

COMMISSION DECISION (EU) 2015/1966**of 9 July 2014****on the State aid SA. 34118 (2012/C ex 2011/N) which Germany is planning to implement in favour of Porsche Leipzig GmbH and Dr Ing. H.c.F. Porsche Aktiengesellschaft***(notified under document C(2014) 4075)***(Only the German text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

- (1) By electronic notification registered on 20 December 2011 at the Commission (SANI 6554), the German authorities notified regional aid under the Guidelines on national regional aid for 2007-2013 ⁽²⁾ (hereinafter 'RAG') to Porsche Leipzig GmbH and to Dr Ing. H.c.F. Porsche Aktiengesellschaft for an investment project in Leipzig, in the region of Saxony, Germany.
- (2) By letter dated 11 July 2012, the Commission informed Germany of its decision of the same date to initiate the procedure laid down in Article 108(2) TFEU (hereinafter 'the opening decision') in respect of the regional aid to be implemented in favour of the investment project by Porsche Leipzig GmbH and by Dr Ing. H.c.F. Porsche Aktiengesellschaft, in view of carrying out an in depth assessment on the basis of the Communication from the Commission on the criteria for an in-depth assessment of regional aid to large investment projects ⁽³⁾ (hereinafter 'IDAC').
- (3) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* on 30 October 2012 ⁽⁴⁾. Third parties were invited to submit their comments.
- (4) Germany submitted comments and the necessary information for the in-depth assessment by letter dated 31 October 2012 (2012/116806).
- (5) By letter dated 17 December 2012 (2012/135107), and by e-mail dated 4 February 2012, the Commission requested further information, which was provided by Germany by letters dated 25 January 2013 (2013/008324) and 7 February 2013 (2013/013186).
- (6) No comments were received from other interested parties.

2. DETAILED DESCRIPTION OF THE STATE AID**2.1. OBJECTIVE OF THE MEASURE**

- (7) The German authorities intend to promote regional development by providing regional aid in the form of a direct grant and an investment premium to Porsche Leipzig GmbH and to Dr Ing. H.c.F. Porsche

⁽¹⁾ OJ C 333, 30.10.2012, p. 17.

⁽²⁾ OJ C 54, 4.3.2006, p. 13.

⁽³⁾ OJ C 223, 16.9.2009, p. 3.

⁽⁴⁾ See footnote 1.

Aktiengesellschaft for the production of a new car model. The investment will take place in Leipzig, Saxony, which is an assisted area pursuant to Article 107(3)(c) TFEU with a standard regional aid ceiling for large enterprises of 20 % gross grant equivalent (GGE) for the period between 1 January 2011 and 30 June 2014 ⁽⁵⁾.

2.2. THE BENEFICIARY

- (8) The recipients of the aid will be Porsche Leipzig GmbH (hereafter 'Porsche Leipzig') and Dr Ing. H.c.F. Porsche Aktiengesellschaft (hereafter 'Porsche AG'). Porsche Leipzig is a subsidiary of Porsche AG, which itself is — since 1 August 2012 — a fully integrated subsidiary of Volkswagen Aktiengesellschaft, and thus belongs to the Volkswagen Group (hereinafter 'VW Group').
- (9) The VW Group manufactures cars ranging from small cars to luxury and commercial vehicles. In 2013, the VW Group operated a total of 106 factories in 19 European countries and eight additional countries in America, Asia and Africa and counted 572 800 employees. In the same year, the VW Group delivered 9,7 million cars to customers in 153 countries, corresponding to a 12,8 % share of the passenger car market in the world ⁽⁶⁾, and its revenue totalled EUR 197 billion.
- (10) In 2013, Porsche AG employed 19 456 people worldwide and delivered 162 145 new vehicles to customers globally. Its revenue reached EUR 14,3 billion in 2013.

2.3. THE INVESTMENT PROJECT

- (11) The investment project started in April 2011. Completion was planned for May 2014.
- (12) The investment project aims at an extension of the existing Leipzig production plant in order to manufacture a new passenger car model 'Porsche Macan'. This model is a sport utility vehicle/cross-over type passenger car, which belongs to the POLK B segment (midsize/medium class passenger cars), and to the IHS Global Insight segment SUV D (Standard Sport Utility Vehicle) ⁽⁷⁾.
- (13) The project involves investments in buildings, machinery, equipment and intangible assets, and includes the construction and equipment of a car body and a paint shop, both dedicated to the production of the new model. Since the operations of the existing plant in Leipzig had been limited so far to the assembly of cars, the investment constitutes an upgrading of the site to a fully developed car manufacturing plant.
- (14) The production capacity created by the project amounts to [40 000-100 000] (*) vehicles per year. Technically a maximum capacity of [40 000-100 000] vehicles would be possible. Calculated on the basis of 235 working days this corresponds to [...] vehicles per day. Full capacity is envisaged to be reached in the first half of 2014.
- (15) The total eligible investment costs of the project are EUR 550,08 million in nominal value. In present value ⁽⁸⁾ this amount is EUR 521,56 million. The table below provides a breakdown of the total eligible costs of the project by year and category, as notified:

Eligible investment costs (nominal in EUR million)

Mio. EUR (rounded)	2011	2012	2013	2014	Total
Building	[...]	[...]	[...]	[...]	[...]
External Equipment	[...]	[...]	[...]	[...]	[...]

⁽⁵⁾ Leipzig is a so-called 'Statistical effect region'; see Germany's regional aid map in Commission decision of 8 November 2006 on State aid case N 459/06 — National State aid map for Germany 2007-2013 (OJ C 295, 5.12.2006, p. 6). Leipzig is eligible for regional aid under the derogation of Article 107(3)(c) with a maximum aid intensity of 20 % for the period between 1 January 2011 and 30 June 2014.

⁽⁶⁾ The German authorities confirmed that the submitted market data include all vehicles manufactured or sold by the VW Group, while the market share data relates only to passenger cars.

⁽⁷⁾ POLK and IHS Global Insight are major market research companies analysing the car market.

^(*) Business secret.

⁽⁸⁾ The present values in this decision are calculated on the basis of a base rate of 2,05 %, applicable on the date of the notification (December 2011), increased by 100 basis points in accordance with the Commission Communication on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

Mio. EUR (rounded)	2011	2012	2013	2014	Total
Machinery/Equipment	[...]	[...]	[...]	[...]	[...]
Intangible assets	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	550,08

- (16) The German authorities confirm that only new assets will be eligible, and that intangible assets are obtained from third parties at market price.

2.4. FINANCING OF THE INVESTMENT

- (17) The German authorities confirm that the beneficiary's own contribution, free of any public support, exceeds 25 per cent of the eligible costs.

2.5. LEGAL BASIS

- (18) The national legal basis for the financial support is the following:
- (a) an investment premium on the basis of the 'Investitionszulagengesetz 2010' ⁽⁹⁾;
 - (b) a direct grant pursuant to the 'Koordinierungsrahmen der Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur (GA) 2009' ⁽¹⁰⁾.

