



2024/3031

11.12.2024

**COMMISSION DECISION (EU) 2024/3031**

**of 11 June 2024**

**on the regional State aid SA.63470 (2022/C) (ex 2021/N) which Hungary is planning to implement for GKN Automotive Hungary Kft. (previously Rubin NewCo 2021 Kft.)**

*(notified under document C(2024) 3925)*

**(Only the English version is authentic)**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'), 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), point (a), thereof,

Having called on interested parties to submit their comments pursuant to these provisions <sup>(1)</sup> and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 11 June 2021, Hungary pre-notified to the Commission its intention to grant regional investment aid (the 'measure') in favour of Rubin NewCo 2021 Kft. ('Rubin') <sup>(2)</sup> for the setting-up of a new establishment for production of automotive components in Miskolc, Hungary (the 'Investment Project').
- (2) On 30 June 2021, a virtual meeting took place between the Commission services, the Hungarian authorities and representatives of GKN Automotive Limited ('GKN Automotive', recital (15)).
- (3) On 23 July 2021, the Commission requested supplementary information, which Hungary submitted on 27 August 2021.
- (4) On 21 September 2021, a second virtual meeting took place between the Commission services, the Hungarian authorities and representatives of GKN Automotive.
- (5) On 30 September 2021, the Commission requested supplementary information, which Hungary submitted on 2 December 2021, together with its formal notification of the measure.
- (6) On 1 February 2022, the Commission requested further information, which Hungary provided on 29 March, 11 April and 4 May 2022. The Commission requested additional information on 13 May and 15 July 2022 and Hungary replied, respectively, on 17 May and 23 August 2022.
- (7) By letter of 23 August 2022, Hungary exceptionally agreed to waive its right deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation No 1/1958 <sup>(3)</sup>, and agreed to have this decision adopted and notified in the English language.
- (8) By letter dated 27 October 2022, the Commission informed Hungary that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the measure (the 'Opening Decision'). On 14 February 2023, Hungary sent its comments on the Opening Decision to the Commission.

<sup>(1)</sup> OJ C 336, 22.9.2023, p. 11.

<sup>(2)</sup> Subsequently, Rubin's name was changed to GKN Automotive Hungary Kft.

<sup>(3)</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

- (9) The Opening Decision was published in the *Official Journal of the European Union* on 22 September 2023 <sup>(4)</sup>. The Commission called on interested parties to submit their comments within one month.
- (10) On 3 and 16 October 2023, the Commission received comments from, respectively, Melrose Industries PLC ('Melrose') and GKN Automotive. On 24 November 2023, the Commission submitted those comments to Hungary, which replied by letter dated 21 December 2023.
- (11) On 8 March 2024, Hungary submitted an overview table listing the doubts that had been raised in the Opening Decision and the corresponding evidence that Hungary considered it had provided to dispel such doubts.
- (12) On 16 April 2024, a meeting took place between the Commission services, Hungary and GKN Automotive. On the same day and in view of the meeting with the Commission services, Hungary supplemented its comments of 14 February 2023 with new documents. On 17 April 2024, Hungary re-submitted those documents together with some additional documents and a memorandum summarising the discussion with the Commission services of 16 April 2024 and providing further comments on the issues discussed and on the new evidence submitted.
- (13) On 25 April 2024, as a further follow-up to the meeting of 16 April 2024, Hungary submitted another memorandum further commenting on some of the Commission's doubts.

## 2. DETAILED DESCRIPTION OF THE MEASURE

### 2.1. Objective of the measure

- (14) Through the measure, the Hungarian authorities intend to promote regional development by providing regional investment aid for the setting-up of a new establishment for the production of automotive components (sideshafts, propshafts and sub-components such as joints). The Investment Project is located in the Felsőzsolca industrial zone in Miskolc, Borsod-Abaúj-Zemplén County (NUTS 3 code HU311), in the region of Northern Hungary (NUTS 2 code HU31), an area eligible for regional aid under Article 107(3), point (a), TFEU based on the Hungarian regional aid maps for both the period from 1 July 2014 to 31 December 2021 ('regional aid map 2014') <sup>(5)</sup> and the period from 1 January 2022 to 31 December 2027 ('regional aid map 2022') <sup>(6)</sup>.

### 2.2. The beneficiary

- (15) The recipient of the aid is Rubin, a legal entity that at the time of its establishment (January 2021), was fully owned by Eachairn Aerospace Holdings Limited, a member of UK-based Melrose group <sup>(7)</sup>. On 31 August 2022, 100 % of the ownership of Rubin was transferred, within the Melrose group, to GKN Industries Limited <sup>(8)</sup>. GKN Industries Limited controls GKN Automotive, the entity which holds investments in GKN Automotive entities, performs some head office functions and employs part of GKN Automotive's senior management and functional leadership team <sup>(9)</sup>. On 20 April 2023, Melrose demerged its GKN Automotive business <sup>(10)</sup>, including GKN Industries Limited, GKN Automotive and Rubin, to form part of a new independent group of companies, the ultimate parent company of which is the UK-based Dowlais Group plc. The beneficiary of the aid does not meet the criteria to qualify as a small or a medium-sized enterprise <sup>(11)</sup> and should thus be considered as a large enterprise.

<sup>(4)</sup> Cf. footnote 1.

<sup>(5)</sup> Commission Decision of 11 March 2014 in case SA.37718 (2013/N) (OJ C 172, 6.6.2014, p. 1), as modified by Commission Decision of 11 October 2016 in case SA.46346 (2016/N) (OJ C 4, 6.1.2017, p. 1), and as prolonged (until 31 December 2021) by Commission Decision of 7 October 2020 in case SA.58164 (2020/N) (OJ C 430, 11.12.2020, p. 1).

<sup>(6)</sup> Commission Decision of 16 September 2021 in case SA.63934 (2021/N) (OJ C 410, 8.10.2021, p. 2), as modified by Commission Decision of 12 May 2023 in case SA.107119 (2023/N), OJ C 195, 2.6.2023, p. 8.

<sup>(7)</sup> Eachairn Aerospace Holdings Limited is 100 % indirectly owned by the holding company of the Melrose Group, Melrose Industries PLC.

<sup>(8)</sup> GKN Industries Limited, like Eachairn Aerospace Holdings Limited, was, since the first half of 2018, 100 % indirectly owned by Melrose Industries PLC.

<sup>(9)</sup> Information based on the last available Annual Report of GKN Industries Limited and GKN Automotive Limited (2022 Annual Report), published in the UK Companies House.

<sup>(10)</sup> Together with the powder metallurgy and hydrogen businesses, as mentioned on the GKN Automotive website 'Dowlais Group plc ("Dowlais" or the "Company") completion of demerger and admission of shares in Dowlais' (<https://www.gknautomotive.com/en/media-centre/news-releases/2023/dowlais-group-plc-dowlais-or-the-company--completion-of-demerger-and-admission-of-shares-in-dowlais/>).

<sup>(11)</sup> Within the meaning of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

- (16) The Hungarian authorities confirmed that neither Rubin nor the Melrose Group is an undertaking in difficulty as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty <sup>(12)</sup>. The Hungarian authorities have not informed the Commission of any changes in this respect that would have been caused by the change in ownership of Rubin.

### 2.3. The Investment Project

#### 2.3.1. General description

- (17) According to the Hungarian authorities, the Investment Project is part of GKN Automotive's long-term restructuring plan defined in 2019 (the 'Strategy'). The Strategy aims at safeguarding GKN Automotive's competitiveness in an increasingly competitive market environment by consolidating its inefficient and scattered European production footprint and shifting its production capacity towards more cost-effective locations. GKN Automotive's manufacturing operations in Europe are spread across more than ten sites, the majority of which are in Western Europe, in locations with high production costs. Furthermore, those sites are largely fragmented and supply each other with intermediate products thereby resulting in inefficiencies through increased transport and stock holding costs.
- (18) The Strategy is structured into multiple phases ('Waves one to six'). The first and the third waves – which involve the [transfer of business] (\*) of certain sites – are the only waves in the process of being implemented. As explained at recitals 40 to 42 of the Opening Decision, Wave two concerned the setting-up of a new production facility for products different to those under the Investment Project and its implementation has been suspended, and Waves four, five and six did not advance further than the conceptual stage of the Strategy with no further steps towards implementation taken.
- (19) Wave one, which sought to balance GKN Automotive's capacity with expected demand, consisted in closing certain sites and transferring their manufacturing operations to existing European sites with spare capacity.
- (20) Wave three, as initially planned in the Strategy (November 2019) provided for the [transfer of business] of two European sites and the transfer of their capacity to two integrated sites to be established in two countries that were more cost-effective. Those new production sites would also cover production capacity from other existing production sites to be [transferred] under the following waves. This wave was amended in July 2020 ('New wave three'). Under New wave three, the relevant production would be integrated into only one integrated site.
- (21) The Hungarian authorities explained that the decision to pursue a certain wave within the Strategy (for example, a decision on the [transfer] and/or transfers of production capacity and on the setting-up of new sites, where needed) should be considered as having been taken only once a project is subject to a more detailed feasibility analysis (bottom-up) and a business case is prepared for approval of the relevant funding release.
- (22) The Investment Project, which implements New wave three, concerns the setting-up of a production facility for automotive components that will integrate the capacity, without increasing it, of two existing GKN Automotive production facilities in Europe into a new integrated plant in Hungary. Hungary explained that the Investment Project is not planned to accommodate further transfers under the scope of waves two and four to six of the Strategy (recitals 41 and 42 of the Opening Decision).
- (23) The Investment Project will have a production capacity of around [5.5 – 7.5] million units of sids shafts and [0.5 – 2.5] million units of prop shafts. In addition, it will produce joints and other components (capacity of [17.5 – 21] million units) to be assembled on site into sids shafts and prop shafts, and also supply other GKN Automotive assembly sites.

<sup>(12)</sup> OJ C 249, 31.7.2014, p. 1.

(\*) Confidential information.

- (24) The Investment Project is expected to create approximately 1 500 new direct jobs in Hungary.
- (25) According to the Hungarian authorities, the beneficiary submitted its aid applications on 8 April 2021 (for the cash grant) and on 31 March 2021 (for the tax benefit). Those applications were (conditionally) approved on, respectively, 22 December 2021 for the cash grant (recital (29)), and on 12 December 2021 for the tax benefit (recital (31)). The works on the Investment Project then started, within the meaning of paragraph (20)(v) of the Regional Aid Guidelines 2014-2020<sup>(13)</sup> ('RAG 2014')<sup>(14)</sup> and of paragraph 19(29) of the Regional Aid Guidelines applicable as from 1 January 2022<sup>(15)</sup> ('RAG 2022') on 28 April 2022. Finally, production in the facility started in the last quarter of 2023, with full production capacity planned to be reached in 2026.

