

II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION

of 2 December 2009

on the State aid C 39/08 (ex N 148/08) planned by Romania for training by Ford Craiova

(notified under document C(2009) 9350)

(Only the Romanian text is authentic)

(Text with EEA relevance)

(2010/357/EU)

THE EUROPEAN COMMISSION,

(now Article 108(2) TFEU) ⁽²⁾ with respect to the notified aid, and called on interested parties to submit comments ⁽³⁾.

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

(3) Romania submitted comments by letter of 7 November 2008. On 18-19 November 2008, the Commission met with the Romanian authorities and Ford representatives on the premises of the Craiova plant.

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

(4) By letter of 26 November 2008, the Commission accepted the beneficiary's request to extend the deadline for submitting its comments. Ford submitted its comments by letter of 18 December 2008. These comments were forwarded to Romania by letter of 9 March 2009.

Having called on interested parties to submit their comments pursuant to those provisions ⁽¹⁾,

Whereas:

(5) The Commission requested further information by letters of 6 March 2009 and 23 June 2009. The Romanian authorities responded on 2 April 2009 and 22 July 2009 respectively.

1. PROCEDURE

(1) Romania notified to the Commission by letter of 1 April 2008 an *ad hoc* individual training aid for the amount of EUR 57 million in favour of car producer Ford Romania SA, located in Craiova.

(6) The Commission did not receive comments from other interested third parties.

(2) By letter dated 10 September 2008, the Commission informed Romania that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty

⁽²⁾ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

⁽³⁾ The Commission Decision to initiate the procedure was published in the *Official Journal of the European Union*, see footnote 1.

⁽¹⁾ OJ C 270, 25.10.2008, p. 29.

2. DESCRIPTION OF THE PROJECT

The beneficiary

- (7) The aid beneficiary is Ford Romania SA, part of Ford Motor Company, which on 12 September 2007 purchased from the Romanian privatisation agency AVAS the car plant and business formerly operated in Craiova by SC Automobile Craiova SA and SC Daewoo Automobile SA (hereinafter referred to as 'Ford Craiova').
- (8) By decision of 27 February 2008, the Commission found that the privatisation agreement entailed incompatible aid, and ordered recovery of EUR 27 million⁽⁴⁾. The sum was reimbursed with interest on 27 June 2008.
- (9) Ford purchased the Craiova car plant to start producing, as of 2009, two new types of vehicles (B-MAV, a small multifunctional model, and ISV, a light vehicle suitable for the transport of goods and/or passengers), and as of 2011, a new generation of low CO₂ engines. This project will entail the setup of two new production lines, for an estimated overall investment of EUR 675 million. Under the privatisation agreement, Ford committed to retain the 3 900 existing workforce and to create new jobs, reaching a total of 9 000 employees by the end of the year 2012.
- (10) The Craiova plant is based in a disadvantaged region eligible for aid under Article 107(3)(a) TFEU. By decision of 30 April 2008, the Commission approved EUR 143 million of regional aid to Ford Craiova, corresponding to the maximum aid intensity allowed for a large investment project of this size in a region eligible for a basic maximum aid intensity of 50 % of the eligible investment costs⁽⁵⁾.

The training project

- (11) The notified aid supports a comprehensive 5-year training programme which Ford intends to offer to both the existing workforce (3 900) and future employees of the Craiova car plant, up to a total of 9 000 employees. The training programme is estimated to cost a total of EUR 185,5 million⁽⁶⁾, of which EUR

128,5 million will be contributed by Ford, and EUR 57 million will be provided by Romania in the form of training aid.

- (12) The training programme has a bi-dimensional structure.
- (13) On the vertical dimension, the programme consists of several layers. The first layer comprises training that is either required by EU/Romanian law and/or necessary in order to run the plant efficiently – which could be defined as 'company-specific training'. This layer of training is not eligible for aid. Its estimated cost of approximately EUR 29,7 million is entirely borne by Ford. The additional layers include: training that would only partially be offered in the absence of aid (i.e. up to 40 % of the complete course content); training that would not be offered at all in the absence of aid; and training related to the selection of categories of employees.
- (14) On the horizontal dimension, the programme offers 269 courses, grouped around four main training themes/blocks:
- Safety: 79 courses aimed at developing a safety culture in the workplace. These courses are divided into four principal sub-themes: basic safety for the workplace; safe use of machinery and personal protection equipment; pedestrian safety; hazard risk identification and prevention. Each course consists of an introductory part, to be followed by in-depth behavioural training. Of the 79 courses offered under this block, 61 are addressed to both blue-collar employees and staff in leadership positions, while 18 courses are addressed only to the latter category of professionals.

Training that must be provided by the company to meet internal company safety standards and to satisfy requirements resulting from EU and Romanian safety regulations is not considered eligible for aid⁽⁷⁾. Eligible costs for this block amount to EUR 17,57 million, for which aid up to EUR 8,43 million could be claimed.

⁽⁴⁾ Commission Decision 2008/717/EC of 27 February 2008 on State aid C 46/07 (ex NN 59/07) implemented by Romania for Automobile Craiova (formerly Daewoo Romania), OJ L 239, 6.9.2008, p. 12. The Commission found that the privatisation price was reduced, in exchange for Ford's commitments to preserve the existing force (3 900) and create new jobs up to a total of 9 000 by 2012, and to reach by the end of 2012 a production level of 200 000 vehicles per year. The Commission ordered recovery of EUR 27 million, representing the difference between the net asset value and the purchase price. As part of the privatisation deal, the Romanian government had signed on 7 November 2007 a Binding Commitment Letter, undertaking to give Ford regional aid totalling EUR 156 million and training aid totalling EUR 57 million in relation to the Craiova project.

⁽⁵⁾ Commission Decision of 30 April 2008 on State aid N 767/2007, Regional investment aid to Ford Craiova, OJ C 238, 17.9.2008, p. 4.

⁽⁶⁾ As submitted by the beneficiary on 18 December 2008.

⁽⁷⁾ As following: Health and Safety Induction for Production; Safe Cell Entry Training; ECPL Stand Down; ECPL Stand Down for Production; Health and Safety Induction for Office Workers; Site Induction for Visitors and Contractors; Environmental Energy Response Plan; MATS System and Data Management for Hazardous Materials; Risk Evaluators; Induction for Fenced Areas or Construction Sites; Fire Risk Assessment and Safety; Safety Stand Down on legal requirements (bi-annually); Safety Stand Down on Pedestrian Safety (bi-annually); Health and Safety for Managers and the Health and Safety Committee; First Aid.

- Core Skills: 59 courses aimed at supporting the personal development of employees, by providing them with skills of a general value. The courses are grouped under the following sub-themes: Romanian language for expatriate employees; leadership skills for supervisors/foremen; Outlook and basic IT skills; English language skills for the local workforce; literacy and numeracy skills; basic leadership skills for employees at all levels; extensive IT training; individualised in-depth training for selected 'role model' employees. In particular, 14 of the courses are addressed to both blue-collar staff and staff in leadership positions⁽⁸⁾, while 45 courses are addressed only to the latter category of professionals.

The estimated cost of the courses considered non-eligible for aid will be entirely covered by Ford⁽⁹⁾. Eligible costs for this block amount to EUR 93,13 million, for which aid up to EUR 46,56 million could be claimed. In particular, the literacy and numeracy courses, which will be provided to both blue collar employees and staff in leadership positions, are budgeted to cost approximately EUR 22,5 million each.

- Business Fundamentals: 73 courses intended to bring the workforce up-to-speed on European and global business practices. Part of the courses offered under this block, i.e. 20⁽¹⁰⁾, cover both blue-collar employees and staff in leadership positions (team leaders, supervisors, specialist staff and managers). The rest of the courses are targeted only at the latter professional categories. Three training areas under this block, i.e. Ford-Specific IT Systems, Ford Business Processes, and Ford Internal Control Processes, comprise courses that are necessary for the efficient operation of the plant, and are therefore not eligible for aid. The rest of the courses are defined as optional, or additional, and their purpose is to take employees to a higher level of experience and skill. These additional areas of training cover general themes such as: Project Management Skills; Functional Expertise (HR,

Purchasing, Finance); Six Sigma (quality improvement); additional individualised training for selected 'role model' employees.

The total eligible costs of this training block are estimated at about EUR 8 million, of which EUR 4 million will be contributed by Ford and the other EUR 4 million are provided as aid. The costs of the company-specific training under this block are entirely borne by the company⁽¹¹⁾.

- Industrial Skills: 58 courses aimed at conveying in their ensemble a level of industrial skill that goes beyond what is necessary to function on the job, and enabling employees to cope with the challenges of using new technologies in the manufacturing environment in general. Two of these courses, i.e. Engine Assembly and Manufacturing Simulation, are company-specific, and therefore not eligible for aid. The rest of the courses are qualified as additional/optional training, covering various subjects under the broad themes of Electrical/Mechanical Trades and Extended Maintenance. Most of the courses offered under this block are addressed to blue-collar employees and staff in leadership positions alike⁽¹²⁾.

The total eligible costs of this training block are estimated at approximately EUR 39,1 million, of which about EUR 18,9 million will be borne by Ford, and about EUR 18,2 million could be claimed as aid.

- (15) The company-specific part of the training programme, which will be entirely financed by Ford, is estimated to cost EUR 29,73 million EUR⁽¹³⁾. For the additional training which is declared eligible for aid, the distribution of eligible costs between the blocks of the training programme and Ford's own contribution are reported in the Table below (in EUR million).

