COMMISSION DECISION (EU) 2017/166

of 27 November 2015

on State aid SA.38831 (2014/C) (ex 2014/N) which Portugal is planning to implement for Volkswagen Autoeuropa, Lda

(notified under document C(2015) 8232)

(Only the Portuguese 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 the provision(s) [1],

Whereas:

1. PROCEDURE

(1) By electronic notification registered on 30 June 2014, Portugal notified regional investment aid it had granted, subject to its approval by the Commission, on 30 April 2014 to Volkswagen Autoeuropa, Lda (hereinafter 'Autoeuropa').

(2) By letter dated 2 October 2014, the Commission informed Portugal that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission called on interested parties to submit their comments.

(4) Portugal submitted comments on the opening decision on 15 December 2014 (2014/127950); further information was provided by letters dated 27 February 2015 (2015/019588), 12 June 2015 (2015/056315) and 27 July 2015 (2015/073908). A meeting between the Commission services, the Portuguese authorities, and the beneficiary was held at Autoeuropa's premises on 19 May 2015.

(5) The Commission received no comments from interested parties.

2. DETAILED DESCRIPTION OF THE MEASURE/AID

2.1. *OBJECTIVE OF THE AID MEASURE*

(6) By granting aid for the investment in Autoeuropa's existing establishment in Palmela, Peninsula de Setubal region, a region eligible for regional aid under Article 107(3)(c) TFEU, with a standard regional aid ceiling for large undertakings of 15 % pursuant to the Portuguese regional aid map applicable for the period 2007-June 2014 [3], Portugal intends to further develop the region concerned.

[1] OJ C 460, 19.12.2014, p. 55.
[2] Cf. footnote 1.
[3] State Aid N 727/2006 — Portugal — Regional aid map 2007-2013 (OJ C 68, 24.3.2007, p. 26), as prolonged until the end of June 2014 by SA.37471 (2013/N) — Prolongation of the Portuguese regional aid map 2007-2013 until 30 June 2014 (OJ C 50, 21.2.2014, p. 16).

2.2. *THE BENEFICIARY*

(7) The beneficiary of the aid is Autoeuropa, a 100 % subsidiary firm of Volkswagen Group (hereinafter VW Group). The VW Group has been described in numerous State aid decisions, most recently in the Commission's decision of 9 July 2014 to open the formal investigation regarding regional aid in favour of AUDI HUNGARIA MOTOR Ltd ([4]) to which the Commission refers for a further description of VW Group.

(8) Autoeuropa has been active in the Setubal region since June 1991, producing several passenger car models under the VW brand name. Autoeuropa is a large firm. Neither VW Group nor Autoeuropa can be considered as a firm in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([5]) in force at the time of the notification.

2.3. *THE INVESTMENT PROJECT*

(9) The investment project consists in the introduction of a new production technology, called 'Modularer Querbaukasten' (hereinafter 'MQB') which replaces the traditional platform based production. This new production technology allows high flexibility in the production of passenger car models and the realisation of major synergy effects in their production. The Commission refers to its decision of 13 July 2011 to open a formal investigation regarding regional aid in favour of Volkswagen Sachsen ([6]) for a more profound description of the technology.

(10) The investment in Palmela enables Autoeuropa to produce passenger cars belonging to three different segments of the passenger car market defined according to the classification of POLK ([7]), namely the A0 segment, the A segment and the B segment. At present, VW Group intends to produce on the new production line a SUV belonging to the A0 segment, and a not yet fully defined passenger car belonging to the […] (*) segment, which is to succeed the actual platform based […]segment model of Autoeuropa. VW Group did not exclude the possibility that it will start the production of a passenger car belonging to the B segment within 5 years after completion of the investment. The overall capacity created by the investment amounts to [140 000-160 000] cars per year, of which on the basis of the current plans a capacity of [80 000-100 000] is dedicated to the production of the A0 SUV and a capacity of [50 000-60 000] is earmarked for the […]segment model.

(11) The investment started on 26 June 2014, and is envisaged to be largely completed by December 2018. Full production is planned for the end of 2018.

2.4. *COSTS OF THE INVESTMENT PROJECT*

(12) According to the investment and aid contract signed between Portugal and VW Group and the submission of Portugal of 28 July 2014, the investment involves eligible expenditure of EUR 672,9 million for equipment and infrastructure (building) works which will be incurred between 2014 and 2019. About a quarter of that expenditure will be for vendor tooling, i.e. capital assets financed by Autoeuropa which will not be used in the Palmela establishment of Autoeuropa, but will be made available by Autoeuropa to its suppliers, for use in the establishments of the suppliers for the production of parts and components for VW Group. These assets, although they will form an integral part of the productive stock of the suppliers, will remain the property of VW Group.

(13) The expenditure refers exclusively to new, tangible assets. The table below derived from the investment contract breaks down the planned eligible expenditure by type and year.

([4]) Case SA.36754 LIP — HU — Aid for AUDI HUNGARIA MOTOR Ltd (OJ C 418, 21.11.2014, p. 25).
([5]) OJ C 244, 1.10.2004, p. 2.
([6]) Case SA.32169 — Germany — LIP — Aid to Volkswagen Sachsen GmbH (OJ C 361, 10.12.2011, p. 17).
([7]) R. L. Polk & Co. (also referred to as POLK) is a globally integrated organisation and a major market information and analytics provider in the automotive industry. On July 16 2013, IHS Inc., the leading global source of critical information and analytics completed its acquisition of R. L. Polk & Co.
(*) Business secret

Table 1

Breakdown of eligible expenditure in million EUR — Investment contract

	2014	2015	2016	2017	2018	2019	Total
Equipment	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Vendor tooling	[…]	[…]	[…]	[…]	[…]	[…]	[…]
TOTAL	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**672,9**

(14) This cost breakdown which is based on the information in the investment contract is different from the cost breakdown in the supplementary information sheet attached to the notification. In the supplementary sheet, the Portuguese authorities explained that VW Group has lowered the total investment costs of EUR 672,95 million specified in the investment contract to EUR 623,85 million. The breakdown resulting from the supplementary information sheet is given in the table below.

Table 2

Breakdown of eligible expenditure in million EUR — Supplementary information sheet

	2014	2015	2016	2017	2018	2019	Total
Equipment	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Vendor tooling	[…]	[…]	[…]	[…]	[…]	[…]	[…]
TOTAL	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**[…]**	**623,9**

2.5. *LEGAL BASIS*

(15) The national legal basis for awarding the aid is the Decree-Law no 287/2007, of August 17, as amended by Decree Law no 65/2009, of March 20 which approves the national framework of incentives for business investment and the Ordinance no 1464/2007, of November 15, as amended by Ordinance 1103/2010, of October 25 which creates and regulates the aid scheme 'Sistema de Incentivos a Inovação'.

(16) Portugal awarded the aid, subject to Commission approval, in application of its aid scheme 'Sistema de Incentivos a Inovação'. This aid scheme was block-exempted in application of the Commission Regulation (EC) No 800/2008 ([8]) (hereinafter 'GBER 2008'), for aid applications below the notification threshold laid down in its article 6.

2.6. *THE AID MEASURE*

(17) The aid was awarded, subject to Commission approval, by an aid and investment contract signed on 30 April 2014. Works on the investment started on 26 June 2014, i.e. after signature of the contract.

