and Slovakia at the top of the list. From the same documents it appears that the Strategy core project team and external consultants preliminarily concluded that '*Poland and Hungary present the most appropriate risk and opportunity profile for GKN*' and that GKN Automotive's existing site in Eskişehir (Türkiye), was evaluated at an initial stage of the assessment, with a significant expansion '*potentially attractive because of [the] ultra-low-cost status*'. At the same time, the Strategy core project team and external consultants considered that '*[the] political stability of [the] country poses a significant risk*', and also noted that '*OEM investment decisions in Turkey [are] currently in [the] process of reconsideration/cancellation because of country risk*'). The suggested future for Eskişehir was '*No change*'. As a consequence, Türkiye was not further considered amongst the countries-of-interest.
- (44) In the final presentation of the Strategy of 29 November 2019 (recital (38)), the Strategy core project team and external consultants proposed Poland and Hungary as new plant locations and identified within each country a 'key target area' for the potential establishment of a possible future site.

2.13.2.2. Second phase (November 2019 until November-December 2020): initial site selection and capital expenditure approval

Step 1 — Initial site selection

- (45) Hungary explained that, from the end of November 2019 the site selection process was taken over by another project team ('Site selection project team') and by the GKN Automotive ET as decision-making body. Between November 2019 and January 2020 a small sub-team (i.e. two members of the Site selection project team) had contacts with local investment promotion agencies to obtain further information and identify potential regions and sites of interest within each of the shortlisted countries (Poland, Hungary and Slovakia) and arranged site visits and meetings with local representatives of the Governments, Universities and HR agencies.
- (46) The results of these visits and discussions allowed for an assessment of the shortlisted countries on the basis of a set of criteria including land size/shape, access to talent, salaries, connections (highways and routes), utilities and government support in terms of maximum aid intensity. Among 24 analysed sites in all three shortlisted countries, one preferred site per country was selected. On this basis, Poland initially appeared to be the most favourable, followed by Slovakia and Hungary. After this initial exploration and in light of the accelerating pandemic in Europe in the first quarter of 2020, the initial site identification process was put on hold.

- (47) The selection process was resumed in July 2020, when the Site selection project team presented the preliminary results of the suspended site selection process to the GKN Automotive ET and submitted a proposal to modify Wave three. The amended Wave three, i.e. New Wave three, provides for the construction of one new plant only, instead of the two new plants that were part of the November 2019 Wave three (recital (40)) and for a different allocation of propshaft and sidschaft production in the network. The presentation summarising the results of the selection process, presented to the GKN Automotive ET on 7 July 2020, shows that the production volume of this one plant was projected to be [1,5 — 3] million sidschafts and [0,2 — 1,6] million propshafts under the New Wave three versus [5,4 — 7,6] million sidschafts in the initial Wave three. The preferred site options were Hungary and Poland⁽²⁸⁾. Among those two, Hungary was considered as the best option. It was suggested to ‘*approve land selection for Hungary*’, based on the fact that a new plant in Hungary would minimise the risk exposure, otherwise increased by a setting-up in Poland, where the new plant would represent a second site (in addition to the one already located in Oleśnica). In terms of capacity, the New Wave three comprises a transfer of capacity from existing sites in [...] Europe to the new site without an increase in capacity. According to Hungary, the approach of New Wave three was triggered by the need for improvement in the payback period of that wave. The initial bottom-up business case of Wave three resulted in a payback period of [7,5 — 11] years. With the change of the approach, including limiting the number of new sites to one, the project payback was reduced to [a range between 5 — 7] years⁽²⁹⁾.
- (48) From the documentary evidence related to the 7 July 2020 meeting, it appears that the GKN Automotive ET agreed upon the New Wave three and confirmed ruling out Eastern Poland as a potential location (all sites investigated in Poland were in the same Eastern Poland area). The Hungarian authorities explained that in the same meeting the GKN Automotive ET challenged the rigour of the process and requested that the Site selection project team refine the land selection methodology and present a ‘robust documentation’ of the decision proposal (recital (47)).
- (49) In response, the Site selection project team applied a revised selection methodology to all seven long-listed countries identified in the initial country assessment (recital (43)) in 2019 (Czech Republic, Bulgaria, Hungary, Poland, Romania, Slovakia and Slovenia). This methodology consisted in a three-step process (country selection, region identification, selection of preferred site) based on a catalogue of criteria (about 60, including both financial and non-financial factors) aligned to their location requirements and resulting in a scoring model i.e. a scorecard (decision making tool) to sequentially assess locations against the criteria. It appears from a preparatory document for the GKN Automotive ET meeting of 12 August 2020 that, among the long-listed countries, only Hungary, Poland and Slovakia were assessed at regional and site level, following the assessment at Country level (first step of the revised methodology)⁽³⁰⁾. Poland and Hungary were identified as most favourable countries, largely due to a good balance between labour costs and availability, infrastructure and business environment. [...] in Poland and Miskolc in Hungary were the most favourable regions.
- (50) According to the meeting notes of the GKN Automotive ET meeting of 12 August 2020, the GKN Automotive ET confirmed Miskolc, Hungary ‘*as working hypothesis for new site to be presented to Melrose for approval*’. Both this document and the preparatory document referred to in recital (49), provide for the approval of the land selection by Melrose as one of the next steps. The meeting notes also identified several other next steps: ‘*Prepare proposal for project set-up in execution phase*’, ‘*Update business case*’, ‘*Prepare timeline until finalisation of building construction in 2022 incl. operational process, application for government subsidies, final approval with on site visit, ...*’, ‘*Explore differences in setting up an environmentally friendly factory between Miskolc, HU and [...], PL*’, ‘*Confirm no exit tax are is due in case of liquidation of [the transferred European] legal entities*’ and ‘*Set up BC review meetings*’. In terms of payback period of New Wave three, the preparatory document for the meeting refers to [a range between 5,4 — 7,4] years with a target of less than [5,6 — 7,2] years.

Step 2 — Contacts with Hungarian authorities and indicative offer

- (51) Hungary provided some evidence of contacts between GKN Automotive and the Hungarian authorities dating back to July and August 2020. GKN Automotive discussed the incentives available for the Investment Project with the Hungarian Investment Promotion Agency (‘HIPA’) and wanted to exchange/gather information on several practical aspects (e.g. the timeline for the land purchase, incentive guides and templates, incentive procedures). HIPA asked the company to fill-in the so-called ‘Request List’ (a form used by HIPA to gather as much information as possible on the project) with information on e.g. the investment period, project costs, and investor’s data. Between July and November 2020, GKN Automotive sent HIPA several versions of the Request List, which was continuously adjusted according to the company’s evolving project cost estimates and the company’s understanding of which costs could be classified as eligible costs according to local legislation.

⁽²⁸⁾ Presentation to the GKN Automotive ET for a meeting on 7 July 2020.

⁽²⁹⁾ The information on the payback period is provided in the presentation mentioned in footnote 26.

⁽³⁰⁾ However, on the basis of country score, the ranking of the countries, from highest to lowest, was the following: Poland, Hungary, Czech Republic, Slovakia, Bulgaria, Slovenia, Romania. In terms of labour cost Bulgaria and Romania had the highest score of all countries.

- (52) Already in August 2020, HIPA warned GKN Automotive that State aid supporting the Investment Project would need the Commission's approval. In this respect, HIPA clarified that *'In order to be able to receive the approval of the European Commission, we would have to prove that there is no casual⁽³¹⁾ relation between the potential state aid and the [transfer of business] in an EEA country. Considering all the above, based on our consultation with the Hungarian State Aid Monitoring Office, we do not think that this statement may be underpinned in this case'*. The Hungarian authorities have not provided exhaustive evidence of the follow-up exchanges between GKN Automotive and HIPA concerning this statement on the relocation aspect.
- (53) On 2 November 2020, GKN Automotive submitted a request for a first indicative offer for the cash grant. In that request, GKN Automotive refers to a project with EUR [85 — 100] million eligible costs, a requested cash grant of EUR [9 — 13] million and to Poland and Slovakia as alternative locations for the project. Based on those elements, on 5 November 2020, HIPA provided GKN Automotive with an indicative incentive offer for a cash grant of EUR [9 — 13] million and a tax benefit of EUR [18 — 25] million (which corresponded, altogether, to the applicable regional aid ceiling). The same HIPA e-mail transmitting that indicative offer also provides: *'We are also open to facilitate a joint meeting with the State Aid Monitoring Office, in order to take a closer look on the relocation matters, which might serve as a good guidance during the notification procedure towards the European Commission'*.

Step 3 — Capital expenditure approval and introduction of Türkiye in the process

- (54) Hungary explained that the business case review for the Investment Project was carried out as part of the annual budget review between GKN Automotive and Melrose on 12 November 2020. The presentation for this meeting (prepared by the Site selection project team and shared with the Chief Finance Officer in advance, on 10 November 2020) includes one slide with an overview of the scores of the shortlisted locations concluding *'decision for Miskolc, HU driven by desire to balance exposure in EEU countries and not to localize another site in Poland'*. The presentation then focuses on the financials of the project being implemented in Hungary with a clear request to *'Approve [Investment Project]⁽³²⁾ business case with a payback of [5,4 — 7] years⁽³³⁾, recurring cash savings of GBP [50-65]m and total one-off costs of GBP [220-400]m' (of which [...] % constitutes severance payments). In the presentation, it is noted that this payback period is below the initial top down estimate of [5,4 — 8] years in November 2019. The business case presented in this 12 November 2020 meeting did not take into account any State aid and was centred around the notions of project value, project costs and payback period. However, one slide summarised the Hungarian potential for incentives (potential benefit of GBP [18-39] million (EUR [20-45] million), stating that incentives would be *'limited to delta between NPV of project in Miskolc and alternative location'* and that *'key eligibility criteria'* was that the investment in Miskolc *'would without a grant financially not [be] viable or [...] result in a different location decision (more developed / non-EU)'*.*
- (55) According to Hungary, during this 12 November 2020 meeting, Melrose / the GKN Automotive ET⁽³⁴⁾ challenged the business case since its payback period of [5,4 — 7] years did not comply with an internal policy for investments, which required a payback period of maximum [4,5 — 5,4] years (the Hungarian authorities have not provided any contemporary documents laying out such internal policy). Therefore, Melrose requested that opportunities to further improve the business case and payback period be identified. According to Hungary, no written documentation exists on this request by Melrose. Hungary further explained that nevertheless, Melrose recognised the strategic necessity of further consolidating the European footprint and recognised the need for its initial approval of the funds that it considered had to be released in order to allow GKN Automotive to progress with the project (total one-off costs of GBP [220-400] million for the project)⁽³⁵⁾.
- (56) On 18 November 2020, a 'capital expenditure request', i.e. a document requesting the said Melrose approval, was launched by GKN Automotive. That request contained a breakdown of the project costs (amounting to a total of GBP [220-400] million) the funding of which was asked, and it made no reference to any public support covering any part of such costs. On the same day or shortly after, the request was signed by the management of the driveline division, by the Chief Financial Officer and the Chief Executive Officer of GKN Automotive. That request was based upon the discussion of 12 November (the presentation for the 12 November 2020 meeting in recital (54) was attached to the capital expenditure request). The short summary of the description of the requested capital expenditure was: *'the target of this project is to generate value by consolidating the current footprint in [...] into a new site located in Hungary. The evaluated project value is estimated to GBP [50-65] million [...] based on total project costs of GBP [220-400] million considering a payback of [5,4 — 7] years.'* The capital expenditure request was approved by the Melrose operations controller and the Melrose Executive Directors & Management on 9 December 2020.