⁽⁸⁾ As following: The Role of Teams in Objective Setting and Policy Deployment; Continuous Improvement; Introduction to the PC with MS Windows XP; MS Excel Fundamentals; MS Word 2003 Fundamentals; Team Building Skills; Valuing Differences, Creating Success – Diversity and Dignity at Work; Train the Trainer; Effective Team Meetings; Literacy Skills; Business Mathematics; Introduction to Scorecards; English Language Training; Product Specialist Leadership Training.

⁽⁹⁾ As following: Task Card Training; Introduction to Scorecards; and Strategies, Objectives and Key Performance Indicators.

⁽¹⁰⁾ Such as: Manufacturing Principles; Root Cause Analysis (5 Why's); Visual Factory Techniques; Error Proofing; Defect Identification and Resolution; Continuous Improvement; Quality Overview; Statistical Process Control; Principles of Corporate Conduct; Manufacturing Systems; etc.

⁽¹¹⁾ Which cover the following company-specific courses: In Station Process Control; Document Management and Retention; The Use of Statistical Process Control in Ford; Corporate Conduct in Ford; Internal Control at Ford; Manufacturing Operating Systems at Ford; Captura Training; Management Accounting in Ford; Financial Accounting and Tax Processes in Ford; Financial Analysis Processes in Ford; Purchasing Processes in Ford; Human Resources Processes in Ford; Purchase and Ordering Systems; Control of Requisitioning and Approvals; Procurement and Requisitioning Systems for Buyers; Non-Production On-Line Order Processing (SNOOPE); Blanket Order Selection.

⁽¹²⁾ Except two Medical Skills courses, i.e. Resuscitation and Treatment for Electric Shock, and Medical Up-Skilling.

⁽¹³⁾ Nominal value.

	Safety	Core Skills	Business Fundamentals	Industrial Skills	Total
Eligible Costs General Training	16,17	93,13	7,94	36,67	153,91
Eligible Costs Specific Training	1,49	—	0,16	0,24	1,89
General Training Aid	8,08	46,56	3,97	18,33	76,94
Specific Training Aid	0,37	—	0,03	0,06	0,46
Total Aid	8,45	46,56	4,00	18,39	77,44
Ford Contribution	9,2	46,56	4,08	18,50	78,39

The total aid and Ford contribution values reported above are indicated at nominal value. Romania and Ford underline that the company decided to cap the total amount of aid to EUR 57 million. The difference between the total aid that the programme would qualify for and the claimed amount of EUR 57 million is covered by the company as its own contribution, which is thus increased to EUR 98,8 million.

- (16) The total number of training days to be offered under the company-specific part of the programme, which is not eligible for aid, is of roughly 200 000 over a period of five years, and the total number of training days to be offered under the eligible part of the programme is of roughly 800 000 over a period of five years. Accordingly, the 9 000 employees should receive on average in total about 111 days of training each, to be distributed over a five-year period. Romania and Ford also provided evidence to show that most of the trainers involved in the programme (up to 90 %) will be recruited from external specialised training centres, and that a good part of the training will be offered at locations external to the factory (see in this sense also recital 18 below, where eligible travel costs for both trainees and trainers are indicated).
- (17) The costs of the training programme were estimated starting from similar costs incurred by Ford for training offered at its plant in Dagenham (UK), which were adjusted to take into account cost levels in Romania, based on initial forecasts (2008 data adjusted for predicted inflation rates for the following years). Accordingly, the following costs were estimated per day of training and per trainee (not including trainee wages):

Categories of Eligible Costs	General Training	Specific Training
Guidance and Counselling	[...] (*) EUR	[...] EUR
Trainer fee (2 days)	[...] EUR	[...] EUR
Trainer travel expenses	[...] EUR	[...] EUR
Trainee travel expenses	[...] EUR	[...] EUR
Depreciation of tools & equipment	[...] EUR	[...] EUR
Rent/depreciation of training facilities	[...] EUR	[...] EUR
Training materials	[...] EUR	[...] EUR
Total	181,00 EUR	265,00 EUR

(*) Business secret.

- (18) The eligible costs claimed for this programme (covering a total of 9 000 employees, and to be provided over a period of four years) are indicated below (nominal values, in EUR million):

	General Training Aid	Specific Training Aid	Total
Trainer Costs	[45-50]	[0,5-1,0]	[45-50]
Trainer Travel Expenses	[10-15]	[0-0,5]	[10-15]
Trainee Travel Expenses	[0-5]	[0-0,5]	[-0-5]
Other Expenses Art. 4(7)(c)	[10-15]	[0-0,5]	[10-15]
Depreciation	[0-5]	[0-0,5]	[0-5]
Training Facility	[5-10]	[0-0,5]	[5-10]
Guidance and Counselling	[25-30]	[0-0,5]	[25-30]
Internal Trainer Costs	[0-5]	[0-0,5]	[0-5]
Wage Compensation for Trainees	[40-45]	[0-0,5]	[40-45]
Eligible Costs Excluding Wage Compensation	[110-115]	[1-2]	[115-120]
Maximum Aid	76,96	0,47	77,44
Ford Contribution	76,96	1,42	78,39

The aid

- (19) The aid consists of a direct grant to Ford Craiova of EUR 57 million for a period of five years. The aid is proposed in support of a training project estimated to cost overall EUR 185,5 million (nominal value), of which EUR 155,8 million are qualified as eligible for training aid. Most of the eligible expenditure is associated with general training, i.e. EUR 153,93 million. Only EUR 1,88 million of the eligible costs is linked to specific training. For this project, Romania applied an aid intensity of 50 % for general training measures, and 25 % for specific training measures. Accordingly, the project qualifies for EUR 76,96 million of general training aid, and for EUR 0,47 million of specific training aid — totalling EUR 77,44 million of aid. The beneficiary opted however for limiting the State support to EUR 57 million (see also recital 15 above).
- (20) Romania maintains that, as it would be unrealistic to predict *ex ante* the exact costs by training course for a programme scheduled to last for five years, it becomes necessary to give to the aid beneficiary some flexibility to re-allocate aid between different eligible costs, were the actual costs incurred to vary from the estimated standard costs. This flexibility should allow the beneficiary to optimise the training programme along the way, while the scope of training and overall aid volume and intensities would nevertheless be respected.
- (21) Romania also proposed in its submission of July 2009 that the aid be paid to the beneficiary in advance, at intervals to be determined in agreement with the latter (e.g. on a quarterly basis), and based on standard claimed costs. Expenses actually incurred during each fiscal year should then be audited by the beneficiary's internal auditors, and aid payments adjusted yearly to the applicable intensity ceilings. The rules and conditions for the payment of aid should be stipulated in a specific Romanian legislative act.

3. DECISION TO OPEN THE FORMAL INVESTIGATION PROCEDURE UNDER ARTICLE 82(2) EC

- (22) In the decision to open the formal investigation of 10 September 2008, the Commission expressed doubts concerning the following aspects: the justification of aid, the incentive effect/necessity of aid, the cumulation of regional and training aid, and compliance with the so-called 'Deggendorf principle' (all discussed below).

Incentive effect/necessity

- (23) In particular, the questions raised by the Commission were: (i) whether part of the training declared eligible for aid would not need to be provided by Ford in any event, at least to the existing workforce, in order to be able to operate a plant introducing state-of-the-art manufacturing technology; and (ii) whether parts of the training offered under the Safety block were not actually compulsory for the company to offer under EU and/or Romanian safety regulations. If so, the aid would not be compatible with the internal market under Article 107(3)(c) TFEU, as it would subsidise training that would be undertaken in any event, and consequently would not 'facilitate the development of certain economic activities'.

Justification

- (24) The Commission questioned whether parts of the training proposed for future employees were justified, since Ford had the possibility of recruiting qualified new employees.

Cumulation/Intangible regional handicaps

- (25) The opening decision raised the question whether parts of the proposed training would not in effect address intangible regional handicaps in the form of a shortage of skills in the existing workforce that were already compensated by the regional investment aid granted to the company in 2008 ⁽¹⁴⁾.

Deggendorf principle

- (26) According to established case law ⁽¹⁵⁾, new aid cannot be paid until previously-granted incompatible aid has been fully recovered. The Romanian authorities had not proven at the date of the opening of the formal investigation that the aid linked to the privatisation of the

Craiova plant declared incompatible with the EC Treaty (now TFEU) by the Commission on 27 February 2008 ⁽¹⁶⁾ had been fully recovered.

4. COMMENTS FROM ROMANIA

- (27) Following the opening of the investigation procedure, Romania submitted comments concerning: (i) the legal basis for assessing the compatibility of the aid with the Treaty; (ii) the incentive effect of the aid; and (iii) compliance with the so-called Deggendorf principle.

Legal basis for assessment

- (28) Romania argues that, according to the principle of legal certainty, the aid should be assessed according to the criteria in place at the time of the notification (April 2008). At that time Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽¹⁷⁾ still applied, and the General Block Exemption Regulation ⁽¹⁸⁾ (hereinafter 'the GBER') was published on 9 August 2008, and entered into force on the 20th day following its publication.

- (29) Romania considers that the assessment criteria resulting from the GBER are partially different from those resulting from Regulation (EC) No 68/2001. It also underlines that, for the purposes of the notification, it had taken into account the maximum aid intensities of 50 % for general aid and 25 % for specific aid resulting from Regulation (EC) No 68/2001, whereas the GBER allows intensities of 60 % for general training and 25 % for specific training.

- (30) Romania is also of the view that, starting with its *Ford Genk* ⁽¹⁹⁾ and *GM Antwerp* ⁽²⁰⁾ decisions, the Commission has adopted a rigid approach to the assessment of training aid under the incentive effect criterion which is not consistent with the Commission's overall approach towards training aid and with the objectives of the Lisbon Agenda.