([8]) 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), prolonged until 30 June 2014.

(18) The aid is granted in form of a partially reimbursable grant. The investment contract refers to a reimbursable grant of EUR 52,49 million (in nominal value) for investment expenditure (including vendor tooling) of EUR 672,95 million which is partially transformed into an outright grant if Autoeuropa meets certain contractually agreed realisation parameters. The notification indicates that more recent cost planning by VW Group led to a slightly lower amount of expected investment expenditure (EUR 623,9 million). Taking account of that lower amount, the notified aid amount and the notified aid intensity, in prices of 2014, are EUR 36,15 million and 6,03 % respectively. Portugal commits that neither the notified aid amount, nor the notified aid intensity will be exceeded, if the realised eligible expenditure deviates from the planned amount of eligible expenditure, as taken into account in the notification and the calculation of the maximum aid amount.

(19) Portugal confirms that an own contribution free of any public support of at least 25 % of the eligible expenditure will be borne by Autoeuropa/Volkswagen from its own resources.

(20) Autoeuropa/Volkswagen commits to maintain the investment during a minimum period of 5 years after its completion.

2.7. *GROUNDS FOR INITIATING THE PROCEDURE*

(21) In the opening decision, the Commission expressed doubts as to conformity of the measure with the provisions of the Guidelines on national regional aid for 2007-2013 [9] (hereinafter 'RAG 2007-13') concerning eligible expenditure, maximum aid amount, and maximum aid intensity, and thus as to its compatibility with the internal market.

(22) The Commission noted that the notified eligible expenditure included costs for vendor tooling, as to the eligibility of which the Commission raised doubts and was thus unable to confirm that the notified maximum aid amount, which is calculated with regard to the total notified investment expenditure, does not exceed the maximum amount that can be allowed.

(23) Furthermore the Commission noted that Autoeuropa received investment aid for another investment project carried out on the same site. Start of works on the other investment project was less than 3 years before the start of works on the present investment project. The investment project intended to innovate and optimise the production processes, by performing investments in three areas of activity: (i) in the information technology area, by implementing programs and the most technologically advanced systems; (ii) in the area of interior and exterior painting of motor vehicles, by automating the method of applying paint; and (iii) in the area of stamping dies, responsible for the execution of moulds for stamping parts. At the time of the opening decision, Portugal did not clarify the extent to which these improvements would be relevant and would still be used in the event that platform-based manufacturing would cease and be replaced by MQB manufacturing technology.

(24) On the basis of information submitted by Portugal, the Commission was unable to form a definite view on whether the two investment projects form a single investment project in the meaning of paragraph 60 of the RAG 2007-13 and decided to assess the question of whether the two projects are economically indivisible within the meaning of footnote 55 [10] of the RAG 2007-13 during the formal investigation.

(9) Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13). On 28 June 2013 the Commission adopted the Guidelines on Regional State Aid for 2014-2020, in which it extended the period of application of the RAG 2007-13 until 30 June 2014 (paragraph 186); (OJ C 209, 23.1.2013, p. 1).

(10) Footnote 55 of the RAG 2007-13 specifies the following: 'To assess whether an initial investment is economically indivisible, the Commission will take into account the technical, functional and strategic links and the immediate geographical proximity. The economic indivisibility will be assessed independently from ownership. This implies that to establish whether a large investment project constitutes a single investment project, the assessment should be the same irrespective of whether the project is carried out by one undertaking, by more than one undertakings sharing the investment costs or by more undertakings bearing the costs of separate investments within the same investment project (for example in the case of a joint venture)'.

(25) In addition, paragraph 68 of RAG 2007-13 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'). Where an in-depth assessment is necessary, it will be carried out on the basis of the Communication from the Commission concerning the criteria for an in-depth assessment of regional aid to large investment projects ([11]) (IDAC).

(26) In the opening decision, the Commission left the precise definition of the relevant product market open and considered all plausible alternative market definitions, including in particular the narrowest segmentation for which data is available ([12]). Since Autoeuropa will produce cars belonging to A0 and […] segments according to POLK, and could also produce cars belonging to the B segment according to POLK, the Commission considered that these individual segments and for SUVs also the SUV-B segment according to Global Insight ([13]), as well as the combined segment (A0 to B) according to POLK should all be considered as relevant plausible markets for this case.

(27) Paragraph 70 of the RAG 2007-13 provides that for the purposes of carrying out the tests under paragraph 68, markets should normally be defined at EEA level. For the purpose of the assessment of the present case, the Commission considered that the relevant geographic market for the products concerned is at least EEA-wide. The Portuguese authorities and Autoeuropa accepted that the Commission applies this geographic market definition for the purposes of this notification.

(28) During the preliminary investigation, the analysis under paragraph 68 (a) of the RAG 2007-13 came to the result that the applicable 25 % market share threshold is exceeded in the individual A and B segments and in the combined A0, A and B segments (according to POLK) in the EEA in all the years concerned.

(29) As the result of the paragraph 68(a)-test required already to proceed to the in-depth assessment of the aid, the Commission considered that it was not necessary to carry out the paragraph 68(b) test.

3. COMMENTS FROM INTERESTED PARTIES

(30) No comments were submitted by interested third parties.

4. COMMENTS FROM PORTUGAL

4.1. *VENDOR TOOLING*

(31) Portugal considers investments in vendor tooling amounting to EUR 136,3 million as eligible, as the tools are part of the notified project, belong to Autoeuropa's fixed assets, are located at a supplier's plant in an assisted area in Portugal, and will be maintained there for at least 5 years after the completion of the project. The Portuguese authorities refer to recitals 36 and 37 of decision C(2002)1803 Ford España SA ([14]) in which the Commission noted that expenditure for vendor tooling can be considered as eligible for regional aid if incurred in assisted regions.

([11]) OJ C 223, 16.9.2009, p. 3.
([12]) This approach is in line with the Commission's State aid decisions SA. 34118 (Porsche Leipzig), Decision of 9 July 2014 (C(2014)4075) in the case of SA.34118, not yet published in the OJ, available on http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3; SA.30340 (Fiat Powertrain Technologies), Decision of 9 February 2011, (C(2011)612) in the case of SA.30340 (OJ C 151, 21.5.2011, p. 5); SA. 32169 (Volkswagen Sachsen) Decision of 13 July 2011 (C(2011)4935) in the case of SA.32169 (OJ C 361, 10.12.2011, p. 17); N 767/07 (Ford Craiova) Decision of 30 April 2008 (C(2008)1613) in the case N 767/2007 (OJ C 238, 17.9.2008, p. 4); N 635/2008 (Fiat Sicily), Decision of 29 April 2009 (C(2009)3051) in the case N 635/2008 (OJ C 219, 12.9.2009, p. 3); and N 473/2008 (Ford Espino) Decision of 17 June 2009 (C(2009)4530) in the case N 473/2008 (OJ C 19, 26.1.2010, p. 5).
([13]) The Commission considered in a series of decisions regarding SUVs, most recently in its final decision on regional aid for Porsche (Decision of 9 July 2014 in the case 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, not yet published in the OJ, available on http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3), that for SUVs the Global Insight classification is more appropriate. SUVs falling under the POLK A0 segment correspond to the SUV-B segment in the classification of Global Insight.
([14]) C34/2001, decision of 7 May 2002 on State aid Spain is planning to implement in favour of Ford España SA (notified under document number C(2002) 1803), published in OJ L 314, 18.11.2002, p. 86.