⁽³¹⁾ The Commission notes that "casual" might have been a clerical error and it should read "causal".

⁽³²⁾ "[Investment Project]" is a name used both for Wave three and New Wave three.

⁽³³⁾ [4,4 — 5,3] years in the best case and [5,4 — 8] years in the worst case. On top, there was a cost reduction opportunity of GBP 18,9 million not taken into account in the payback of [5,4 — 7] years, with a possible payback period reduction of [0,2 — 0,4] years, resulting from the sale of the land and the building of one of the [transferred] sites.

⁽³⁴⁾ The provided information is not consistent on this point. There are references to both a Melrose's challenge and to a 'Melrose /ET challenge'.

⁽³⁵⁾ According to the Hungarian authorities, based on the investment policy of GKN Automotive, the release of funding for investments of an important value has to be approved/ratified by Melrose (recital (34)).

- (57) According to Hungary, by signing this document Melrose only meant to approve the investment in principle, using Hungary as a working hypothesis, with the location to be identified later on for complying with the said [4,5-5,4] year payback rule. The Commission notes that the capital expenditure request did not refer to Hungary as only being a working hypothesis nor did it provide that the business case still needed to be improved.
- (58) Hungary argues that after the challenge of the business case by Melrose / the GKN Automotive ET (in the meeting of 12 November 2020) and as a follow-up to Melrose's request that opportunities to further improve the business case and payback period be identified (recital (55)), the GKN Automotive ET discussed options to improve the project's financials. Changing the scope of the Investment Project was not deemed a viable option at that time. Furthermore, according to the Hungarian authorities: *'Changing the location to the runner up locations from the initial country assessment (Poland and Slovakia) was not expected to yield significant financial benefits due to comparable [production] cost to Hungary'*. The Hungarian authorities further stated that the Site selection project team started a discussion on how to improve the financial viability of the project. Over the course of November and December 2020 the Site selection project team considered the possibility of investigating alternative locations and expressed its preference for Türkiye as an ultra low cost location. The GKN Automotive's President of the Driveline Business Unit, who is a member of the GKN Automotive ET, in turn discussed the idea within the wider GKN Automotive ET.
- (59) Hungary submitted limited evidence (one e-mail invitation to a meeting on 16 November 2020) from which it appeared that alternative locations in Poland, Slovakia, Morocco and Serbia could potentially be studied in terms of costs. At the same meeting *'tax implications (exit tax and tax arbitrage)'* would be discussed. The Hungarian authorities have not provided evidence that would point to more detailed follow up on those alternative locations or an actual comparison between those alternative locations and Türkiye ⁽³⁶⁾.
- (60) On 1 December 2020 a member of the Site selection project team (the Vice President Operations Driveline Europe) contacted informally a colleague in Türkiye to gather information about property prices there. The day after, the same member of the Site selection project team checked the availability of a land plot suitable for the project close to GKN Automotive's existing operations in Eskişehir, Türkiye. These exchanges ended on 7 December 2020, with the identification of a proposed land plot in the industrial zone of Eskişehir.
- (61) All of the activities above concerning the introduction of Türkiye in the process, were performed informally and at the initiative of the Site selection project team. It was only on 8 December 2020 ⁽³⁷⁾ that GKN Automotive's President of the Driveline Business, by email, informed the Site selection project team that *'we had a discussion in the ET regarding [the Investment Project] and decided to look into an alternative Scenario focusing on Turkey (in particular ESK)'* — and officially instructed the Site selection project team *'to work on this scenario and the respective Business case around that'*.

2.13.2.3. Third phase (December 2020 until December 2021): preparatory activities in both Türkiye and Hungary and comparison of the two options to take the final location decision

- (62) Starting from 4 December 2020, GKN Automotive, assisted by [a consultancy firm], established contacts with the Investment Office of Türkiye to inquire about potential Turkish financial support for the Investment Project. GKN Automotive provided the general project data, including the envisaged project costs and headcount to document a request for financial support. On 16 December 2020, the Turkish authorities provided a first simulation of potential support for the Investment Project (called *'incentives simulation'*), largely based on tax benefits.
- (63) Hungary explained that on 10 December 2020, GKN Automotive started assessing Türkiye, based on the established scoring methodology (recital (49)). In the framework of such assessment (December 2020 to January 2021), Türkiye was added to the scorecard, next to the seven countries previously shortlisted and considered at country, regional and location levels. The criteria of the model were extended by six metrics that were deemed as relevant considering the new option (e.g. foreign exchange risk) or based on experiences from other projects (e.g. trade union density). According to Hungary, the addition of the new criteria did not impact the validity of the model due to a small number of newly introduced parameters. Therefore, the continuity of the model was ensured. The Hungarian authorities note that although the comparison comprised all seven initial countries-of-interests, plus Türkiye, the assessment, was focused on Eskişehir (Türkiye) and the previously favoured location of Miskolc (Hungary). The Hungarian authorities explained that no other locations than Eskişehir were added to the assessment because *'Introducing other new location options at this point without existing local footprint was perceived to potentially result in substantial delays to the project and increase the risk exposure. The existing site in Eskişehir has continuously demonstrated a very good operational performance and is highly cost competitive. The site was / is traditionally internally considered as a best cost site (similarly to Poland), so there is no strict division between Eastern EU / non-EU sites'*.

⁽³⁶⁾ Hungary provided an email of 16 November 2020 (sent immediately after the meeting by one of the participants), which does not contain any text but which attached documents concerning Morocco (not provided). Hungary also provided other e-mail invitations to virtual meetings in November 2020, which, although referring to the project, do not refer to the alternative locations discussion.

⁽³⁷⁾ One day before the Melrose operations controller and the Melrose Executive Directors & Management approved the capital expenditure request, see recital (56).

- (64) The comparison between the Turkish option and the Hungarian option was discussed within the Site selection project team in the 17 December 2020 meeting on the land selection update, in which the President of the Driveline Business Unit also participated. The presentation for this meeting shows a preliminary update to the scorecard, where Türkiye appears to be slightly behind Hungary when considering qualitative factors. It also includes a financial analysis focussing on the comparison of the Hungarian and the Turkish locations based on an NPV comparison, this time including incentives. The financial analysis showed an advantage for Türkiye over Hungary. The meeting resulted in the following 'next steps': (i) finalising the updated scoring model, (ii) confirming the level of the potential incentives in Hungary and Türkiye; and (iii) finalising the financial assessment (including revised/confirmed incentive packages) to be undertaken in view of a decision meeting with the GKN Automotive ET in January 2021. The presentation also justifies the reintroduction of the previously excluded Turkish option in the process (recital (43)) by referring to a *'Directive to expedite a re-examination of ESK as low-cost option; primarily based on labour and current operational cost profile but also to leverage recent site options identified by local team. Political situation still remains a risk, but is less volatile than in 2019. No disruption to operations'*.
- (65) On 18 December 2020, GKN Automotive sent an updated version of the request for incentives to the Investment Office of Türkiye with capital expenditure costs also including VAT, which had not been accounted for in the initial version of the request (recital (62)). The Investment Office of Türkiye issued a second incentives simulation on 21 December 2020. On 8 January 2021, GKN Automotive asked the Investment Office of Türkiye what the success rate of the applications/positive approvals was as compared to incentives simulations. The reply was that the *'Success rate is very close to 100 %'*. The viability of the second Turkish incentives simulation was further reinforced by a Letter of Intent from the President of the Investment Office of Türkiye dated 17 May 2021.
- (66) On 18 December 2020, GKN Automotive also submitted an updated aid application to Hungary, which referred to Türkiye, Poland or Slovakia as alternative locations for the project. On 21 December 2020, Hungary provided a new indicative incentives offer.
- (67) The scoring model and financial comparison between Hungary and Türkiye were finalised in advance of the 'Land Selection Review' meeting with the GKN Automotive Driveline president (also a GKN Automotive ET member) on 20 January 2021. The 'Land Selection Review' meeting concluded on a recommendation to the GKN Automotive ET to decide for Hungary, on the assumption of receiving the full amount of the incentives. Although Türkiye was recognised as a viable and the most attractive option financially (including incentives), particularly when considering current operations and site performance, the recommendation in favour of Hungary was based on the fact that Hungarian incentives offset about half of the NPV gap, with the remaining being offset by non-financial factors in Hungary, such as proximity and risk. The presentation for that meeting refers to an update to operational risks indicating that *'Political risk in Turkey has stabilised [...] however, still remains significantly higher than for Eastern Europe'*, although in the scorecard Türkiye and Hungary score the same for 'political risk'. Overall, Hungary scored higher than Türkiye⁽³⁸⁾, with the difference increasing when considering only qualitative factors⁽³⁹⁾. The NPV advantage of the Turkish location was further confirmed by sensitivity analyses, indicating however that the strengthening of the Turkish Lira could tilt the case in favour of Hungary. Regarding incentives, the presentation refers to the fact that the *'[t]imeline for incentives application in Turkey [was] significantly shorter, less complex and more certain than for [Hungary] — there is no requirement for EC notification'*. One of the identified next steps was to *'[a]llign final decision and outcome of business case challenge with Melrose to follow up from project budget approval in December'*. In the minutes of this meeting a *'Review [of the] alternative sources for assessment of political risk in scoring model to confirm difference between Hungary and Turkey'* is also provided as a next step.
- (68) In the Land Selection Decision meeting of 29 January 2021, Hungary was confirmed as the preferred location *'only if the project is granted the full amount of incentives'* and Türkiye would *'be maintained in case incentives are not likely to be approved in Hungary'*. The presentation for that meeting, along the lines of the presentation of the earlier meeting of 20 January 2021, includes the same financial NPV figures comparing Hungary and Türkiye and a revised detailed scoring of the 'political risk' criterion which shows a higher risk for Türkiye. Türkiye again was slightly behind Hungary when considering mainly qualitative factors (i.e. the overall scoring model)⁽⁴⁰⁾ but was favourable in terms of NPV analysis. Hungary was recommended by the Site selection project team because of a better score *'on the purely non-financial factors'*⁽⁴¹⁾. The presentation also included the Site selection project team's recommendations to the GKN Automotive ET that: (i) Hungary be confirmed as the preferred location on the assumption that the project is granted the full amount of the offered incentives; (ii) the incentives application to Hungary and the corresponding

⁽³⁸⁾ Hungary scored 2,89, Türkiye scored 2,77.