#### 2.3.2. *Eligible investment costs*

- (26) The eligible investment costs amount to HUF 51 919,55 million (EUR<sup>(16)</sup> 142.74 million) in nominal value and HUF 50 112,01 million (EUR 137.77 million) in discounted value<sup>(17)</sup>.
- (27) Hungary confirmed that the assets to be acquired under the Investment Project are new. Hungary also confirmed that the costs of intangible assets included under the eligible investment costs meet the conditions set out in paragraphs 100 to 102 of the RAG 2014, which are fully reflected in Article 18(5) of Government Decree No 210/2014 (VIII.27.) 'on the earmarked scheme for investment promotion' (recital (29)), which provides that, in order to be eligible for the calculation of the investment costs, intangible assets: (a) must be used exclusively by the investor in the establishment receiving the aid; (b) must be depreciated; (c) must be purchased under market conditions from third parties unrelated to the buyer; (d) must be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is granted for at least five years (three years for small and medium-sized enterprises); furthermore (e) for large enterprises, costs of intangible assets are eligible only up to a limit of 50 % of the total eligible costs for the project. Similar provisions are also included in the cash grant incentive agreement.

#### 2.4. **Form of aid, granting authority and national legal bases**

- (28) The measure includes two different aid instruments: a cash grant and a tax benefit, financed by the general State budget.

##### 2.4.1. *The cash grant*

- (29) The cash grant is provided based on Government decree No 210/2014 (VIII.27.) 'on the earmarked scheme for investment promotion', a regional aid scheme<sup>(18)</sup> implemented under Commission Regulation (EU) No 651/2014 ('GBER')<sup>(19)</sup>, allowing aid for initial investments in a variety of economic sectors. The cash grant constitutes an individually notifiable case of application of that aid scheme, since it exceeds the notification threshold laid down in Article 4(1), point (a), GBER (recital (110)). The cash grant incentive agreement (the 'Incentive Agreement') was signed on 22 December 2021 between the Ministry of Foreign Affairs and Trade (aid grantor) and Rubin and is conditional upon the Commission's approval of the aid.

<sup>(13)</sup> Guidelines on regional State aid for 2014-2020 (OJ C 209, 23.7.2013, p. 1).

<sup>(14)</sup> The RAG 2014 were prolonged until 31 December 2021.

<sup>(15)</sup> Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1).

<sup>(16)</sup> HUF conversions to EUR are indicative and rounded, based on an exchange rate of EUR 1 = HUF 363.73 (official exchange rate of the National Bank of Hungary on 31 March 2021, the last day of the month preceding the aid applications).

<sup>(17)</sup> Discount rate 1.80 %, date of discounting April 2021, in line with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

<sup>(18)</sup> SA.61023 (2021/X) as modified by SA.63819 (2021/X).

<sup>(19)</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

#### 2.4.2. The tax benefit

- (30) The tax benefit, by the Ministry of Finance (aid grantor) is based on Act LXXXI of 1996 'on Corporate Tax and Dividend Tax' <sup>(20)</sup> and Government Decree No 165/2014 'on Development Tax Incentive (VII.17.)' <sup>(21)</sup>, an aid scheme <sup>(22)</sup> implemented under the GBER, allowing aid in the form of tax benefits for certain investments. The tax benefit constitutes an individually notifiable case of application of that aid scheme since the total aid amount (cash grant and tax benefit) exceeds the notification threshold laid down in Article 4(1), point (a), GBER (recital (110)). The annual amount of the tax benefit to be utilised may not exceed 80 % of the annual payable corporate tax of the beneficiary. The available tax benefit may be utilised in thirteen consecutive fiscal years at most, but no later than in the sixteenth fiscal year (tax year) after the fiscal year when the application is submitted.
- (31) Hungary considers that it awarded the tax benefit on 12 December 2021, which is the date on which the Government adopted a decision <sup>(23)</sup> according to which it 'allow(s) the Company to benefit from the development tax advantage for its investment...'. That decision refers to a subsequent act setting specific conditions for the granting: 'The development tax benefit shall be granted in accordance with the conditions laid down in the decision of the Government to be published on the basis of the decision of the European Commission'.

#### 2.5. Aid amount, aid intensity and cumulation with other investment aid

- (32) The total notified aid amounts to HUF 15 917,4 million (EUR 43.76 million) in discounted value. The cash grant has an overall nominal value of HUF 16 280,56 million (EUR 44.76 million) and a discounted value of HUF 15 644,30 million (EUR 43.01 million). The projected amount of the tax benefit is HUF 273.10 million (EUR 0.75 million) in discounted value.
- (33) The Hungarian authorities calculated the maximum aid amount and the maximum aid intensity for the Investment Project by applying the scaling-down mechanism <sup>(24)</sup> to the total eligible investment costs in discounted value and considering the regional aid ceiling of 50 % set by the regional aid map 2014, which it considered as the only regional aid map applicable to both components of the aid (recital (91)) <sup>(25)</sup>. Based on that calculation, the maximum aid amount could not exceed HUF 15 976 million (EUR 43.9 million) in discounted value i.e. the maximum aid intensity allowed for the Investment Project was considered to be 31.88 %. The notified aid amount, as indicated at recital (32), is below that maximum, and corresponds to an aid intensity of 31.76 %.
- (34) In light of the provisions of the Incentive Agreement, neither the maximum aid amount (recital (33)), nor the maximum aid intensity (recital (33)) would be exceeded if, for instance, the amount of eligible expenditures deviates from the estimated amount. This is because, according to the Incentive Agreement, (i) even if the actual investment costs of the investment increase compared to the eligible costs set out in the Incentive Agreement, the beneficiary will only be entitled to the cash grant maximum aid amount specified in the agreement; (ii) it is the Commission's decision that determines the aid intensity of the total State aid that may be granted to the investment (including the tax benefit); and (iii) no amendment affecting the essential content of the Commission decision is possible under the Incentive Agreement without a prior notification to the Commission.
- (35) The Hungarian authorities confirmed that the measure cannot be cumulated with other State aid or *de minimis* aid covering the same eligible costs.

<sup>(20)</sup> <https://net.jogtar.hu/jogszabaly?docid=99600081.tv>.

<sup>(21)</sup> <https://net.jogtar.hu/jogszabaly?docid=A1400165.KOR>.

<sup>(22)</sup> SA.61029 (2021/X), amending SA.49983.

<sup>(23)</sup> The Commission was provided with an undated decision by the Government, which Hungary confirmed was adopted on 12 December 2021.

<sup>(24)</sup> See paragraphs 86 and 20(c) of the RAG 2014 and paragraphs 90 and 19(3) of the RAG 2022.

<sup>(25)</sup> As explained further at recital (91), Hungary considered the 50 % ceiling to apply also in case of application of the regional aid map 2022.

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

- (36) The Hungarian authorities explained that within the waves under implementation, mentioned at recital (18), GKN Automotive had already closed several sites and had concrete plans to [transfer the business of] two further sites in [...] Europe, after the production capacity of those sites had been transferred to the new Hungarian plant.

**2.7. Maintenance of the assisted activity**

- (37) Section 14(1)(d) of Government Decree No 210/2014 and Section 4(3) of Government Decree No 165/2014 provide that the cash grant and the tax benefit can only be applied and maintained if the investment is maintained in the area concerned for at least five years after its completion. The Incentive Agreement also includes an equivalent obligation on the beneficiary until the end of the monitoring period, which is set at five financial years after 31 December 2026, the deadline for the completion of the investment <sup>(26)</sup>.

**2.8. Own contribution**

- (38) Hungary confirmed that the beneficiary would provide a financial contribution of at least 25 % of the eligible costs through its own resources or by external financing, in a form that is free of any public financial support. This results from the Hungarian legislation applicable to the measure, namely Section 4(7) of Government Decree No 165/2014 (VII. 17.) and Section 14(1)(e) of Government Decree No 210/2014, as well as from the Incentive Agreement.

**2.9. Grounds for initiating the procedure laid down in Article 108(2) TFEU**

- (39) The Commission assessed the compatibility of the aid with Article 107(3), point (a), TFEU, as interpreted by the RAG 2014 and the RAG 2022. The application of the two RAGs is related to the different granting dates of the cash grant and the tax benefit. The cash grant was granted before 31 December 2021, and therefore falls within the scope of RAG 2014. For the tax benefit, the Commission, at recital 111 of the Opening Decision, preliminarily considered that the tax benefit, had to be assessed based on RAG 2022. This was because the Government decision of 12 December 2021 presented by Hungary as the tax benefit granting act, could not qualify as such because it does not identify the relevant aid and refers to a further granting decision to be issued following the Commission's decision on the aid. Therefore, the Commission preliminary considered that the aid would be granted after 31 December 2021.

- (40) According to section 3.5 of the RAG 2014 and section 5.2 of the RAG 2022, regional aid can only be found compatible with the internal market if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in a way that it carries out additional activity contributing to the development of an area that it would not have carried out, or would only have done in a limited or different manner (i.e., scenario 1 situation, investment decision), or in another location (i.e., scenario 2 situation, location decision), if the aid was not granted (Opening Decision, recital 119).

- (41) In order to demonstrate the existence of a substantive incentive effect, the Hungarian authorities invoke a scenario 2 situation (location decision) (Opening Decision, recital 32) and claim that, without the aid, the investment would have taken place in Türkiye (Eskişehir) because it would have been more profitable to invest in that location as compared to the Hungarian location.

<sup>(26)</sup> The Incentive Agreement defines the completion of the investment as the date of capitalisation of the last capitalised asset, which cannot be later than the deadline for completion of the investment, that is, 31 December 2026.

2.9.1. *Doubts on incentive effect*

- (42) The Commission expressed the preliminary view that, following GKN Automotive's initial country assessment in November 2019, where seven countries-of-interest<sup>(27)</sup> had been identified and compared, with Poland, Hungary and Slovakia at the top of the list (recital 43 of the Opening Decision) and a 1-year site selection analysis in these three 'shortlisted' countries (Section 2.13.2.2. of the Opening Decision), Melrose decided to invest in Hungary on 9 December 2020 through the approval of the capital expenditure request ('CER') for the Investment Project. The CER reads: 'the target of this project is to generate value by consolidating the current footprint in ... into a new site located in Hungary.' The financial summary on that same document concluded on a payback period of [5.4 – 7] years without any consideration of any aid.
- (43) According to Hungary, the decision on the location for the investment was adopted only on 9 December 2021 by GKN Automotive and relied on State aid from Hungary to locate the Investment Project in that Member State rather than in an alternative location in Türkiye. More specifically, according to Hungary, Melrose's approval of the CER on 9 December 2020 only constituted a preliminary securing of the project funding, considering the location of that investment in Hungary as a working hypothesis, and did not constitute a decision on the investment location, but left the door open to a further site selection decision by the GKN Automotive Executive Team ('GKN Automotive ET'), that latter team being the sole decision-making body for the site selection workflow. Hungary had also submitted that, before the approval of the CER, the business case review for the Investment Project was carried out as part of the annual budget review meeting between GKN Automotive and Melrose on 12 November 2020. In that meeting Melrose had requested that the financial assumptions for the Investment Project in Hungary be improved to reduce the [5.4 – 7]-year payback period of the project to below [4.5 – 5.4] years, which Hungary had submitted is a decisive threshold for Melrose's investment policy. On that basis, as of December 2020, GKN Automotive explored the possibility to carry out the investment in Türkiye. In January 2021, GKN Automotive took a preliminary location decision in favour of Hungary, conditional upon receiving the full amount of incentives in Hungary, and in December 2021 it adopted a final location decision in favour of Hungary, finding that Hungary was 'still considered the preferred option concerning non-financial indicators, especially considering the current political and economic volatility in Turkey' and that the Hungarian incentives that were considered 'likely to be approved', 'will largely offset [the] financial advantage of Turkey [...] over Hungary and will enable the project to meet the target payback period of [4.4 – 5.3] years ([5.5 – 7.1] years w/o incentives)'. Following the final decision of 9 December 2021, GKN Automotive discontinued the preparatory activities in Türkiye and purchased a plot of land in Hungary for the purposes of the Investment Project (recitals 76 and 80 of the Opening Decision).
- (44) The Commission questioned whether GKN Automotive had, in its attempt to reach the financial target imposed by Melrose (if existent), the mandate and the freedom to change the location as presented in the CER (recital 133 of the Opening Decision). In this context, the Commission also noted, at recital 134 of the Opening Decision, that the language of the meeting notes and preparatory document of the GKN Automotive ET meeting of 12 August 2020, which identify the approval of the land selection by Melrose as one of the next steps (recital 50 of the Opening Decision), seemed to point to Melrose as the decision-making body with respect to site selection for the Investment Project. It also appeared that Melrose's approval was required for the aid application documents (recital 68 of the Opening Decision). In the presentations for the 'Land Selection Review' meeting of 20 January 2021 and the 'Land Selection Decision' meeting of 29 January 2021 (recitals 67 and 68 of the Opening Decision), there was also reference to an alignment of the final decision with Melrose and Hungary explained that once the GKN Automotive ET took the location decision in December 2021, it communicated it to the Melrose leadership and that the Melrose leadership 'did not raise objections'(recital 79 of the Opening Decision).