(32) Before the signing of the investment contract in April 2014, VW Group and Autoeuropa developed an investment plan regarding vendor tooling that took into account these eligibility criteria and ensured that the amount of EUR 136,3 million included only vendor tooling expenditure meeting the above conditions. The Portuguese authorities have set up a control mechanism to monitor compliance with the above conditions.

4.2. *SINGLE INVESTMENT PROJECT*

(33) Portugal signed on 8 October 2013 an investment contract with Autoeuropa regarding three different projects, each of them representing an initial investment targeted at the expansion of the existing establishment which Portugal does not consider to form a single investment project within the meaning of paragraph 60 of the RAG 2007-13 with the notified investment project.

4.2.1. INITIAL INVESTMENT IN INTERIOR AND EXTERIOR PAINTING ROBOTS (PAINT SHOP)

(34) The first project concerned the introduction of robots for the automation of the interior and exterior painting process which allowed improvements in quality (exterior appearance homogeneity, paint thickness reduction, overspray reduction, dirt reduction in interior area) and productivity as well as improved ergonomics and labour protection and a reduction of material consumption and paint waste. The corresponding eligible expenses amounted to EUR 20 million ([15]) and the aid amount was EUR 2,89 million in gross grant equivalent (GGE).

(35) The Portuguese authorities underline that this investment is not linked in an economically indivisible way with the notified investment project. The notified investment project is targeted at a fundamental change in the overall production process by implementing the MQB production technology. Whereas this requires substantial investments in particular in assembly facilities, the implementation of the MQB technology requires only minor investments in the existing paint shop.

(36) The existing paint shop has been functional before and without the MQB investment. Vice versa, the new MQB assembly facilities are functional without the paint shop investments, i.e. the MQB production would be possible and functional without the preceding investment in robots in the paint shop. Therefore, although both facilities are part of an integrated car manufacturing process, they are not linked by the investments in an economically indivisible way.

(37) Moreover, the relevant investment decisions have been taken independently (paint shop modernisation: August 2011; MQB investment: May 2014).

4.2.2. INITIAL INVESTMENT IN STAMPING DIES (TOOL SHOP)

(38) The second project concerned the tool shop of Autoeuropa which produces moulds and stamping tools for car body metal parts. It specialises in the production of tools for engine hoods and fenders. The tool shop delivers its products to the VW Group's factories worldwide, i.e. it is not limited to supplying Autoeuropa. It is part of Autoeuropa, however operates autonomously and independently of the main activity of the factory which is the production of vehicles.

(39) The objective of the initial investment in the tool shop was the extension of the existing establishment. In order to achieve a set of high-impact technological improvements in the quality of the production, Autoeuropa acquired new equipment for stamping dies in order to enable the construction of tools with higher quality levels and to increase the production volume of the tool shop. The eligible investment was EUR 12,7 million (discounted value of EUR 12,66 million) and the aid amount was EUR 1,84 million in GGE.

(40) Given that the tool shop functions independently of the MQB car manufacturing process, is located in the same industrial area but not on the same plot of land as the car manufacturing site and the decisions on the investments have been made independently of each other (for the tool shop modernisation in 2011 and for the MQB investment in May 2014), the Portuguese authorities take the view that the investment in the tool shop is not linked in an economically indivisible way with the notified investment project.

([15]) EUR 19,95 million discounted to 2011, the year when the investment project started, discount rate 1,56 %.

4.2.3. INITIAL INVESTMENT IN THE INFORMATION TECHNOLOGY AREA (IT)

(41) The third project concerned investments into IT hardware which increased in combination with new software applications IT security and led to a more stable production within the car production. The car production depends to a great extent on smoothly and reliably running IT systems, the configuration of each car (engine type, gear box, color etc.) being fed into the production process via the group's data network. The eligible investment was EUR 5,5 million (discounted value of EUR 5,5 million) and the aid amount was EUR 0,79 million in GGE.

(42) The Portuguese authorities consider this 2011 IT investment as not linked in an economically indivisible way with the notified investment project. The new production technology MQB would be possible and functional without the preceding investment in IT security given that all applications which support and control the MQB production would have run the same way without this preceding investment. The IT investment has been functional before and without the MQB investment.

(43) Moreover, the investment decisions were taken independently of each other, for the IT area investment in 2011 and for the MQB investment in May 2014.

4.3. *IN-DEPTH ASSESSMENT OF THE AID MEASURE*

(44) Portugal provided the information necessary to carry out an in-depth assessment.

4.3.1. POSITIVE EFFECTS OF THE AID

(45) Portugal intends to further develop the region concerned. The investment is to create 500 new direct jobs, and to ensure, in the long term, the maintenance of 3 339 existing jobs.

(46) The notified project will substantially increase the qualification and skills of the beneficiary's employees, increasing their employability within and outside VW Group and Portugal, and increasing the regional skills basis. Specific training actions are planned. This vocational training has also a positive effect on the know-how transfer mainly within the Setubal Peninsula region.

(47) The investment project will create more business opportunities for the suppliers of Autoeuropa. According to a study of the Center of Automotive Research, the total number of jobs created as a consequence of one job created in the automotive industry amounts to 2,5 new jobs at the suppliers and 2,2 new jobs at other companies, created as a result of the spending of the suppliers' employees in Portugal. Portugal therefore expects that the investment will lead to the creation of 2 350 indirect jobs, in addition to the 500 newly created direct jobs.

(48) Moreover, the Portuguese authorities emphasise the qualitative aspects of the positive regional effects of the investment project. The investment project will contribute to the development of the region of the Setubal Peninsula by attracting investments by industrial suppliers to the region, involving transfer of technology (knowledge spillovers) and clustering of undertakings in the same industry which allows individual plants to specialise more and leads to increased efficiency.

(49) In addition, the beneficiary was invited to participate in several projects together with leading universities, both for the development of manufacturing engineering and for ergonomics related aspects.

4.3.2. APPROPRIATENESS OF THE AID

(50) Portugal notes that the Commission accepted already in the Porsche Leipzig decision ([16]) that State aid is an appropriate means to promote the regional development of regions which are disadvantaged in comparison with the average of other regions in the Member State. This argumentation equally applies to the notified investment aid in the Peninsula de Setubal region.

([16]) SA. 34118, decision of 9 July 2014, not yet published in the OJ, available on http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3, recital 107.

(51) The Peninsula de Setubal region is part of the Lisboa e Vale do Tejo region, which includes the Lisbon area and is the most developed Portuguese region. However, if the Peninsula de Setubal would be considered alone, it could be classified as an 'a' region since its GDP per capita ranges between 45 % and 47 % of the EU average in the period 2006-2010 (which was the period used for defining the national regional State aid maps for 2014-2020).

(52) When compared with the Portuguese average, the GDP per capita in the Peninsula de Setubal was around 75 % for the last 3 years.

Table 3

GDP per capita as compared to the Portuguese average (EUR) [1]

Years	Peninsula de Setubal	Portugal average	%
2013	12 302	16 372	75,1
2012	12 105	16 136	75,0
2011	12 656	16 686	75,8

(1) The data source is INE — Instituto Nacional de Estatística (the national official agency for statistics).