2.6. THE AID MEASURE

- (19) The beneficiary applied for the direct grant on 24 March 2011. On 29 March 2011 the development bank 'Sächsische Aufbaubank' (hereinafter 'SAB') confirmed that the beneficiary will be in principle entitled to obtain a direct grant as incentive for the realisation of the investment. The investment premium is granted — in the present case, subject to Commission approval — under a fiscal measure that establishes a legal right to aid in accordance with objective criteria and without further exercise of discretion by the Member State. Therefore, the beneficiary did not need to apply for the investment premium before start of works.
- (20) Germany intends to grant aid of EUR 43,67 million in present value. Since the planned total eligible expenditure in present value for the project is EUR 521,56 million (EUR 550 million in nominal value), the proposed aid intensity is 8,37 % GGE (Gross Grant Equivalent).
- (21) Germany confirmed that the aid for the project would not be combined with aid received for the same eligible costs from other local, regional, national or Union sources; and that neither the approved maximum aid amount in present value nor the approved aid intensity would be exceeded if the amount of eligible expenditure deviated from the estimate given in the notification.
- (22) Both the direct grant and the investment premium are granted under the condition that the beneficiary will maintain the investment in the assisted region for a minimum period of 5 years after the completion of the investment project.

2.7. GENERAL PROVISIONS

- (23) The German authorities undertook to submit to the Commission:
- within 2 months of granting the aid, a copy of the relevant acts concerning this aid measure,
 - on a 5-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant),
 - within 6 months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

⁽⁹⁾ The summary information sheet for the block exempted scheme 'Investitionszulagengesetz 2010' was published under X 167/08 (OJ C 280, 20.11.2009, p. 5).

⁽¹⁰⁾ The summary information sheet for the block exempted scheme 'Koordinierungsrahmen der Gemeinschaftsaufgabe — Verbesserung der regionalen Wirtschaftsstruktur' was published under XR 31/07 (OJ C 102, 5.5.2007, p. 11).

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (24) In the opening decision, the Commission noted that the aid project respects the standard compatibility criteria laid down in the RAG, and that the proposed aid amount and intensity do not exceed the maximum allowable. Nonetheless, in conformity with the provisions of paragraph 68 of RAG, it was unable to confirm the compatibility of the aid with the internal market within the preliminary examination.
- (25) Paragraph 68 of RAG requires that the Commission opens the formal investigation and proceeds to an in-depth assessment of the incentive effect, the proportionality, as well as the positive and negative effects of the aid, where the beneficiary's market share in the relevant product and geographic market exceeds 25 % before or after the investment (hereinafter also 'paragraph 68(a)-test') or where the capacity created by the investment exceeds 5 % of a market that is in relative or absolute decline (hereinafter also 'paragraph 68(b)-test').
- (26) The Commission could not exclude in the preliminary examination that the market share threshold and the threshold relating to the capacity increase by the investment in an underperforming market were not exceeded in the relevant markets.
- (27) More specifically, the Commission raised doubts about Germany's proposal for the definition of the relevant product market, i.e. to take into consideration either the overall passenger car market without any segmentation, or if a segmentation is deemed necessary, only the B segment according to the classification of POLK. In line with an earlier decision ⁽¹¹⁾, the Commission considered that for sport utility vehicles the IHS Global Insight classification would be more appropriate. The Commission was not in a position to confirm without doubts that either the overall passenger car markets, solely the POLK B segment or solely the IHS Global Insight SUV-D category can be considered as relevant product market by the investment. Therefore, the Commission left the precise definition of the relevant product market open and considered plausible alternative market definitions, consisting of the overall passenger car market, the POLK B segment B and the IHS Global Insight SUV-D segment.
- (28) The Commission was also unable to take a definite view on the definition of the geographic market. It could not conclude whether the geographic market is as wide as the European Economic Area (hereinafter 'EEA'), or, as suggested by Germany, that it consists of the global, or at least the combined EEA and North American market.
- (29) The analysis under paragraph 68(a) of the RAG (market share test) came to the result that the applicable 25 % market share threshold is exceeded on the POLK B segment on the EEA geographic market ⁽¹²⁾.
- (30) The analysis under paragraph 68(b), applied to the EEA market, showed that for the IHS Global Insight SUV-D segment, the capacity increase created by the project, which amounts to [...] %, exceeds substantially the applicable threshold of 5 %, whilst the market itself was underperforming in the relevant reference period. In 2005-2010, the average annual growth rate (CAGR) of the apparent consumption of the product concerned in the EEA was - 0,9 %, compared to the average annual growth of the GDP in the EEA, which was 1,62 % ⁽¹³⁾.
- (31) As the Commission could not establish that the thresholds laid down in paragraph 68(a) and (b) of the RAG were not exceeded, it decided to open the formal investigation procedure. It stated in particular that if the comments received in reply to the opening of the formal investigation would not allow the Commission to conclude without any doubt that the relevant thresholds are not exceeded, it would carry out an in-depth assessment of the investment project on the basis of the IDAC. Germany and interested third parties were invited to submit their comments.

4. COMMENTS FROM INTERESTED PARTIES

- (32) No comments were submitted by interested third parties.

⁽¹¹⁾ Cf. Commission Decision C(2011)6479 final of 20 September 2011 (N 559/10 — United Kingdom — LIP — Jaguar Cars) (OJ C 22, 27.1.2012, p. 2).

⁽¹²⁾ In the years between 2010 and 2015, i.e. in the year before and after completion of the investment, the market share of the VW Group in the POLK B segment in the combined EEA and North American market, as well as in the IHS Global Insight SUV-D segment in both the EEA and the combined EEA and North American market remains below 25 %.

⁽¹³⁾ For the POLK B segment, the capacity increase remains below the 5 % threshold.

5. COMMENTS FROM GERMANY

5.1. THE RELEVANT PRODUCT MARKET

- (33) Germany maintained its position that the POLK B segment represents an appropriate definition of the relevant product market, but did not submit any additional arguments.

5.2. THE RELEVANT GEOGRAPHIC MARKET

- (34) Germany remains of the view that the global market, or at least the combined EEA and North American market, should be considered as the relevant geographic market. Germany argues that this opinion is additionally supported by the fact that the world market is served from a single production site.

5.3. IN-DEPTH ASSESSMENT OF THE AID MEASURE

- (35) Germany provided the following information in order to allow the Commission to carry out an in-depth assessment.

5.3.1. Positive effects of the aid

- (36) Germany considers that the investment contributes to the regional development of Leipzig and Saxony for the following reasons.

- The investment project will secure 833 jobs and 29 trainee posts and will create 1 040 new jobs and 30 new trainee positions.
- In addition, a large number of indirect jobs will be created by the suppliers and service providers in the region. The employment multiplier is 2,5 ⁽¹⁴⁾, which means that about 2 700 additional indirect jobs are expected to be created. A large number of these jobs are expected to be created at the aid beneficiary's establishment or in its immediate vicinity. About 750 jobs are expected to be created between 2012 and 2015 in the areas of supplies, technology transport and packaging alone.
- The aid beneficiary is actively involved in various network and cluster initiatives that promote the development of the automotive industry in the region (e.g. the Automotive Cluster East Germany).
- The beneficiary is highly active in the area of basic and further training of its employees. In addition to hiring highly qualified staff, the beneficiary supports regular (in-house and external) training for its own employees.