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<sup>(27)</sup> Czechia, Bulgaria, Hungary, Poland, Romania, Slovakia and Slovenia.

- (45) The Commission expressed the preliminary view that, if GKN Automotive had to work within the scope of the approved project description, it could be that Türkiye was only established as a counterfactual location for the purposes of enabling GKN Automotive to demonstrate the requisite incentive effect and hence to receive regional aid for the investment, rather than as a genuine counterfactual of where the Investment Project would take place in the absence of aid. The Commission also noted that the beneficiary was fully aware that, in the context of the relocation, to qualify for regional aid, it needed to present a scenario 2 counterfactual for the Investment Project, as it had been in contact with the Hungarian authorities responsible for State aid matters (recital 133 of the Opening Decision). Indeed, following some preliminary discussions between GKN Automotive and the Hungarian authorities on the incentives available for the Investment Project (recital 51 of the Opening Decision), on 26 August 2020, the Hungarian Promotion Agency ('HIPA') had warned GKN Automotive, by e-mail, that to receive the Commission's approval on the relevant State aid 'we would have to prove that there is no casual<sup>(28)</sup> relation between the potential state aid and the closure of an activity in an EEA country. Considering all the above, based on our consultation with the Hungarian State Aid Monitoring Office, we do not think that this statement may be underpinned in this case' (recital 52 of the Opening Decision). On 5 November 2020, HIPA had provided an indicative incentive offer for a cash grant of EUR [9 – 13] million and a tax benefit of EUR [18 – 25] million (which corresponded, altogether, to the applicable regional aid ceiling), which referred to the Investment Project identifying Poland and Slovakia as alternative locations. The same HIPA e-mail transmitting that indicative offer also reads: 'We are also open to facilitate a joint meeting with the State Aid Monitoring Office, in order to take a closer look on the relocation matters, which might serve as a good guidance during the notification procedure towards the European Commission' (recital 53 of the Opening Decision).
- (46) The Commission harboured serious doubts that a payback period of maximum [4.5 – 5.4] years constituted a determinative factor, prevalent at the time of the investment and location decision on the Investment Project. The Hungarian authorities had not provided any evidence, contemporaneous to the events in question, confirming the relevant payback period, nor any material to substantiate the argument that Melrose had requested that the payback period for the investment in Hungary be improved to reach the [4.5 – 5.4]-year target. The Commission also noted that it would expect to find some reference to such [4.5 – 5.4]-year requirement or to the efforts to reach it in the CER for the Investment Project or in the more detailed description attached to it (i.e. the presentation used at the meeting with Melrose on 12 November 2020) (recital 135 of the Opening Decision). This was also based on the fact that, in the capital expenditure request for another project of much lower cost, submitted by Hungary, the Commission found clear reference to efforts required to reduce the payback period, which in that case was already below [4.5 – 5.4] years. The Opening Decision also refers to the fact that the CER did not refer to Hungary as only being a 'working hypothesis' and to the fact that the wording<sup>(29)</sup> of the 12 November presentation, annexed to the CER, points to a location decision to be taken by Melrose (recital 57 of the Opening Decision). That presentation also includes a clear request to 'Approve [Investment Project]<sup>(30)</sup> business case with a payback of [5.4 – 7] years<sup>(31)</sup>, recurring cash savings of GBP [50 – 65]m and total one-off costs of GBP [220 – 400]m' (of which [...] % constitutes severance payments) (recital 54 of the Opening Decision).
- (47) The Commission questioned the existence of a strict investment policy requiring a maximum payback period of [4.5 – 5.4] years that would have been applicable to the relevant decision-making process also on the basis of the pieces of evidence listed at recital 136 of the Opening Decision (recital (138)).
- (48) As to the counterfactual scenario involving a location of the investment in Türkiye, the Commission acknowledged the further documentary evidence as of December 2020 (recital 131 of the Opening Decision) from which it appears that a location in Türkiye, as an investment location, was compared with the selected region in Hungary, in the context of the preliminary location decision in January 2021 and of the final location decision in December 2021. However, for the reasons set out at recital (50), the Commission could not establish that Türkiye was a genuine counterfactual location in which, in the absence of the Hungarian aid, the Investment Project would have taken place.

<sup>(28)</sup> The Commission notes that 'casual' might have been a clerical error and it should read 'causal'.

<sup>(29)</sup> Which reads: 'decision for Miskolc, HU driven by desire to balance exposure in EEU countries and not to localize another site in Poland'.

<sup>(30)</sup> '[Investment Project]' is a name used both for Wave three and New Wave three.

<sup>(31)</sup> [4.4 – 5.3] years in the best case and [5.4 – 8] years in the worst case. In addition, there was a cost reduction opportunity of GBP 18.9 million not taken into account in the payback of [5.4 – 7] years, with a possible payback period reduction of [0.2 – 0.4] years, resulting from the sale of the land and the building of one of the [transferred] sites.

- (49) The Commission noted that it was not clear on what basis in November/December 2020 Türkiye evolved as the only counterfactual location for the Investment Project to be further explored. GKN Automotive had excluded Türkiye as a potential location for setting up new plants<sup>(32)</sup> in the initial country assessment in November 2019 as it considered that it presented political risks. A presentation dated 13 November 2019 shows that GKN Automotive's existing site in Eskişehir (Türkiye), was evaluated at an initial stage of the assessment, with a significant expansion 'potentially attractive because of [the] ultra-low-cost status'. At the same time, it was considered that '[the] political stability of [the] country poses a significant risk', and that 'OEM investment decisions in Turkey [are] currently in [the] process of reconsideration/cancellation because of country risk'. The suggested future for Eskişehir was 'No change'. As a consequence, Türkiye was not further considered amongst the countries-of-interest to be scored and compared (recital (42)). One year later, Türkiye reappeared in the process together with Poland, Slovakia, Morocco and Serbia and very quickly evolved as the only alternative to Hungary that was explored, without any evidence of follow-up for any of the other locations. Hungary had explained that due to the comparable cost of the Investment Project between Hungary and either Poland or Slovakia, changing the location to either of those latter countries was not expected to yield significant financial benefits. It also explained that Morocco and Serbia were not considered due to the advantages offered by the already existing local footprint in Türkiye. Since the existing operations in Türkiye are limited in size in comparison to all of GKN Automotive's other sites, the Commission raised serious doubts as to whether those existing operations could actually represent a decisive factor to opt for Türkiye as the only alternative location to Hungary, with no need to perform any comparison with the other possible best cost locations. The Commission noted in this context that Romania and Bulgaria had also been identified among the countries-of-interest in the initial country assessment (recital (42)) as being very attractive locations in terms of costs. Although those two countries were eventually not shortlisted, it was not clear why they were not reconsidered as ultra-low-cost locations.
- (50) Even if Türkiye had been analysed as a genuine alternative between December 2020 and December 2021, it was not clear whether Türkiye presented a real counterfactual which GKN Automotive and/or Melrose, in December 2021, would have selected in the absence of State aid in Hungary. The Commission considered that Hungary did not sufficiently substantiate how the political risks, which had been evaluated as a deterrent factor in 2019 (recital (49)), had changed by December 2020, when Türkiye was re-introduced as an alternative location. Hungary did not provide a detailed risk analysis, report or other document concerning the 2019, 2020 and January 2021 assessments of the political and operational risks in Türkiye, nor did Hungary provide sufficient explanations as to why Melrose and/or GKN Automotive considered the political situation less volatile in December 2020 or January 2021 as compared to 2019 (recitals 143 and 144 of the Opening Decision). Given GKN Automotive's view on the political and economic volatility in Türkiye at the end of 2021 and the increased perceived risks<sup>(33)</sup>, the Commission raised doubts that Türkiye was a realistic investment option and preliminarily considered that GKN Automotive would have invested in Hungary in any event (recitals 78 and 144 of the Opening Decision). The Commission also questioned the underlying reasoning of the consideration in December 2021 that Hungary was the preferred option since Hungarian incentives 'will largely offset the financial advantage of the Turkey option', given that the financial advantage of the location in Türkiye (in terms of NPV) was only partially offset (less than 50 %) by the aid offered by the Hungarian authorities (recital 145 of the Opening Decision).

#### 2.9.2. *Doubts on proportionality*

- (51) The Commission expressed doubts on the proportionality of the aid amount in view of its doubts on incentive effect but also in light of the uncertainties related to the size of the investment.
- (52) For the size of the investment, the Commission noted that the projected production volume of the site to be established under the third wave seems to have changed significantly between the initial Wave three and the New wave three whereas the land and building requirements, which are the basis for the capital expenditure considered in the NPV, were not amended. The Commission also noted that the time frame considered for the NPV calculation presents discrepancies with regards to the indicated timing of start of production and of reaching full

<sup>(32)</sup> As explained at recital (20), at that time Wave three provided for the construction of two integrated sites to be established in two countries.

<sup>(33)</sup> As expressed in the presentation for the final location decision in favour of Hungary 'current political and economic situation in Turkey was monitored closely. Without reversal to more stable situation the risk level for [the] project is considered heightened' (recital 78 of the Opening Decision).

production capacity, as presented by the Hungarian authorities. In addition, given that (i) the past actual production of the two existing sites to be relocated as a result of the Investment Project appeared to be below the capacity created with the Investment Project and (ii) the forecasted sales quantities of the Investment Project in the years of full production, as shown in the NPV analysis, appeared to be below the capacity created with the Investment Project, the Commission could not confirm that the capital expenditure to set up the Investment Project was realistic. In this context, the Commission could not exclude that the Investment Project was planned to accommodate further transfers under the scope of Waves four to six of the Strategy. However, the Hungarian authorities explained that there are no concrete plans to implement those waves. The Commission also noted that a production facility of lower capacity adjusted to the sales needs would require a lower cost to be considered in the NPV calculation, which could affect the NPV gap between the two locations and might impact the proportionality assessment (recital 165 of the Opening Decision).