(53) Therefore Portugal considers that the notified aid is an appropriate instrument for enhancing the regional development of the Peninsula de Setubal.

4.3.3. INCENTIVE EFFECT/COUNTER-FACTUAL SCENARIO

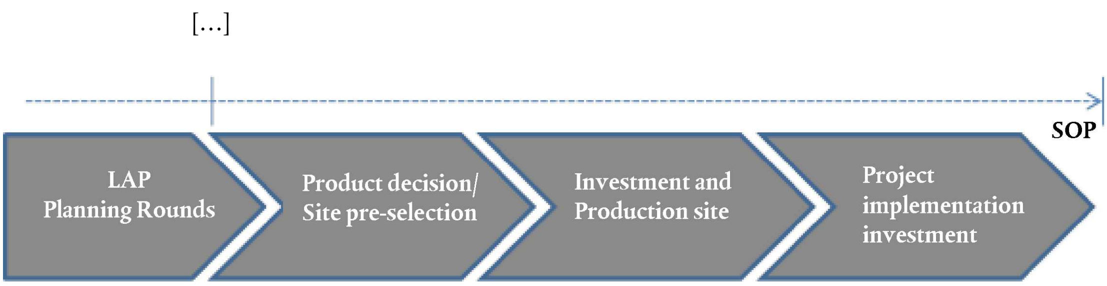
(54) Portugal provides information to prove that the aid falls under scenario 2 of the IDAC, as it gave an incentive to the beneficiary to carry out the investment in the Setubal plant instead of in the [location 1] plant (non-assisted area in EEA) where the investment would have been located in the absence of aid. In particular, Portugal provides details on the multistage decision-making process and on the financials of the counterfactual scenario, both of which are described below.

VW Group's decision-making process

(55) At VW Group, investment decisions are prepared in a multistep decision-making process in which decision-makers analyse various sites in a competitive comparison process. The major phases are: (1) Long-term Sales Planning (LAP) and planning rounds; (2) Product development, product decision and site pre-selection; and (3) Investment and location decision.

(56) The decisions regarding the notified investment project followed this general process. However, as they concerned an investment project of the brand Volkswagen, the relevant decisions were taken directly by the organs of the brand Volkswagen and there were no additional decisions at group level, because the composition of the group organs is largely identical to that of the Volkswagen brand.

(57) The introduction of new products within the VW Group is driven based on the so called product creation process (PEP) that ranges from product planning to the start of production (SOP). This PEP consists of four major phases as can be seen from the diagram below:



(1) **LAP and planning round 61**

(58) The point of departure is the Long term Sales Planning (LAP) phase in which forecasts of the market development and of potential demand as well as market fluctuations are analysed. The LAP schedules product developments for […] years ahead and identifies which additional production capacities have to be built, or which adjustments to existing capacities are necessary. The LAP is mirrored by the annual planning rounds (PR), which the Group Supervisory Board concludes and which contain the financial framework of the scheduled investments. The deliverable of the LAP phase is a proposal to launch new product(s), but not yet a product development, investment, or location decision.

(59) Regarding the notified project, planning round 61 in 20[…] established [140 000-160 000] units p.a. as a realistic sales potential for new products in the segments A0 SUV and […] ([…]). The production planning identified the need to create corresponding production capacities. At the same time, the combination of the A0 SUV and […] volumes should meet the framework conditions for the MQB strategy.

(60) The outcome of this phase was an MQB investment package of [140 000-160 000] A0 SUV and […] p.a. for the brand Volkswagen with planned start of production dates of August 2016 for the A0 SUV and of November 2017 for the […].

(2) **Product development, product decision and site pre-selection phase**

(61) During this phase several central departments of the VW Group and the concerned production sites work together to prepare both the product decision and the site pre-selection. The controlling department takes the central and consolidating role during this phase.

(62) The first step in this second phase is the product development process, which according to the beneficiary's internal rules always starts at least […] months in advance of the envisaged start of production date, in the case of the notified project in August 2012 (first SOP[…]).

(63) The product decision, i.e. the decision to produce a product proposed in the LAP, requires that the product development reaches a pre-defined feasibility target. The expected revenues generated by the new product are compared with the necessary production (including investment) costs. In order to determine the expected cost of production, first a particular location is set hypothetically as planning assumption (location premise). The location premise is employed in order to determine a first cost structure and framework for the project. This does not lead to a predetermination of a specific production site, but develops a required baseline for the assessment of expected production costs.

(64) In case of a successor product to an ongoing production, the current production site of the product will be usually chosen as the site premise; for an entirely new product (without predecessor) the site premise is usually based on performance indicators, i.e. the location with the best performance figures will be selected as first hypothesis. In practice, additional criteria, such as free capacities or suitable structures, are taken into consideration as well.

(65) In the case of the notified project, a greenfield investment was not considered as an investment package of [140 000-160 000] cars falling into a […]price market segment is too small to render a greenfield investment viable. If the location assessment does not concern a greenfield investment, the two main criteria for identifying suitable locations are whether at an existing plant additional capacities can still be installed, and whether the existing facilities at that site are compatible with the planned project, e.g. the dimensions of the existing paint shop are also suitable for the planned new investment, etc.

(66) The application of these criteria identified four possible locations ([location 1 in a non-assisted area in EEA], Setubal, [location 2 outside EEA] and [location 3 in a non-assisted area in EEA]) for which Portugal provided company information, dating from July 2012, on first comparative calculations of production costs per car done by the controlling of the brand Volkswagen ([Group Controlling]). These calculations included the planned sales

volumes in the A0 SUV segment and the […] segment and covered, in addition, planned sales volumes for the [predefined model], whose production was exceptionally predefined for [location 1 in a non-assisted area in EEA]. Three different alternatives for assigning the envisaged production volumes of the A0 SUV segment, the […] segment and the [predefined model] to the four locations were considered, and for each alternative, [Group Controlling] conducted preliminary calculations of the production costs and investment costs.

(67) At a more advanced stage of the planning process, [location 2 outside EEA] and [location 3 in a non-assisted area in the EEA] were excluded as possible locations, since they were characterised by high logistics and high personnel costs respectively. At any event, due to earlier decisions to locate the [predefined model] production to [location 1 in a non-assisted area in the EEA] and [location 2 outside EEA], and to manufacture the […] and […] in [location 3 in a non-assisted area in the EEA], in 2014 (when further comparative calculations were done by [Group Controlling]), neither [location 2 outside EEA] nor [location 3 in a non-assisted area in the EEA] had any spare capacities left. Therefore, a combination of the A0 SUV and […] volumes was assessed for Setubal and [location 1 in a non-assisted area in the EEA] only.

(68) In view of the above, [Group controlling] prepared the product decision with Setubal as location premise. Portugal provided evidence that on 10 March 2014 the Product committee of the brand Volkswagen (Volkswagen Ausschuss Produkte, VAP) took the product decision and confirmed Setubal as location premise. The evidence submitted by Portugal shows that a possible State aid amount of up to EUR 36 million was taken into account already at this stage.

(3) **Investment and location decision**

(69) Once the product decision is taken, the next step is the selection of the most suitable location for the project. The controlling department typically starts from the entirety of Volkswagen production sites and narrows this list down to those locations that seem suitable for the investment. As a result of the PEP process, the investment and production scenarios for each realistic site are specified and summarised in a decision paper. Based on a specific location and investment recommendation, the investment committee of the brand Volkswagen (Volkswagen Ausschuss Investitionen, VAI) needs to decide whether or not the project shall be realised.