5.3.2. Appropriateness of the aid

- (37) Germany notes that the Commission accepted already in the Dell Poland decision ⁽¹⁵⁾ that State aid, among other measures, is an appropriate means to promote the regional development of regions where the GDP per capita and the wage levels are lower than the national average, and the unemployment rate is higher than the national average. The GDP per capita in Saxony was 73 % of the German average in 2011. The unemployment rate was almost 50 % higher than the German average in 2011, and the inhabitants of the region had an average disposable income which amounted to 82 % of the German average in the period of 2007-2009 ⁽¹⁶⁾.
- (38) Therefore, Germany considers that the notified aid is an appropriate instrument for achieving its cohesion objectives.

⁽¹⁴⁾ Germany based the assumption of the 2,5 multiplier on empirical data published in comparable studies, e.g. Meißner (2009): 'Automobilproduktion in der Prozess- oder Wertschöpfungskette' presentation on 28 October 2009 in Brandenburg; Kleinhenz, Hebllich, Gold (2006): Das BMW Werk Regensburg — Wirtschaftliche und soziale Vernetzung in der Region; University of South Carolina (2002): The Economic Impact of BMW on South Carolina; Woodward, Guimaraes (2008): BMW in South Carolina: The Economic Impact of a Leading Sustainable Enterprise; Gesellschaft für Wirtschaftliche Strukturforshung mbH (2011): Gute Wachstumsperspektiven trotz zukünftiger Herausforderungen; Gehrke, Krawczyk et al. (2009): Die Bedeutung der Automobilindustrie für die deutsche Volkswirtschaft im europäischen Kontext.

⁽¹⁵⁾ C46/2008, decision of 23 September 2009 (OJ L 29, 2.2.2010, p. 8), Paragraph 171.

⁽¹⁶⁾ Source: Statistical Office of the Free State of Saxony (Statistisches Landesamt des Freistaates Sachsen) July 2012, German Federal Statistical Office (Statistical Yearbook 2012) — GDP/capita; Federal Employment Agency (Bundesagentur für Arbeit) — unemployment per inhabitant as a percentage; Statistical Yearbook for Saxony 2011 — disposable income per inhabitant.

5.3.3. Incentive effect/Counter-factual scenario

- (39) Germany offers information to prove that the aid falls under Scenario 2 of the IDAC, as it provides an incentive to the beneficiary to carry out the full investment in the Leipzig plant rather than locating it partly in [location 1 in Germany] and partly in Leipzig (body construction and paintwork in an existing plant in [location 1 in Germany], and assembly in the Leipzig plant). In particular, Germany provided relevant, genuine and contemporary company documents which explain Porsche AG's multistage decision-making process concerning the location of the investment. The decision-making process is described below.

The beneficiary's decision-making process

- (40) The decision to invest in the Macan project and on its location was taken in March 2011. In the preparatory and decision-making period, despite the fact that Porsche Automobile Holding SE and Volkswagen AG had already agreed on the creation of an integrated automotive group in 2009, the relevant organs of Porsche AG took all company-relevant decisions completely autonomously, without involvement of the boards and committees of the VW Group.
- (41) In accordance with the applicable rules of procedure of the executive board of Porsche AG, decisions (including location decisions) to launch new products (models) had to be first submitted to the products committee of the executive board of Porsche AG (Vorstandsausschuss Produkte, hereinafter 'VAP'), and to be approved by the supervisory board of Porsche AG (Aufsichtsrat, hereinafter 'AR').
- (42) The investment and location decision on Macan was taken in a multi-stage decision-making process. At each stage, comparative calculations for different production scenarios at various locations in Germany were prepared and considered.
- (43) The decision-making process — as described below — started in [2010] and was completed on 15 March 2011 with the AR decision in favour of the Leipzig location, taken under the condition that State aid would be available for the investment in that location.
- (44) In the early stages of the decision-making process only the Options 1 to 4 described below were considered; Option 5 ⁽¹⁷⁾ was introduced slightly later and presented to the VAP on [2010].

Option	Description of the option
1. [location 2 in Germany]	Production and delivery of the entire vehicle from [location 2 in Germany]
2. [location 2 in Germany]/Porsche Leipzig	Body construction/paint in [location 2 in Germany], then transport of the painted body to Leipzig for assembly and delivery
3. [location 1 in Germany]/Porsche Leipzig	Body construction/paint in [location 1 in Germany], then transport of the painted body to Leipzig for assembly and delivery
4. [location 3 in Germany]	Production and delivery of the entire vehicle from [location 3 in Germany]
5. Porsche Leipzig	Production and delivery of the entire vehicle from Leipzig.

- (45) Germany explained, on the basis of company documents, that during the course of the planning and decision-making phase several calculations of the production costs attributable to the location were carried out in order to achieve the same level of accuracy for each Option. Therefore, the baseline — i.e. the preferred option at a given time — was changing during the decision making process ⁽¹⁸⁾.
- (46) Since Porsche Leipzig had less time than the other locations to perform calculations of the same scope, and, as its operations had been limited to assembly, it lacked experience in detailed cost planning for structural investments, such as buildings and infrastructure in the areas of paint shop and body construction. The VAP meeting of [2010], which accepted Option 5 as baseline, requested the submission of a more detailed plan by Porsche Leipzig.

⁽¹⁷⁾ Option 5 had initially not been considered, as it was assumed to be uneconomical. At the initiative of the executive board of Porsche Leipzig, Porsche Leipzig was able to disprove this assumption based on a preliminary calculation of the production costs attributable to the location.

⁽¹⁸⁾ The VAP chose as baseline Option 1 on [2010], Option 3 on [2010], and Option 5 on [2010].

- (47) During this further detailed planning phase, it became clear that the initially assumed cost advantage of Option 5 over Option 3 was steadily diminishing, and finally disappeared, when additional investment costs were identified resulting into a clear cost disadvantage compared to Option 3. Still the cost estimates of Option 3 and 5 were significantly lower than those of the other options.
- (48) The management of Porsche Leipzig started to investigate the possibility of utilising State aid to bridge the cost disadvantage, and contacted the Saxon Ministry for Economy, Labour and Transportation (hereinafter 'SMWA').
- (49) In its letter of 25 February 2011, Porsche Leipzig asked the SMWA to examine the possibility of granting aid for the planned investment. This letter underlined that, so far, no decision on the location had been taken and that State aid was sought in order to compensate the disadvantages of the Leipzig location. The general outline and scope of the investment project were presented to SMWA in a meeting on 28 February 2011.
- (50) The VAP, in its meeting on [2011], prescribed Porsche Leipzig to identify additional savings in order for Option 5 to remain competitive with Option 3.
- (51) By letter of 9 March 2011, the SMWA assured Porsche Leipzig that it would support the investment project for the full production of Macan in Leipzig, if it were to meet the conditions in force for the award of regional aid.
- (52) As a result of detailed calculations, the below comparison of production costs attributable to the location before the potential State aid was presented to the AR on 15 March 2011:

Options	Production costs attributable to the location in EUR million without aid as of 15 March 2011
3. [location 1 in Germany]/Porsche Leipzig	[...]
5. Porsche Leipzig	[...]