⁽³⁹⁾ Hungary scored 2,36, Türkiye scored 1,87. This purely 'non financial score' was based on a subset of the overall scoring model where 26 % of the overall weight was not taken into account.

⁽⁴⁰⁾ Hungary scored 2,88, Türkiye scored 2,71.

⁽⁴¹⁾ Hungary scored 2,35, Türkiye scored 1,82. This purely 'non financial score' was based on a subset of the overall scoring model where 26 % of the overall weight was not taken into account.

preparatory works be approved; (iii) feedback on the incentives application from the Hungarian authorities be reviewed (within 1 month); and, on that basis, (iv) confirm Hungary as the preferred location if the incentives are granted or, if such incentives are not granted, then confirm Türkiye as the preferred location. The presentation includes in the next steps the alignment of the final decision and the outcome of the business case challenge with Melrose and the review of application documents with Melrose team and submission to the Hungarian authorities.

Preparatory activities in Hungary

- (69) Rubin was founded in January 2021 (recital (5)). On 31 March 2021, the beneficiary applied for the development tax benefit. On 8 April 2021, the beneficiary submitted a formal application for the cash grant in Hungary, which referred to Türkiye as the only alternative location. On 14 April 2021 HIPA issued a formal incentive offer for a cash grant of HUF 16 280,56 million (EUR 44,76 million).
- (70) Following the aid application in Hungary and up to December 2021, the beneficiary progressed with preparatory activities that allowed it to further substantiate and improve its existing assumptions, as well as to reflect cost and value changes since the original NPV calculation (recital (81)).
- (71) During land plot suitability checks in June 2021, GKN Automotive identified unfavourable hydrological features of the initially favoured plot of land in Miskolc. Therefore, following additional checks and discussions on whether possible technical solutions could solve the issue, GKN Automotive opted for another plot in Miskolc, in the Felsőzsolca industrial zone. GKN Automotive visited the new land plot in July 2021 and started the technical due diligence of the site (e.g. archaeology and ammunition clearance) which confirmed the suitability of that plot of land. The Hungarian authorities explained that this change in the plot of land did not lead to any substantial change in the NPV calculation, as developed until that moment, since the size of the new plot of land was similar to that of the original location and the price for the plot of land was only slightly higher than that of the original option. The minor difference in price was taken into account as part of part of the NPV update exercise (recital (81)(ii)).

Preparatory activities in Türkiye

- (72) In February 2021, the beneficiary engaged a consultant in Türkiye (the 'Local Consultant'). In the period up to May 2021, the Local Consultant dealt with activities concerning building design and project planning, with the preparation of a general layout of works to be carried out, including their timeline and costs estimation.
- (73) The Hungarian authorities explained that between 5 July and 7 July 2021 the regional management team, including the Vice President Operations Europe, conducted a site visit in Türkiye. During that visit, meetings took place with Eskişehir Organised Industrial Zone ('OIZ'), the Investment Office of Türkiye and the Ministry of Industry, as well as a visit of the plot of land with the Local Consultant. As of mid-July 2021, the Local Consultant was appointed to perform additional tasks, e.g. dealing with the tender procedure for the project design and soil investigation, studying new costs linked to a structural change of the project and updating the former cost estimations.
- (74) Following some preliminary exchanges at the end of July 2021, in August 2021 GKN Automotive engaged a law firm in Türkiye to provide legal advice on Turkish local laws and regulations as well as to support certain contract negotiations with OIZ. In August 2021, once the scope of its mandate had been clarified⁽⁴²⁾, the law firm started reviewing the Draft Land Allocation Agreement and, in the period between September 2021 and November 2021, it participated in three virtual meetings with GKN Automotive and OIZ. During discussions with OIZ in that period, it transpired that the price of the targeted plot of land had nearly tripled⁽⁴³⁾ compared to the initial price in July 2021, due to an increase in the market value of the area and an increase in expenses due to currency fluctuations.
- (75) At the end of October 2021, GKN Automotive filed an updated request for an incentive simulation with the Investment Office of Türkiye to partially offset an increase in the eligible costs resulting from an updated cost estimation. The updated cost estimation, resulting from the work of the Local Consultant, took into account new elements affecting the initial cost estimate for the Investment Project (e.g. structural changes to the project, costs resulting from the tendering processes, cost inflation in Türkiye, increase in the purchase price for the plot of land). On 3 November 2021, the Investment Office of Türkiye provided an incentives simulation based on the updated cost assumptions.

⁽⁴²⁾ Based on the provided documents, the engagement letter of the law firm concerned only the drafting and/or reviewing of the reservation agreement of the land plot. However, GKN Automotive and the law firm agreed to widen it to cover 'the review of the whole package of agreements regarding land allocation process and translations of the same' (i.e. the reservation agreement, preliminary agreement and the land allocation agreement).

⁽⁴³⁾ The price increased from 235 TRY/m² (July 2021) to 600 TRY/m² (October 2021).

Location decision of December 2021

- (76) Hungary submits that the GKN Automotive ET took the final location decision in a meeting held on 9 December 2021, where Hungary was confirmed as target location for the new site and where it was decided to discontinue preparatory activities in Türkiye.
- (77) Hungary provided the Commission with the presentation of the Site selection project team for that meeting (no formal deliberation/decision was provided). The presentation indicates that *'[f]ollowing the further pursuit of national application and EU approval processes to obtain incentive packages incentives in Hungary are now considered more likely than in January. Incentives will largely offset [the] financial advantage of Turkey ... and will enable the project to meet the target payback period of [4,4 — 5,3] years ([5,5 — 7,1] years without incentives).'*
- (78) The decision proposal in that presentation indicates that the *'current political and economic situation in Turkey was monitored closely. Without reversal to more stable situation the risk level for [the] project was considered heightened'*. Hungary was *'still considered the preferred option concerning non-financial indicators, especially considering the [current] political and economic volatility in Turkey'*. The presentation includes updated NPV figures for both locations confirming the financial advantage of Türkiye and the calculation of the payback period for both locations, with Hungary having a payback period of [4,4 — 5,3] years with incentives and [5,5 — 7,1] years without incentives and Türkiye [4,5 — 5,4] years with incentives and [4,7 — 5,5] years without incentives, calculated on the basis of costs (GBP [230 — 410] million in Hungary and GBP [210 — 390] million in Türkiye) and value (GBP [50 — 65] million in Hungary and GBP [65 — 80] million in Türkiye). The scoring (including both financial and non-financial metrics) remained the same as in January 2021. Hungary explained that the foreign exchange rate volatility and the increasing land prices had been taken into account in the final land selection decision by the GKN Automotive ET.
- (79) The Hungarian authorities further explained that the GKN Automotive ET communicated the location decision to the Melrose leadership *'who, in turn did not raise any objections'*. A member of the Site selection project team informed HIPA and the Turkish authorities of the location decision, respectively on 13 December 2021 and on 14 December 2021.
- (80) Following the decision on 9 December 2021 negotiations with the landowners of the plot of land in Hungary were concluded with a preliminary land plot purchase agreement on 14 December 2021 and the purchase was concluded on 10 March 2022 (recital (10)). The beneficiary also initiated the tender procedure for construction of the Investment Project.

2.13.3. Proportionality

- (81) According to the Hungarian authorities, GKN Automotive compared the cases of the two locations — Hungary and Türkiye — in an NPV model, developed from December 2020 to January 2021. At the end of 2021, the model was updated based on: (i) the results of the work streams as described in recitals (70), (71), (73) and (74) and the incentive simulation of 3 November 2021, for the Turkish option, and (ii) the slightly higher cost for the purchase of the new plot of land and a refinement of assumptions concerning the building, building equipment and tooling (recital (70)) for Hungary. The NPV model compares Miskolc to the alternative location in Türkiye over the period 2021 — 2028, with sales starting in 2022, and considers a terminal value for both locations calculated on the basis of the modelled revenues for the last projected year adjusted by a growth rate of 1 %, net of costs⁽⁴⁴⁾. The model assumes inflation for labour costs with all other costs not being adjusted for inflation⁽⁴⁵⁾ as these costs are expected to be procured regionally in Europe regardless of the location of the Investment Project and therefore the same inflation assumption would apply in both locations. The beneficiary's standard weighted average cost of capital (WACC) of [8 — 12]%, used for financial modelling and other investment decisions, was used for discounting purposes for both locations.
- (82) The NPV model assumes a nominal capital expenditure ('Capex') of GBP [200 — 230] million (EUR [230 — 265] million) for Hungary and GBP [175 — 195] million (EUR [200 — 225] million) for Türkiye. Expressed in NPV, the capex disadvantage for Hungary amounted to GBP 20,2 million (EUR 23,23 million) with the major driver for this being the higher construction cost in Hungary. The model also assumes for each location other project related 'one-off' costs related to the transfer of production of GBP [25 — 40] million (EUR [30 — 46] million) in nominal value.

⁽⁴⁴⁾ All amounts are included in GBP with an exchange rate of EUR/GBP 1,15 and TRY/GBP 11,25, the average year to date exchange rate as of 6 October 2021.

⁽⁴⁵⁾ Inflation has been included in the scoring model.