(70) As explained, the list of realistic sites had been narrowed down to [location 1 in a non-assisted area in the EEA] and Setubal at this stage. For these two sites, the specific production costs attributable to the location were determined and compared. These location specific costs consist of the required investment costs and the expected production costs during a reference period. Portugal submitted genuine contemporary company documents, prepared by [Group controlling] and […] (the group's State Aid Unit), and dated 9 May 2014 as evidence of a counterfactual analysis confronting [location 1 in a non-assisted area in the EEA] and Setubal as potential locations. Portugal explained that whereas the [location 1 in a non-assisted area in the EEA] plant had slightly better performance values, the Setubal plant scored with the possibility to benefit from regional investment aid. Based on this counterfactual analysis ([17]), [Group controlling] submitted a decision recommendation to the VAI proposing Setubal as location for the investment.

(71) The investment and location decisions, confirming Setubal, were taken by the VAI on 28 May 2014 and 26 June 2014 ([18]). Portugal provided the copy of the minutes of the relevant meetings where these decisions were adopted. Taking into consideration the comparative calculations as well as regional aid in the amount of EUR 37,96 million in nominal value (EUR 33,4 million discounted value) ([19]), both decisions approve the MQB investment project with an investment volume of EUR 624 million. In addition, the first decision concedes a first budgetary tranche for clearing factory space for the first investments, and the second decision authorised the bulk of the investment expenditures.

4.3.4. PROPORTIONALITY OF THE AID

(72) Portugal notes that the calculations used to demonstrate the incentive effect can also be used as a basis for assessing the proportionality of the aid.

([17]) This counterfactual analysis is presented in detail in Annex I which cannot be published since its elements constitute business secrets.
([18]) See also footnote 20 below.
([19]) This figure is based on a different spread of the eligible expenses throughout the years as compared to the final investment configuration which was notified.

(73) The final calculation used by Portugal to demonstrate the incentive effect show a net financial handicap of Setubal compared to [location 1 in a non-assisted area in the EEA] of EUR 48 million. Even with the aid, Setubal is by EUR 14,6 million (discounted value) more expensive than [location 1 in a non-assisted area in the EEA] (financial disadvantage minus the aid taken into account in the counterfactual analysis; i.e. EUR 48 million-EUR 33,4 million).

(74) Portugal therefore argues that, as the aid does not fully compensate the location disadvantage of Setubal, there is no overcompensation. The aid is consequently proportionate.

(75) Portugal points out that in its decision on location, VAI took not only financial considerations into account, but also non quantifiable qualitative criteria such as reasons of social responsibility or the possibility of avoiding shifting production to other sites at production peaks.

4.3.5. NEGATIVE EFFECTS OF THE AID ON COMPETITION AND TRADE

(76) Portugal emphasises that the regional aid serves solely to compensate the net disadvantage of the location in Setubal. The aid is proportionate and will have no effect on competition as the investment project, and its resulting effects on competition and trade, would have happened in any event. The investment project would not have been located in another assisted region with a higher or same aid intensity ceiling, as a greenfield investment would not have been viable, and the only plausible alternative is not an assisted region. Therefore, the aid has no anti-cohesion effect that would run counter the very rationale of regional aid.

5. **ASSESSMENT OF THE AID**

5.1. *EXISTENCE OF AID*

(77) The financial support in the form of a reimbursable grant will be given by the Portuguese authorities and is financed through the general budget of the State. The support is thus given by a Member State and through State resources within the meaning of Article 107(1) of the TFEU.

(78) As the aid is granted to a single company, Autoeuropa, the measure is selective.

(79) The financial support will be given for an investment in the car sector, which is subject to intensive trade between Member States, and will partially replace supplies of intermediate goods from other Member States. Therefore, the measure affects trade between Member States.

(80) The favouring of Autoeuropa and its production by the Portuguese authorities means that competition is distorted or threatened to be distorted.

(81) Consequently, the Commission considers that the notified measure constitutes State aid to Autoeuropa within the meaning of Article 107(1) TFEU.

5.2. *LEGALITY OF THE AID MEASURE*

(82) By granting the aid subject to Commission approval and notifying the aid measure before putting it into effect, the Portuguese authorities have respected their obligations under Article 108(3) TFEU, since the notification of individual aid above a certain amount is required by the GBER 2008. In fact, the aid for the investment project is individually notifiable within the meaning of paragraph 68 of the RAG 2007-13 and the GBER 2008, as the envisaged aid amount of EUR 36,15 million in present value exceeds the individual notification threshold of EUR 11,25 million applicable in the region concerned under the regional aid map applicable from 2007 to June of 2014.

5.3. *LEGAL BASIS FOR THE ASSESSMENT*

(83) The objective of the aid is to promote regional development. As the aid and investment contract was signed in April 2014, only subject to Commission approval, the Commission considers that pursuant to paragraph 188 of the RAG 2014-20, the aid was awarded before July 2014 and thus has to be assessed on the basis of the RAG 2007-13, and in particular its provisions regarding regional investment aid for large investment projects laid down in paragraph 68.

5.4. *STRUCTURE OF THE COMPATIBILITY ASSESSMENT*

(84) 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 2007-13 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.

5.5. *COMPATIBILITY OF THE MEASURE WITH STANDARD COMPATIBILITY CRITERIA OF THE RAG*

(85) The Commission established already in the opening decision that the aid meets part of the general compatibility criteria for the RAG 2007-13. The formal investigation did not reveal any elements that would put into question this assessment. The Commission notes in particular the following:

— the aid is granted for a project in Palmela which is an area eligible for regional aid pursuant to the Portuguese regional aid map applicable from 2007 to June of 2014,

— there is no indication that the VW Group in general, or Autoeuropa in particular, would be a firm in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty applicable at the time of the notification. Therefore, the aid beneficiary is eligible for regional aid in accordance with paragraph 9 of the RAG 2007-13,

— the project comprises an initial investment within the meaning of paragraph 34 of the RAG 2007-13. Initial investment is defined in paragraph 34 of the RAG 2007-13 as an investment in tangible and intangible assets relating to (i) the setting up of a new establishment; (ii) the extension of an existing establishment; (iii) diversification of the output into new additional products; and (iv) a fundamental change in the overall production process of an existing establishment. The introduction of the new production technology qualifies as fundamental change of the production process of an existing establishment. In addition, it allows to diversify the output of the establishment,

— in conformity with paragraph 40 of the RAG 2007-13, Autoeuropa is obliged to maintain the investment in the region for a minimum of 5 years after completion of the project,

— the beneficiary provides, in conformity with paragraph 39 of the RAG 2007-13, a financial contribution of at least 25 % of the eligible costs in a form which is free of any public support,

— the formal incentive effect requirements, laid down in paragraph 38 of the RAG 2007-13, are respected ([20]),

— the eligible expenditure of the project is limited to new tangible assets (equipment and buildings only), and is thus in line with the provisions of paragraphs 50 and 54 of the RAG 2007-13.