⁽¹⁶⁾ See footnote 4.

⁽¹⁷⁾ OJ L 10, 13.1.2001, p. 20.

⁽¹⁸⁾ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3).

⁽¹⁹⁾ Commission Decision 2006/938/EC of 4 July 2006 on State aid C 40/2005 (ex N 331/2005) which Belgium is planning to give to Ford Genk (OJ L 366, 21.12.2006, p. 32).

⁽²⁰⁾ Commission Decision 2007/612/EC of 4 April 2007 on State aid C 14/06 which Belgium is planning to implement for General Motors Belgium in Antwerp (OJ L 243, 18.9.2007, p. 71).

⁽¹⁴⁾ See footnote 4.

⁽¹⁵⁾ Joined Cases T-244/93 and T-486/93 *TWD v. Commission* [1997 II-2265, and Case C-355/95 *P TWD v. Commission* [1997] ECR I-2549.

Incentive effect

- (31) Necessity. Romania maintains in essence that, in the absence of aid, the company would provide a less ambitious training programme, choosing instead to offer its employees only the training that is necessary in order to operate the plant (which amounts to roughly 17 % of the proposed programme, and the costs of which will be entirely borne by the company) and much less of the additional training.
- (32) It is argued that Ford would be able to operate the Craiova plant without providing the additional training qualified as eligible for aid, because the existing workforce has experience with car manufacturing, and the new technology to be used at the plant allows for a process of 'learning-by-doing' that was verified at other Ford locations, where indeed such additional training was not provided.
- (33) Romania also provides in-depth explanations regarding the distinction between courses that are necessary in order to operate the plant (and which will be entirely financed by the company) and additional courses ('useful, but not indispensable') for each block of training.
- (34) Safety: most of the courses offered under the four proposed sub-topics (Basic Safety Training for the Workplace, Safe Use of Machinery and Personal Protective Equipment, Pedestrian Safety and Hazard and Risk Identification and Prevention) are considered necessary in order to convey a safety culture at the workplace. Part of these courses will be given to meet obligations resulting from EU and Romanian safety regulations, and part are aimed at meeting internal safety standards at a Ford plant. In relation to the latter, Romania explains that Ford applies internally safety standards which go beyond the minimum requirements resulting from the law. At any rate, both safety courses required by law and those corresponding to company internal safety policy are not considered eligible for aid. Their cost will be borne entirely by the company. The additional safety training, for which aid of EUR 3,2 million is requested, consists of individual coaching to further support awareness and behavioural change, and individualised training for selected 'role model' employees. These types of in-depth training are useful to employees, but not indispensable to the company.
- (35) Core Skills: this training block is aimed at supporting the personal development of individuals, and relates very little to the actual functioning on the job. A good part of the training offered under this block concerns general IT skills, English language training, literacy and numeracy skills, etc. For example, literacy and numeracy training is designed to fill in gaps that were verified in adults working in industrial sectors in all parts of the world, irrespective of their level of education. Literacy and numeracy training is not necessary to function on the job, as the technology used at the plant relies on Visual Factory systems that convey simplified visual work instructions. The literacy and numeracy training is intended to improve the capacity of employees to formulate ideas/concepts and communicate them fluently, and to interpret changes in the surrounding environment in quantitative terms. In a similar way, this block includes training to provide basic leadership skills for employees at all levels. Such skills, Romania argues, are beneficial to all categories of employees, irrespective of their level of education. This sort of training benefits mostly to the employees themselves, improves their quality of life, and generates positive spillovers for the region and society as a whole.
- (36) Business Fundamentals: the broad aim of this training block is to convey general advanced management and functional expertise. Three areas of training convey management skills that are specific to the company (Ford Specific IT Systems, Ford Business Processes, Ford Internal Control Processes), and their costs are entirely borne by the company. The additional training conveys skills which are largely transferable to other companies or industries, on general subjects such as Project Management Skills, HR, Purchasing, Finance, Six Sigma (a methodology for reducing error in repeated processes that is applied in many industries), and individualised training for 'role models', which undoubtedly benefits the company as well, in so far as it improves the working environment by helping to flatten hierarchies, but primarily benefits the trainees themselves and increases their attractiveness on the job market. For this training block aid up to EUR 4,33 million is requested.
- (37) Industrial Skills: again, this block includes training that goes beyond what is necessary to function on the job. The courses that are necessary for performing normal tasks in production, i.e. Launch, Maintenance and Fork Lift Truck, Robotics and Automation, will be entirely financed by the company. Additional training will be offered in two general areas: multiskilling on electrical/mechanical trades (which improves the employability of workers, but is not necessary to function on the job), and extended (in-depth) maintenance, automation and robotics. In both cases, employees learn to use different high technology machinery other than the one relevant for their current job. This block of training is declared eligible for aid up to EUR 18,9 million.

- (38) Furthermore, Romania considers that the incentive effect of the proposed aid must be assessed for the training programme as a whole, and not separately for each of the training themes or individual courses. Assessing training themes and/or courses individually, out of their overall context, is likely to lead to distorted results. Such an individual assessment would fail to take into account the added value of the training programme in its ensemble, which is more than the simple sum of benefits derived from training on specific subjects.
- (39) Justification. Concerning the justification of training to be provided to newly-recruited employees, Romania dissociates the issue of the company's (undisputed) capacity to recruit qualified new employees from the question of whether additional training is justified in their case. The additional training conveys general skills that are not necessary for the functioning on the job, and is therefore justified and beneficial for all categories of employees, irrespective of their educational background.
- (40) Intangible regional handicaps. On the issue of whether the proposed training aid compensates for intangible regional handicaps, in the form of a shortage of skills, that were already compensated by regional aid, Romania argues that regional investment aid and training aid measures have different objectives (and thus address different problems) and cover distinct eligible costs. The objective of regional investment aid is to support investment in the disadvantaged regions of the EU, whereas the purpose of training aid is to remedy under-investment in training, a phenomenon observed across the board in the EU. Furthermore, the 'distribution' of benefits for regional aid is the reverse of the benefits of training aid: while the former benefits primarily the investor, the latter is foremost beneficial to the employees.
- (41) Romania also underlines that the 'intangible' regional handicap resulting from a shortage of local skills is not one of the criteria for selecting the EU disadvantaged regions — criteria include GDP per capita levels, unemployment rates, population density, etc. Moreover, in the past the Commission had approved training aid based, inter alia on the argument that it would play a role in overcoming the competitive disadvantage resulting from the weak qualification of the local workforce (*Webasto* ⁽²¹⁾, *Vauxhall Motors* ⁽²²⁾).
- (42) Furthermore, a line of reasoning according to which projects which received regional investment aid should

not receive training aid would implicitly penalise the Union's disadvantaged regions, by precluding them from the possibility to support training projects.

Deggendorf principle

- (43) Romania submitted documentation showing that the incompatible privatisation aid of EUR 27 million ⁽²³⁾ and accruing interest was reimbursed by Ford Motor Company on 27 June 2008. As a consequence, Romania considers that the notified aid is in compliance with the so-called Deggendorf principle.

5. COMMENTS FROM INTERESTED PARTIES

- (44) Ford submitted comments on 18 December 2008, supporting the facts and arguments presented by Romania, and adding further arguments concerning the incentive effect of the proposed aid.

Significant own contribution

- (45) Ford emphasises that a considerable part of this comprehensive training programme is financed from own resources – up to EUR 128,5 million of the estimated total cost of EUR 185,5 million for the entire project. Moreover, training that is either legally required and/or necessary for the operation of the plant has not been declared eligible for aid, and will be entirely financed by the company. The company-specific part of the training, estimated to cost approximately EUR 29,7 million, has indeed already started to be offered to the existing workforce in 2009.

Reduced distorting effects of aid

- (46) In relation to the potential distorting effects of the aid, Ford underlines that the programme involves for the most part general training, where the employees are the main beneficiaries, and from which the company will benefit only indirectly. Consequently, the distorting effects of the training aid should be only secondary and indirect. Ford considers that, consequently, considerations related to the impact of aid from the perspective of 'the structure of relevant markets' and 'the sector and industry characteristics' are not pertinent in relation to general training, as the projected output and technical capacities as such will not be modified. By contrast, specific training may directly improve the productivity of the company and thus affect its position on the market. However, specific training represents only a minor part of the proposed additional training.

⁽²¹⁾ Commission Decision in State aid case N 653/2005, Training Aid for Webasto Portugal (OJ C 306, 15.12.2006, p. 14).

⁽²²⁾ Commission Decision in State aid case C 23/2007, Training Aid for Vauxhall at Ellesmere Port (OJ C 243, 17.10.2007, p. 4).

⁽²³⁾ See footnote 4.

Necessity of training

(47) On the issue of whether parts of the training notified as eligible for aid might not have to be given at any rate in order to ensure compliance with internal company safety standards, Ford underlines that this line of reasoning would lead to normative distortions of the 'race-to-the-bottom' kind: if only companies with low internal safety standards may benefit from training aid, companies would eventually be discouraged from raising their own internal safety standards. Accordingly, Ford wonders whether proposed training aid that should in any case be granted to the beneficiary should not be determined by reference to internal company standards, but to objective criteria applicable to all companies in a given sector. Moreover, with this investment project Ford will become by 2012 Romania's largest industrial employer. Investments of this kind have a 'lighthouse' function in the economy, and the Romanian government supports Ford's plans to make the Craiova plant a benchmark for other employers and new investors.