- (83) The NPV model assumes the same sales volumes and selling price for both locations based on actual data from other operating GKN Automotive sites. Price leakages, due to pressure from customers for price reductions, were assumed to be the same percentage of external gross sales for both locations. Freight leakage, accounting for the additional outbound freight distance/costs from each location to customers, based on inputs from GKN Automotive's internal logistics teams, was assumed to be lower in Hungary (0,9 % for the ramp up period accelerating to the level of 1,0 % of external gross sales for full scale production — starting in 2024) than in Türkiye (assumed to be 4,0 % for the ramp up period accelerating to the level of 4,1 % of external gross sales for full scale production — starting in 2025). Leakage resulted in a GBP 70,2 million (EUR 80,73 million) NPV advantage for Hungary.
- (84) Labour cost assumes fewer employees (in terms of Full Time Equivalents ('FTE')) in Türkiye than in Hungary, due to a higher number of working hours per week in Türkiye (45 compared to 40 for Hungary) and a lower labour rate per FTE in Türkiye. A labour inflation rate of 11,6 % was assumed for Türkiye and of 6,8 % to 7,8 % in Hungary, depending on the category of employees. The NPV advantage for Türkiye was calculated at GBP 127,9 million (EUR 147,09 million).
- (85) In terms of cost of sales, for raw materials Hungary has a GBP 36,6 million (EUR 42,09 million) advantage mainly due to higher inbound shipping cost for Türkiye. Utilities costs assume the same consumption in both locations with lower prices in Türkiye, which lead to an NPV advantage for Türkiye at GBP 20 million (EUR 23 million). For other costs of sales components such as maintenance, consumables and tooling Türkiye has an NPV advantage of GBP 3,3 million (EUR 3,80 million). Türkiye also has a GBP 3 million (EUR 3,45 million) advantage in terms of other costs (central recharges).
- (86) As far as taxes are concerned, the NPV model assumes a corporate income tax rate of 9 % and 2,3 % for local taxes in Hungary and a 20 % tax rate for Türkiye. For Türkiye, the model assumes that the investment will be consolidated under the existing Turkish legal entity to consume tax credit from the beginning of the investment implementation and not just after the new investment begins to generate a profit. These tax estimates result in a GBP 47,5 million (EUR 54,63 million) advantage for Hungary.
- (87) The Hungarian authorities note that, since Hungary is an EEA member, the Hungarian aid could not be taken into account in the NPV of the Hungarian location (following paragraph 80 of the RAG 2014). On the contrary, Türkiye not being an EEA member, the Turkish incentives could be taken into account in the NPV of the Turkish location. Considering the operating free cashflow the NPV of the investment in Hungary without State aid was GBP 212 million (EUR 243,8 million), while the NPV of the investment in Türkiye, including incentives of GBP 36 million (EUR 41,4 million), was GBP 270 million⁽⁴⁶⁾ (EUR 310,5 million), thus GBP 58 million higher (EUR 66,7 million). GKN Automotive has calculated the NPV of the Hungarian aid to be GBP 27 million (EUR 31,05 million). If the incentives for Hungary are considered, the NPV in case of Hungary increases to GBP 239 million (EUR 274,85 million) and the NPV advantage of Türkiye is reduced to GBP 31 million (EUR 35,65 million).
- (88) The Hungarian authorities submit that GKN Automotive accepts the remaining difference considering the substantial non-financial benefits in Hungary, particularly with regards to workforce availability and qualification, local infrastructure, and risk exposure, as measured in the scoring model.

2.14. Effects on competition and trade

2.14.1. Manifest negative effects

- (89) Hungary submits that the alternative location of the investment is outside the EEA, so that, without aid, the investment would not have been located in an EEA region with a regional aid intensity that is higher or the same as the target region.
- (90) The beneficiary (at group level) is considering [transferring] the same or similar activities in the EEA as part of New Wave three of the Strategy (recital (25)). Despite that, Hungary submits that the aid will not have a manifest negative effect as there is no causal link between the aid and the relocation for the following reasons:
- (a) Market forces (e.g. trend of increased cost competition in the relevant market with a general trend and shift in favour of low-cost manufacturing locations) led to the footprint re-evaluation, which will result in a loss of jobs in [...] Europe.

⁽⁴⁶⁾ The Commission notes that there is an unexplained NPV advantage of Türkiye of GBP 1,9 million (EUR 2,18 million).

- (b) The [transfer of business] under New Wave three and the consequent job losses are the result of the implementation of the Strategy, which had already been decided upon and is being implemented regardless of any aid offered by Hungary.
- (c) The decision on potential [transfer of business] of existing facilities as part of the Strategy and the location decision are two independent events made at different points in time with the aid in Hungary not being a factor in defining the Strategy.
- (d) The Hungarian incentives will only influence the beneficiary's decision to create jobs inside the Union instead of outside the Union but not the decision on the relocation that would happen in any event. According to Hungary, in the absence of the aid, the investment would have been undertaken, but in Türkiye as opposed to Hungary. Consequently, the aid has changed the location of the investment from Türkiye (Eskişehir) to Hungary (Miskolc) (scenario 2 situation, see recital (32))⁽⁴⁷⁾.

2.14.2. *Situation of the market*

- (91) Hungary considers that the Investment Project is a 'scenario 2' investment and that the two locations (the selected location in Hungary and the alternative location in Türkiye) are located in the same geographical market. Furthermore, Hungary provided information on the product market and figures on the evolution of the European market.

2.14.2.1. *Product market*

- (92) The establishment would be classified under NACE⁽⁴⁸⁾ code 29.32, i.e. manufacture of other parts and accessories for motor vehicles. The products concerned are sids shafts, prop shafts and sub-components required for their assembly (e.g. joints).

2.14.2.2. *Geographic market*

- (93) The Hungarian authorities explained that the main market for the final products of the Investment Project will be Europe⁽⁴⁹⁾, however, customers are also currently purchasing driveline components from outside the Union and this tendency is expected to continue and possibly grow, as they are demanding significant price reductions and are lowering quality and technological requirements.
- (94) Hungary submits that the Investment Project will not lead to an increase of GKN Automotive's production capacity (recital (9)), therefore, the Investment Project would not lead to the creation of overcapacity in the market. The downstream product market for the products that will be produced by the Investment Project is the European production market for passenger cars and light commercial vehicles. On the basis of the beneficiary's market information the downstream market is expected to grow at 2,9 % per year in the period 2020 — 2029.

2.15. **Transparency and monitoring**

- (95) In accordance with the Transparency Communication⁽⁵⁰⁾, Hungary indicated that the following information will be published in the EU Transparency Award Module and on the website of the State Aid Monitoring Office (www.tvi.kormany.hu): the full text of the individual aid granting decisions and 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.

⁽⁴⁷⁾ Hungary refers to recital 211 to 213 of Commission Decision 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). Hungary submits that the Commission accepted that once the decision to close a manufacturing plant in one location is independent of the decision to locate a new investment in another (and that there would be an investment in a new location undertaken anyway), it cannot be considered that the aid has a causal link with the closure of the existing plant.

⁽⁴⁸⁾ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

⁽⁴⁹⁾ Hungary explained that Rubin's main customers will be the European sites of some of the world's largest automotive OEMs and accounting for around 94 % of total sales generated by the Investment Project.

⁽⁵⁰⁾ 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).

- (96) Hungary undertakes to:
- (a) annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589 ⁽⁵¹⁾; and
 - (b) 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, upon written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (97) According to Article 107(1) TFEU, '[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (98) The qualification of a measure as aid within the meaning of Article 107(1) TFEU requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) the measure must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) it must distort or threaten to distort competition and affect trade between Member States.
- (99) The public support awarded by Hungary in the form of a cash grant and a tax benefit is imputable to the State as it is granted by the Hungarian authorities and it is based on national legal bases adopted by Hungary (recitals (17) to (18)). It is financed through State resources, in the form of direct grants or waiving revenues which would otherwise have been paid to the State, within the meaning of Article 107(1) TFEU since it is financed by the general budget of the State (recital (16)).
- (100) The cash grant constitutes an advantage, which the beneficiary would not have received under market conditions. The tax benefit relieves the beneficiary from costs, which it normally would have to bear under the normal (corporate) tax rules (recital (18)). The objective of that system of reference is to tax the profits of all undertakings in Hungary in a uniform way. As explained in recital (18), thanks to the tax benefit, the annual payable corporate tax of the beneficiary will be reduced. Therefore, the beneficiary benefits from an economic advantage over its competitors.
- (101) As the measure is granted to a single company, the measure is selective. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective ⁽⁵²⁾. This is so regardless of whether there are operators on the relevant markets that are in a comparable factual and legal situation.
- (102) The measure is likely to affect trade between Member States since trade between Member States exists in the automotive components sector and, more specifically, in the market for propshafts and sideshafts.
- (103) As the measure strengthens the competitive position of the beneficiary, competition is distorted or is threatened to be distorted.
- (104) Consequently, the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) TFEU.
- (105) Hungary submits that the measure constitutes individually notifiable applications of State aid schemes that are themselves exempted from the notification obligation under Article 108(3) TFEU by virtue of the GBER (recital (17) and (18)), which confirms the Commission's conclusion that the measure constitutes State aid.

3.2. Lawfulness of the measure

- (106) If the regional investment aid amount to be granted exceeds the notification threshold laid down in Article 4(1)(a) of the GBER, the aid is not covered by the exemption provided by the GBER, and has thus to be notified individually to the Commission (recitals (17) and (18)). In the Northern Hungary region, the applicable threshold is EUR 37,50 million. Therefore, the planned measure of EUR 43,76 million cannot be exempted from notification.

⁽⁵¹⁾ 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).

⁽⁵²⁾ Judgment of the Court of Justice of 4 June 2015, *Commission v MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraph 60.

- (107) By making the award of the cash grant conditional upon the Commission's approval (recital (17)), by adopting the granting act for the tax benefit only once the Commission's approval is notified (recital (19)) and by having notified the 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 measure

- (108) 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.
- (109) The objective of the measure is to promote regional development in an area designated in accordance with Article 107(3)(a) TFEU. According to established case practice, the appropriate legal basis for assessing compatibility of regional State aid may be Article 107(3)(a) TFEU.
- (110) As explained in recital (17), the Incentive Agreement was signed before 31 December 2021. The legal basis for the assessment of the cash grant is therefore Article 107(3)(a) TFEU, as interpreted by the RAG 2014⁽⁵³⁾, in accordance with paragraph 197 of the Regional Aid Guidelines applicable as from 1 January 2022⁽⁵⁴⁾ ('RAG 2022'). The Incentive Agreement for the cash grant enters into force upon the Commission's decision approving the aid.
- (111) Concerning the tax benefit, the Commission preliminarily considers that the Government decision (which Hungary explained was adopted on 12 December 2021, recital (19)) does not constitute a granting act. This document does not identify the relevant aid to the beneficiary, and states that *'the development tax benefit shall be granted in accordance with the conditions set out in the Government decision to be issued on the basis of a decision of the European Commission'*. Therefore it is only that future Government decision (or other following acts) that could confer the beneficiary a legal right to receive the aid. The Commission considers that the tax benefit is only intended to be awarded after 31 December 2021 and that the legal basis for its assessment is therefore Article 107(3)(a) TFEU, as interpreted by the RAG 2022, in accordance with paragraph 197 of the latter⁽⁵⁵⁾.
- (112) Since RAG 2014 apply to the cash grant and considering that RAG 2022 apply to the remaining part of the aid (i.e. the tax benefit), the Commission will undertake its preliminary assessment of compatibility of the cash grant on the basis of RAG 2014 and of the tax benefit on the basis of RAG 2022 (together 'RAGs'). The Commission notes that, in the specific circumstances of the present case, there is nothing that would prevent the Commission from assessing part of the aid on the basis of the RAG 2014 and part of the aid on the basis of the RAG 2022. In any event, the provisions of the RAGs that are relevant for the below assessment are materially identical and, moreover, as clarified in recital (4), Miskolc was eligible for regional aid on the basis of the regional aid map 2014 and also on the basis of the regional aid map 2022, with the same aid intensity.
- (113) In line with Article 107(3)(a) TFEU, the Commission examines whether the aid is 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 TFEU, in view of their structural, economic, and social situation'*. That examination is carried out by reference to the criteria laid down in the RAGs.