([20]) Autoeuropa submitted an application for aid on 31 March 2014 and the authority responsible for administering the scheme confirmed on 4 April 2014 in writing that, subject to detailed verification, the project in principle met the conditions of eligibility. The investment contract was signed on 30 April 2014 and contained a suspensive clause making it dependent on VW Group's decision to proceed or not with the project, as long as this decision was taken before 30 June 2014.

(86) However, the Commission raised doubts in the opening decision with regard to the eligibility of costs for vendor tooling. Therefore, and as it was unable to form a definitive view on whether the notified project and an earlier investment project carried out on the same site formed a single investment project in the meaning of paragraph 60 of the RAG 2007-13, the Commission was unable to establish whether the notified aid intensity exceeded the maximum allowable, and hence raised doubts also regarding the respect of the applicable regional aid ceiling.

5.5.1. CONCLUSION ON THE VENDOR TOOLING

(87) The Commission clarified in case C34/2001 that vendor tolling costs cannot be considered eligible costs, unless they occur in assisted areas of the Member State concerned ([21]). The Commission notes (see recitals 31 and 32 above) that all the investments in vendor tooling amounting to EUR 136,3 million will fulfil the standard compatibility criteria of the RAG given that they will meet certain conditions such as: the tools are part of the notified project and belong to Autoeuropa's fixed assets, are located at a supplier's plant in an assisted area in Portugal, and will remain located in Portugal in an assisted area for at least 5 years after completion of the project. Furthermore, the assisted areas of Portugal where vendor tooling will take place have the same or higher maximum aid intensities than the area of Palmela. Monitoring mechanisms which ensure that no aid will be granted to vendor tooling that does not comply with the above conditions have been set up.

(88) In line with its previous practice in case C34/2001, the Commission therefore considers that the vendor tooling costs arising in assisted areas of Portugal and amounting to EUR 136,3 million can be considered eligible costs in line with sections 4.1 and 4.2 of the RAG 2007-13.

5.5.2. CONCLUSION ON THE SINGLE INVESTMENT PROJECT

(89) The Commission analysed the possible single investment project character of the three earlier investments carried out by Autoeuropa at the same site.

5.5.2.1. *Initial investment in interior and exterior painting robots (paint shop)*

(90) The project consisted of the acquisition of new robots for the paint shop which led to improvements in terms of quality, but also ergonomics and labour protection, environmental protection and resource savings and productivity. The Commission considers that these investments were necessary at that point in time in order to improve the working conditions in the paint shop and therefore they were not undertaken in preparation of the notified project.

(91) The Commission considers that the investment in the automation of the interior and exterior painting process in the paint shop and the notified investment project show technical and functional differences and the investment decisions were taken independently from each other. Therefore the Commission considers that the initial investment in the paint shop is not linked in an economically indivisible way with the notified investment project and consequently, the two investments do not form a single investment project within the meaning of paragraph 60 of the RAG 2007-13.

5.5.2.2. *Initial investment in stamping dies (tool shop)*

(92) The tool shop of Autoeuropa produces moulds and stamping tools for car body metal parts. It specialises in the production of tools for engine hoods and fenders. The tool shop delivers its products to the VW Group's factories worldwide, i.e. it is not limited to servicing Autoeuropa. It is part of Autoeuropa, however its activity runs autonomously and independently of the main activity of the factory which is the production of vehicles.

([21]) See Commission Decision in case C34/2001 regarding aid to Ford España (footnote 14 above), recitals 36-37.

(93) The project concerned the acquisition of new tools for stamping dies in order to enable the construction of tools with higher quality levels and to increase the production volume of the tool shop. The tool shop produces moulds and stamping tools for the entire VW Group, is not located in the same plot of land as the notified investment and runs independently of the car manufacturing factory. Moreover, the investment decisions for the tool shop modernisation and for the notified project were taken independently from each other. Therefore the Commission considers that the initial investment in the tool shop is not linked in an economically indivisible way with the notified investment project and consequently, the two investment projects do not form a single investment project within the meaning of paragraph 60 of the RAG 2007-13.

5.5.2.3. *Initial investment in the information technology area (IT)*

(94) The project concerned the acquisition of new IT equipment with new software applications for a stable IT security aimed at increasing the stability and the productivity of the car production. The investment in the IT area does not have strategic and technical links with the notified project that would link them in an economically indivisible way. Moreover, the investment decisions for the IT project and for the notified project were taken independently from each other. Therefore the Commission considers that the two investment projects do not form a single investment project within the meaning of paragraph 60 of the RAG 2007-13.

5.5.3. *OVERALL CONCLUSION ON STANDARD COMPATIBILITY CRITERIA*

(95) In view of the above, the Commission considers that vendor tooling costs amounting to EUR 136,3 million can be considered as eligible expenditure under the notified project, whereas the earlier investments do not have to be taken into account. The amount of eligible expenses that has to be taken into account for the calculation of the maximum allowable aid intensity is EUR 623,9 million (EUR 599,6 million in discounted value) as shown in Table 2 of this Decision. By applying the scaling down mechanism laid down in paragraph 67 of the RAG 2007-13, the eligible expenditure incurred leads to a maximum allowable aid intensity of 6,13 % GGE for the project.

(96) Since the intensity of the proposed aid (EUR 36,15 million in present value, 6,03 % aid intensity) 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 2007-13.

(97) In view of these considerations, and since no information was submitted that would affect the conclusions of the Commission in the opening decision on the respect of the standard compatibility criteria referred to in recital 85, the Commission considers that the standard compatibility criteria of the RAG 2007-13 are met.

5.6. *APPLICATION OF THE TESTS LAID DOWN IN THE PROVISIONS OF PARAGRAPH 68 OF THE RAG 2007-13*

(98) The Commission has to carry out an in depth assessment as part of the formal investigation unless it can establish without doubt within that procedure that the thresholds for in-depth assessment laid down in the paragraph 68(a) and (b) tests are not exceeded. ([22]) To carry out the relevant tests, the Commission has first to establish appropriate product and geographic market definitions.

(99) In recital 45 of its opening decision the Commission considered that for the purposes of paragraph 68 of the RAG 2007-13, the products concerned by the investment project are passenger cars belonging to the market segments A0, A, and B according to the segmentation by POLK.

(100) The Commission left the precise definition of the relevant product market open and considered all plausible alternative market definitions, including in particular the narrowest segmentation for which data is available.

([22]) Of course, in any event and thus irrespective of the thresholds of paragraph 68 of the RAG 2007-13, the Commission has to balance the positive and negative effects of the aid before concluding on its compatibility with the internal market. See the General Court's judgment in case T-304/08 *Smurfit Kappa Group v Commission* EU:T:2012:351, para. 94.

(101) The practice of using the narrowest market definition based on individual segments in the car industry is well grounded in comparable decisions, including final decisions ([23]).

(102) This case practice is based on the view that competitors in all market segments, including the smallest possible segment, deserve protection from players with market dominance.

(103) It is also grounded in competition relevant economic considerations. More specifically, this approach is based on the theory that demand side substitutability between two products exists if they are considered to be substitutes by consumers in view of their characteristics, price and intended use. Through its practice of examining market shares also in the smallest possible car market segment for which information is available, the Commission follows exactly this logic: i.e. it considers that substitutability in view of price, characteristics and intended use is the strongest between products belonging to the same segment. In this sense, the application of the narrowest possible market segment as one plausible market reflects the logic of point 28 of the Horizontal Merger Guidelines which states that 'Products may be differentiated within a relevant market such that some products are closer substitutes than others. The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. […] The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes'.