### 2.9.3. *Doubts on undue negative effects on competition and trade*

- (53) In view of its doubts on the incentive effect of the aid and the credibility of the counterfactual, the Commission could not conclude on the lack of potential negative effects of the aid (Section 3.3.6. of the Opening Decision), in particular on whether the aid could have been causal for the relocation (Section 3.3.6.4. of the Opening Decision) and whether the aid would contribute to, or reinforce, the creation of overcapacity in a market in absolute decline and have a manifest negative effect on competition in this respect (Section 3.3.6.2. of the Opening Decision).

## 3. COMMENTS FROM HUNGARY ON THE OPENING DECISION

### 3.1. **Incentive effect**

- (54) Hungary submitted a written statement signed on 11 April 2024 by GKN Automotive's current Chief Executive Officer ('CEO'), who at the time of the decision-making for the Investment Project was the President of the Driveline Business Unit and member of the GKN Automotive ET. Hungary submits that due to the spin-off from Melrose Group, GKN Automotive no longer has access to documents of its former parent company which could further substantiate the statements made during the preliminary and formal investigation and therefore asked the Commission to take this signed statement into account. Hungary submits that with this signed statement the GKN Automotive's former President of the Driveline Business Unit and member of the GKN Automotive ET provides a recollection of the decision-making process concerning the location of the Investment Project, which supports the arguments already submitted by Hungary in the course of the preliminary and formal investigation. Specifically, Hungary refers to the following elements in the statement: (i) 'Neither Melrose, nor GKN Automotive, took the final location decision in the meeting' on 12 November 2020 and that it was his 'clear understanding that GKN Automotive had the freedom in its attempt to reach the financial target imposed by Melrose to change the location as presented in the Capital Expenditure Request'; (ii) GKN Automotive 'would have selected Turkey, even in light of the political and operational risks the GKN Automotive ET had identified for Turkey' 'in case the GKN Automotive ET would have considered there to be a material risk to the approval of the aid'.

#### 3.1.1. *Scope of GKN Automotive's mandate*

- (55) Hungary submits that Melrose is a financial investor and as such puts a higher emphasis on financial impacts and generally considers 'much shorter time frames for payback periods' for the release of funds than conventional manufacturing companies which consider, for example, long-term strategies when taking investment decisions and, thus, are willing to accept longer payback periods. Hungary considers that decision-making processes of conventional manufacturing companies, as the Commission is used to assessing in its compatibility analysis of other notified cases, cannot be compared to decision-making processes of financial investors.

- (56) Hungary reiterates that Melrose was not responsible for the location decision since it does not engage directly in the operational decision-making of its portfolio companies. Melrose's role in the decision-making process is limited to giving approval on issues of 'high financial importance'. According to Hungary, Melrose empowers the management teams of the portfolio companies through the use of a Delegation of Authority Policy, for example, to take business decisions. In this context, Hungary submitted the GKN Delegation of Authority Policy ('DoA'), a document that sets out the approval limits for matters requiring authorisation at all levels of management, up to and including Melrose and that, according to Hungary, (i) demonstrates that the powers of Melrose are predominantly concentrated on financial issues, such as capital expenditure above a certain value, funding and security while matters such as human resources, legal, purchasing and supplier contracts, advisors, consultants and sales agents, customer pricing and contracts are decided primarily within GKN Automotive, with the involvement of Melrose only required when the subject matter is of high financial importance; and (ii) does not relate to operational decisions such as market penetration or the specifics of manufacturing footprint changes (including decisions on [transfer of business] and new site establishments).
- (57) Hungary submits that Melrose reviews significant investment decisions to ensure they are adequate and are meeting expected financial performance indicators such as payback periods. There is no formal rule setting forth thresholds in terms of payback period; rather, such thresholds are based on common practice. Melrose considers that, in its role as a financial investor, its main objective is to maximise shareholder value by managing capital allocation tightly, taking a firm view regarding the financial profitability of opportunities to pursue or reject. Opportunities tend to be ranked based on the length of their payback period. To document the internal practice of Melrose regarding the acceptable payback period of projects, Hungary refers to an email of Melrose of 6 August 2021, submitted in the context of the Commission's preliminary examination of the aid as part of a response to a request for information by the Commission (recital (3)), indicating that '... for routine capital equipment, we tend to look at investments with a payback under [2.1 – 2.9] years. For larger purchases we may consider something a little longer but we would not consider anything with a payback in excess of [4.5 – 5.4] years – this is a red line for us and simply wouldn't be attractive given the constraints on [...]. Whilst nothing is documented, we have a strong track record of complying with this general policy and I certainly cannot recall any instances where a payback longer than [4.5 – 5.4] years has been approved'.
- (58) The decision-making bodies of Melrose are the Melrose Board of Directors, the highest legal decision-making body, responsible for the strategic management of Melrose and all its subsidiaries, and Melrose's Executive Directors & Management, the body responsible for day-to-day management of Melrose and for financial oversight of its subsidiaries, such as approval of strategy, budgets, business plans, significant investments and other material decisions. In this context, Hungary clarifies that the entity within Melrose that had the competence to approve the budget of the Investment Project was Melrose's Executive Directors & Management.
- (59) Hungary maintains that in the business case presented to Melrose's Executive Directors & Management on 12 November 2020, the location of the Investment Project in Hungary was used as a working hypothesis because of the country's favourable rating in the location selection scorecard on country level (slightly behind Poland) and regional level (better than any other European region, including those in Poland). Melrose's Executive Directors & Management recognised the strategic necessity for GKN Automotive to consolidate its European footprint to secure the long-term competitiveness, and recognised the need for an initial approval of the funds to allow the GKN Automotive ET to progress with the project. Therefore, it gave its initial approval for the funding. As Hungary submits, at the same time, Melrose's Executive Directors & Management challenged the payback period of [5.4 – 7] years exceeding the [4.5 – 5.4]-year threshold and asked the GKN Automotive ET to increase the financial attractiveness of the business case to comply with it. In this context, as Hungary submits, GKN Automotive was forced to reconsider the project scope, and, therefore, the location, as a way to address Melrose's request. On this basis, the GKN Automotive ET tasked the Site selection project team<sup>(34)</sup> to elaborate the scenario of pursuing the Investment Project in Türkiye.

<sup>(34)</sup> As defined at recital 45 of the Opening Decision, as opposed to the 'Strategy core project team' referred to at recital 36 of the Opening Decision, which was involved in the preparation of the Strategy and which carried out the initial country assessment to identify the countries-of-interest (recitals 37 to 44 of the Opening Decision).

- (60) Hungary explains that there are no meeting minutes of the meeting of 12 November 2020. Hungary submits a written statement regarding that meeting, which was prepared in January 2023, and signed on 10 February 2023 by the Melrose and GKN Automotive participants to that meeting, in order to clarify the nature of the discussion and decisions taken during the part of the meeting which related to the [Investment Project] Business Case Review (retrospective minutes of the meeting of 12 November 2020). According to this statement, during that meeting, '[a member of Melrose] raises concerns about the financial viability of the business case on the basis that the payback period exceeded [4.5 – 5.4] years. He elaborated that a long payback period would mean Melrose Industries may not see a full return on their cash investment on the project during their period of ownership. Nevertheless, all participants of the meeting agreed on the strategic necessity of the project to future proof the GKN Driveline business, notwithstanding that the payback was less attractive than would ordinarily be considered acceptable. Following discussion, the Melrose Industries representatives signified their approval of the project business case, thereby permitting the project to proceed on the basis of the project budget. However, they tasked the GKN Automotive team to revisit the project assumptions to identify ways to improve project payback below [4.5 – 5.4] years by increasing value and/or reducing cost'.
- (61) Hungary submitted an email of 9 December 2020 from Melrose to GKN Automotive attaching the signed CER, which reads: 'please note the following comments: As discussed in the budget review, we are in agreement with the concept/big picture. Therefore, we have signed the form. However, this is not a blanket approval to spend £[220 – 400]m. We expect to be updated as each element progresses and as the business case becomes clearer, for example £[...]m for [...] will almost certainly not be the final number etc. So please keep us updated on each element, and break down as appropriate – perhaps separately for each stage you have identified'. Hungary submits that this email clearly stipulated conditions to the approval of the business case by Melrose. Melrose did not provide 'a blanket approval to spend £[220 – 400]m' and Melrose approved the request as they were 'in agreement with the concept/big picture' but expected 'to be updated as each element progresses and as the business case becomes clearer'.
- (62) Hungary agrees with the Commission's observation at recital 128 of the Opening Decision that the language of the meeting notes and preparatory document of the GKN Automotive ET meeting of 12 August 2020 could suggest that Melrose was the decision-making body with respect to site selection for the Investment Project. However, in the context of the explanations provided on the involvement of Melrose in the decision-making of its portfolio companies (recital (56)), Hungary submits that all references to the land selection approval by Melrose in the meeting notes and preparatory document of the GKN Automotive ET meeting of 12 August 2020 are only to be considered within the broader context of the overall business case review and should be read as 'document for Melrose approval of the business case with Hungary as a working hypothesis for the investment location'. Those documents only reflect the discussions within the GKN Automotive ET. It was the GKN Automotive ET that proposed the option to pursue the Investment Project in Hungary as part of the overall business case which was presented to Melrose on 12 November 2020. The presentation for that meeting documents the information presented to Melrose on that date, showing that GKN Automotive ET requested from its shareholder a decision to 'Approve [Investment Project] business case with a payback of [5.4 – 7] years...'. Hungary explains that the GKN Automotive ET did not ask to approve Hungary as an investment location.
- (63) Hungary explains that GKN Automotive reached out to a consultancy firm to solicit external support on location and incentives-related services. The Hungarian authorities submitted a service request sent to the consultancy firm on 27 November 2020, that in their view, clearly shows that it was the understanding of the Site selection project team at the time that 'no definite decisions for the project or a site have been made'. Hungary submits that this service request also shows that no location decision had been taken, which is further supported by a meeting set up on 16 November 2020 – two working days after Melrose had challenged the business case for the Investment Project – in which the Site selection project team discussed how to improve the financial viability of the project, including investigation of potential alternative locations (recital 59 of the Opening Decision).