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

3.3.1.1. Real and sustained contribution to regional development

- (114) Both the RAG 2014 and RAG 2022 require that Member States 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 2014 and section 5.1.2 of the RAG 2022 list, 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.

⁽⁵³⁾ The RAG 2014 were prolonged until 31 December 2021.

⁽⁵⁴⁾ Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1).

⁽⁵⁵⁾ Referring to a possible application of the RAG 2022 to the tax benefit, the Hungarian authorities pointed out that *'under the Hungarian regional aid map approved by the Commission for the period of 2022-2027 (SA.63934) Felsőzsolca has the same regional aid ceiling of 50 % as under the previous regional aid map, and the other conditions set by the RAG 2022-2027 are also met, therefore the change of legal basis of the approval (RAG 2022-2027 instead of RAG 2014-2021) should not change the outcome of the assessment of the Commission'*.

- (115) The Investment Project is carried out in Miskolc, Northern Hungary, an area eligible for regional aid pursuant to Article 107(3)(a) TFEU ('a' area) in accordance with the regional aid map 2014 and the regional aid map 2022 (recital (4)). The Commission takes note that Hungary invokes positive regional effects of the investment (recital (26)). At this stage, the Commission acknowledges the contribution of the investment to regional development in particular in the form of direct and indirect job creation, clustering effect, cooperation with universities and knowledge transfer.
- (116) As a rule, an investment can only be considered as a real and sustained contribution to regional development 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⁽⁵⁶⁾, through its own resources or by external financing, in a form that is free of any public financial support. In addition, the investment (the aided assets) can only be considered to have 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 small and medium-sized enterprises) after completion of the investment⁽⁵⁷⁾.
- (117) The Commission notes that the beneficiary will contribute at least 25 % of the eligible costs (recital (28)), and commits to maintain the investment for five years after completion of the project in the area concerned (recital (27)).
- (118) Based on the above, the Commission preliminarily considers that the aided investment contributes to regional development of the target region.

3.3.1.2. Incentive effect

- (119) According to section 3.5 of the RAG 2014 and section 5.2 of the RAG 2022, 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 carries out additional activity contributing to the development of an area that it would not have carried out, or would only have done in a limited or different manner or in another location, if the aid was not granted. The aid must not subsidise the costs of an activity that an undertaking would carry out in any event and must not compensate for the normal business risk of an economic activity.

Formal incentive effect

- (120) According to paragraphs 64 and 65 of the RAG 2014 and 62 and 63 of the RAG 2022, the formal incentive effect requirement is met if works on an individual investment start only after the application for aid has been submitted. This condition is met in the present case as the beneficiary applied for aid on 8 April 2021 (cash grant) and 31 March 2021 (tax benefit), while works on the Investment Project only started on 28 April 2022 (recital (12))⁽⁵⁸⁾.

Substantive incentive effect

- (121) As there are many valid reasons for a company to locate its investment in a certain region, even without any aid being granted, the RAGs 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 ways (see paragraph 61 of the RAG 2014 and paragraph 59 of the RAG 2022), that is to say that the aid: gives an incentive to invest in the area concerned because otherwise the investment would not be sufficiently profitable for the aid beneficiary⁽⁵⁹⁾ (scenario 1, investment decision), or gives an incentive to locate a planned investment in the area concerned rather than elsewhere because it offsets the net disadvantages and costs of investing in a location in the area concerned (scenario 2, location decision).
- (122) As set out in section 3.5.2 of the RAG 2014 and section 5.2.1.2 of the RAG 2022, the Member State must provide clear evidence that the aid has an actual impact on the investment choice or on the choice of the investment location. To that end, the Member State must provide a comprehensive description of the counterfactual scenario in which the beneficiary receives no aid. The Commission has to verify that this alternative scenario is realistic and credible. Paragraph 68 of the RAG 2014 and paragraph 66 of the RAG 2022 indicate that 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 aid beneficiary regarding the investment.

⁽⁵⁶⁾ See paragraph 38 of the RAG 2014 and paragraph 48 of the RAG 2022.

⁽⁵⁷⁾ See paragraph 36 of the RAG 2014 and paragraph 47 of the RAG 2022.

⁽⁵⁸⁾ Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works (paragraph 20(v) of the RAG 2014 and paragraph 19(29) of the RAG 2022). The earlier land purchase (recital (10)) is thus not regarded as start of works.

⁽⁵⁹⁾ This wording reflects the relevant text in the RAG 2014. RAG 2022 provides '*would not be sufficiently profitable for the aid beneficiary anywhere in the EEA*'. Since Hungary notified the measure in the context of a scenario 2 situation, this has no further relevance for the compatibility assessment in this decision.

- (123) Paragraph 71 of the RAG 2014 and paragraph 69 of the RAG 2022 indicate that for scenario 2 — which is invoked by the Hungarian authorities in the present case (recital (32)) — the Member State could prove the incentive effect of the aid by providing the undertaking's documents showing that a comparison has been made between the costs and benefits of locating the investment in the assisted region concerned and those of locating the investment in alternative location(s). Such documents should be contemporary to the decision-making process concerning the investment or its location decision. The Commission verifies whether such comparisons are realistic. For that purpose, paragraph 72 of the RAG 2014 and paragraph 70 of the RAG 2022 invite the Member State to rely on official board documents, risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies and documents that elaborate on investment scenarios.
- (124) To verify the viability of the project in a scenario 2 context, all relevant costs and revenues ⁽⁶⁰⁾ 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.
- (125) The Commission notes that the Hungarian authorities submitted information documenting the decision making process of GKN Automotive / Melrose and the counterfactual scenario. The Commission has to verify that this counterfactual scenario is credible, i.e. that it is genuine and that it relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment. The Commission, therefore, considers it appropriate to assess first, when and by whom the decision was made to invest in Hungary.
- (126) Hungary argues that the GKN Automotive ET took the final location decision in December 2021, whereas Melrose' preceding approval of the capital expenditure request in November/December 2020 (recital (56)) only constituted a preliminary securing of the project funding and did not constitute a decision on the investment location. According to the Hungarian authorities, such capital expenditure approval left the door open to further site selection decisions by the GKN Automotive ET (being the sole decision-making body for the site selection workflow, recitals (34) and (35)), based on the requirement to comply with the [4,5 — 5,4] year payback policy.
- (127) The Hungarian authorities explained that in such context and following the inclusion of Türkiye in the process, the GKN Automotive ET took a preliminary location decision in favour of Hungary in January 2021, a decision that was still conditional upon receiving the full amount of incentives in Hungary (recital (68)). Hungary considers that Melrose was not responsible for the location decision as its role in the decision making process was limited to giving approval on high-level issues only (recital (34) and (35)).
- (128) The Commission notes however that the minutes and the presentation for the GKN Automotive ET meeting of 12 August 2020 include a clear reference to Melrose needing to approve the land selection (recital (50)).
- (129) It is the Commission's preliminary view that this approval was given with the capital expenditure request signed by Melrose on 9 December 2020, which is the only decisional document that was provided at the level of Melrose. As described in recital (56), the scope of the capital expenditure, as is apparent from the signed capital expenditure request, was described as *'the target of this project is to generate value by consolidating the current footprint in [...] into a new site located in Hungary.'* The financial summary on that same document concluded on a payback period of [5,4 — 7] years. The Commission considers that it is clear from the signed capital expenditure request that Melrose's approval was, therefore, given for an investment in Hungary.
- (130) Hungary explained that, although Melrose approved the capital expenditure request, at the same time it had challenged the business case, in terms of payback period in particular. However, such reservations are not reflected in the signed capital expenditure request. The Commission notes that in another capital expenditure request, dated March 2018 and approved by Melrose in April 2019, for a project under Wave one with a cost much lower than that of the Investment Project ⁽⁶¹⁾, there is a clear reference to efforts required from the project team to reduce the payback period, which was already below [4,5 — 5,4] years. The Commission would expect to find similar references in the signed capital expenditure request of the Investment Project, had Melrose challenged the business case.
- (131) The Commission acknowledges the further documentary evidence as of December 2020 from which it appears that Eskişehir in Türkiye, as an investment location, was compared with the selected region in Hungary. However, for the reasons set out below, the Commission cannot establish on this basis that Türkiye was a genuine counterfactual location in which, in the absence of the Hungarian aid, the Investment Project would have taken place.

⁽⁶⁰⁾ See paragraph 80 of the RAG 2014 and paragraph 97 of the RAG 2022.

⁽⁶¹⁾ Cost of project under Wave one amounted to 19 % of the cost of the Investment Project, as shown in the capital expenditure request of the Investment Project.

- (132) As set out in further detail below, the Commission's concerns with respect to Türkiye constituting a genuine counterfactual to Hungary fall within three broad categories. First, the Commission could not establish the scope of the mandate of the GKN Automotive ET after the approval of the capital expenditure request by Melrose on 9 December 2020. Even if it were correct that Melrose asked the GKN Automotive ET to improve the payback period and the financial results more in general (on which no documentation was provided), it is not clear whether the GKN Automotive ET had the freedom to change the location of the investment, which seemed to be an essential element of the approved capital expenditure, or whether Melrose asked the GKN Automotive ET to improve the payback period of the Investment Project in Hungary only (recitals (133) to (137)). Second, even if the GKN Automotive ET had the mandate to decide upon and/or to change the investment location, it is not clear why Türkiye was further investigated as the only alternative location, while also other locations seemed promising in terms of a cost perspective (recitals (138) to (139)). Third, taking into account that GKN Automotive considered that the political and operational risks of Türkiye were still present in December 2021, those risks might have constituted a deterrent factor so that the investment would have taken place in Hungary even without the aid (recitals (140) to (145)).