(104) This is also why conventional cars are traditionally divided into segments, and why the automotive industry assigns models to the various well known segments. This is the consideration that has driven the Commission's practice in defining the relevant market in automotive cases also in terms of the individual segments and this is the reason why Member States presented the relevant market related arguments in this as well as in other cases in the past in terms of individual segments.

(105) Since Autoeuropa will produce cars belonging to A0 and […] segments according to POLK, and could also produce cars belonging to the B segment according to POLK, the Commission considered that these individual segments and for SUVs also the SUV-B segment according to Global Insight, as well as the combined segment (A0 to B) according to POLK should all be considered as relevant plausible markets for this case.

(106) The Commission considered that the relevant geographic market for the products concerned is at least EEA-wide. The Portuguese authorities and Autoeuropa accepted that the Commission applies this geographic market definition for the purposes of this notification ([24]).

(107) In light of the above, and as during the formal investigation the Commission did not receive any additional information showing that it should modify its conclusions from the opening decision, the Commission maintains its assessment as regards the product and geographic market definitions.

5.6.1. CONCLUSION ON THE MARKET SHARE TEST (PARAGRAPH 68(A) OF THE RAG 2007-13)

(108) The Commission has carried out the test laid down in point 68(a) of the RAG 2007-13 in all plausible product and geographic markets to verify whether the beneficiary's market share exceeds 25 % before and after the investment.

(109) 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 individual A and B segments and in the combined A0, A and B segments (according to POLK) in the EEA accounts for more than 25 % in all years between 2013 and 2019. The Commission therefore concludes that the threshold laid down in paragraph in 68(a) is exceeded.

([23]) See for example, the final Commission decision in the Porsche case, SA. 34118 (adopted in July 2014) when it left open the question of market definition and applied the traditional approach of examining all 'plausible market definitions defining individual car segments (including the narrowest segmentation for which data are available)'. See recital 86 of this decision, citing a range of cases, including Fiat Powertrain technologies, SA.30340, recital 88 ('As the project does not exceed the thresholds provided in paragraph 68(a) of the RAG at the level of the smallest segmentation of the downstream product market for which data are available, it results that the project does not exceed the thresholds provided in paragraph 68(a) of the RAG for all possible combinations of these car segments'). 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).

([24]) See also section 3.3.2.2 of the opening decision.

5.6.2. CONCLUSION ON THE PRODUCTION CAPACITY IN AN UNDERPERFORMING MARKET TEST (PARAGRAPH 68(B) OF THE RAG 2007-13)

(110) As the result of the paragraph 68(a) test requires already proceeding to the in-depth assessment of the aid, it is not necessary to carry out the paragraph 68(b) test.

5.6.3. CONCLUSION

(111) In light of the above, the Commission decides that the relevant threshold of the 68 (a) test is 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.

5.7. *IN-DEPTH ASSESSMENT OF THE AID MEASURE*

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

5.7.1. POSITIVE EFFECTS OF THE AID

5.7.1.1. *Objective of the aid*

(113) Paragraph 12 of the IDAC requires that Member States substantiate the contribution of the investment project to the development of the region concerned. The Commission takes note of the investment's positive regional effects, as presented by Portugal (see recitals 45 to 49 above) and considers that in particular the direct and indirect job creation effects, the implantation of additional suppliers in the region, the knowledge transfer into the region, and the improvement of the regional skills base represent a significant contribution to the development of the region and to the achievement of the EU cohesion objective.

5.7.1.2. *Appropriateness of the aid instrument*

(114) 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.'

(115) Portugal justified (see recitals 51 and 52 above) the appropriateness of the aid instrument by the economic situation in Peninsula de Setubal region, proving that the region is disadvantaged in comparison with the national average: during the period 2011-2013, the regional GDP per capita was around 75 % of the Portuguese average.

(116) In view of the socioeconomic situation of Peninsula de Setubal 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 15 %, and in line with earlier case practise (e.g. in the Dell Poland decision ([25]) and Porsche 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.

5.7.1.3. *Incentive effect/Counterfactual scenario*

(117) Paragraph 20 of the IDAC requires that the formal incentive effect conditions as set out in paragraph 38 of the RAG 2007-13 must be met. The Commission has verified in section 5.5 above that this is the case for the notified project. As to the substantive incentive effect, the IDAC requires the Commission to verify in detail that

([25]) Commission Decision 2010/54/EC of 23 September 2009 on the aid which Poland is planning to implement for Dell Products (Poland) Sp. z o.o. C 46/08 (ex N 775/07) (OJ L 29, 2.2.2010, p. 8), recital 171.

([26]) SA.34118 (2012/C, ex 2011/N), not yet published in the OJ, available on http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3, recital 107.

the aid is necessary to change 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 (scenario 2).

(118) The IDAC requires the Member State to demonstrate 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. It thus places the burden of proof regarding the existence of an incentive effect on the Member State. 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 counterfactual scenario has to be deemed realistic by the Commission.

(119) The Portuguese authorities stated (see recital 54 above) that the aid to Autoeuropa falls under scenario 2 and presented a counterfactual scenario reflecting the concrete investment and location planning for the notified project which considered as alternative location a plant in [location 1 in a non-assisted area in the EEA], […].

(120) Paragraph 25 of the IDAC indicates that the Member State could give proof of the incentive effect of the aid for a scenario 2 situation 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.

(121) Portugal provided (see recitals 68, 70 and 71 above) contemporary and genuine evidence documenting VW Group's, and for the notified project Volkswagen's Brand multi-stage decision-making process concerning first the product decision and then the investment and location decision.

(122) This documentation shows that after the sales potential for new products in the segments A0 SUV and […] ([…]) had been established in 2012 in planning round 61, the controlling department [Group Controlling] identified initially in July 2012 four options for the production location: Setubal, [location 1 in a non-assisted area in the EEA], [location 2 outside EEA] and [location 3 in a non-assisted area in the EEA] by applying two main criteria: whether at an existing plant additional capacities can still be installed and whether the existing facilities are compatible with the planned investment. The calculations conducted by [Group controlling] also included the sales volume of the [predefined model] which had a planned SOP at a similar timing. Three alternatives with the volumes split between the four sites were developed. For each alternative, the production costs per car were calculated and the outcome of these calculations showed that at that point in time the best alternative would had been to combine the [predefined model] and the A0 SUV volumes in [location 1 in a non-assisted area in the EEA] and to limit the new volumes in Setubal to the […] segment.

(123) In the later planning process, the controlling department decided to exclude [location 3 in a non-assisted area in the EEA] due to disadvantages in personnel costs and [location 2 outside EEA] due to disadvantages in logistic costs and therefore only retained [location 1 in a non-assisted area in the EEA] as a viable alternative location to Setubal.

(124) The Commission notes that in January 2014 Volkswagen decided to locate the production of the [predefined model] in [location 1 in a non-assisted area in the EEA] and [location 2 outside EEA], where already the predecessor model had been produced. Portugal provided evidence to prove that even after the [predefined model] decision was taken, [location 1 in a non-assisted area in the EEA] remained a realistic scenario for the notified investment. The documents provided allow the Commission to conclude that in March 2014 when the product decision was taken by the VAP, [location 1 in a non-assisted area in the EEA] had sufficient capacity to accommodate the needs of the notified project. This is further supported by VW Group's decision of March 2015 to produce in [location 1 in a non-assisted area in the EEA] another model with a similar yearly production capacity as the notified project.