- (64) Hungary also commented on the Commission's observation, at recital 134 of the Opening Decision, that it appears that the aid application documents submitted to the Hungarian authorities were also subject to Melrose's approval. Hungary submits that indeed such a reference appears in the presentation for the Land Selection Decision meeting of 29 January 2021. However, this concerned a proposal of the Site selection project team to the GKN Automotive ET, with which the Site selection project team 'wanted to test Melrose's sensitivity to the involvement of any political stakeholder'. The Site selection project team was seeking guidance from GKN Automotive ET whether to share the aid application documents with Melrose. Hungary submits that that proposal did not convert into a task, as presented in the meeting minutes, where the review of aid application documents by Melrose was not mentioned.
- (65) Hungary also submits that the formulations from presentations and meeting minutes related to GKN Automotive ET meetings demonstrate the level of involvement of Melrose in the project and reiterates its position that Melrose did not decide on the location. For instance, in the meeting on 29 January 2021, the GKN Automotive ET intends to 'align final decision and outcome of business case challenge with Melrose'. This means that the final location decision taken by the GKN Automotive ET should be communicated to Melrose as part of the business case review. In the meeting minutes, which contain conclusions drawn in the meeting, Melrose is not mentioned in any action point at all. The minutes from the meeting on 9 December 2021, during which, according to Hungary, the final location decision was taken, mention that the GKN Automotive ET have to 'inform Melrose about conclusion about final location decision'. Hungary submits that this clearly means that the decision was taken within and by the GKN Automotive ET and without any approval by Melrose.
- (66) Finally, Hungary submits that if Melrose were the ultimate decision-maker, then it would have stopped GKN Automotive from investigating a potential alternative location for the Investment Project in Türkiye, not to waste resources. In fact, despite being kept informed by the GKN Automotive CEO and the GKN Automotive ET, Melrose did not interfere to stop the investigation of the alternative location. This suggests that should the GKN Automotive ET have concluded that Türkiye was the preferred option, Melrose would have been open to revisit the decision.

### 3.1.2. *Payback period expected by Melrose*

- (67) Hungary submits that the retrospective minutes of the meeting of 12 November 2020 and the email of Melrose of 6 August 2021 constitute contemporaneous evidence of the financial target of maximum [4.5 – 5.4] years of payback that the Investment Project had to fulfil at the time of the investment and location decision.
- (68) Regarding the Commission's preliminary view that 'the payback is not the only consideration for decision-making and was not necessarily to be evaluated wave per wave' at recital 136, point (a) of the Opening Decision, Hungary submits that all projects resulting from the Strategy were evaluated individually. Whilst there is some element of the total financial benefit of the Strategy that would only be unlocked if the whole – or at least the largest part – of the Strategy were implemented (e.g., full working capital benefit), the waves could be and were evaluated separately for implementation. The Strategy in six waves provides the basis for a more detailed feasibility assessment and eventual setup and approval of separate projects to be implemented under the waves. As an example, Hungary referred to the project '[investment project A]', which was already approved in April 2019 with a payback period calculation specific to that project. Accordingly, all other projects resulting from the Strategy were evaluated individually. Hungary also submits that for each project within the waves, the payback period per project was decisive. Hungary provided, in this context, a summary table<sup>(35)</sup> listing four projects, three of which were part of Wave one of the Strategy and one concerned another project<sup>(36)</sup>. Those projects have payback periods of respectively of [3.1 – 4.2], [3.5 – 4.4], [2.2 – 2.9] and [2.5 – 3.1] years, which, according to Hungary, shows that the [5.4 – 7]-year payback period of the Investment Project is 'worse than any other European project in the company's recent portfolio of projects'.

<sup>(35)</sup> In the context of the preliminary examination, Hungary had already provided this table and the CERs for these projects.

<sup>(36)</sup> Project related to restructuring of GKN Automotive aftermarket sites (such as warehousing and distribution) implemented in parallel with the Strategy.

- (69) Hungary also commented on the statements of the Commission at recital 136, point (b) of the Opening Decision that for the several updates of the business case for New wave three, the payback period always exceeded [4.5 – 5.4] years and that, in the preparatory document for the GKN Automotive ET meeting of 12 August 2020, there was a reference to a target payback period of maximum [5.6 – 7.2] years. Hungary submits that the need to improve the payback period of Wave three (with a payback period of [7.5 – 11] years in the initial bottom-up business case) resulted in a change in the approach (New wave three). After the change of the approach including limiting the number of new sites to one, the project payback period was internally reduced to [a range between 5 – 7] years, which ‘presented only the likely range of the payback period of the business case sensitive to some core assumptions’. Hungary explains that the target of less than [5.6 – 7.2] years as mentioned in the preparatory document for the GKN Automotive ET meeting of 12 August 2020 is rather ‘GKN project team’s internal task to deliver a project with financials not worse than [5.6 – 7.2] years’ whereas the common financial threshold for projects of similar scope to be approved by Melrose is [4.5 – 5.4] years. Hungary also adds that the GKN Automotive ET was aware of this requirement when formally requesting the CER approval, that meant in this case further revision of the business case. To substantiate the GKN Automotive ET’s awareness, Hungary refers to the table providing the payback period in other GKN Automotive projects mentioned at recital (68).
- (70) Regarding the statements of the Commission at recital 136, point (c) of the Opening Decision pointing to the absence of any reaction of the Chief Financial Officer (‘CFO’) to the draft presentation for the 10 November 2020 Melrose business case review, which clearly referred to a [5.4 – 7] years payback period, Hungary explains that the CFO was not expected to comment on such pre-read material, since he had been involved - until that moment - in a series of discussions to prepare that 12 November 2020 meeting, which involved the revision of the payback period. Hungary refers to the latest pre-review of the financials before the 12 November 2020 meeting which took place on 30 October 2020, and provided an invitation to an on-line meeting of 30 October 2020 and a presentation titled ‘Business Case Review: [Investment Project]’. According to Hungary, after the 12 August 2020 meeting, the GKN Automotive ET was not able to reduce the payback period that was, therefore, presented as being [5.5 – 7.5] years at the pre-review meeting of 30 October 2020. Hungary explains that the payback period could be lowered following a discussion with the CFO, who was expecting to push it below [4.5 – 5.4] years. Based on that discussion the Site selection project team worked to make some further improvements on the financials which led the GKN Automotive ET to reduce the payback to [5.4 – 7] years, as it was presented to Melrose on 12 November 2020.
- (71) Hungary recalls that the Strategy’s objective was to safeguard GKN Automotive’s competitiveness in an increasingly competitive market environment by consolidating its inefficient and scattered European production footprint and shifting its production capacity to more cost-effective locations. Therefore, ‘GKN Automotive realised that the Company had to proceed with the Investment Project to become competitive in terms of price, to be able to win new businesses on one side and to meet the financial expectations from the shareholder on the other’. Hungary also submits that despite the fact that the payback period was not below [4.5 – 5.4] years, ‘GKN Automotive ET was concerned about the potential negative impact a delay could have on the overall project timeline - and given the project’s important strategic nature, decided to proceed to discuss the business case with Melrose’s Executive Directors & Management on 12 November 2020 even with a payback of [5.4 – 7] years.’. With reference to the 12 November 2020 business case review meeting, Hungary adds that ‘all participants of the meeting agreed on the strategic necessity to implement the project to secure the future of the GKN Driveline business, notwithstanding that the payback was less attractive than would ordinarily be considered acceptable’. Melrose however, challenged the business case and instructed GKN Automotive to seek further financial improvement. As all financial assumptions were already several times reconsidered and improved, the GKN Automotive ET was not able to further reduce the payback without a fundamental change of the core assumptions, i.e., without considering another potential location. Hungary further submits that GKN Automotive ET concluded based on prior internal discussions and regular exchanges with Melrose Executive Directors & Management, to investigate an ultra-low-cost location to see if a financially more attractive business case exists. As a result, the Site selection project team developed the option of investing in Türkiye, as the alternative ultra-low-cost location, in particular the expansion of the existing operation in Eskişehir. According to Hungary, GKN Automotive’s CEO has kept Melrose updated on the further development of this alternative.

- (72) Regarding the lack of evidence of a payback period calculation/consideration for the alternative locations (Türkiye, Poland, Slovakia, Serbia or Morocco) which, according to Hungary, were considered before concluding to promote Türkiye as the only alternative location (recital 136, point (d) of the Opening Decision), Hungary submits that looking into the runner up locations from the initial country assessment (Poland and Slovakia) was not expected to yield significant financial benefits due to comparable cost to Hungary and that other ultra-low cost locations without existing GKN operations were considered less realistic and less viable in terms of fast decision-making.
- (73) Regarding the introduction of Türkiye without any assessment in terms of payback period (recital 136, point (e) of the Opening Decision), Hungary emphasises the difference between two workstreams, each with their own evaluation methodology: (i) a 'general funding pre-approval' (release of funding) for the New wave three of the footprint transformation in November 2020 and (ii) the business case challenge that initiated further location analysis. The first workstream was based on the payback period method and used an 'assumed location' to release funding. The second workstream used the NPV method, which seemed to be more appropriate for long-term decision-making, as the 'NPV comparison allowed a more nuanced understanding of the impact of cash flows expected in both locations. The company was also informed that NPV comparison was the standard approach required in order to demonstrate a funding requirement, relevant to regional aid.'. Hungary explained that Melrose, as a financial investor is looking to invest, recoup and reinvest as fast as they can, and therefore uses the payback period when it takes a decision. Therefore, GKN Automotive was obliged to calculate the payback period to obtain the approval for the financing. At the same time, after having the approval, GKN Automotive, as a conventional manufacturing company that was looking for a more long-term approach to project investment and seeks a better balance of projects and investments so that their mid- and long-term needs are all taken care of, used in January 2021 the NPV methodology 'to confirm a location assumption for the project, not to make the final location decision'. Hungary also submits that the presentation for the meeting of 29 January 2021 was superseded by the presentation for the meeting of 9 December 2021, the latter featuring a more comprehensive report featuring both payback period and NPV comparison of the final two locations, that was the basis of the final location decision on 9 December 2021, in favour of Hungary assuming the full amount of aid that allowed to meet the payback threshold of [4.5 – 5.4] years and taking into account both financial and non-financial factors. NPV is also commonly used by GKN Automotive in other contexts such as new business acquisition. In this respect, Hungary points out to the Commission that for other large investment projects, where the beneficiaries were conventional manufacturing companies, the decisions were taken on the basis of NPV calculations, not on the basis of payback periods.
- (74) Hungary therefore considers that the payback period method appears to be less appropriate for long-term strategic decisions and they believe that the NPV analysis better enabled GKN Automotive's leadership to understand location specific costs and benefits as well as performance drivers over the whole project lifetime. In their view, it was not necessary and not correct to use the payback period method in the location analysis conducted after Melrose had challenged the business case for the Investment Project.
- (75) Regarding the observation of the Commission that the payback period included in the CER of November 2020 did not take account of revenues from sale of land and buildings in the two existing production facilities that were to be relocated to Hungary (recital 136, point (f) of the Opening Decision), Hungary submits that it is common practice within GKN Automotive not to consider those elements in project business cases. As to the CER not taking account of the aid amount of the indicative aid offer, Hungary submits that GKN Automotive acted prudently as at the time of the business case review the aid was not considered certain. Furthermore, as Hungary submits, GKN Automotive was aware that because of its intended relocation from other European sites any aid would require approval by the Commission.
- (76) Hungary concludes that the payback period of [4.5 – 5.4] years was a decisive criterion with regard to the notified measure. Melrose's expectation was clearly to improve payback (i.e., stay under the [4.5 – 5.4]-year payback threshold). The final location decision to invest in Hungary was taken on 9 December 2021 by the GKN Automotive ET, more than a year after the initial business case had been challenged on 12 November 2020. On 9 December 2021, the Investment Project in Hungary was expected to result in a payback period of [4.4 – 5.3] years (below the target of [4.5 – 5.4] years) considering the incentives (and in a payback with [5.5 – 7.1] years without incentives). As the GKN Automotive ET managed to stay under the threshold of [4.5 – 5.4] years payback period fulfilling thereby the shareholder's request from the business case challenge of 12 November 2020, it did not have to request a further approval from Melrose, and only informed Melrose of the final location.