(48) Ford also underlines that, in more general terms, the additional training declared eligible for aid is not necessary for the operation of the plant, given the 'lean manufacturing' system nowadays applicable within the Ford group. Car manufactures have moved over time from 'mass manufacturing' towards 'lean manufacturing', an evolution that entails mainly a behavioural change, in the sense of increasing empowerment at all levels of the internal organisation. The non-eligible part of the training programme would be sufficient in order to induce this behavioural change.

Intangible regional handicap

(49) Ford supports the arguments put forward by Romania against the idea of a possible overlap between regional investment aid and training aid in relation to intangible regional handicaps in the form of lower skills, and also considers that the level of skills and education in a region should be taken into account when assessing if a proposed training aid measure has positive externalities.

The counterfactual

(50) Ford presents a comparison between the training programme that it has offered at its plant in Saint Petersburg and the one proposed to be carried out at the Craiova plant. The purpose of the comparison is to demonstrate that it is possible to run a Ford plant efficiently with a less ambitious training programme than the one proposed for the Craiova plant, and as a consequence, that aid for the additional training offered at the Craiova plant has an incentive effect.

(51) Ford considers that a comparison between the two training projects is pertinent, for the following reasons:

— Production: In Saint Petersburg Ford took over a plant that previously produced large engines for ship-building and for the defence industry, while the Craiova plant was previously producing cars. At the Saint Petersburg plant Ford produces only vehicles (as of 2002, variations of the Ford Focus II model, and as of 2009, the Ford Mondeo model), whereas in Craiova it will produce both vehicles and engines. The Saint Petersburg plant does not have a press shop, unlike the Craiova plant, which does have one. Notwithstanding these differences, Ford considers that outset conditions at the Craiova and the Saint Petersburg plants are comparable, because both plants were acquired to introduce new car production lines. Both plants use the same 'Ford Production System' ('FPS'), and production stages are comparable, including in terms of the level of skills required of the workforce.

— Workforce: In Saint Petersburg Ford did not take over the existing workforce. The newly recruited workforce was on average younger, higher qualified and less experienced than the existing workforce at the Craiova plant. Notwithstanding these differences, Ford considers that the two workforces were comparable at the outset. Both workforces were accustomed to working conditions in non-market economies, an initial condition that was reflected, for example, in a different safety culture by comparison to their Western counterparts, and little management and functional experience in a multinational company (irrespective of education levels).

(52) The structure of the training programme offered at the Saint Petersburg plant was similar to the one proposed for the Craiova plant. However, at the Saint Petersburg plant Ford provided only the minimum necessary of training, and staff in leadership positions received more training than blue collar employees. Production was launched in 2002 with only the minimum levels of training necessary in order to reach Ford quality and safety requirements.

(53) Ford simulated the Saint Petersburg training programme if applied for the 9 000 employees of the Craiova plant. The conclusion was that a Saint Petersburg-type of training programme would amount overall to only about 26 % of the training that is proposed to be offered at the Craiova plant. More specifically, such programme would offer only 57 % of the Safety, 2 % of the Core Skills, 30 % of the Business Skills, and 47 % of the Industrial Skills training proposed for the Craiova plant.

6. ASSESSMENT OF THE AID

6.1. Existence of aid

(54) The measure notified by Romania in favour of Ford Craiova meets the cumulative conditions for qualifying as State aid within the meaning of Article 107(1) TFEU. The measure consists of a direct grant financed by the Romanian State from public resources. The measure is also selective, as it involves *ad hoc* individual financial support to a single beneficiary, Ford Craiova. The beneficiary will derive an advantage from the measure, which relieves it of part of the costs of the proposed training programme. The measure distorts competition by favouring the beneficiary company with respect to competitors not receiving aid for similar purposes. Finally, trade between the Member States is affected, as the beneficiary and its competitors sell their products primarily on EU, but also on EEA and worldwide markets.

6.2. Legal basis for assessment

(55) Romania asks for approval of the aid under the rules applicable at the time of the notification (April 2008). More specifically, Romania maintains that: (i) the compatibility of the proposed aid with the Treaty should be assessed under the criteria stemming from Regulation (EC) No 68/2001⁽²⁴⁾, which was in place at the time of the notification; (ii) the Commission should not apply retroactively the General Block Exemption Regulation (GBER) (which was published on 9 August 2008 and entered into force twenty days later)⁽²⁵⁾; and on a more general level, that (iii) the overly strict application of the incentive effect criterion starting with decisions such as *Ford Genk*⁽²⁶⁾ and *GM Antwerp*⁽²⁷⁾ is not consistent with the Commission's overall approach towards training aid.

(56) In the *Freistaat Sachsen v. Commission* ruling⁽²⁸⁾, the ECJ clarified the issues surrounding the application *rationae temporis* of State aid rules for the purposes of assessing the compatibility of notified aid measures. The Court established that, for the compatibility assessment, the Commission must apply the rules, principles and criteria in force at the time of issuing the Decision, which are better adapted to the context of competition⁽²⁹⁾. In this sense, the Court adds, '[...] the notification by a Member State of aid or a proposed aid scheme does not give rise to a definitively-established legal situation which requires the Commission to rule on their compatibility with the internal market by applying the rules in force at the date on which that notification took place. On the contrary, it is for the

Commission to apply the rules in force at the time when it gives its decision, the only rules on the basis of which the lawfulness of the decision it takes in that regard falls to be assessed.'⁽³⁰⁾

(57) The Court also establishes that, when the compatibility assessment is carried out under new rules, the Commission must give interested parties the opportunity to comment on the compatibility of aid with the latter. Notably, this procedural obligation is not triggered when the new rules do not contain substantial amendments with respect to the previous ones⁽³¹⁾.

(58) It follows from the above that the Commission must assess the compatibility of the aid with the TFEU under the rules and criteria applicable at the time of its decision. Individual training aid which does not meet the conditions for exemption must be assessed directly on the basis of Article 107(3)(c) TFEU, which stipulates that 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest' may be considered compatible with the TFEU. Regulation (EC) No 68/2001 on Training Aid⁽³²⁾ was replaced by the GBER⁽³³⁾ twenty days after its publication on 9 August 2009. Pursuant to recitals 29 and 32 and Article 6(1)(g) of the GBER, individual training aid exceeding EUR 2 million per project, irrespective of whether granted *ad hoc* or under a scheme, should be individually assessed by the Commission, according to the criteria resulting from the applicable Union instruments. To this end, the Commission must rely on the Communication⁽³⁴⁾ setting the criteria for assessing training aid subject to individual notification (hereinafter 'the 2009 Training Aid Communication'), which was published on 11 August 2009 and entered into force on the 20th day following its publication.

(59) To conclude, in compliance with the *Freistaat Sachsen* principles the Commission must assess the compatibility of the notified aid under Article 107(3)(c) TFEU, against the background of the GBER, and based on the individual assessment criteria set out by the 2009 Training Aid Communication.

⁽²⁴⁾ See footnote 17.

⁽²⁵⁾ See footnote 18.

⁽²⁶⁾ See footnote 19.

⁽²⁷⁾ See footnote 20.

⁽²⁸⁾ Case C-334/07 P, [2008] ECR I-9975.

⁽²⁹⁾ *Idem*, at recital 51.

⁽³⁰⁾ *Idem*, at recital 53.

⁽³¹⁾ *Idem*, recital 56; see also Case C-49/05 P *Ferriere Nord v. Commission* [2008], judgment of 8 May 2008, not reported, pars. 68-71.

⁽³²⁾ See footnote 17.

⁽³³⁾ See footnote 18.

⁽³⁴⁾ Communication from the Commission — Criteria for the analysis of the compatibility of State aid for training subject to individual notification (OJ C 188, 11.8.2009, p. 1).

(60) The Commission considers that assessing the notified aid according to the rules and criteria resulting from the GBER and the 2009 Training Aid Communication does not infringe the procedural rights of the interested parties (see recital 57 above). According to the *Freistaat Sachsen* ruling, the Commission must offer to the interested parties the possibility to comment on the application of the new rules to the notified aid only in so far as the new rules introduce substantive changes with respect to the previous ones.

(61) In this respect, the Commission underlines that it had indicated in the Decision to open the formal investigation of September 2008 that the aid would be assessed by reference to the GBER. The interested parties were thus given the opportunity to present comments on the assessment of the notified aid by reference to the GBER. Indeed, in its comments of November 2008, Romania invoked arguments against the application of the GBER to the present case. Romania argued in particular that the assessment criteria resulting from the GBER are partially different from those previously applicable under Regulation (EC) No 68/2001, especially with respect to the maximum aid intensity permitted for general training, which increased from 50 % of the eligible costs under Regulation (EC) No 68/2001 to 60 % of the eligible costs under the GBER⁽³⁵⁾.

(62) The Commission also considers that the 2009 Training Aid Communication does not introduce substantive changes with respect to the assessment of aid of the kind envisaged by the *Freistaat Sachsen* ruling⁽³⁶⁾. The 2009 Training Aid Communication codifies and reinforces long-standing principles and criteria of EU State aid control, such as the market failure/positive externalities rationale, the distinction between general and specific training, the appropriateness of aid as policy instrument, the incentive effect criterion, the proportionality principle and the analysis of the distorting potential of the aid.