- (53) Thus, in absence of aid, Option 5 showed a disadvantage of EUR 65 million compared to Option 3.
- (54) As under Option 5 the entire investment costs are incurred in Leipzig, the total infrastructure and product investment costs of EUR 550 million could be considered as eligible for regional aid. Therefore, if the investment complied with the conditions in force for the award of regional aid, the potential aid amount could be EUR 47,5 million. Therefore the net (after aid) production costs for Option 5 would decrease from EUR [...] million to EUR [...] million.
- (55) Under Option 3, a small part of the total investment costs (for assembly) would be incurred in Leipzig, and could be eligible for regional aid in the amount of approximately EUR 10,02 million. The [location 1 in Germany] is not situated in an assisted region; therefore it is not eligible for regional aid. The net (after aid) production costs for Option 3 decrease from EUR [...] million to EUR [...] million.
- (56) As summarised in the table below, when aid is taken into consideration, the disadvantage of Option 5 compared to Option 3 drops from EUR 65 million to EUR 27,52 million (situation in March 2011).

	Option 3	Option 5
Production costs without State aid	EUR [...] million	EUR [...] million
Disadvantage of Option 5 compared to Option 3 without the aid		EUR 65 million
State aid	EUR 10,02 million	EUR 47,5 million
Production costs taking into account the aid	EUR [...] million	EUR [...] million
Disadvantage of Option 5 compared to Option 3 taking into account the aid		EUR 27,52 million

- (57) Germany explained that, in addition to the quantified cost disadvantage of EUR 27,52 million, some qualitative criteria were considered which were in favour of Option 5.
- First, empirical data from the automotive industry show that complete production at one site compared to a situation where body production and paint take place at one location, and assembly takes place in another, minimises certain risks, e.g. risks due to transportation.
 - Second, the full production in one location allows a dynamic process design, which can ensure an optimised production process.
 - Third, potential deficiencies or errors can be identified and eliminated quicker if the full production takes place in one location. Experience shows that error rates in general can be reduced if the employees working in different stages of the production process can cooperate at the same location.
 - Fourth, the brand image is also a decisive factor. The site [in location 1 in Germany] produces mainly [...] vehicles, whereas the Macan is to be positioned as a premium vehicle.
- (58) Based on these calculations and considerations, the CFO of Porsche AG announced at the AR meeting on 15 March 2011 his company's intention to apply for regional State aid for the expansion of the Leipzig production plant. As is documented in the minutes of the AR meeting of 15 March 2011, he submitted that the final decision on the location of the Macan investment should therefore depend on the availability of aid.
- (59) In reaction to this statement, the AR approved Option 5 (full production in Leipzig) under the condition that State aid would be available.
- (60) After the conditional decision of the AR on 15 March 2011, Porsche Leipzig applied formally for discretionary regional aid from funds of the 'Joint Scheme for Improving Regional Economic Structures' (GRW). The aid application was submitted to the SAB on 24 March 2011. For the investment allowance a legal entitlement exists, which is in the present case subject to Commission approval. No *ex ante* application is required, but the expected amount of the investment allowance has to be indicated in the application for discretionary aid in order to ensure respect of the aid ceiling.
- (61) On 29 March 2011, SAB confirmed that the investment project meets the conditions of eligibility for subsidies.
- (62) The investment project started in April 2011.
- (63) The table below summarises the details of the multi-stage decision making process:

Date	
[2010]	VAP meeting: — Only Options 1 to 4 are presented — VAP approves a decision to further elaborate Options 1 to 4 — Option 1 is chosen as baseline
[2010]	VAP meeting: — Options 1 to 5 are presented — Option 3 is chosen as baseline
[2010]	AR meeting: — AR decides to implement the Macan project — Location decision is still open, AR requests the VAP to propose the location — AR welcomes Option 5

Date	
[2010]	VAP meeting: — Still all five production location options are open — VAP requests further elaboration of the planning of Option 5 — Option 5 is chosen as baseline
[2011]	VAP meeting: — VAP confirms the decision proposal that will be presented to AR at the next AR meeting, which will decide on the production location — The approval of the AR is still required
25 February 2011	Letter of Porsche Leipzig to the SMWA: — requesting SMWA to examine the possibility of granting aid for the planned investment
[before 15 March 2011]	VAP meeting: — VAP confirms the cost estimates for Option 5 — VAP requests further savings
9 March 2011	SMWA letter confirming preparedness to support project: — SMWA confirms that it supports the investment project for the full production of Macan in Leipzig if it meets the conditions in force for the award of regional aid
15 March 2011	AR meeting: — Approves the full production of Macan in Leipzig under the condition of availability of State aid
24 March 2011	Formal application of Porsche Leipzig for the discretionary part of the aid
29 March 2011	Letter of SAB: — confirms that the investment project meets the conditions of eligibility for subsidies
April 2011	Start of works on the investment project

5.3.4. Proportionality of the aid

- (64) Under Scenario 2 of paragraph 22 of the IDAC, an aid measure is 'considered to be proportionate if it equals the difference between the net costs of the beneficiary company to invest in the assisted region and the net costs to invest in the alternative region(s)'. Germany points out that the calculations used for the incentive effect can also be used as a basis for assessing the proportionality of the aid.
- (65) Option 5 has a cost disadvantage of EUR 65 million compared to Option 3.
- (66) Despite the maximum permissible aid of EUR 47,5 million (in nominal value), there is still a cost disadvantage of EUR 27,52 million for Option 5.
- (67) Germany therefore argues that, as the aid does not fully compensate the location disadvantage of Leipzig, there is no overcompensation. The aid is consequently proportionate.

- (68) Germany points out that in its decision on location, Porsche AG takes not only financial considerations into account, but also non quantifiable qualitative criteria.

5.3.5. Negative effects of the aid on competition and trade

- (69) Germany emphasises that the regional aid serves solely to compensate the disadvantage of the location in Leipzig, i.e. to compensate for the additional costs of full production at the Leipzig site compared to the production scenario for bodies and paintwork at the plant in [location 1 in Germany] with delivery of painted bodies to Leipzig for assembly. As the aid is proportionate, the aid has no effect on competition. The investment in the Macan project, and its resulting effects on competition and trade, would have happened in any event.
- (70) Therefore, Germany considers that the aid is in line with paragraph 40 of the IDAC and has no negative effects on competition and trade.

6. ASSESSMENT OF THE AID MEASURE AND COMPATIBILITY

6.1. EXISTENCE OF AID

- (71) The financial support will be given by the German authorities in the form of a direct grant and an investment premium. The support is thus given by a Member State and through State resources within the meaning of Article 107(1) TFEU.
- (72) As the aid is granted to subsidiaries of a single group of companies, the VW Group, the measure is selective.
- (73) The envisaged financial support will relieve the beneficiaries from costs which they would normally have had to bear themselves. Therefore, they benefit from an economic advantage over their competitors.
- (74) The envisaged financial support will be given for an investment in the car sector; as cars are traded between Member States, this support is likely to affect trade between Member States.
- (75) As the measure favours the production of VW Group, competition is distorted or is threatened to be distorted.
- (76) Consequently, the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

6.2. LEGALITY OF THE AID MEASURE

- (77) By notifying the planned aid measure before putting it into effect, the German authorities respected their obligation under Article 108(3) of the TFEU and the individual notification requirement expressed in Article 7(e) of Commission Regulation (EC) No 1628/2006 ⁽¹⁹⁾, and in Article 6(2) of Commission Regulation (EC) No 800/2008 ⁽²⁰⁾.