- (77) Finally, Hungary expresses concern with regard to the Commission's assumptions that a formal investment policy would have needed to be in place for Melrose to be able to challenge the business case for the Investment Project. Even if there was no formal investment policy requiring a payback of below [4.5 – 5.4] years, as the Commission assumes, Melrose as an owner could still have requested GKN Automotive to improve the financial viability of the Investment Project.

3.1.3. *The introduction of Türkiye as the only counterfactual*

- (78) Hungary submits that in order to further reduce the payback period after Melrose had challenged the business case, GKN Automotive had to fundamentally change the core assumptions and thus consider another potential location through investigation of an ultra-low-cost location to see if a more attractive business case existed. In this context, a multi-stage selection process was conducted that involved an analysis of location-specific costs, exclusion of other low-cost countries previously considered (because of costs comparable to Hungary), consideration of ultra-low-cost locations and selection of an ultra-low-cost location in which the Investment Project could realistically be implemented in the time frame required.

- (79) Hungary submits that at the time when the Strategy was drawn up, Türkiye had been identified as having the lowest cost/revenue ratio amongst GKN Automotive's existing sites. In November 2020, when Melrose asked to improve the payback period, Türkiye was considered as a priority option to be explored. Poland and Slovakia, countries previously shortlisted, were not considered as the investments in those locations would involve comparable costs to an investment in Hungary. Other ultra-low-cost options such as Serbia, Morocco, Romania and Bulgaria, which according to Hungary had all to a certain extent been considered at various stages in the location selection process, would have required additional effort extending the lead time for decision-making and ultimately the start of production. At this stage of the project, only an investment in Türkiye, in the region where GKN Automotive had already been operating, was feasible, given the presence of a local team that could meet the expected timeline for the Investment Project. Even though the existing operation in Türkiye was limited in terms of volumes, the site had continuously demonstrated a very good operational performance and was highly cost competitive in comparison to other existing sites of GKN Automotive and could therefore have been a viable nucleus for further expansion of the local footprint. Thus, Türkiye emerged as the most feasible option to consider further at that point of time.

- (80) Hungary provided two invitations to online meetings of 19 November 2020 and 4 December 2020 referred to as 'catch-up call' between two GKN Automotive individuals involved in the Investment Project and an invitation to an online meeting invitation of 10 December 2020 involving GKN Automotive staff involved in the Investment Project and local staff in Türkiye for a 'quick [Investment Project] review to agree on the next steps'. Hungary submits that these documents provide further evidence of meetings in November and December 2020 in which the Investment Project was discussed, including the ways of addressing Melrose's challenge to the business case for the project. Hungary submits that over the course of these meetings, along with meetings for which evidence was already provided during the Commission's preliminary examination, GKN Automotive concluded that '(a) only a lower cost alternative location would enable the level of improvements required to meet the target payback, (b) other locations than Turkey would either not materially change the financial viability, e.g., Poland, Slovakia, and/or would be expected to cause a substantial delay to the investment process in the absence of existing local operations, e.g., Morocco, Serbia.' Apart from the meeting invitations, no further evidence was provided.

- (81) Hungary provided an email dated 8 December 2020 where, as follow-up to the activities in the period 1 to 7 December 2020 indicated at recital 60 of the Opening Decision, GKN local staff in Türkiye presented information on the investment history of GKN Automotive in Türkiye (plant established in 2009 and expanded in 2013), on the current site and on investments made by other companies in the area. Hungary submits that this email further substantiates the early internal discussions on locating the project in Türkiye.

#### 3.1.4. *Türkiye as a genuine counterfactual*

- (82) Regarding the timeline of GKN Automotive's preparatory activities in Türkiye and the pre-notification discussions with the Commission, Hungary submits that the counterfactual location in Türkiye began being investigated immediately after the request to explore an ultra-low-cost location. Hungary referred to the update of the scorecard in December 2020 (described at recital 63 of the Opening Decision), to the financial analysis of this alternative scenario in the course of January 2021 and to negotiations with the Turkish authorities in January 2021. Given that the award of the aid offered by Hungary was subject to Commission approval, GKN Automotive could not take it for granted. Therefore, Hungary initiated a pre-notification process with the Commission in June 2021 and the GKN Automotive ET continued to develop the alternative scenario of an investment in Türkiye in parallel, to match the level of analysis carried out for other locations, which included further meetings with the Turkish authorities and a site visit by the VP Operations Europe in July 2021 (the local team visited the site at a much earlier stage in the process) as well as further preparatory activities around land purchase, project planning and building design. Hungary submits that, since GKN Automotive had an existing facility in Türkiye, the majority of this work was done by the local team and the arrangement of senior management site visits was only sensible once the case was developed to an appropriate level of maturity, which was the main preoccupation of the Site selection project team from December 2020 to July 2021.
- (83) Regarding the timing of the pre-notification of the case to the Commission, as referred to at recital 140 of the Opening Decision, Hungary submits that the fact that the beneficiary pre-notified the project in Hungary already in spring 2021 does not imply a location decision. Hungary and the beneficiary approached the Commission as early as possible in view of the complexity of the case, which includes a relocation element, on which there was no existing case-law. The beneficiary considered a swift pre-notification to better understand the likelihood of obtaining the aid. Hungary referred to the meeting minutes of the Land Selection Decision meeting of 29 January 2021 which indicated that Miskolc was confirmed as the preferred location of the Investment Project on the assumption that the project would be granted the full amount of incentives. Hungary also referred to the presentation that the Site selection project team prepared for the meeting of 9 December 2021 where the final location decision was taken. That presentation states: 'Following the further pursuit of national application and EU approval processes to obtain incentive packages, incentives in Hungary are now considered more likely than in January. Incentives will largely offset financial advantage of Turkey option over Hungary and will enable the project to meet the target payback period of [4.4 – 5.3] years ([5.5 – 7.1] years w/o incentives)'.
- (84) Regarding the perceived political and operational risks of Türkiye, Hungary submits that the political risks in Türkiye had never been considered as deterrent as the beneficiary already has successful operations in Türkiye. In November 2019, the existing GKN Automotive site in Türkiye was evaluated within the Strategy showing very plausible economic results however GKN Automotive adopted a 'wait and see' stance potentially considering an expansion of the site, due to perceived risks and other operational factors and based on the fact that the cost was not the important decision factor before the business case challenge by Melrose in November 2020. It was only then that the cost factor/payback period was prioritised over any other considerations. When Türkiye was added to the scorecard assessment in December 2020, it scored the lowest on political and economic risk dimensions, which meant that the internal perception of Türkiye did not materially change and the risks were still considered high in comparison to the other locations considered. However, given the positive experiences from the current operations in Türkiye and the prioritisation of the financial impact to achieve the payback target, the Site selection project team decided that the perceived risk levels were tolerable to pursue the scenario of carrying out the investment in Türkiye, which was highly attractive from a financial perspective. Hungary submits that the heightened risk profile of Türkiye was very much considered in the final location decision in December 2021 and 'Considering the aid, Hungary was meeting the payback target of Melrose, the purely financially driven shareholder, but was considered by the company's strategically oriented management favourable from non-financial criteria – including the risk profile – such that these were considered to offset the remaining financial advantage of Turkey'. If GKN Automotive did not consider Türkiye as a viable location, it would not have its presence there in the first place.
- (85) Finally, Hungary submits that, in 2020 and 2021, when GKN Automotive was considering Türkiye as an alternative location, other investors (OEMs suppliers or vehicle manufacturers) were considering Türkiye a credible investment location, either to invest or to extend their existing sites, and therefore this confirms in principle the credibility of Türkiye as potential location.

### 3.2. Proportionality

#### 3.2.1. Proportion of the NPV gap covered by the State aid

(86) At recital 145 of the Opening Decision, the Commission had questioned the statement of the beneficiary that the Hungarian incentives 'will largely offset the financial advantage of the Türkiye option'. This was because the incentives cover less than 50 % of the NPV gap. Hungary considers this element as part of the proportionality analysis and submits that the significant advantage of Hungary in the qualitative (non-financial) criteria in the scoring model, such as workforce skills and availability, infrastructure, logistics, proximity to customers, risks, in combination with the payback period of [4.4 – 5.3] years with incentives (fulfilling the request from the shareholder to improve the payback period to meet the [4.5 – 5.4]-year target) were sufficient for GKN Automotive ET to take a decision in December 2021 to locate the investment in Hungary. Hungary also notes that according to its experience, State aid is one of the factors, but not always the decisive one that the investors take into account when they decide on the future investment location. Hungary also submits a list of three State aid cases where the Commission approved the aid although it only covered part of the NPV gap.

#### 3.2.2. Size of the Investment Project

(87) At recital 165 of the Opening Decision, the Commission raised questions as to whether the aid corresponds to the net-extra costs of investing in the area concerned, compared to the counterfactual in the absence of aid. Hungary submits that the scope of the Investment Project under Wave three and New wave three is different in terms of the products and volume allocation, as Wave three and New wave three are fundamentally different concepts resulting in different footprint targets in terms of number of new sites, product allocation and volume/capacity per site. Space requirements are thus not comparable. Hungary notes that production of propshafts has a significantly higher space requirement than production of sids shafts. Whereas sids shafts are approximately 0.5 meters long (they bridge the distance from the transmission in the centre of the car to the wheels), propshafts can be up to three meters long (connecting the front with the rear axle). Consequently, the equipment and floorspace requirements to produce the same volume of sids shafts and propshafts are higher for propshafts.

(88) Further at recital 165 of the Opening Decision, the Commission questioned the capacity created with the Investment Project. Hungary submits that there are several reasons why the sales and production volumes are lower than the created capacity. Capacity figures present technical maximum outputs under optimal conditions, while actual production volumes are always below technical capacities due to factors such as breakdowns, changeovers, insufficient availability of inputs or manpower. In addition, capacities need to be sized to accommodate temporary peak demands, not annual average demands, and a capacity reserve needs to be maintained for multiple clusters of products. Regarding the volumes of 2020 and 2021 that were submitted during the Commission's preliminary examination, Hungary submits that these were affected by the demand drop following the COVID-19 outbreak and that volumes at pre-COVID levels are expected over the coming years. Finally, Hungary submits that the size of the floorplan space on the Investment Project in Hungary is comparable to that of the relocated sites. Hungary also repeats that the Investment Project comprises transfers from existing sites to the new site without an increase in capacity across the production network in Europe and that the beneficiary confirmed that no additional production capacities will be installed in the new plant in Hungary as part of this project.

#### 3.2.3. Time frame considered for the NPV calculation

(89) With regards to the discrepancies in the timeframe used in the NPV calculation (recital 165 of the Opening Decision), Hungary submits that the timing in both scenarios is equally delayed. For both Hungary and Türkiye, the first year of production ramp-up was determined to be 2022 (no difference is assumed for start of production) and full production start is planned for 2026.

### 3.3. Undue negative effects on competition and trade

(90) Regarding the manifest negative effect of relocation, Hungary submits that it is convinced that Türkiye was a credible counterfactual scenario and therefore there is no causal link between the aid and the relocation.