(63) Romania and the beneficiary appear to be principally concerned with the alleged overly strict interpretation and application of so-called incentive criterion for the assessment of training aid. The Commission considers however that the spelling out of the incentive criterion in the 2009 Training Aid Communication cannot be

qualified as a substantive change of the assessment rules. The *Ford Genk*⁽³⁷⁾ and *GM Antwerp*⁽³⁸⁾ decisions, which Romania invokes as examples of an excessively tight interpretation of the incentive effect criterion, actually date from before the time of the notification. The incentive effect criterion was not explicitly referred to by Regulation (EC) No 68/2001, although its rationale is inherent to the compatibility assessment of any aid measure under Article 107(3)(c) TFEU and was implicit in the reasoning concerning the potential role of aid in remedying market failures, at Recitals 10 and 11 thereof. The earlier 1998 Training Aid Framework⁽³⁹⁾ had already confirmed the incentive effect criterion as one of the main pillars of the compatibility assessment for this type of aid⁽⁴⁰⁾. Moreover, in the course of the investigation Romania and the beneficiary provided detailed explanations on the incentive effect of the proposed aid, regarding its necessity and appropriateness, on the distinction between the general and specific parts of the proposed 'eligible' training, and on the (allegedly limited) potential of aid to distort competition.

(64) In light of these considerations, the Commission concludes that conditions are met for the assessment of the aid under criteria stemming from the 2009 Training Aid Communication and the GBER, with the procedural rights of the interested parties being safeguarded. The Commission also notes that in the course of formal investigation it has not received comments from other third parties (competitors of the beneficiary etc.).

6.3. Compatibility of the aid with the TFEU

(65) The 2009 Training aid Communication sets out the criteria for assessing the compatibility with the TFEU of training aid exceeding EUR 2 million, whether granted *ad hoc* or under a scheme, to be granted to individual companies. The compatibility assessment of such measures involves balancing the positive effects of the proposed aid against its negative consequences, so as to evaluate whether the former outweigh the latter.

⁽³⁷⁾ See footnote 19.

⁽³⁸⁾ See footnote 20.

⁽³⁹⁾ Communication from the Commission — Framework on Training Aid (OJ C 343, 11.11.1998, p. 10).

⁽⁴⁰⁾ Points 27-28 of the 1998 Training Aid Framework. Point 28, for example, stated that: 'To determine the incentive effect, the Commission will consider whether training aid has the effect of encouraging firms to do more in the way of training than they would normally do or to spend more than they would normally spend on training. An aid measure which relates to a firm's normal operating costs (standard induction courses for new recruits and so forth), being intended solely to reduce either continuously or periodically the costs which the firm normally has to bear, is not an incentive and cannot as a rule be approved. [...]'. See also Loredana von Buttlar and Salim Medghoul 'The Principle of the Incentive Effect Applied to Training Aid — Some Recent Cases', *Competition Policy Newsletter* No 3, 2008, pp. 85-88, available at http://ec.europa.eu/competition/publications/cpn/2008_3_85.pdf

⁽³⁵⁾ Article 39(2) of the GBER.

⁽³⁶⁾ See footnote 28.

(66) The positive effects of the proposed aid will be evaluated by reference to: (i) the potential of the proposed aid to remedy specific market failures and generate positive externalities (justification); (ii) the appropriateness of aid as policy instrument; (iii) the incentive effect and necessity of aid; and (iv) whether the aid amount is kept to the minimum necessary in order to achieve its objective (proportionality). The negative effects of aid will be evaluated in terms of its potential to distort competition and intra-Union trade, depending on the characteristics of the aid and of the relevant market(s).

Market failure/positive externalities

(67) Under Points 5-11 of the 2009 Training Aid Communication, aid shall be considered justified if the Member State demonstrates that it contributes to redressing underinvestment in training – a market failure that is observed across the board in the EU. Companies are often reluctant to invest in the training of their employees unless there are palpable and immediate benefits of the training for the company itself, or the training is at any rate necessary in order to run the company efficiently. However, training may also produce benefits for the economy and society as a whole, especially if the skills acquired by the employees are transferable to other workplaces or produce positive spill-over effects for society. In principle, companies will be less prone to invest in training when the immediate benefits of this training for the company do not exceed its spill-over effects. In short, aid is justified by its potential to redress a specific market failure, i.e. underinvestment in training, which is linked to the positive externalities of training.

(68) To determine if aid is justified by its potential to redress underinvestment in training, the Commission will first analyse the nature of the training proposed, i.e. whether the training is general or specific within the meaning of Article 38 of the GBER, or a combination of both. The distinction between general and specific training is of importance, as general training is presumed likely to generate more positive externalities than specific training, which benefits first and foremost to the company itself. As a consequence, aid for general training is considered as being more justified in terms of inducing companies to undertake this sort of investment than aid for specific training.

(69) Article 38(1) of the GBER defines specific training as 'involving tuition directly and principally applicable to the employee's present and future position in the undertaking and providing qualifications which are not or only to a limited extent transferable to other undertakings or fields of work'. General training is defined by Article 38(2) of the GBER as 'involving tuition which is

not applicable only or principally to the employee's present or future position in the company, but which provides qualifications that are largely transferable to other undertakings or fields of work'. While both kinds of training benefit to a certain degree the company itself, as it will in any case reap benefits associated with having a more qualified workforce, the essential distinction between general and specific training lies in the degree of 'transferability' of the skills acquired through training.

(70) Article 38(2)(a) and (b) of the GBER, and respectively, Point 9.2 of the 2009 Training Aid Communication, list by way of example factors that could be taken as indications that training is of general nature. These include: (i) the training is jointly organised by different companies, or employees from different companies may join the training project; (ii) the training is certified, leads to a recognised diploma, or is validated by public authorities; (iii) the training is offered to categories of employees that are characterised by a high rotation in the undertaking and sector concerned; (iv) training could be valuable for the employees beyond their current job (future occupations in another undertaking, social life, well-being, etc.).

(71) The Commission first notes that that Romania and Ford have proved convincingly the fourth indicator at Point 9.2 of the 2009 Training Aid Communication, i.e. that the additional 'eligible for aid' training to be offered will be valuable to employees beyond their current job. In particular, Romania and Ford have shown that the additional training to be provided conveys transferable skills which are valuable for employees outside their job, contribute to their well-being, improves their quality of life and their employability in other companies/sectors, and not least, it generates positive spillovers for the economy and society as a whole, and primarily at the level of a disadvantaged region assisted under Article 107(3)(a) TFEU.

(72) Thus, Romania proposed aid in support of a training project for which most of the claimed eligible expenditure is associated with general training. Of the total costs of EUR 185,5 million budgeted for the whole training project, EUR 113,7 million are declared eligible costs for general training (excluding wage compensation), and only EUR 1,5 million are considered eligible costs for specific training (excluding wage compensation) (see recital 15 above). More specifically, the additional 'specific' training to be offered under the Safety, Business Fundamentals and Industrial Skills blocks is almost exclusively of general nature, whereas the additional training offered under the Core Skills block is exclusively general (see recital 14, but also 34-37 above).

- (73) The Commission considers that Romania and Ford have substantiated the distinction between the general and specific parts of the proposed training programme in a satisfactory manner. In particular, Romania and Ford have shown that the additional 'eligible' general training to be offered under each of the four main training blocks conveys skills that will be valuable for the employees beyond their actual job at the Craiova plant, skills that are 'transferable' within the meaning of the 2009 Training Aid Communication and the GBER. Romania shows that the additional training to be offered under the Core Skills block is aimed at supporting the personal development of individuals, and relates very little to the actual functioning on the job (see recital 35 above). The training offered under this block conveys general knowledge (e.g. general IT skills, English language training, literacy and numeracy skills) which are beneficial to all categories of employees, irrespective of their educational background. The personalised literacy and numeracy training, for example, will improve the capacity of the employees with different education backgrounds to communicate and convey concepts and ideas, and their ability to interpret in quantitative terms changes in the surrounding environment. In a similar way, the block includes personalised leadership training for employees of all categories. Such skills benefit mostly to the employees themselves, improve their quality of life, and generate positive externalities for the economy and society as a whole. These positive externalities will be particularly felt at the level of the region where the Craiova plant is located, which is a disadvantaged Union region assisted under Article 107(3)(a) TFEU.
- (74) The additional general training to be offered under the Business Fundamentals block will convey general skills which are largely transferable to other companies or industrial sectors, on broad subjects such as Project Management Skills, Human Resources, Purchasing, Finance, Six Sigma (reducing errors in repeated processes, a methodology applicable in different industrial sectors) (see recital 36 above). Such general skills are likely to increase the attractiveness of the employees on the job market. In a similar way, the additional general training to be offered under the Industrial Skills block will cover two broad areas: improving skills for electrical/mechanical trades, which improves the employability of the workers, and extended (in-depth) training on maintenance, automation and robotics. In both cases the employees learn to handle different types of machines than the one used on their actual job, and as such, the skills conveyed are transferable.
- (75) In the case of the Safety training block (see recital 34 above), the additional eligible training to be offered, involving partly general training and partly specific training, consists of individualised coaching to further safety awareness and a safety-related behavioural change. Given that the general part of the additional safety training conveys skills that are useful to the employees beyond the performance of their actual job tasks, and of which they may benefit in a different workplace and even in their private lives, such training can be considered to generate the kind of positive externalities associated with general training.
- (76) The Commission therefore concludes that Romania and Ford have shown to a satisfactory level that the skills conveyed by the additional general training should be valuable for the employees beyond their current job, possibly in other future occupations, in their social life, or for their well-being – in the sense of Point 9.2.(d) in the 2009 Training Aid Communication. This finding is reinforced by the evidence submitted by Ford and Romania (see recital 16 above) to show that a good part of the trainers involved in the programme (up to 90 %) will be external trainers from specialised training centres, and that a considerable part of the training will be offered outside the premises of the factory (see also in this sense eligible travel expenses for both trainers and trainees at recital 18 of the Decision).
- (77) At the same time, the Commission must observe that the other 'transferability' indicators listed by way of example in Article 38(2)(a) and (b) of the GBER and Point 9.2(a), (b) and (c) of the 2009 Training Aid Communication do not seem to be met in the present case. In particular, the training project is organised by one single company, and is not open to participation of employees from other companies. Romania and Ford did not submit information as to whether the training will be certified. Since most of the training will likely be carried out with trainers selected from private companies, it is unlikely that the trainees can receive diplomas/certificates recognisable or validated by the public authorities. The interested parties have not presented information concerning the degree of mobility of the employees towards other companies and/or sectors. The Commission therefore considers that the transferability of the skills acquired should be reinforced by the issuing of attendance certificates to the trainees. Although this condition is not sufficient on its own for the fulfilment of Point 9.2(b) of the 2009 Training Aid Communication, it would nevertheless strengthen at implementation stage compliance with the transferability requirement. This issue is addressed by Article 2(5) of this Decision. The Commission considers that the fourth indicator at Point 9.2(d) of the 2009 Training Aid Communication is substantiated. In the light of all the foregoing considerations the Commission finds that the transferability requirement regarding the proposed additional general training is met.