6.3. LEGAL BASIS FOR THE ASSESSMENT

- (78) The objective of the aid is to promote regional development. As the German authorities undertook to award the aid before 1 July 2014 (subject to Commission approval, if not yet available), the basis for assessing the compatibility of the aid with the internal market are the RAG, as prolonged by paragraph 186 of the Guidelines on regional State Aid for 2014-2020 ⁽²¹⁾ until 30 June 2014. The provisions of section 4.3 of the RAG, relating to large investment projects are particularly relevant for the purposes of this assessment. If the Commission

⁽¹⁹⁾ Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29).

⁽²⁰⁾ 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).

⁽²¹⁾ OJ C 209, 23.7.2013, p. 1.

should not be able to establish without doubts in the formal investigation that the thresholds laid down in paragraph 68(a) ('market share test') and paragraph 68(b) ('capacity increase/market performance tests') of the RAG are not exceeded, it is required to proceed to an in-depth assessment to be conducted on the basis of the criteria laid down in the IDAC.

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

- first, it has to confirm that the measure is compatible with the general provisions of the RAG,
- second, it has to verify whether or not it can exclude without doubt that the 'market share test' and 'capacity increase/market performance tests' under paragraph 68(a) and (b) of the RAG (the 'paragraph 68(a) and (b) tests') do not require an in-depth assessment,
- third, depending on the outcome of the assessment in the second step, it may have to conduct an in-depth assessment.

6.4. COMPATIBILITY OF THE MEASURE WITH STANDARD COMPATIBILITY CRITERIA OF THE RAG

(80) The Commission established already in recital 36 of the opening decision that the aid meets the general compatibility criteria for the RAG. The formal investigation did not reveal any elements that would put into question this assessment. The Commission notes in particular the following.

- There is no indication that Porsche Leipzig, Porsche AG or the VW Group in particular would be in financial difficulty, as the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽²²⁾ are not fulfilled. Therefore, the group to which the aid beneficiary belongs is eligible for regional aid.
- The aid is granted in application of block-exempted schemes which respect the standard compatibility criteria of the RAG.
- In particular, the project leads to a diversification of the output of an existing establishment, allowing it to manufacture a new passenger car model, the Porsche Macan; it is therefore an initial investment within the meaning of paragraph 34 of the RAG.
- The costs eligible for investment aid are defined in line with the RAG.
- The beneficiary also has the obligation to maintain the investment in the region for a minimum of 5 years after completion of the project.
- The beneficiary provides a financial contribution of at least 25 % of the eligible costs in a form which is free of any public support.
- The planned total eligible expenditure for the project is EUR 521 559 981,66 in present value (discounted to the date of notification). There is no indication that, in the past, the beneficiary has received regional investment aid for any earlier investment projects which may have started within the 3-year period before the start of works on the present investment. Therefore, the present investment does not constitute a single investment project, within the meaning of paragraph 60 of the RAG, with any such earlier investment projects.
- According to the scaling down mechanism laid down in paragraph 67 of the RAG, the eligible expenditure incurred leads to a maximum allowable aid intensity of 8,37 % GGE (Gross Grant Equivalent) for the project.
- Since the intensity of the proposed aid (EUR 43 666 078,75 in present value) does not exceed the maximum allowed aid intensity, and the notified aid is not to be combined with further regional investment aid, the proposed aid intensity for the project complies with the RAG.

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

⁽²²⁾ OJ C 244, 1.10.2004, p. 2.

6.5. APPLICATION OF THE TESTS LAID DOWN IN THE PROVISIONS OF PARAGRAPH 68 OF THE RAG

- (82) The Commission stated in paragraph 78 of the opening decision that if ‘the comments received in reply to the opening of the formal investigation do not allow the Commission to conclude without any doubt that the thresholds laid down in the paragraph 68(a) and (b) tests are not exceeded, the Commission will carry out an in-depth assessment of the investment project on the basis of the Commission Communication on the Criteria for an In-depth Assessment of Regional Aid to Large Investment Projects’. The Commission has to assess whether the comments received allow this conclusion.
- (83) In its comments, Germany maintained its position already reflected in the opening decision, without adding any comments or information not yet presented in the preliminary examination phase. In particular, Germany maintained its view that the relevant product market should be defined as the POLK B segment (and not as the IHS Global Insight classification SUV-D), and that the geographic market should be defined as including at least the combined EEA and Northern American market (and not only the EEA market). The position on the geographic market is in particular supported by the argumentation that the world market is served from a single production site.
- (84) As to the **product market**, the Commission considers the following: the decision to carry out an in-depth assessment does not prejudice the outcome of the resulting in-depth compatibility assessment. However, before approving aid, the Commission has to be satisfied that the positive contribution resulting from the aid measure will compensate in any event its negative effects on trade and competition. Therefore, for the purpose of deciding on whether an in-depth assessment on the compatibility of an aid measure is to be carried out or not, the product market definition should be as narrow as possible, taking account of the specific characteristics of the car to be manufactured.
- (85) In the opening decision the Commission considered that — as far as sport utility vehicles are concerned — due to their different nature in comparison to ‘normal’ passenger cars as regards price, size and engine performance, etc., the IHS Global Insight classification would be more appropriate than the classification offered by Polk and should therefore be applied to the project at hand. For the same reasons, in a recent other case concerning sport utility vehicles, the Commission referred to the relevant IHS Global Insight classification and not to the broader POLK B segment ⁽²³⁾.
- (86) The Commission maintains its view that, for the definition of the product market of sports utility vehicles, the IHS Global Insight classification is more relevant than the segmentation offered by POLK. Germany did not submit any additional arguments which would contradict this view. The argument that VW Group operates all its long-term strategic planning and analyses on the conceptual base of POLK is irrelevant in this context. In addition, the Commission did not receive any information from third parties during the formal investigation that would allow a better understanding of the segmentation of the market regarding the type of passenger car in question. The Commission therefore maintains its approach to leave open the exact definition of the relevant product market and to apply an approach of plausible alternative market definitions, defining individual car segments (including the narrowest segmentation for which data are available) in addition to combined segments as plausible relevant product markets ⁽²⁴⁾, and does not discard the SUV-D segment according to ISH Global Insight as a plausible alternative market segment.
- (87) As to the **geographic market** the Commission maintains its initial assessment that the relevant market is the EEA or a larger market; therefore the Commission cannot exclude that the geographic market is limited to the EEA market.
- (88) In the opening decision (paragraph 58), the Commission referred to two at that time pending formal investigations ⁽²⁵⁾ in which it examined, for certain segments of the car market, whether the relevant geographic market is wider than the EEA. According to the conclusions of the in-depth assessment undertaken by the Commission services, it could not be excluded that the relevant geographic market for the products and reference periods concerned was not larger than the EEA market. Since the two Member States concerned by those opening decisions chose to withdraw their notifications of regional aid before the adoption of final decisions by the Commission, the conclusions of the in-depth assessments carried out in those cases could not be confirmed in formal decisions.