Scope of GKN Automotive ET's mandate

- (133) The Commission could not establish the scope of the mandate that the GKN Automotive ET had following the 12 November 2020 meeting with Melrose. It is also not clear if there were further changes to that mandate following Melrose's approval of the capital expenditure request. Even if it were correct that the achievement of better financial results was requested, the Commission questions to what extent the GKN Automotive ET had the freedom to deviate from the project description as presented in the capital expenditure request. If the GKN Automotive ET had to work within the scope of that project description, then the Commission harbours serious doubts concerning whether Türkiye was investigated as a genuine alternative location for the Investment Project or whether it was only investigated for the purposes of being able to present an alternative location as part of the State aid review, and thereby improve the chances of aid to be granted by Hungary in favour of the Investment Project being found compatible with the internal market. In the latter situation Türkiye could not be considered as a genuine counterfactual within the meaning of paragraph 68 of the RAG 2014 and paragraph 66 of the RAG 2022 for determining where the Investment Project would take place in the absence of aid. The Commission notes that the beneficiary was fully aware that, in the context of the relocation, it had to present a scenario 2 counterfactual as a requirement to obtain regional State aid (recitals (52) and (54)). GKN Automotive had been in contact with Hungary and on 5 November 2020, shortly before the meeting with Melrose of 12 November 2020, it had received an indicative aid offer from Hungary (recital (53)). It is not clear to the Commission on what basis Hungary offered this aid since (i) in the relevant submission GKN Automotive had identified only Poland and/or Slovakia as alternative locations; and (ii) no significant NPV difference to be covered by the aid could have been expected between Hungary and those alternative locations, due to the fact that their costs were considered as being of a comparable level (recital (58)). Therefore, at that stage, there was no evidence that the aid would provide a substantive incentive effect within the meaning of paragraph 69 of the RAG 2014 and paragraph 67 of the RAG 2022.
- (134) On the question whether the GKN Automotive ET had the mandate to change and/or decide upon the location, the Commission notes that the language of the meeting notes and preparatory document of the GKN Automotive ET meeting of 12 August 2020 (recital (50)), seemed to point to Melrose as decision making body with respect to site selection for this Investment Project. There were also references to an alignment with Melrose, e.g. in the presentation for the 'Land Selection Review' meeting as referred to in recital (67). Also it appears that the aid application documents submitted to the Hungarian authorities were also subject to Melrose's approval (recital (68)). Furthermore, Hungary explained that once the GKN Automotive ET took the location decision in December 2021, it communicated it to the Melrose leadership and that the Melrose leadership '*did not raise objections*'. At the present stage of the procedure, the Commission preliminarily considers that the fact that Melrose appears to have the ability to raise objections to the proposed location confirm that Melrose was ultimately the decision-making body with respect to the location of the Investment Project.
- (135) Furthermore, Hungary did not provide any contemporary evidence concerning the exact financial target that the Investment Project needed to achieve. Hungary argued that although Melrose approved the capital expenditure request referring to Hungary as a target location with a payback period of [5,4 — 7] years, in the preceding meeting of 12 November 2020, it had challenged the business case since it did not match Melrose's general practice of requiring a payback of maximum [4,5 — 5,4] years for big investments. Based on the documents provided, the Commission is not currently in a position to establish without serious doubts that a payback of maximum [4,5 — 5,4] years constituted a decisive element to invest or not, prevalent at the time of the investment and location decision (recital (55)). The Commission has no evidence that, in the 12 November 2020 meeting, Melrose effectively raised concerns in that sense. Hungary justifies this lack of information based on the informal character of all exchanges with the shareholder⁽⁶²⁾, however it did not provide any contemporary informal discussion/exchange capable of substantiating the existence and application of the said general payback rule. If there was indeed a general

⁽⁶²⁾ In general, Hungary claims that the governance within GKN and with its shareholder Melrose is not very formalistic. Even for meetings with the Melrose Executive Directors & Management or within the GKN Automotive ET meetings are generally not documented.

practice of a maximum payback of [4,5 — 5,4] years, the Commission would expect to find some reference to it or to the efforts to reach it in the capital expenditure request of the Investment Project or in the more detailed description attached to it. As indicated in recital (130), in the context of another project of much lower cost, the Commission found clear reference to efforts required to reduce the payback period, which in that case was already below [4,5 — 5,4] years. The Commission also notes that the annex to the signed capital expenditure request consisted of the presentation used at the meeting with Melrose on 12 November 2020 (recital (54)) including a clear reference to a [5,4 — 7] years payback period without any reference to a target of [4,5 — 5,4] years.

(136) The Commission also questions the existence of a strict investment policy of maximum payback period of [4,5 — 5,4] years applicable to the relevant decision-making process on the basis of the following elements:

- (a) The beneficiary's internal documents refer to an overall assessment of the Strategy recognising that even if some individual waves look unattractive from a payback perspective, the full benefits of the Strategy will not be achieved from a piecemeal approach to projects (recital (38)). It appears therefore that the payback is not the only consideration for decision-making and was not necessarily to be evaluated wave per wave.
- (b) The business case for the New Wave three had been updated at several instances, but the payback always exceeded [4,5 — 5,4] years, with the preparatory document for the GKN Automotive ET meeting of 12 August (recital (49)) even mentioning a target payback of less than [5,6 — 7,2] years, without any reference to a policy of [4,5 — 5,4] years. Had the maximum payback period of [4,5 — 5,4] years been a strict investment policy criterion, the Commission would expect that such criterion would have been clear to the project team from the start, or at least would expect to see references to it in the updates of the business case and, even more, would not expect to see references to a target of [5,6 — 7,2] years.
- (c) On 10 November 2020 the Site selection project team sent the presentation for the Melrose review to the Chief Financial Officer (recital (54)), asking him if he had any question on it prior to the meeting with Melrose. The Commission is not aware of any reply to this e-mail, comments or proposal for amendments by the Chief Financial Officer to this presentation, although it clearly refers to a [5,4 — 7] years payback. The Commission would expect the Chief Financial Officer, in the context of this role, to raise the issue of the payback period, had the maximum payback period of [4,5 — 5,4] years been a strict investment policy criterion.
- (d) In November 2020, after the alleged challenging of the business case by Melrose and in the discussions within the Site selection project team on alternative locations (recital (59)), there is no evidence of a payback period calculation/consideration for the alternative locations (Türkiye, Poland, Slovakia, Serbia or Morocco) which, according to Hungary, were considered before concluding to promote Türkiye as the alternative location. If there was a strict investment policy of maximum payback period, the Commission would expect to have evidence that the payback period for the new alternative locations had been analysed before establishing Türkiye as the alternative location to consider further early December 2020.
- (e) The comparison of Hungary and Türkiye by the Site selection project team on 17 December 2020 and the alleged conditional location decision in January 2021 (recital (68)) were based on the NPV comparison and scoring of the two locations without any calculation or consideration of the payback period. The earliest evidence of a payback period calculation for Türkiye dates back to December 2021 (recital (78)). The Commission therefore questions on which basis the new location (i.e. Türkiye) was introduced if no assessment had been made in terms of payback period given the investment policy of maximum payback period of [4,5 — 5,4] years, the alleged reason for challenging the business case for Hungary.
- (f) The Commission also notes that the payback period included in the capital expenditure request of November 2020 did not consider revenues from sale of land and buildings in the two existing production facilities that are to be relocated to Hungary⁽⁶³⁾. The payback period also did not consider the indicative aid amount the Hungarian authorities had included in their indicative offer of 4 November 2020 (indicative Hungarian aid of EUR 35,22 million — cash grant and development tax). In other words, it is not clear why there was a need to change location to meet the alleged payback period requirement if the target might have been reached already by including those extra financing sources.

(137) The Commission therefore cannot establish whether the [4,5 — 5,4] year payback period requirement was decisive at the time of the decision regarding the investment.

⁽⁶³⁾ See footnote 32.

The introduction of Türkiye as only counterfactual scenario

- (138) Already on the basis of the questions raised in the previous section, the Commission harbours serious doubts concerning whether Türkiye was investigated as a genuine alternative location for the Investment Project or whether it was only investigated for the purposes of being able to present an alternative location as part of the State aid review, and thereby improve the chances of aid to be granted by Hungary in favour of the Investment Project being found compatible with the internal market. However, even if the [4,5 — 5,4] year payback period were a genuine requirement, still it is not clear why only Türkiye was added to location analysis, which as such raises doubts as to the decision making process.
- (139) At the end of 2019, Türkiye had been excluded from the initial location search because of political risks (recital (43)). One year later (November/December 2020), however, it reappeared in the process together with Poland, Slovakia, Morocco and Serbia (recital (59)) and very quickly evolved as the only alternative to Hungary that was explored, without any evidence of follow-up for any of the other locations. Hungary explained that Morocco and Serbia were not considered due to the advantages — in terms of absence of delays⁽⁶⁴⁾ and risk exposure — offered by the already existing local footprint in Türkiye (recital (63)). Taking into account that the existing operations in Türkiye are limited in size in comparison to all of GKN Automotive's other sites⁽⁶⁵⁾, the Commission has serious doubts as to whether those existing operations could actually represent a decisive factor to opt for Türkiye as the only alternative location to Hungary, with no need to perform any comparison with the other possible best cost locations. The Commission notes in this sense that Romania and Bulgaria had also been identified in the initial site selection step as being very attractive locations in terms of costs (recital (49)). Although they did not make it to the shortlist, it is not clear why they were not reconsidered as ultra low cost location, given that Türkiye, which had been removed from the initial country assessment procedure at an even earlier stage (recital (43)) was reintroduced.