(125) Moreover, the Commission verified that all the relevant costs relating to additional shifts needed in [location 1 in a non-assisted area in the EEA] in order to cope with the additional capacity needed for the notified project were taken into account in the counterfactual scenario. In addition, it takes note of Portugal's argument that if Setubal would not have been chosen as location for the notified project, Autoeuropa might have had to shut down at least major parts of the plant. The Commission verified that both the costs for the dismissal of employees in Setubal and the costs for reimbursing the State aid granted in the earlier investment projects mentioned in section 4.2 were taken into account in the counterfactual scenario.

(126) The Commission is also satisfied that the calculations of the investment and production costs at the two locations used in the counterfactual scenario are accurate and are based on credible data provided by the factories or on credible assumptions.

(127) As described in recital 70 and in annex I of this decision, the estimates for production costs attributable to the location, which include production costs and investment costs, resulted in a cost disadvantage of EUR 90 million in nominal value for Setubal compared to [location 1 in a non-assisted area in the EEA]. In order to reduce the cost disadvantage of Setubal, and in view of the forthcoming formal decision of the VAI on the localisation of the investment project, after the product decision was taken by the VAP on 10 March 2014, Autoeuropa introduced an application for aid on 31 March 2014.

(128) On 28 May 2014 and 26 June 2014, the VAI decided to locate the notified investment in Setubal. As documented by the minutes of the VAI meetings, this decision was adopted explicitly subject to the availability of State aid. Works on the project started on 26 June 2014.

(129) The Commission established already above (see recital 85) that in accordance with paragraph 20 of the IDAC the formal incentive effect requirements laid down in paragraph 38 of the RAG 2007-13 were met. In addition, the Portuguese authorities provided clear evidence that the aid effectively had an impact on the investment's location choice, since VW Group's decision to locate the notified project in Setubal was taken only after signing the investment contract ([27]) which confirmed that the investment project would be eligible for State aid. The Commission considers, in accordance with paragraphs 23 and 25 of the IDAC that the counterfactual scenario presented by Portugal is realistic and supported by genuine and contemporary evidence proving that the aid has a real (substantive) incentive effect: by reducing the viability gap between both locations in favour of Setubal, the aid contributed to changing the location decision of the beneficiary company. Without the aid, the investment would not have taken place in Setubal.

5.7.1.4. *Proportionality of the aid*

(130) Paragraph 29 of the IDAC requires that 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.

(131) 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 96.

(132) In addition to the general principle of proportionality contained in the RAG 2007-13, 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.

(133) The documentation submitted by Portugal (see recitals 68, 70 and 71 above) proves that the aid was limited to the amount necessary, because it does not exceed the difference in costs between locating the investment in Setubal and in […]. The calculation done at the time of the counterfactual analysis (and based on documents drafted contemporaneously with the investment decision) shows that even with the aid, Setubal was by EUR 14,6 million more expensive in discounted value than [location 1 in a non-assisted area in the EEA]. The Commission notes that the remaining cost disadvantage was considered as acceptable due to certain qualitative aspects, such as reasons of social responsibility (without the investment Autoeuropa would have had to shut down major parts of the Setubal plant) or the possibility for Setubal to cover production peaks without any support by other plants, while [location 1 in a non-assisted area in the EEA] would have to shift some of the production to [location outside EEA]. If the calculation is done taking into account the notified discounted aid amount of EUR 36,15 million ([28]), the location disadvantage of Setubal would still be EUR 11,85 million (EUR 48 million-EUR 36,15 million).

([27]) The investment contract contained a suspensive clause making it dependent on VW Group's decision to proceed or not with the project, as long as this decision was taken before 30 June 2014.

([28]) See the explanation for the difference in aid amounts in footnote 19 above.

(134) As the aid is limited to the amount necessary to compensate for the net additional costs of locating the investment project in Setubal, as compared to the alternative location [location 1 in a non-assisted area in the EEA], the Commission considers that the proportionality of the aid at the time of the location decision is demonstrated.

5.7.2. NEGATIVE EFFECTS OF THE AID ON COMPETITION AND TRADE

(135) 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'.

(136) Without the notified aid, the investment would have been carried out in another location within the EEA, resulting in the same level of distortion of competition (i.e. scenario 2). Since the aid is limited to the minimum necessary to off-set the additional costs stemming from the regional handicaps of an assisted region, it does not have undue negative effects on competition, such as crowding-out of private investment.

(137) According to paragraph 50 of IDAC, due to its geographical specificity, the potential negative location effects of regional aid are already recognised and restricted to a degree by RAG and the regional aid maps, which define exhaustively the areas eligible to grant regional aid, taking account of the equity and cohesion policy objectives, and the eligible aid intensities. However, 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 in 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 effect on trade and 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.

(138) In the case of the notified project, a greenfield investment was not considered, as an investment package of [140 000-160 000] cars falling into a […] price market segment is too small to render a greenfield investment viable. By applying two criteria, existing additional capacities and compatible facilities with the planned project, the only initial alternative locations were limited to [location 1] (non-assisted area in [the EEA]), [location 2] ([outside EEA]) and [location 3] ([non-assisted area in the EEA); [location 2 outside EEA] and [location 3 in a non-assisted area in the EEA] were in a later stage excluded as they were characterised by high logistics, respectively high personnel costs.

(139) Therefore, the Commission concludes that there is no indication that the investment would have been located in another assisted region with a higher or similar aid intensity ceiling: hence the Commission considers that the aid has no anti-cohesion effect that would run counter the very rationale of regional aid and the aid has no undue negative effects on trade.

5.8. *BALANCING*

(140) 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.

(141) 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'.

(142) 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.

(143) In accordance with paragraph 68 of the RAG 2007-13, 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.

6. **CONCLUSION**

(144) The Commission concludes that the proposed regional investment aid in favour of Volkswagen Autoeuropa, Lda awarded on 30 April 2014 subject only to Commission approval fulfils all the conditions laid down in the RAG 2007-13 and in the IDAC and can therefore be considered compatible with the internal market in accordance with Article 107(3)(c) TFEU.

(145) The Commission recalls that in accordance with recital 16 of the opening decision, Portugal committed that neither the notified aid amount, nor the notified aid intensity will be exceeded, if the realised eligible expenditure deviates from the planned amount of eligible expenditure, as taken into account in the notification and the calculation of the maximum aid amount. Portugal also undertook to submit to the Commission on a 5-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the amounts being paid and on any other investment projects started at the same establishment/plant) and within 6 months after payment of the last tranche of the aid, in accordance with the notified payment schedule, a detailed final report.

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Portugal is planning to implement for Volkswagen Autoeuropa, Lda, amounting to EUR 36,15 million in present value and representing a maximum aid intensity of 6,03 % in gross grant equivalent, is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Implementation of the aid, amounting to a maximum of EUR 36,15 million in present value and to a maximum aid intensity of 6,03 % in gross grant equivalent, is accordingly authorised.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 27 November 2015.

For the Commission

Margrethe VESTAGER

Member of the Commission