⁽²³⁾ See footnote 11.

⁽²⁴⁾ State aid decisions SA.30340 Fiat Powertrain Technologies: Decision of 9 February 2011, (C(2011)612) (OJ C 151, 21.5.2011, p. 5); SA. 32169 Volkswagen Sachsen: Decision of 13 July 2011 (C(2011)4935) (OJ C 361, 10.12.2011, p. 17).

⁽²⁵⁾ SA.27913 — C 31/2009 — HUN — LIP — Aid to Audi Hungaria Motor Kft: Decision of 28 October 2009 (C(2009)8131) (OJ C 64, 16.3.2010, p. 15); Extension decision of 6 July 2010 (C(2010)4474) (OJ C 243, 10.9.2010, p. 4); Decision of 13 July 2011 (C(2011)4935) in SA.32169 — C/2011 — DE — LIP — Aid to Volkswagen Sachsen, (OJ C 361, 10.12.2011, p. 17).

- (89) The Commission considers that the arguments brought forward by Germany in the preliminary examination, and maintained without further elements or information being submitted in the context of the formal investigation, are insufficient to diffuse the concern that the geographic market could be limited to the EEA market. In particular, the Commission considers the following:
- (90) The fact that large car producers are internationally active and in global competition is not sufficient proof that the individual markets are integrated and constitute a single worldwide market (or a combined EEA and Northern American market). The same applies to the argument that the 10 largest OEMs have manufacturing sites and distribution systems all over the world. In fact, the Commission considers that exchange rate instability could be named as one factor that has led OEMs to build production plants closer to regional demand; and the same may hold for policies of effective protection (high tariffs on imports of final producers, low tariffs on intermediate products, giving an incentive for local production/assembly). A third argument for the existence of globalised production structures, despite not integrated markets, is the fact that certain states allow imports only if joint ventures for local production are created in parallel. The global presence of major players as manufacturers is therefore not by itself an indication of the existence of a global (or wider than the EEA) market. Similarly, the existence of distribution systems that extend across the world does not constitute proof that the market is global (or wider than the EEA) from a competition perspective. The fact that Porsche AG intends to serve the world market from only one site is also not sufficient to support an assessment that the geographic market is wider than the EEA. In fact, the SUV-D market is relatively small compared to other market segments, and economies of scale might favour here a 'one site' approach. As the model is to be sold under the Porsche name, and the high quality of luxury cars produced by Porsche AG is so far, in view of their clients, linked to manufacturing in Germany, a second production site outside Germany could be harmful for a successful marketing strategy. Germany justified itself (see recital 57 above) the choice of Leipzig over [location 1 in Germany], amongst others, with brand name aspects.
- (91) Also the argument that a high level of trade flows, e.g. the fact that more than 20 % of the EEA production are exported to the North American market, is insufficient to prove the existence of a global (or here wider than the EEA) market. The Commission considers that, whereas trade flows can give insight into the degree of integration of different geographic areas by looking at the importance of imports and exports relative to local production and consumption levels, the existence of trade flows itself is not a sufficient proof to consider that an integrated geographic market exists. In fact, there may well be shipments between the EEA and other regions, but that does not mean that markets are integrated in the sense that market conditions (e.g. prices) in one market influence market conditions in the other. This holds in particular where the observed shipments relate primarily to shipments by the manufacturers themselves, as opposed to shipments by independent importers and exporters engaging in price arbitrage. Pricing may well be entirely market specific (e.g. high in one market, low in another), and not aligned to the conditions of an alleged integrated market. Trade flow analysis does not address the principal question in market definition, namely whether imports or exports could defeat a price increase in the local market. The Commission notes that Germany did not submit further empirical material that would prove the existence of correlated price movements, or the reactivity of net imports to changes in relative prices. Empirical material submitted in the quoted earlier cases is irrelevant for the present case, as it refers to different market segments (A-segment according to Polk) and different reference periods.
- (92) The Commission notes that Porsche AG has plans to export a substantive part of its Macan production to China. This intention, as such, does not prove the existence of an integrated market.
- (93) The Commission acknowledges that the importance of trade barriers is diminishing over time. Nonetheless, the Commission is convinced that one of the main factors for overseas production, and relocation decisions, of EU car manufacturers are market access barriers in the target markets. High tariff barriers still seriously hamper access for EU exporters, notably in Asia. Non-tariff barriers, including burdensome and discriminatory certification requirements, additional testing requirements excise taxes etc., have a strong impact on EU vehicle exports to the South-East Asian, Chinese, and South American markets. The Commission admits that the United States is by far the most important destination for the EU overall car exports. However, the EU and the US have strongly divergent approaches to regulation and market surveillance. Such regulatory divergence is probably even today the most significant access barrier for EU automotive exports to the US.

- (94) The Commission has further taken due note of the arguments put forward in relation to the decreasing transport costs. The Commission is not fully convinced in this respect. The future developments with regard to decreasing transport costs cannot be clearly confirmed in the current economic situation where fuel costs are increasing. Therefore, the mentioned future decrease in costs cannot be taken into consideration.
- (95) In light of the above, and as the Commission did not receive any additional information during the formal investigation enabling it to conclude that the relevant geographical market is wider than the EEA, it maintains its assessment that the relevant geographic market — whatever the product market definition chosen — is either the EEA or larger. Again, the Commission emphasises that it is required to verify that the positive contribution resulting from the aid measure will compensate in any event its negative effects on trade and competition. Therefore, for the purpose of deciding on whether an in-depth assessment on the compatibility of an aid measure is to be carried out or not, the geographic market definition should be as narrow as possible, taking account of the specific characteristics of the car to be manufactured.

6.5.1. Conclusion on the market share test (paragraph 68(a) of the RAG)

- (96) The Commission has carried out the test laid down in point 68(a) of the RAG in all plausible product and geographic markets to verify whether the beneficiary's market share exceeds 25 % before and after the investment.
- (97) In view of the fact that a single relevant product and geographic market could not be established, the results of all plausible markets had to be taken into account. The market share of the VW Group in the POLK B segment in the EEA accounts for more than [> 25] % in all years between 2010 and 2015. The Commission therefore concludes that the threshold laid down in paragraph 68(a) is exceeded. However, for the SUV-D product market, the market share is not exceeded for none of the possible plausible geographic markets (EEA, EEA+ Northern America, global).