### 3.4. Other

- (91) Hungary does not contest the Commission's view, at recital 111 of the Opening Decision, that RAG 2022 shall apply to the tax benefit and explains that this 'should not change the outcome of the assessment of the Commission', given that 'under the Hungarian regional aid map approved by the Commission for the period of 2022-2027 (SA.63934) Felsőzsolca has the same regional aid ceiling of 50 % as under the previous regional aid map' and the other conditions set by RAG 2022 are met.
- (92) On the Commission's question at recital 133 of the Opening Decision on what basis, in terms of providing a substantive incentive effect, Hungary provided an indicative incentive offer on 5 November 2020, Hungary submits that the official request for VIP cash grant arrived at the aid grantor on 8 April 2021, containing evidence of the internal location decision-making process. Everything prior to that date was an informal part of the procedure, helping to inform the selection process. They further referred to the limited information available at the time. Hungary also explains that during the meetings with HIPA, the beneficiary indicated on several occasions that alternative locations were being assessed and that the Company was still in the site selection process.
- (93) Hungary also submits that at recital 133 of the Opening Decision the Commission is raising points about Hungary providing the beneficiary with information regarding relocation aspects. In this respect, Hungary submits that HIPA, in its quality as granting authority, is obliged to provide potential beneficiaries all information, which might be applicable in a particular case. This is a standard procedure which applies to all applications for State aid. Hungary considers that the beneficiary acted as any other diligent investor that tries to collect all the information before taking a decision. If this information from HIPA were the trigger for GKN Automotive to assess an ultra-low-cost country as an alternative location, GKN Automotive could have started preparing the alternative scenario involving a location in Türkiye already back in August 2020.

## 4. COMMENTS FROM OTHER INTERESTED PARTIES

### 4.1. Comments from Melrose

- (94) Melrose clarifies that on 20 April 2023, GKN Automotive and Rubin were demerged from Melrose to form part of a new independent group of companies, the ultimate parent company of which is Dowlais Group plc. Melrose also clarifies that in February 2023 the legal name of Rubin was changed to GKN Automotive Hungary Kft. with GKN Automotive becoming the sole shareholder in the place of Eachairn Aerospace Holdings Limited.
- (95) Regarding the doubts expressed by the Commission on the role of Melrose in the decision-making process, in particular regarding the location decision and the business case challenge, Melrose submits that it operated a decentralised business model with the majority of business and strategy decisions taken by the portfolio company executive and management teams whilst Melrose retained the right to approve or veto certain decisions. Melrose limits its involvement with its portfolio companies to reviewing significant investment decisions to ensure they are appropriate and that they meet the expected financial requirements. By presenting the CER with a business case and summarising financial assumptions for the Investment Project in the meeting with Melrose's Executive Directors & Management on 12 November 2020, GKN Automotive acted in accordance with Melrose's approval requirements, as reflected in the DoA, which Hungary submitted with its comments (recital (56)). Melrose understood the strategic rationale for the proposal and the need for an initial approval of funds to allow GKN Automotive to progress with the Investment Project and therefore approved the overall business case while it mandated GKN Automotive ET to identify ways to improve the payback period below [4.5 – 5.4] years. References to Hungary in the business case and the CER were a working hypothesis. GKN Automotive ET had the mandate to lead the location selection and take a decision on the final location, provided that the underlying business case and amortisation timeline would meet Melrose's financial expectations and approved budget.

- (96) Regarding the doubts expressed by the Commission on the existence of a payback period of maximum [4.5 – 5.4] years as a determinative factor, prevalent at the time of the investment and location decision, Melrose submits that in order to ensure an acceptable return on investment, for large strategic investments such as the Investment Project, there is a well-established internal practice of requiring a payback period of up to [4.5 – 5.4] years and longer payback periods are usually not considered acceptable. As supporting evidence for the existence of such an internal practice, Melrose refers to the email of Melrose of 6 August 2021, submitted in the context of the preliminary investigation, to which also Hungary refers (recital (57)). Melrose also refers to the retrospective minutes of the meeting of 12 November 2020, that Hungary submits with its comments (recital (60)), as contemporaneous evidence concerning the exact financial target that the Investment Project needed to achieve.

#### 4.2. **Comments from GKN Automotive**

- (97) GKN Automotive submits that it was the main decision-making body regarding the Investment Project and that Rubin is a subsidiary that was established only when the decision to select Hungary as location for the Investment Project was sufficiently mature. GKN Automotive clarifies that in September 2022, the legal name of Rubin was changed to GKN Automotive Hungary Kft.
- (98) Regarding the scope of GKN Automotive ET's mandate and the doubts raised by the Commission at recitals 133 to 137 of the Opening Decision, GKN Automotive submits that Melrose, as financial investor, was only in charge of approving the funding for the Investment Project, it did not, however, interfere with the operational aspects, which were fully in GKN Automotive ET's hands. As the DoA demonstrates, the powers of Melrose concern predominantly financial matters. In this context, GKN Automotive ET developed the business case and all its operational aspects and presented it to Melrose on 12 November 2020 with the CER. Melrose recognised the need for an initial approval of the funds to allow GKN Automotive ET to progress with the Investment Project. At the same time, Melrose's Executive Directors & Management challenged the payback period and asked the GKN Automotive ET to increase the financial attractiveness of the Investment Project, as evidenced by the retrospective minutes of the meeting of 12 November 2020 (recital (60)).
- (99) Regarding Melrose's policy expecting a payback period of maximum [4.5 – 5.4] years, GKN Automotive refers again to the retrospective minutes of the meeting of 12 November 2020 (recital (60)) as evidence for that. Similarly to Hungary (recital (68)), GKN Automotive also provides the payback period for four other European projects in its recent portfolio which show a payback period of less than [4.5 – 5.4] years. GKN Automotive submits that the comparison of the presentation of the latest pre-review of 30 October 2020 (also referred to by Hungary, recital (70)), in preparation for the 12 November 2020 business case review by Melrose, with the final presentation for the business review meeting of 12 November 2020 demonstrates the evolution of the project costs as well as reflects the considerations about the need of decreasing the payback period, pointing to a clear understanding of Melrose's policy in that respect. Finally, GKN Automotive also refers to the email of Melrose of 6 August 2021, submitted in the context of the preliminary investigation (recital (57)), as contemporaneous evidence concerning the financial targets of Melrose.
- (100) Regarding the introduction of Türkiye as the only counterfactual scenario and the doubts raised by the Commission at recitals 138 and 139 of the Opening Decision, GKN Automotive submits that the decision not to include Türkiye in further stages of the initial location assessment in 2019 was based on the fact that Türkiye fell behind other locations based on a more comprehensive evaluation (which also included strategic and operational factors) despite a favourable assessment in terms of costs. When Melrose challenged the financial viability of the business case, the cost factor became of pivotal importance in the further location selection to improve the financial viability (payback) and therefore Türkiye became relevant again. Introducing other low-cost locations without existing GKN Automotive footprint was perceived to potentially result in substantial delays to the Investment Project and increase the risk exposure. The local presence and positive experience with existing operations became a decisive factor for choosing Türkiye as an ultra-low-cost option, given the time constraints.

- (101) Regarding Türkiye being a genuine counterfactual where GKN Automotive would actually invest and regarding the timeline of activities in Türkiye and the doubts raised by the Commission at recitals 140 to 145 of the Opening Decision, GKN Automotive submits that at the time of the pre-notification of the aid by Hungary, the alternative scenario of carrying out the investment in Türkiye had already been developed to a considerable degree. Immediately after the introduction of that alternative into the location selection process, the Site selection project team started carrying out the respective procedures for the location to catch up with the level of the analysis of other locations and this allowed GKN Automotive to have comparably developed business cases for Hungary and Türkiye by the time the final location decision was taken. Regarding risks, GKN Automotive submits that both locations showed a significant degree of political risk but not to the extent to threaten the viability of the Investment Project. In Türkiye there has been no disruption nor other adverse effects to the production in the GKN Automotive site. Before the business case challenge by Melrose, Türkiye was a back-up option, partially due to risk considerations. After the business case challenge, this alternative option was revisited as one of the most promising and cost-efficient location whereas the importance of risk was slightly downgraded.
- (102) GKN Automotive also submits that the investments of OEMs suppliers and vehicle manufacturers in Türkiye and the positive climate for British companies investing in Türkiye support the credibility of Türkiye as a potential location for the investment.
- (103) Regarding the NPV gap between the two locations, GKN Automotive submits that the qualitative factors favouring the location in Hungary were sufficient to mitigate the remaining NPV gap between Türkiye and Hungary under the caveat that the Investment Project would be granted the incentives, which would offset a considerable portion of the gap. GKN Automotive also considers that further project elaborations in both Hungarian and Turkish scenarios throughout the year 2021 demonstrate that GKN Automotive was actually able to improve the financial viability of the scenario involving the investment in Hungary and bring down the expected payback period below [4.5 – 5.4] years considering the award of the aid at the time of the final location decision. Therefore, despite a remaining NPV gap compared to Türkiye, the Hungarian location was able to meet Melrose's [4.5 – 5.4]-year payback period policy.
- (104) Regarding the proportionality of the aid, the size of the investment, the created capacity and the doubts raised by the Commission at recital 165 of the Opening Decision, GKN Automotive repeats the arguments already raised by Hungary on the same issues (recitals (87) and (88)).
- (105) GKN Automotive welcomes the Commission's preliminary view that the aided investment contributes to regional development, the investment is eligible for regional aid, there is need for State intervention and the measure is appropriate. Regarding the potential negative effects of the aid on competition and trade, GKN Automotive welcomes the Commission's preliminary view that the aid intensity ceiling is not exceeded. GKN Automotive also indicates that it understands that the conclusion on the creation of overcapacity depends on the credibility of the counterfactual scenario, which it reiterates is credible, and confirms that no additional production capacities will be installed in the new plant in Hungary as part of the project and therefore there is no risk of creating overcapacity. GKN Automotive adds that it understands that the Commission considers on a preliminary basis that the aid has no counter-cohesion effect. For a potential manifest negative effect of relocation, GKN Automotive welcomes the Commission's view that 'should the counterfactual scenario of implementing the investment in Turkey be considered genuine, the Commission will accept that there is no causal link between the aid offered in Hungary and relocation of activity'.

#### 4.3. **Comments from Hungary on comments from other interested parties**

- (106) Hungary notes that the comments from the other interested parties fully align with its comments on the Opening Decision.

## 5. ASSESSMENT OF THE MEASURE

5.1. **Existence of aid**

- (107) For the reasons set out at recitals 97 to 105 of the Opening Decision, the Commission considered that the notified measure constituted State aid within the meaning of Article 107(1) TFEU, as it was imputable to the State and granted through State resources, was selective, procured an economic advantage to the beneficiary, was likely to affect trade between Member States, and distorted or threatened to distort competition. That assessment remains valid, hence the Commission concludes that the measure constitutes State aid.