Türkiye as a genuine counterfactual

- (140) It appears from the documentation provided that the investigation of Türkiye as a counterfactual scenario remained relatively high level until mid-2021. A site visit was only organised in July 2021. At this point in time the Hungarian State aid had already been pre-notified to the Commission and first contacts had been established. However, the Commission acknowledges that, even if Türkiye had originally been introduced into the analysis only for the purposes of improving the chances of the proposed State aid being declared compatible, it might be possible that the Turkish alternative had evolved into a genuine alternative where GKN Automotive and Melrose were prepared to invest. However, for the reasons set out below, the Commission harbours serious doubts that this was the case.
- (141) Considering that GKN Automotive considered that the political and operational risks of Türkiye were still present in December 2021 (recital (78)), those risks might have constituted a deterrent factor so that the investment would have taken place in Hungary even without the aid.
- (142) The Commission notes in this context, that Türkiye had been excluded from the initial location search at an early stage in 2019 because of political risks (recital (43)). Based on the available documents, the reasons for Türkiye's reintroduction in the process seem to partly coincide with information on Türkiye already well known at the moment of its exclusion in 2019, i.e. 'low-cost option; primarily based on labour and current operational cost profile' (recital (64)). What differs from the initial assessment on Türkiye is: (i) the possibility 'to leverage recent site options identified by local team'⁽⁶⁶⁾, and the consideration that (ii) 'political situation still remains a risk, but is less volatile than in 2019. No disruption to operations'. The Commission considers that Hungary did not sufficiently substantiate how the political risk, still evaluated as a deterrent factor in 2019, had changed sufficiently in 2020 to justify Türkiye being evaluated as a genuine alternative site for the Investment Project.
- (143) With respect to the evolution of the political situation, the Commission notes that the presentation to the GKN Automotive ET of 29 January 2021 (alleged conditional location decision) includes a short update on operational risks in Türkiye: "(1) *Despite political unrest in recent years, GKN's operations have not been affected;* (2) *Political risk in Turkey has stabilized, with some source indicating that there is now a slightly reduced chance of regime change — however remains significantly higher than for Eastern Europe;* (3) *Competitors successfully operate from outside of the EU and import to supply OEM's from ultra low cost countries and* (4) *For the period of interest 'Data indicates [...]PL and TR labor cost are negatively correlated. Therefore ESK could further diversify risk with respect to labour cost trends in Eastern Europe, after accounting for FX.'* Hungary did not provide a detailed risk analysis, report or other document concerning the 2019, 2020 and January 2021 assessments of the political and operational risks, nor did Hungary provide sufficient explanations on why the Site selection project team considered that the political situation was less volatile in

⁽⁶⁴⁾ Hungary confirmed indeed 'access to relevant data from local teams allowed GKN Automotive to quickly gather data and develop the business case confirming ESK as a highly attractive potential location'.

⁽⁶⁵⁾ In several presentations, reference is made to the fact that 'Site assembles small volumes of sideshafts for a limited range of customers'.

⁽⁶⁶⁾ Point (i) seems to be linked to GKN Automotive need to quickly prepare a counterfactual with no delay and reinforces the doubts on the reasons for the reintroduction of Türkiye in recital (133), in this sense see also footnote 62.

December 2020 / January 2021 compared to November 2019 and therefore the introduction of Türkiye as alternative location would be justified.

- (144) On 9 December 2021, the GKN Automotive ET took the alleged final location decision. The presentation for that meeting (recital (78)) refers to the risk level for the project in Türkiye as '*heightened*' (after monitoring closely the political and economic situation). However, the relevant scoring in December 2021 seems to be identical to that presented in January 2021. According to the presentation, '*incentives in Hungary are now considered more likely than in January*' (recital (77)) and on this basis, the Turkish process was discontinued. However, given GKN Automotive's view on the political and economic volatility in Türkiye end of 2021 and the increased perceived risks (recital (78)), the Commission maintains serious doubts as to whether Türkiye was a realistic option and preliminarily considers, at the present stage of the procedure, that GKN would have invested in Hungary in any event (the Turkish risks being a deterrent factor).
- (145) Furthermore, the presentation for the 9 December 2021 meeting (recital (78)) explains that, although the NPV comparison shows a financial advantage of the Turkish option (NPV difference of GBP 31 million) Hungary is still the preferred option since the Hungarian incentives '*will largely offset the financial advantage of the Turkey option*'. The Commission notes that the measure covers less than 50 %⁽⁶⁷⁾ of the NPV gap between Türkiye and Hungary and therefore raises questions on the underlying reasoning of that statement.

Conclusion on the presence of incentive effect

- (146) For all the reasons expressed in recital (126) to (145), at this stage, the Commission has serious doubts as to the credibility of the counterfactual scenario submitted by Hungary, on whether the investment decision in Hungary was taken in a scenario 2 situation and on whether an incentive effect was present. The Commission invites Hungary to submit further authentic and contemporary evidence and to provide further explanations on the elements raised above. The Commission calls upon interested parties to comment on the serious doubts raised by the Commission on the incentive effect and the credibility of the counterfactual scenario.

3.3.2. Eligibility of the Investment Project

- (147) Pursuant to paragraph 34 of the RAG 2014 and paragraph 45 of the RAG 2022, 'initial investments' of large undertakings (such as the beneficiary) in 'a' areas may benefit from regional investment aid.
- (148) The Investment Project is carried out by a large undertaking (the beneficiary) in an 'a' area (recital (4)).
- (149) The Investment Project concerns the 'setting-up of a new establishment', which is an 'initial investment' pursuant to paragraph 20(h)(a) of the RAG 2014 and paragraph 19(13)(a) of the RAG 2022. The Investment Project, as an 'initial investment' with eligible costs exceeding EUR 50 million (recital (13)), qualifies as a 'large investment project' pursuant to paragraph 20(l) of the RAG 2014 and paragraph 19(18) of the RAG 2022.
- (150) The Investment Project is thus eligible for regional investment aid, which means regional aid can be granted provided all compatibility conditions are met.
- (151) According to paragraph 20(e) of the RAG 2014 and paragraph 24 of the RAG 2022, and within the limits defined in those paragraphs, the costs for new assets for the beneficiary's Investment Project are eligible for regional aid.
- (152) The cost of intangible assets included in the eligible costs of the project meet the conditions set out in paragraphs 100 to 102 of the RAG 2014 and paragraphs 33 and 34 of the RAG 2022 and are eligible for regional aid.

3.3.3. Need for State intervention

- (153) According to section 3.3 of the RAG 2014 and section 5.3 of the RAG 2022, 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.
- (154) As established in paragraph 49 of the RAG 2014 and paragraph 77 of the RAG 2022, State intervention is considered necessary for the development of the areas included in the regional aid map. The Commission notes that the NUTS 2 region of Northern Hungary (in which Miskolc is located), is eligible for regional aid pursuant to Article 107(3)(a) TFEU under the Hungarian regional aid map 2014 and the regional aid map 2022, so that there is a need for State intervention.
- (155) On this basis, the Commission preliminarily concludes that there is a need for State intervention.

⁽⁶⁷⁾ The entire NPV gap was GBP 58 million, while the NPV of the Hungarian aid was estimated at GBP27million (i.e. 46,55 % of that NPV gap).

3.3.4. Appropriateness of the measure

- (156) According to paragraph 50 of the RAG 2014 and paragraph 78 of the RAG 2022, the notified aid measure must be an appropriate policy instrument to promote regional development. The RAGs 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 2014 and section 5.4 of the RAG 2022 therefore introduce 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.
- (157) The Hungarian authorities justify the appropriateness of the aid (see section 2.12) in light of the macroeconomic need of State aid for large investment projects in order to stimulate economic development at the regional level and of the necessity to bridge the NPV gap between the alternative location and Miskolc.
- (158) 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 the Northern Hungary region in general is confirmed by its status as a region eligible for regional aid in accordance with Article 107(3)(a) TFEU. With a gross domestic product per capita of 47,67 % of the EU average according to RAG 2022 and 40 % according to RAG 2014⁽⁶⁸⁾, 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 Toray⁽⁶⁹⁾, Mondi SCP⁽⁷⁰⁾ and LG Chem⁽⁷¹⁾ decisions).
- (159) As regards the question whether the measure constitutes an appropriate aid instrument, the Hungarian authorities argue that an investment aid in the form of a direct pecuniary advantage (direct grant and tax benefit) is necessary to incentivise the beneficiary to carry out the investment in Hungary rather than in the alternative counterfactual location in Türkiye. The Commission considers that, as argued by the Hungarian authorities and in line with previous Commission practice⁽⁷²⁾, with other forms of aid, e.g. guarantees or soft loans, it would, indeed, be more difficult to bridge the NPV gap between the two alternative investment locations, and thereby offer the necessary incentive to attract the investment to the 'a' area in question (assuming that the aid indeed operates as an incentive, which is a separate question with respect to which the Commission has serious doubts). On this basis, the Commission preliminarily concludes that the measure is appropriate.

3.3.5. Proportionality of the aid amount

- (160) According to section 3.6 of the RAG 2014 and section 5.5.1 of the RAG 2022, the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned. Therefore, the assessment of the proportionality of the aid amount can only be carried out once the counterfactual scenario has been established as credible.
- (161) For scenario 2 situations, according to paragraph 106 of the RAG 2014 and paragraph 98 of the RAG 2022, the Member State must demonstrate the proportionality on the basis of documentation such as that referred to in paragraph 72 of the RAG 2014 and paragraph 70 of the RAG 2022.
- (162) As a general rule, notified individual aid will be considered to be limited to the minimum, if the aid amount does not exceed 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 2014 and paragraph 97 of the RAG 2022, in scenario 2 situations (location incentives), the aid amount should not exceed the difference between the NPV of the investment in the target area and the NPV of the investment in the alternative location, while taking into account all relevant costs and benefits.

⁽⁶⁸⁾ See Annex 1 of the RAG 2014 and Annex 1 of the RAG 2022.

⁽⁶⁹⁾ Commission decision 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).

⁽⁷⁰⁾ Commission decision of 13 July 2017 in case SA.45584 (2016/N) — LIP — Investment aid to Mondi SCP (OJ C 400, 24.11.2017, p. 1).

⁽⁷¹⁾ See Commission decision 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).

⁽⁷²⁾ See in particular, Commission decision of 2 July 2020 in case SA.54226 (2019/N) — Regional investment aid to Toray Industries — Hungary (OJ C 214, 4.6.2021, p. 1), recital 94. See also Commission decision of 24 May 2017 in case SA.45359 (2016/N) — Regional investment aid to Jaguar Land Rover — LIP — SK (OJ C 422, 8.12.2017, p. 21), recital 163.