6.5.2. Conclusion on the production capacity in an underperforming market test (paragraph 68(b) of the RAG)

- (98) Having regard to the fact that it could not be established whether the overall passenger car market without any segmentation, solely the POLK segment category B or solely the IHS Global Insight SUV-D segment can be considered as the relevant product market, the Commission had to verify whether the capacity created by the project exceeds 5 % of all plausible markets, measured using the apparent consumption data of the product concerned in the EEA.
- (99) This test carried out for the IHS Global Insight SUV-D segment revealed that the capacity increase exceeds by far the 5 % threshold if applied to the EEA market. The opening decision established already in paragraph 72 that the relevant market was underperforming and even in decline over the last 5 years preceding the investment.
- (100) The Commission therefore concludes that the threshold of 5 % capacity increase in an underperforming market laid down in paragraph 68(b) of the RAG is exceeded in so far as the IHS Global Insight SUV-D segment of that market is concerned.

6.5.3. Conclusion

- (101) In light of the above, the Commission decides that it cannot exclude that the relevant thresholds of the 68(a) and (b) tests are exceeded. The Commission therefore decides to conduct a detailed verification, following the opening of the procedure provided for in Article 108(2) TFEU, that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effects on trade between Member States.

6.6. IN-DEPTH ASSESSMENT OF THE AID MEASURE

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

6.6.1. Positive effects of the aid

6.6.1.1. Objective of the aid

- (103) The German authorities explained the investment's positive regional effects. The following positive effects of the investment have been identified.
- Impact on regional employment: the investment will create 1 040 new jobs and 30 trainee positions in addition to the existing 833 jobs and 29 training positions. Furthermore, the creation of at least 2 700 indirect jobs can be expected. It is expected that at least 744 indirect jobs will be created in the vicinity of the establishment in question.
 - Attracting suppliers and service providers of the automotive and of other sectors to the region: the Commission considers that the investment of Porsche AG has an important role in creating and further developing the automotive industry in Saxony, thus attracting suppliers and service providers to this region.
 - Active involvement of the beneficiary in various network and cluster initiatives: in order to promote the development of the automotive industry in the Leipzig region, and in the whole of East Germany, the beneficiary actively participates in cluster and network initiatives, such as the cross-state Automotive Cluster Eastern Germany initiative.
 - Training: it is planned to further develop employees' skills in the form of internal and external training.
- (104) The Commission considers that the German authorities have provided adequate information to demonstrate that the project will contribute to the economic development of the Leipzig region.

6.6.1.2. Appropriateness of the aid instrument

- (105) Paragraphs 17 and 18 of the IDAC underline that State aid in the form of initial investment aid is only one of the means to overcome market failures and to promote economic development in disadvantaged regions. Aid constitutes an appropriate instrument if it provides specific advantages compared with other policy measures. According to paragraph 18 of the IDAC, only 'measures for which the Member State considered other policy options, and for which the advantages of using a selective instrument such as State aid for a specific company are established, are considered to constitute an appropriate instrument.'
- (106) Germany based its explanation for appropriateness of the aid instrument on the economic situation of the situation in the Saxony region and provided evidence to prove that the region is disadvantaged in comparison with the average of other regions in Germany. The German authorities point out that in the year of starting the works, i.e. in 2011, Saxony's GDP per capita was 75 % of the German average and the unemployment rate was 50 % higher than the German average. For the years between 2007 and 2009 the average disposable income in Saxony was approximately 82 % of the German average. Germany argues that, in this kind of economic situation, a direct subsidy has already been acknowledged by the Commission's case practice as an appropriate means to address the economic shortcomings.
- (107) In view of the socioeconomic situation of the Leipzig region, as confirmed by its status as a region eligible for regional aid in accordance with Article 107(3)(c) TFEU with an aid intensity ceiling of 20 %, and in line with earlier case practice (e.g. in the Dell Poland decision ⁽²⁶⁾), the Commission accepts that the granting of State aid is an appropriate instrument to achieve the regional development objective in the region concerned.

6.6.1.3. Incentive effect/Counterfactual scenario

- (108) As there are many valid reasons for a company to locate its investment in a certain region, even without any aid being granted, the IDAC requires the Commission to verify in detail that the aid is necessary to provide an incentive effect for the investment. The objective of this detailed assessment is to determine whether the aid actually contributes to changing the behaviour of the beneficiary, so that it undertakes (additional) investment in the assisted region concerned. Paragraph 22 of the IDAC states that the incentive effect can be proven in two possible scenarios: in the absence of aid, no investment would take place at all since without the aid, the investment would not be profitable for the company at any location (scenario 1); in the absence of aid, the investment would take place in another location in the EU (scenario 2).

⁽²⁶⁾ See footnote 15.

- (109) The IDAC requires the Member State to demonstrate to the Commission the existence of the incentive effect of the aid and provide clear evidence that the aid effectively had an impact on the investment choice or the location choice. In this context, the Member State is also required to give a comprehensive description of the counterfactual scenario in which no aid would be granted to the beneficiary. The scenarios have to be deemed realistic by the Commission.
- (110) The German authorities state that the aid to Porsche Leipzig and Porsche AG falls under scenario 2, and presented a counterfactual scenario, reflecting the concrete investment and location planning for the Macan project which considered, in addition to Leipzig, several alternative locations, all situated in Germany.
- (111) The IDAC places the burden of proof regarding the existence of an incentive effect on the Member State. Paragraph 25 of the IDAC indicates that the Member State could give proof of the incentive effect of the aid by providing company documents that show that a comparison has been made between the costs and benefits of locating in the assisted region selected for the investment with an alternative location. The Member State is invited to rely on financial reports, internal business plans and documents that elaborate on various investment scenarios.
- (112) Germany provided comprehensive contemporary and genuine evidence documenting Porsche AG's multi-stage decision-making process concerning the location of the investment.
- (113) This documentation shows that five options for the production location were considered. All the locations considered, except Leipzig, are situated in non-assisted regions in Germany.
- (114) In the planning process, several calculations and cost estimates with increasing level of detail and precision were carried out, based on which the most viable option — the baseline — changed three times ⁽²⁷⁾. The documents provided allow the Commission to conclude that when the estimates for production costs attributable to the location arrived to the same accuracy levels (revenue levels are assumed to be identical for all options), Option 3 (Body construction and paint in [location 1 in Germany], delivery of the painted body to Leipzig for assembly) and Option 5 (Body construction, paint and assembly in Leipzig) emerged as the most competitive locations.
- (115) For this reason the documents show that, in the last phase of the decision-making process, the comparison took place only between Option 3 and Option 5.
- (116) As described in recital 53 of this decision, the final estimates for production costs attributable to the location resulted in a cost disadvantage of EUR 65 million for Option 5 (Leipzig) compared to Option 3 ([location 1 in Germany]/Leipzig). In order to reduce the cost disadvantage of Option 5, and in view of the forthcoming formal decision of the AR on the localisation of the investment project, Porsche Leipzig started exploring with the Saxon authorities the availability of State aid to attract the investment project to Leipzig.
- (117) In its letter of 25 February 2011, Porsche Leipzig asked the SMWA to examine the possibility of granting aid for the planned investment. Following a meeting between Porsche Leipzig and the Saxon authorities where Porsche Leipzig explained the investment project and the decisional situation, the Saxon authorities undertook by letter of 9 March 2011 to support the investment project for the full production of Macan in Leipzig if the investment were to respect the conditions in force for the award of regional aid.
- (118) As described in recital 56 of this decision the cost disadvantage of Option 5 to Option 3 decreased to EUR 27,52 million after taking the maximum permissible aid into account. However, some qualitative criteria were also taken into account in favour of Option 5.
- (119) On 15 March 2011, the AR decided to locate the full investment in Leipzig (Option 5). As documented by the minutes of the AR meeting, this decision was made explicitly subject to the availability of State aid.
- (120) Following the conditional decision of the AR, Porsche Leipzig applied formally for regional aid on 24 March 2011. The authority responsible for administering the scheme confirmed on 29 March 2011 in writing that, subject to detailed verification, the project in principle met the conditions of eligibility. Following this formal confirmation, works on the project were started in April 2011.