- (78) In the decision to open the investigation, the Commission questioned whether parts of the additional 'eligible' training were indeed necessary for future employees, especially considering that the beneficiary had the opportunity to recruit personnel with higher education qualifications. This doubt was resolved by the considerations previously made with respect to the transferability of the additional general training proposed to be provided and its potential to generate positive externalities in an assisted region and for the economy and society as a whole.
- (79) In light of the above considerations, the justification criterion is considered to be met.

Appropriateness of aid as policy instrument

- (80) Under Points 10-11 of the 2009 Training Aid Communication, the Commission must assess whether State aid is the most appropriate policy instrument to encourage training of the kind that is being proposed. To this end, the Commission must take into account the alternatives to the provision of aid considered by Romania, such as supporting the training through the regional education system, or supporting the individual employees to undertake the training in a different context, outside the company.
- (81) Romania submitted that the training project will rely almost exclusively on external trainers, to be recruited with the help of a specialised company from regional or foreign specialised private companies. The Commission considers that the alternatives of providing (at least part of) the envisaged training by drawing on local public education institutions has not been satisfactorily explored. Notwithstanding this, the Commission accepts Romania's argument that a comprehensive training programme such as the one proposed for the Craiova plant derives added value from the synergies to be generated between the different types of training offered, which goes beyond the mere sum of the values of individual training courses on specific subjects.
- (82) It is therefore concluded that the appropriateness criterion is also met.

Incentive effect/necessity of aid

- (83) Under Point 12 of the 2009 Training Aid Communication, the proposed aid shall be deemed to have incentive effect when it is demonstrated that it results in changing the behaviour of the beneficiary so as to provide more and/or better training than in the absence of aid. Compliance with the incentive effect criterion is a *sine qua non* condition for the approval of aid (Recital 28 of the GBER).

- (84) The incentive effect of aid is identified by counterfactual analysis, i.e. by comparing the levels of training to be offered with aid, and respectively, in the absence of aid (Point 13 of the 2009 Training Aid Guidelines).
- (85) To demonstrate the incentive effect of the proposed aid, Ford presented a comparison between the training programme that it had offered to the employees of its car plant in Saint Petersburg and the one proposed for the Craiova plant. For the Saint Petersburg training programme, the company had not received aid. The structure of the training programme offered was similar to that of the training project proposed for the Craiova plant, though the scope of the programme and the degree of content elaboration differed. In Saint Petersburg the company offered only the minimum of training necessary to meet safety requirements and Ford production quality levels. Ford argues that, by comparison, the Saint Petersburg programme offered only 57 % of the Safety, 2 % of the Core Skills, 30 % of the Business Skills and 47 % of the Industrial Skills training that is proposed to be offered at the Craiova plant.
- (86) The Commission is of the view that the comparison between the Saint Petersburg and the Craiova training programmes is not entirely convincing. Outset conditions and the production characteristics of the two plants are not comparable. In Saint Petersburg, Ford took over a plant that previously produced large engines for ship-building and the defence industry, while the Craiova plant previously produced vehicles. In Saint Petersburg Ford did not have to retain the existing workforce. As a consequence, it was able to recruit younger and more qualified, though less experienced employees. The Saint Petersburg plant has a smaller output than the one projected for the Craiova plant. In Saint Petersburg Ford produces only vehicles (as of 2002, the plant produces the Ford Focus II and Ford Mondeo models), while the Craiova plant will produce both vehicles (the multifunctional models B-MAV and ISV) and engines. The former does not have a press shop, while the latter does. As a consequence, the company's training needs in order to operate the plant efficiently and to meet (likely different) regulatory and internal safety and quality standards should be different.

- (87) Notwithstanding this, the Commission considers that the Saint Petersburg comparison is at any rate evidence of the fact that a Ford car plant may be run efficiently and meet company internal quality and safety standards with considerably less training than that which is proposed for the Craiova plant. This finding supports Romania's argument that, in the absence of aid, the company would limit itself to offer at the Craiova plant only little

more than the training that is necessary for the running of the plant (i.e. the so-called company-specific training, for which the beneficiary committed EUR 29,7 million own funds). Ford indeed specifies that, in the absence of aid, it would offer only the company-specific training (i.e. training that is necessary in order to operate the new technology at the plant and to meet internal safety and quality standards, which was not declared eligible for aid, and the costs of which it shall entirely bear) and only up to 40 % of certain additional training courses (as listed in the documentation submitted in relation to the training project). Furthermore, Ford submitted detailed estimates of training costs, budgets, participants, content and scheduling for the proposed training programme at the Craiova plant, and sufficient equivalent information on the training programme which had been offered at the Saint Petersburg plant – elements which must be verified by the Commission under Point 15(a) of the 2009 Training Aid Communication. The company also submitted extensive evidence making it possible to distinguish between courses which are obligatory to give under the existing EU and/or Romanian regulation — in the sense of Point 15(b) of the 2009 Training Aid Communication. The costs budgeted for the additional, 'eligible' part of the training programme are credible by comparison to the costs allocated for the company-specific (non-eligible) part of the training programme, which was already started in Summer 2009. Thus the criterion laid down at Point 15(c) of the 2009 Training Aid Communication is also considered to be met.

(88) In the opening decision the Commission questioned whether parts of the training programme notified as eligible for aid were not in fact necessary in order to operate the new technology introduced at the Craiova plant. In such case, the effect of aid would be only to cover operating costs of the company, i.e. costs that the company should have covered at any rate, and as such, the aid would lack incentive effect. Such a situation would be similar to the ones verified in *Ford Genk*⁽⁴¹⁾, *GM Antwerp*⁽⁴²⁾ and *DHL Leipzig*⁽⁴³⁾, where the Commission found the aid incompatible with the internal market for those parts of the training programme linked to e.g. restructuring, the launch of new products, or compulsory to give under the safety regulations. The Commission found that, where aid is destined to finance normal operations that companies must at any rate pay for themselves, the aid does not have a real incentive effect, but simply subsidises operating costs of the beneficiary by alleviating it from costs it should normally have had to provide for itself.

(89) Romania and Ford underline that the training that is necessary to operate the new technology was clearly

separated from the additional general training, which is not necessary for functioning on the job. Under the Business Fundamentals block, the company shall entirely finance the company-specific training courses offered in the areas of Ford Specific IT Systems, Ford Business Processes and Ford Internal Control Processes. Similarly, under the Industrial Skills block the company will entirely finance courses that are necessary for performing on the job, such as Launch, Maintenance and Fork Lift Truck, Robotics and Automation. Neither is the additional general training offered under the Core Skills block necessary for functioning on the job, or even for being able to follow the more specialised parts of the training programme, because the new technology used at the plant relies on visual instructions which are easy to follow and can be assimilated in a 'learning-by-doing' style. The Commission accepts these arguments, which are consistent with the observation that most of the additional 'eligible' training proposed conveys general and transferable skills that are not directly linked to performance on the job. In this sense, the Commission also notes that the relationship between the additional training to be offered and the business activities of the beneficiary (i.e. the production of vehicles and engines) is less close in the case of courses offered under the Safety, Core Skills and Business Fundamentals blocks (see also recitals 35-36 above) than for the Industrial Skills block (see also recital 37 above). However, the considerations made above concerning the necessity of the training offered under this block for the beneficiary mitigate this concern, and make it possible to conclude that the relationship between the Industrial Skills training and the beneficiary's activity is not of a nature to indicate lack of incentive effect within the meaning of Point 15(d) of the 2009 Training Aid Communication. This finding is reinforced by the fact that Romania and Ford provided evidence indicating that a good part of the training will be offered outside the premises of the factory itself, and by external trainers recruited from specialised external training centres (see recitals 16 and 76 above). This is an additional indication of the fact that the relationship between the training offered and the activities of the beneficiary is less close within the meaning of Point 15(d) in the 2009 Training Aid Communication.

(90) At the same time, the Commission notes that Romania and the beneficiary have not submitted evidence to substantiate that the beneficiary will not include in the eligible costs those costs that might eventually be recovered by the beneficiary as a consequence of benefiting from the skills acquired by the employees through training — as required by Point 16, last paragraph (with accompanying footnote 1) of the 2009 Training Aid Guidelines. The Commission nevertheless acknowledges that such effects might be difficult to quantify and demonstrate *ex ante* in the particular circumstances of the training programme proposed in this case, where a large part of the additional training proposed is of a general nature, which in principle benefits the beneficiary only indirectly, and the very nature and content of the training proposed excludes the hypothesis that it could be conducted in the context of the current tasks or jobs

⁽⁴¹⁾ See footnote 19 above, recitals 28-38 of the Decision.

⁽⁴²⁾ See footnote 20 above, recitals 43-45 of the Decision.