- (163) As a preliminary observation, the Commission recalls that, at the present stage of the procedure, it harbours serious doubts as to the credibility of the counterfactual scenario that the Hungarian authorities have put forward and the resulting, claimed incentive effect of the aid (recital (146)). Therefore, at this stage, the Commission takes the view that it cannot conclude on the proportionality of the aid amount as the aid is to be assessed in light of the extra costs of implementing the investment in the area concerned compared to the counterfactual scenario in the absence of aid.
- (164) Nevertheless, the Commission preliminarily notes that the aid intensity and the aid amount do not exceed the permissible adjusted aid intensity and the adjusted aid amount (recital (22)), calculated on the basis of eligible expenditure ⁽⁷³⁾, that is, new assets including intangible assets and excluding leasing costs. The Hungarian authorities also confirmed that the cumulation of the measure with other aid ⁽⁷⁴⁾ is excluded (recital (24)).
- (165) Even if the counterfactual scenario were considered to be credible, the Commission raises questions as to whether the aid corresponds to the net-extra costs of investing in the area concerned, compared to the counterfactual in the absence of aid. The Commission notes that the projected production volume of the site to be established under the third wave seems to have changed significantly between the initial Wave three and the New Wave three (recital (47)) whereas the land and building requirements, which are the basis for the capital expenditure considered in the NPV, were not amended. The Commission also notes that the time frame considered for the NPV calculation (recitals (81) and (83)) presents discrepancies with regards to the indicated timing of start of production and of reaching full production capacity (recital (12)), as presented by the Hungarian authorities. In addition, given that (i) the past actual production of the two existing sites to be relocated in the project seem to be below the capacity created with the Investment Project and (ii) the forecasted sales quantities of the Investment Project in the years of full production, as shown in the NPV analysis, seem to be below the capacity created with the Investment Project, the Commission cannot confirm that the capital expenditure to set up the Investment Project is realistic. In this context, the Commission does not exclude that the Investment Project is planned to accommodate further transfers under the scope of Waves four to six of the Strategy, however the Hungarian authorities explained that there are no concrete plans to implement those waves. The Commission notes that a production facility of lower capacity adjusted to the sales needs would require a lower cost to be considered in the NPV calculation, which could affect the NPV gap between the two locations and might impact the proportionality assessment.
- (166) For the reasons set out above, the Commission cannot conclude on the proportionality of the aid amount in light of the counterfactual scenario submitted and in light of the uncertainties related to the size of the investment. The Commission calls for comments from interested parties and in particular invites Hungary to clarify the planned capacity figures, also in light of the Strategy, composed of six waves.

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

- (167) The Commission further analysed whether the aid has undue negative effects on competition and trade. Section 3.7.2 of the RAG 2014 and section 5.6.2 of the RAG 2022 explicitly list 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*

- (168) A manifest negative effect would exist, according to paragraph 119 of the RAG 2014, where the proposed aid amount exceeds, compared to the eligible (standardised) investment expenditure ⁽⁷⁵⁾, the maximum (adjusted) aid intensity ceiling that applies for a project of the given size, taking into account the required 'progressive scaling down' ⁽⁷⁶⁾. As assessed in recital (164), the aid amount does not exceed the maximum aid intensity as established in the regional aid map 2014 and the regional aid map 2022.

- (169) The Commission therefore preliminarily concludes that there is 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*

- (170) According to paragraph 120 of the RAG 2014 and section 5.6.2.1 of the RAG 2022, 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.

⁽⁷³⁾ See section 3.6.1.1 of the RAG 2014 and section 4.1.1 of the RAG 2022.

⁽⁷⁴⁾ Paragraph 92 of the RAG 2014 and paragraph 99 of the RAG 2022.

⁽⁷⁵⁾ 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 2014.

⁽⁷⁶⁾ See paragraphs 86 and 20(c) of the RAG 2014.

- (171) 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 in any event (whatever the location). Therefore, this verification will normally be required only in 'scenario 1' situations⁽⁷⁷⁾ or in those 'scenario 2' situations where the alternative locations (i.e. the target region and the more viable region for the implementation of the investment project) are situated in different geographical markets⁽⁷⁸⁾.
- (172) In order to determine whether this verification is necessary in the case at hand, being a 'scenario 2' situation, the Commission has to assess and establish whether the two alternative locations are situated in different geographical markets. Only in that case does the 'overcapacity in a declining market' test need to be carried out.
- (173) To determine whether the two alternative locations are situated in different geographical markets, the relevant product market needs to be defined.

Product concerned and relevant product market

- (174) 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⁽⁷⁹⁾. In the case at hand, the products concerned by the Investment Project are sids shafts, prop shafts and sub-components required for their assembly (e.g. joints) (recital (92)). Sids shafts and prop shafts are sold as final products directly to customers, mainly the European producers of passenger cars and light commercial vehicles.

Relevant geographical market

- (175) The Hungarian authorities did not establish the relevant geographic market. Hungary confirmed that the two locations (Hungary and Türkiye) would serve the same customers and customer locations. If so, both locations cannot be considered as belonging to different geographical markets.
- (176) The Commission recalls that it has expressed serious doubts as to the credibility of the counterfactual scenario (recital (146)). Therefore, at this stage the Commission cannot conclude whether or where an alternative investment might have taken place in the absence of the aid. As such, the Commission cannot conclude on whether any such alternative investment would have happened in the same geographical market ('scenario 2'). On that basis, at this stage, the Commission cannot conclude on whether the aid would 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

- (177) Paragraphs 121 and 139 of the RAG 2014 and paragraphs 117 and 134 of the RAG 2022 prohibit an EEA region with a lower project-specific viability from participating in 'subsidy races' to the detriment of equally weak or worse-off regions⁽⁸⁰⁾.
- (178) Hungary submits that in the final decision-making process only one other alternative location not located in the EEA was considered for the Investment Project. The Commission notes that during the location decision process, several other EEA locations were investigated, such as locations in Poland and Slovakia and in earlier stages of the decision making process also Czech Republic, Slovenia, Romania and Bulgaria. However none of those locations, based upon the evidence provided, were considered in the final decision making process.

- (179) The Commission therefore preliminarily considers that the aid has no counter-cohesion effect.

3.3.6.4. No manifest negative effect on trade: No relocation

- (180) Pursuant to paragraph 122 of the RAG 2014 and paragraph 118 of the RAG 2022, 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.

⁽⁷⁷⁾ See paragraph 120 of the RAG 2014 and 114 of the RAG 2022.

⁽⁷⁸⁾ See paragraph 139 of the RAG 2014 and 115 of the RAG 2022.

⁽⁷⁹⁾ See paragraph 124 of the RAG 2022.

⁽⁸⁰⁾ According to paragraph 121 of the RAG 2014 and paragraph 117 of the RAG 2022, 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.

- (181) In the period 2019 to 2021, the beneficiary (at group level) has closed down several sites with the same or a similar activity in the EEA and intends to [transfer] the same or similar activity elsewhere in the EEA after the completion of the investment (recital (25)).
- (182) Hungary submits that the aid will not have a manifest negative effect as there is no causal link between the aid and the relocation for the reasons stated in recital (90). The Commission considers that among those reasons, the ones indicated in recitals (90)(a) to (90)(c) are inconsistent with Hungary's explanation that the set-up of the Strategy in 2019 did not constitute a decision to perform any of the specific projects/relocations therein (recital (39)). However, the argument cited in recital (90)(d) according to which the aid only changed the location of the investment, i.e. incentivised the beneficiary to locate the investment in Hungary instead of Türkiye, but did not impact the investment decision itself, would be sufficient by itself to exclude the causal link between the aid and the relevant relocations, if the credibility of the counterfactual scenario in Türkiye were fully demonstrated. The Commission therefore preliminarily concludes that — in the event that the proposed counterfactual can ultimately be considered to be credible — a causal link does not exist between the aid and the relevant [transfer of business] and relocations.
- (183) However, at this stage of the procedure, the Commission preliminarily considers that, if, following its in-depth investigation, the Commission concludes that Türkiye was not a credible counterfactual scenario, while it transpires that the aid was still needed for the investment in Hungary to be sufficiently profitable (in which case a scenario 1 situation would apply), then, without the aid the [transfer of business] would not take place. In such case, a causal link between the aid the relocation would be present. Consequently, the Commission, at this stage, cannot conclude on the absence of a manifest negative effect related to relocation.

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

- (184) In view of the above, the Commission has serious doubts concerning whether the aid will have a manifest negative effect on competition or trade within the meaning of section 3.7.2 of the RAG 2014 and section 5.6.2 of the RAG 2022.

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

- (185) The Commission could not conclude at this point on the positive effects of the aid in view of the doubts expressed in connection with the incentive effect. Furthermore, the Commission expressed serious doubts on the proportionality of the measure and as to the absence of manifest negative effects resulting from the measure. Since all of those elements need to be taken into account in the balancing test, the Commission is not in a position at this stage to perform such balancing.
- (186) Nevertheless, also other negative effects need 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. They are identified in paragraph 114, 115 and 132 of RAG 2014 and in paragraph 107, 108 and 127 of the RAG 2022 and concern the creation or reinforcement of overcapacities in an underperforming market (even if this market is not in absolute decline). The Commission recalls that it harbours serious doubts as to the credibility of the counterfactual scenario (recital (146)). Therefore, at this stage, the Commission takes the view that it cannot conclude on such a balancing test.

3.3.8. *Transparency*

- (187) In view of the Commission's Transparency Communication ⁽⁸¹⁾, the Hungarian authorities confirmed (recital (95)) that the following information will be published in the EU Transparency Award Module and in the website of the State Aid Monitoring Office ⁽⁸²⁾: 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/(ies); 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).
- (188) The Hungarian authorities also confirmed (recital (96)) 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.
- (189) On this basis, the Commission preliminarily concludes that the aid complies with the transparency provisions of section 3.8 of the RAG 2014 and section 5.7 of the RAG 2022.

⁽⁸¹⁾ See footnote 48.

⁽⁸²⁾ <http://tvi.kormany.hu/>

3.3.9. No relevant breach of EU law

- (190) 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 relevant provision of Union law⁽⁸³⁾. 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.

3.4. Doubts and grounds for opening

- (191) For the reasons set out above, the Commission, after a preliminary assessment of the measure, harbours serious doubts as to the conformity of the measure with the provisions of the RAGs concerning the credibility of the counterfactual scenario, the incentive effect and the proportionality of the aid. In addition, for the reasons set out above, the Commission notes that it cannot be excluded that the measure contributes to, or reinforces, the creation of overcapacity in a market in absolute decline and is causal to the relocation of activities from another Member State, which would constitute manifest negative effects on competition and trade. For all these reasons, the Commission harbours serious doubts as to the compatibility of the measure with the internal market.
- (192) Consequently, the Commission is under a duty to carry out all of the required consultations and, therefore, to initiate the procedure under Article 108(2) TFEU. This will give the opportunity to third parties whose interests may be affected by the granting of aid to comment on the measure. In light of both the information submitted by the Member State concerned and that provided by third parties, the Commission will assess the measure and will take its final decision.
- (193) The Member State and interested parties are invited to provide in their comments to this decision all information necessary to enable the Commission to carry out this formal investigation.
- (194) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) TFEU, requests that Hungary submit its comments and provides all such information as may help the Commission to assess the aid, within one month of the date of receipt of this letter. The Commission requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.
- (195) The Commission wishes to remind Hungary that Article 108(3) TFEU has suspensory effect, and would draw your attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipient.
- (196) The Commission warns Hungary that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending it a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

⁽⁸³⁾ See paragraph 28 of the RAG 2014 and paragraph 41 of the RAG 2022.