⁽²⁷⁾ See footnote 17.

- (121) In view of the above, the Commission notes, in accordance with paragraph 20 of the IDAC, that the formal incentive effect requirements laid down in paragraph 38 of the RAG were met; the beneficiary submitted an application for aid and the authority responsible for administering the scheme subsequently confirmed in writing that, subject to detailed verification, the project in principle met the conditions of eligibility laid down by the scheme, before works on the project started. In addition, the German authorities provided clear evidence that the aid effectively had an impact on the investment's location choice; since Porsche AG's decision to locate the full production of Macan in Leipzig was taken only after confirmation that the investment project would be eligible for State aid and supported by public authorities, since the AR approved the location subject to the availability of State aid. Therefore, the Commission considers, in accordance with paragraphs 23 and 25 of the IDAC that the counterfactual scenario presented by Germany is realistic and supported by genuine and contemporary evidence. The aid therefore has a real (substantive) incentive effect. By reducing the viability gap in favour of Leipzig, the aid contributed to changing the location decision of the beneficiary company. Without the aid, the investment would not have taken place in Leipzig.

6.6.1.4. *Proportionality of the aid*

- (122) For the aid to be proportional, the amount and intensity of the aid must be limited to the minimum needed for the investment to take place in the assisted region.
- (123) In general, regional aid is considered to be proportional to the seriousness of the problems affecting the assisted regions if it respects the applicable regional aid ceiling, including the automatic, progressive scaling-down of the regional aid ceiling for large investment projects (which is already part of the applicable regional aid map). The applied aid intensity in this case is not higher than the regional aid ceilings corrected by the scaling-down mechanism, as was already established in recital 80.
- (124) In addition to the general principle of proportionality contained in the RAG, the IDAC requires a more detailed assessment to be carried out. Under scenario 2 of the IDAC, the aid is considered proportionate if it equals the difference between the net costs for the beneficiary to invest in the assisted region and the net costs to invest in the alternative location.
- (125) The documentation submitted by Germany proves that the aid was limited to the amount necessary, because it does not exceed the difference in costs between Option 3 and Option 5. The final calculation shows that even with the aid, Option 5 is EUR 27,5 million more expensive (EUR 65 million without the aid) in nominal value than Option 3. The German authorities explained that the remaining cost disadvantage was considered as acceptable due to certain, non-quantifiable criteria, such as strategic (second full manufacturing car plant under Porsche name), quality (avoidance of transport risks between [location 1 in Germany] and Leipzig) and image ([...]) factors that also favoured the location of the investment in Leipzig.
- (126) As the aid is limited to the amount necessary to compensate for the net additional costs of locating the investment project in Leipzig, as compared to the alternative location, the Commission considers that the proportionality of the aid is demonstrated.

6.6.2. **Negative effects of the aid on competition and trade**

- (127) Paragraph 40 of the IDAC states that 'if the counterfactual analysis suggests that without the aid the investment would have gone ahead in any case, albeit possibly in another location (scenario 2), and if the aid is proportional, possible indications of distortions such as a high market share and an increase in capacity in an underperforming market would in principle be the same regardless of the aid.'
- (128) As the aid measure supports a scenario 2 investment decision and the aid is limited to the minimum, no negative effects on trade and competition could be identified. The investment would have been carried out in another location, resulting in the same level of distortion of competition in any event. Therefore, the Commission considers that the aid has no negative effects on competition.

- (129) In accordance with paragraph 53 of the IDAC, if, without aid, the investment would have been located in a poorer region (more regional handicaps — higher maximum regional aid intensity) or to a region that is considered to have the same regional handicaps as the target region (same maximum regional aid intensity), this would constitute a negative element in the overall balancing test that is unlikely to be compensated by any positive elements, because it runs counter the very rationale of regional aid.
- (130) As there is no indication that the investment would have been located in another assisted region with a higher or similar aid intensity ceiling (there is no indication that any location outside Germany was considered), the Commission considers that the aid has no anti-cohesion effect that would run counter the very rationale of regional aid.

6.7. BALANCING

- (131) Having established that the aid provides an incentive for carrying out the investment in the region concerned and is proportionate, it is necessary to balance the positive effects of the aid with its negative effects.
- (132) The assessment confirmed that the aid measure has an incentive effect attracting an investment which offers an important contribution to the regional development of a disadvantaged region which is eligible for regional aid pursuant to Article 107(3)(c) TFEU, without depriving from the investment any region with the same or a higher aid intensity ceiling (no anti-cohesion effect). The Commission considers that attracting an investment to a poorer region is more beneficial for cohesion within the Union than if the same investment had been located in a more developed region. As stated in paragraph 53 of the IDAC, the Commission considers that 'the positive effects of regional aid which merely compensate for the difference in net costs relative to a more developed alternative investment location, will normally be considered, under the balancing test, to outweigh any negative effects in the alternative location for new investment'.
- (133) In view of the above, the Commission finds that, given that the aid is proportional to the difference in net costs for carrying out the investment in the selected location, as compared to a more developed alternative location, the positive effects of the aid, in terms of its objective and appropriateness, as demonstrated above, outweigh the negative effects in the alternative location.
- (134) In accordance with paragraph 68 of the RAG, and in light of the in-depth assessment conducted on the basis of the IDAC, the Commission concludes that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effect on trade between Member States.

7. CONCLUSION

- (135) The Commission concludes that the proposed regional investment aid in favour of Porsche Leipzig GmbH and Dr Ing. H.c.F. Porsche Aktiengesellschaft — awarded before 1 July 2014 under the condition that it is subject to Commission approval — fulfils all the conditions laid down in the RAG and in the IDAC and can therefore be considered compatible with the internal market in accordance with Article 107(3)(c) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid which Germany is planning to implement in favour of Porsche Leipzig GmbH and Dr Ing. H.c.F. Porsche Aktiengesellschaft amounting to EUR 43 666 078,75 in present value (discounted to the date of notification) and representing a maximum aid intensity of 8,37 % in gross grant equivalent, is compatible with the internal market in accordance with Article 107(3)(c) TFEU.

2. The implementation of the aid referred to in Article 1(1) is accordingly authorised, provided that it is awarded before 1 July 2014.

Article 2

The German authorities shall submit to the Commission:

- within 2 months of granting the aid, a copy of the relevant acts concerning this aid measure;
- on a 5-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant);
- within 6 months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 9 July 2014.

For the Commission
Joaquín ALMUNIA
Vice-President