⁽⁴³⁾ Commission Decision of 2 July 2008 on State aid Case C 18/07 (ex N 874/06) which Germany is planning to implement for DHL (OJ L 312, 22.11.2008, p. 31).

performed by the employees. The Commission nevertheless considers it necessary to request that the beneficiary undertake a commitment on the exclusion of the costs from the eligible costs claimed in the course of implementation of the programme – see in this sense Article 2(6) of this Decision.

- (91) In the opening decision, the Commission also questioned whether parts of the Safety training declared as eligible for aid were not actually necessary for the company to offer, as required by EU and/or Romanian safety regulations, or resulting from internal company safety standards. Romania and Ford submitted documentation to show that the safety training required by regulation will be provided entirely at the company's expense, within the company-specific, non-eligible part of the training programme. Ford also argues that the incentive effect of aid should not be assessed by reference to internal company standards – internal safety standards in this case – because such an approach would have the distorting effect of determining companies to lower (or keep low) their internal standards in order to be considered eligible for aid. The Commission concludes that this question has also been answered in a satisfactory manner.

Proportionality

- (92) Under Point 16 of the 2009 Training Aid Guidelines, the Commission shall verify that the aid amount is limited to the minimum necessary in order to achieve the objective of aid. To this end, the Commission verifies if claimed eligible costs are calculated in accordance with the provisions of Article 39(4) of the GBER and limited to the costs arising from training that would not have been undertaken in the absence of aid, and that the maximum aid intensities established by Article 39(2) of the GBER are respected.
- (93) The categories of eligible costs claimed by Romania for the additional 'eligible' part of the training programme (see recital 18 above) fulfil the conditions of Article 39(4) in the GBER and therefore of Point 16 in the 2009 Training Aid Communication. In particular, Romania and the beneficiary submitted separate cost estimates for the company-specific (non-eligible), and respectively the 'eligible' general and specific parts of the training programme, distinguishing in the latter case between the following categories: trainers' personnel costs; trainers and trainees' travel expenses (including accommodation); depreciation of tools and equipment used exclusively for the training project; guidance and counselling related to the training project; and trainees' wage compensation limited to the hours/days of training foreseen to be undertaken. Furthermore, Romania and Ford provided detailed explanations as to the cost assumptions and forecasts underlying claims by categories of eligible expenditure, for both the general and specific parts of the additional training. The

Commission also notes that detailed explanations were submitted as regards the approximate number of employees to which each specific training course is addressed (distinguishing between present and future employees, and providing separate estimates for the successive years of implementation of the programme), and in close relation, the estimated number of training days/hours to be offered by training course, by block of training, and by year of implementation of the programme. Romania also shows that, for the purposes of this project, maximum aid intensities of respectively 50 % for general training and 25 % for specific training, were applied. Thus, the maximum aid intensity applied in relation to the eligible general training is lower than the one permitted by Article 39(2)(a) of the GBER. Furthermore, Romania shows that the aid amount was actually limited to EUR 57 million by the beneficiary, although even by applying the less permissive Regulation (EC) No 68/2001 maximum aid intensities to the estimated eligible costs, the project would have qualified for EUR 76,96 million of general training aid and for EUR 0,47 million of specific training aid.

- (94) In the decision opening the investigation, the Commission questioned if (at least parts of) the proposed training aid would not actually compensate for intangible regional handicaps, in the form of shortage of skills, that were already compensated by the regional aid amounting to EUR 143 million which was approved by the Commission in April 2008 for investment at the Ford Craiova plant ⁽⁴⁴⁾.
- (95) This question is linked to the issue of compliance with the cumulation rules laid down by Article 7 of the GBER. According to paragraph 3 of this Article, training aid should not be cumulated with any other aid in relation to the same – partially or fully overlapping – eligible costs if such a cumulation would result in exceeding the maximum aid intensity ceiling applicable under Article 39 of the GBER.
- (96) Romania has shown that the notified training aid and the previously-awarded regional aid do not cover overlapping eligible costs. The regional aid approved in April 2008 related to eligible initial investment expenditure (machinery, plant, buildings) in compliance with Point 4.2 of the 2006 Regional Aid Guidelines ⁽⁴⁵⁾. In the present case, the notified eligible expenses cover entirely different categories of expenditure: trainer personnel costs, trainer and trainees' travel expenses,

⁽⁴⁴⁾ See footnote 4.

⁽⁴⁵⁾ Guidelines on National Regional Aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).

materials and supplies, depreciation of materials and tools used for training, guidance and counselling, wage compensation for trainees exclusively related to the time spent in training. The Commission finds that Romania has substantiated the distinction between eligible costs covered by the regional aid given and the training aid proposed for the Craiova plant.

- (97) Another way to look at the same issue is to ask whether training aid is justified as such to the extent that it would compensate for an intangible regional handicap that was already compensated by regional aid. Romania answers this question by underlining that regional aid and training aid measures have different objectives and cover different eligible costs. The objective of regional aid is to stimulate investment in the Union's disadvantaged regions, whereas training aid aims to remedy underinvestment in training. Regional aid benefits first and foremost the beneficiary company, whereas training aid, especially when linked to general training, benefits primarily the employees, and only secondarily the company. Romania also underlines that EU state aid rules do not prohibit the cumulation of regional and training aid for the same company. Furthermore, as Romania rightfully points out, if companies who received regional aid would not be allowed to receive training aid, the Union's most disadvantaged regions would be *de facto* discriminated against by precluding them from the possibility to provide training aid.
- (98) The Commission concludes from the observations made at recital 94 that, based on the submitted information, it can be considered that the proportionality conditions resulting from Article 39(2) of the GBER (establishing the applicable aid intensities), Article 39(4) of the GBER (defining the categories of eligible costs that may be taken into calculation), and Point 16 of the 2009 Training Aid Communication are satisfied. In particular, as regards the trainees' wage costs, only those costs related to the time spent in training have been taken into consideration, in compliance with the conditions resulting from Article 39(4)(f) of the GBER.
- (99) The Commission nevertheless must observe that the proportionality-related evidence on ensuring the limiting of the aid to the minimum necessary submitted in this case consists almost exclusively of estimates of future costs and projections of future action. This is the case, for example, regarding the total number of employees to be covered by the proposed training project, which includes estimates of a total workforce of 9 000 people by 2012. A similar reasoning applies to estimates of eligible costs by categories of expenditure according to Article 39(4) of the GBER. The Commission recognises that it is justified to accept, for the purposes of a training project of such magnitude like the one at hand, designed to be aimed at 9 000 workers, and covering over 269 different courses to be implemented over a five-year period, the eligible costs considered to be necessary can only be estimates

derived from similar expenses incurred in the past (in relation to training projects offered at other company locations) and taking into account realistic cost projections and forecasts for Romania (see recital 20 above). However, it cannot be excluded *a priori* that the costs which will be actually incurred could eventually be lower than the ones forecasted. It is therefore necessary to introduce additional safeguards to ensure compliance with the proportionality principle during the implementation of the project. This issue is addressed through the conditions laid down in Article 2 of the Decision.

Distortion of competition

- (100) Under Point 17 of the 2009 Training Aid Communication, the Commission should assess in depth the potential distorting effects of aid in those cases where the proposed aid might result in a significant change of behaviour for the beneficiary which is likely to distort competition. The distorting potential of aid may vary depending on the characteristics of the aid and the market(s) affected.
- (101) The Commission notes that the proposed aid is almost exclusively linked to general training, which by its nature is presumed to benefit primarily the employees themselves, and only secondarily the beneficiary (though the latter will reap the benefits associated with having at its disposal a better qualified workforce). It could thus be argued that the aid does not have a substantial impact in terms of quality, quantity of output or pricing – effects of the sort that favour the beneficiary to the detriment of its competitors. Moreover, compliance with the proportionality principle should also limit the distorting effects of aid.
- (102) However, according to Point 18 of the 2009 Training Aid Communication, the selectivity of the aid, the size of aid, and the duration of the aided programme are indicators of likelihood and extent of distortion of competition. The proposed aid is selective (it involves individual *ad hoc* support to a large company), the amount of the aid is unusually high (EUR 57 million), and the aided training programme extends over a five-year period (which moreover coincides with the period for launching two new production projects).
- (103) The Commission is particularly concerned with the impact of the unusually high total amount of aid proposed, i.e. EUR 57 million. Aid of such size, especially if the whole sum were to be paid outright to the beneficiary, would have similar distorting effects to those of an outright cash grant. In this situation the beneficiary could dispose of the sum, at least in the initial stages of implementation of the programme, also for other operational purposes besides covering the costs of an ongoing training programme.

- (104) Another concern is the possible financial advantage that could be derived by the beneficiary from the fact that training aid would partially cover the wage compensation for the employees in relation to the time spent for following the additional, 'eligible' part of the training. According to the information submitted by Romania and Ford, the proposed training project would entail overall an average total of 111 training days per employee (i.e. an average of 22,2 training days per year), comprising both the company-specific (non-eligible) part of the training programme and the additional 'eligible' part of the programme.
- (105) To assess the distorting potential of the proposed aid, the Commission must also take into account the characteristics of the sector and the structure of the market(s) relevant to the aided training project. To examine these aspects, the Commission draws on the relevant product market, relevant geographical market and market share analysis carried out by the Commission in 2008 for the purposes of assessing the regional aid to Ford Craiova⁽⁴⁶⁾, the conclusions of which are contrasted against recent car sales data from the consultancy Global Insight⁽⁴⁷⁾, and interpreted against the background of recent information concerning the rates of capacity utilisation in the industry.
- (106) The beneficiary of the training aid is a large company in the motor vehicles production sector. Ford will produce at the Craiova plant two new types of vehicles: B-MAV, a small multifunctional vehicle built on a platform classified by Ford as belonging to the B segment passenger cars, and ISV, a small utility vehicle that may be used for both passenger and commercial transport purposes, built on a platform classified by Ford as belonging to the C segment passenger cars. As of 2011, the Craiova plant will also produce a new line of low CO₂ engines, to be incorporated almost exclusively on Ford vehicles.
- (107) In the regional aid decision of April 2008, the Commission concluded that, in so far as the engines are intermediary products to be incorporated on Ford vehicles, the relevant product and geographic markets for the engines coincide with those defined for the final products (the vehicles). Concerning the relevant product and geographic markets for the B-MAV and IVS vehicles, due to the existence of different systems for classifying the relevant car segments, the Commission took into account different alternative product market definitions. The vehicles produced at the Craiova plant will be sold principally on EU and EEA markets, but the company also intends to export in time to other worldwide destinations. The Commission estimated relevant market shares over the period 2007-2012 at EEA and worldwide levels, and concluded that the highest possible relevant market share reached by Ford was of 16,8 % at EEA level in 2007, with a tendency to slightly decrease over time towards 2013. Companies producing vehicles with very similar characteristics to B-MAV and the IVS vehicles are Renault and Opel, and respectively, Renault, Citroen, Fiat and Volkswagen.
- (108) The European car sector as a whole is characterised by production over-capacity – in 2007, for example, which was considered a good year for car sales in Europe, the producers put on the market 4 million cars more than the market could buy⁽⁴⁸⁾. ACEA (the European Car Producers Association) reports that registrations of new light commercial vehicles up to 3,5 t decreased by 31,4 % in Europe between July 2008 and July 2009⁽⁴⁹⁾.
- (109) The Commission is of the view that the characteristics of the sector (over-capacity in principal) and of the relevant markets (intense competition between few large producers), indicate that the aid has a clear potential for distorting competition. Nevertheless, these considerations must be balanced against the need to encourage the future investment necessary to ensure the long-term viability of the European motor vehicle sector as a whole. In its Communication on 'Responding to the crisis in the European automotive industry'⁽⁵⁰⁾ the Commission identified a wide range of aid measures to assist the industry in the context of the present crisis, including training aid. Furthermore, it is necessary to recall that, while the aid is large in absolute terms, it represents only about one third of the overall financial commitment to training employees at the Craiova plant. Accordingly, these concerns do not in themselves constitute sufficient ground to refuse the aid. Nevertheless, they suggest that it is necessary to impose certain conditions on the payment of the aid, in order to ensure that it does not provide Ford with excessive short-term liquidity. This issue is addressed through the conditions regarding the implementation of the programme laid down in Article 2 in the concluding section of the Decision.

Balancing of the positive and negative effects of aid

- (110) The Commission concluded that the positive effects of the proposed aid, in terms of (i) inducing the beneficiary to offer additional general training of the kind likely to generate positive spill-over effects for the economy and the society, and particularly at the level of a region

⁽⁴⁶⁾ See footnote 4, recitals 70-129.

⁽⁴⁷⁾ Global Insight data from October 2009 obtained by the Commission services. See <http://www.ihsglobalinsight.com>

⁽⁴⁸⁾ See The Economist of 17 September 2009, 'Small Isn't Beautiful', quoting PWC estimates of over-capacity in the European car industry over the period 2005-2010.

⁽⁴⁹⁾ See ACEA Press Release of September 24, 2009, *New Commercial Vehicles Registrations July & August 2009, EU and EFTA Countries*, available at http://www.acea.be/index.php/news/news_detail/commercial_vehicles_registrations_down_374_eight_months_into_2009

⁽⁵⁰⁾ Communication for the Commission of 25 February 2009, text available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0104:FIN:EN:PDF>

assisted under Article 107(3)(a) TFEU, (ii) appropriateness of the aid as policy instrument and (iii) its incentive effect were demonstrated to a satisfactory degree. The Commission maintains certain concerns with respect to the proportionality of aid proposed on the basis of estimates of future costs and projections of future action, but nevertheless concludes that the *ex ante* evidence on proportionality presented in the case is acceptable. As to the negative effects of aid, associated to its potential to distort competition, the Commission expresses concerns in particular related to the impact of individual aid of this size, *inter alia* considering the characteristics of the sector and of the relevant markets. The Commission considers however that these proportionality and distorting effects-related concerns can be addressed by compliance with certain conditions regarding the implementation of the aided programme, destined to ensure that the aid is paid only in retroactive periodic instalments after the submission by Ford of evidence of the real costs incurred. The Commission therefore concludes that the positive effects of the proposed aid exceed the potential negative effects caused by it. This overall positive balance justifies allowing the aid as compatible with the TFEU under Article 107(3)(c).

Cumulation of aid

- (111) This issue was treated at recitals 96-97 of the Decision. The Commission concluded that the proposed aid satisfies the requirements regarding cumulation of aid resulting from Article 7 of the GBER.

Deggendorf principle

- (112) In light of the documentation submitted by Romania to show that the incompatible privatisation aid of EUR 27 million and accruing interest were reimbursed by Ford on 27 June 2008, the Commission concludes that the proposed aid satisfies the so-called Deggendorf principle.

7. CONCLUSION

- (113) The Commission finds that the training aid measure notified by Romania in favour of Ford Romania SA, located in Craiova, and consisting of an aid totalling EUR 57 million in support of a five-year training programme covering up to a total of 9 000 employees at the Craiova plant, is compatible with the Internal Market pursuant to Article 107(3)(c) TFEU.
- (114) In light of the concerns regarding the proportionality and potentially-distorting effects of the aid exposed at recitals 99, 109 and 110 of the present Decision, the Commission allows as necessary and justified the adoption of a positive decision with conditions under Article 7(4) of the Procedural Regulation⁽⁵¹⁾. These

conditions are destined to ensure proportionality during the implementation of the project (by ensuring that the amount of aid is strictly limited to covering eligible expenses that were actually incurred), to limit the distorting potential of an outright payment of the whole aid amount, and to reinforce the transferability of the skills acquired by the employees through the training received.

- (115) Furthermore, as proposed by Romania itself in its submission of 9 July 2009⁽⁵²⁾, the rules and conditions for the payment of aid should be stipulated in a specific Romanian legislative act.

- (116) Based on these considerations, the Commission hereby,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Romania is planning to implement for Ford Romania SA, located in Craiova, amounting to EUR 57 million, is compatible with the internal market subject to the conditions set out in Article 2.

Article 2

1. The aid shall be paid in periodic *ex post* instalments, at intervals whose length should be established in agreement between the Romanian granting authority and the beneficiary, but which should not at any rate exceed one year. The total sum of the periodic payments shall correspond to costs actually incurred, as declared by the beneficiary to the Romanian granting authority.

2. The Romanian authorities shall inform the Romanian Competition Council, which is entrusted with the monitoring of the implementation of this aid measure, and the competent Commission services, of the terms of the agreement reached on the length of the *ex post* payment intervals.

3. At the conclusion of each year of implementation of the training programme, the beneficiary shall submit to the Romanian monitoring authority and to the Commission independently audited detailed reports concerning the application of the programme and the costs incurred for the reported period. The implementation reports shall contain detailed information on expenses incurred and the training offered. The reports shall classify the categories of eligible expenditure as defined in Article 39(4) of the GBER for each block of training. The

⁽⁵¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

⁽⁵²⁾ See recital 21.

yearly implementation reports shall also list the training courses offered under each block during the reported period, the number of employees who attended the courses distinguishing by category of employees, the total number of training days/hours offered by course and by block of training, and the total number of employees of the company at the end of each year of implementation of the programme (staff headcount). The independent auditor shall be chosen by mutual agreement between the beneficiary and the Romanian monitoring authority.

4. Payments of the instalments for the successive years of implementation of the programme shall be conditional upon the acceptance of the yearly implementation reports by the Romanian monitoring authority and by the Commission, within six weeks from the date when the report submitted is considered complete. Failure to react within the established deadline shall be interpreted as tacit acceptance of the implementation reports.

5. The beneficiary shall issue to each of the employees who attend the training programme attendance certificates, either at the end of the programme or on a yearly basis (as most convenient), listing the courses attended and the number of training days/hours received by course. Such attendance certificates should at any rate be issued at the request of the employee if and when the latter has formalised a request to leave the company. Attendance certificates shall thereby reinforce the transferability of the skills acquired through the training provided.

6. The Romanian authorities shall transpose the conditions laid down in subparagraphs 1-5 above into a legislative act regulating the implementation of the training programme. In addition to reflecting the above-mentioned conditions, the legislative act shall stipulate specific conditions guaranteeing the reimbursement of aid amounts that were disbursed in previous periodic instalments which are found to be in excess of expenses actually incurred and/or in excess of the aid

intensities on the basis of which the aid was approved according to the 'general' or 'specific' qualification of the training to be provided. The legislative act shall also stipulate an obligation for the beneficiary to exclude from the eligible costs claimed those costs that would eventually be recovered as a consequence of benefiting from the skills acquired by the employees through training, in the sense of the last paragraph of Point 16 of the 2009 Training Aid Communication. The legislative act shall be communicated to the Commission within the shortest delay. The aid cannot be implemented before the adoption of this act.

7. The Commission invites representatives of the employees at the Ford Craiova plant to present at the end of each of year of implementation of the training programme written comments regarding the content of the training courses that were provided and attendance at the courses (in terms of number of employees who attend training and the time spent in training).

Article 3

Romania shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to Romania.

Done at Brussels, 2 December 2009.

For the Commission
Neelie KROES
Member of the Commission