5.2. **Lawfulness of the measure**

- (108) If the regional investment aid amount to be granted exceeds the notification threshold laid down in Article 4(1), point (a), GBER, the aid is not covered by the exemption provided by the GBER and has thus to be notified individually to the Commission.
- (109) The measure consists of two elements: a cash grant granted before 31 December 2021 (recital (29)) and a tax benefit, which Hungary considers was granted on 12 December 2021 (recital (31)). At recital 111 of the Opening Decision, the Commission raised doubts on that granting date and considered that the aid might not have been granted yet (recital (115)).
- (110) In the Northern Hungary region, the applicable maximum aid intensity, at the time of granting the cash grant was 50 %. Therefore, the applicable notification threshold (laid down in Article 4(1), point (a), GBER applicable at the time of granting the cash grant) was EUR 37.50 million, calculated in accordance with the mechanism defined in Article 2, point (20), GBER applicable at the time of granting the cash grant. As from 1 January 2022, the aid intensity for the Northern Hungary region is 60 %.<sup>(37)</sup> As of 1 July 2023, the Commission increased the notification thresholds in cases with a maximum regional aid intensity of 50 % to EUR 41.25 million and in cases with a maximum regional aid intensity of 60 % to EUR 49.5 million<sup>(38)</sup>. The Commission considers that the cash grant, amounting to EUR 44.76 million in nominal value (EUR 43.01 million in discounted value) (recital (32)), already exceeded the notification threshold for a 50 % region (which was the aid intensity that applied at the time the cash grant was granted) and this meant that the measure did not benefit from the exemption from the notification obligation under Article 108(3) TFEU, regardless of the tax benefit.
- (111) The Commission concludes that by making the award of the cash grant conditional upon the Commission's approval, by adopting the granting act for the tax benefit only once the Commission's approval is notified, and by having notified the measure, the Hungarian authorities have respected their obligations under Article 108(3) TFEU and Article 4(1), point (a), GBER.

5.3. **Legal basis for the assessment**

- (112) In derogation from the general prohibition of State aid laid down in Article 107(1) TFEU, aid may be declared compatible if it can benefit from one of the derogations enumerated in the TFEU.
- (113) In the present case, the measure seeks to promote regional development in an area designated in accordance with Article 107(3), point (a), TFEU. The Hungarian authorities notified that measure on the basis of the RAG 2014. The cash grant constitutes an individual aid granted on the basis of Government decree No 210/2014 (VIII.27.) 'on the earmarked scheme for investment promotion', a regional aid scheme implemented under the GBER (recital (29)). The tax benefit constitutes an individual aid granted on the basis of Act LXXXI of 1996 'on Corporate Tax and Dividend Tax' and Government Decree No 165/2014 'on Development Tax Incentive (VII.17.)', also a regional aid scheme<sup>(39)</sup> implemented under the GBER (recital (30)). On this basis, the Commission considers that, Article 107(3), point (a), TFEU, as interpreted by the regional aid guidelines, constitute the appropriate legal basis for assessing the compatibility of the measure.

<sup>(37)</sup> Cf. footnote 6.

<sup>(38)</sup> With Commission Regulation (EU) 2023/1315 of 23 June 2023 amending the GBER (OJ L 167, 30.6.2023, p. 1).

<sup>(39)</sup> This scheme also concerns investment aid to SMEs, which is not applicable to the measure.

- (114) The Commission preliminarily established at recital 110 of the Opening Decision that the legal basis for the assessment of the cash grant is Article 107(3), point (a) TFEU, as interpreted by the RAG 2014, in accordance with paragraph 197 RAG 2022. The Incentive Agreement for the cash grant was signed before 31 December 2021, conditional only upon the Commission's decision approving the aid. Neither Hungary, nor any other interested party contested this preliminary view following the adoption of the Opening Decision. For the reasons set out at recital 110 of the Opening Decision, therefore, the Commission concludes that the compatibility of the cash grant should be assessed on the basis of the RAG 2014.
- (115) The Opening Decision expressed, at recital 111, the Commission's preliminary view that concerning the tax benefit, the Government decision as adopted on 12 December 2021 did not constitute a granting act and that only a future Government decision could confer the beneficiary a legal right to receive the aid. Therefore, the appropriate legal basis for the assessment of the tax benefit would be Article 107(3), point (a), TFEU, as interpreted by the RAG 2022. Neither Hungary, nor any other interested party contested this preliminary view following the adoption of the Opening Decision. For the reasons set out at recital 111 of the Opening Decision, therefore, the Commission concludes that the compatibility of the tax benefit should be assessed on the basis of the RAG 2022.
- (116) The Commission notes that, in the specific circumstances of the present case, there is nothing that would prevent it from assessing part of the aid on the basis of the RAG 2014 and part of the aid on the basis of the RAG 2022 (referred together as the 'RAGs'). In any event, the provisions of the RAGs that are relevant for the below assessment are materially identical and, moreover, as clarified at recital (14), Miskolc is eligible for regional aid on the basis of the regional aid map 2014 and also on the basis of the regional aid map 2022. Moreover, the increase of the maximum aid intensity in the Northern Hungary region, from 50 % to 60 % (recital (110)), does not affect the outcome of the overall compatibility assessment, as presented in section 5.4.

#### 5.4. **Compatibility of the measure**

- (117) In the Opening Decision, the Commission raised serious doubts as to the compatibility of the aid measure on the basis of: (i) the credibility of the counterfactual scenario; (ii) the incentive effect; and (iii) the proportionality of the aid. In addition, the Commission noted that it could not be excluded that the measure contributes to, or reinforces, the creation of overcapacity in a market in absolute decline and is causal to the relocation of activities from another Member State, which would constitute manifest negative effects on competition and trade (Section 2.9). Paragraph 26 RAG 2014 and paragraph 39 RAG 2022 set out the cumulative criteria that an aid measure must meet to be considered compatible with Article 107(3) TFEU. It follows that, if the measure does not comply with one or more of those criteria, the measure cannot be considered compatible with the internal market. The Commission first assessed the incentive effect criterion.

##### 5.4.1. *Incentive effect*

- (118) Section 3.5 RAG 2014 and section 5.2 RAG 2022 require that aid has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in a way that it carries out additional activity contributing to the development of an area that it would not have carried out, or would only have done in a limited or different manner or in another location, if the aid was not granted. The aid must not subsidise the costs of an activity that an undertaking would carry out in any event and must not compensate for the normal business risk of an economic activity.

##### Formal incentive effect

- (119) According to paragraphs 64 and 65 RAG 2014 and paragraphs 62 and 63 RAG 2022, the formal incentive effect requirement is met if works on an individual investment start only after the application for aid has been submitted. As established already at recital 120 of the Opening Decision, this condition is met in the present case as the beneficiary applied for aid on 8 April 2021 (cash grant) and 31 March 2021 (tax benefit), while works on the Investment Project only started on 28 April 2022 (recital (25)).

## Substantive incentive effect

- (120) As there are many valid reasons for a company to locate its investment in a certain region, even without any aid being granted, the RAGs require the Commission to verify in detail that the aid is necessary to provide a substantive incentive effect for the investment. This can be proven in two possible ways (see paragraph 61 RAG 2014 and paragraph 59 RAG 2022), that is to say that the aid: gives an incentive to invest in the area concerned because otherwise the investment would not be sufficiently profitable for the aid beneficiary<sup>(40)</sup> (scenario 1, investment decision), or gives an incentive to locate a planned investment in the area concerned rather than elsewhere because it offsets the net disadvantages and costs of investing in a location in the area concerned (scenario 2, location decision).
- (121) As set out in section 3.5.2 RAG 2014 and section 5.2.1.2 RAG 2022, the Member State must provide clear evidence that the aid has an actual impact on the investment choice or on the choice of the investment location. To that end, the Member State must provide a comprehensive description of the counterfactual scenario in which the beneficiary receives no aid. The Commission must verify that this alternative scenario is realistic and credible. Paragraph 68 RAG 2014 and paragraph 66 RAG 2022 indicate that a counterfactual scenario is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the aid beneficiary regarding the investment.
- (122) Paragraph 71 RAG 2014 and paragraph 69 RAG 2022 indicate that for a scenario 2 situation – which is invoked by the Hungarian authorities in the present case (recital (41)) – the Member State could prove the incentive effect of the aid by providing the undertaking's documents showing that a comparison has been made between the costs and benefits of locating the investment in the assisted region concerned and those of locating the investment in alternative location(s). It is clear from paragraph 70 RAG 2022 and from the Commission's decision-making practice based on the RAG 2014<sup>(41)</sup>, that such documents should be contemporaneous to the decision-making process concerning the investment or its location. The Commission verifies whether such comparisons are realistic. For that purpose, paragraph 72 RAG 2014 and paragraph 70 RAG 2022 invite the Member State to rely on official board documents, risk assessments (including the assessment of location-specific risks), financial reports, internal business plans, expert opinions and other studies and documents that elaborate on investment scenarios.
- (123) To verify the viability of the project in a scenario 2 context, all relevant costs and revenues<sup>(42)</sup> have to be taken into account, with the exception of possible subsidies available in the alternative location, where this alternative location is in the EEA.
- (124) Already as part of the pre-notification exchanges and as further complemented throughout the Commission's preliminary examination, the Hungarian authorities submitted information documenting the decision-making process of GKN Automotive and Melrose and presented a counterfactual scenario involving the implementation of the project in Eskişehir, Türkiye.
- (125) In its comments to the Opening Decision, Hungary maintained its view, as explained at recitals 126 and 127 of the Opening Decision, that the GKN Automotive ET took the final location decision only in December 2021, whereas Melrose's preceding approval of the CER in December 2020 only constituted a preliminary securing of the project funding and did not constitute a decision on the investment location (Section 3.1.1).

<sup>(40)</sup> This wording reflects the relevant text in the RAG 2014. RAG 2022 provides 'would not be sufficiently profitable for the aid beneficiary anywhere in the EEA'.

<sup>(41)</sup> Commission Decision of 7 January 2022 in case SA.59516 (2021/N) – Hungary – LIP – regional investment aid to Volta Energy Solutions Kft. (OJ C 461, 2.12.2022, p. 1); Commission Decision of 29 June 2021 in case SA.58633 (2020/N) – Hungary – LIP – regional investment aid to SKBM Hungary (OJ C 90, 25.2.2022, p. 1); Commission Decision of 22 March 2022 in case SA.63328 (2021/N) – LIP – regional investment aid to SK On Hungary Kft. (OJ C 195, 2.6.2023, p. 11); Commission Decision of 4 October 2018 on the stated aid SA.45359 – 2017/C (ex 2016/N) which Slovakia is planning to implement for Jaguar Land Rover Slovakia s.r.o. (OJ L 177, 2.7.2019, p. 82).

<sup>(42)</sup> Paragraph 80 RAG 2014 and paragraph 97 RAG 2022.

- (126) In order to assess the credibility of the counterfactual scenario invoked by Hungary, the Commission examined: (i) whether the GKN Automotive ET could finally decide on the location or had the freedom to change the location of the investment, after the approval of the CER and to what extent a decisive payback threshold of [4.5 – 5.4] years existed (Section 5.4.1.1); (ii) why Türkiye was further investigated as the only alternative location, while other locations also seemed promising from a cost perspective (Section 5.4.1.2); and (iii) whether Türkiye was a genuine counterfactual where the beneficiary would have invested in the absence of aid in Hungary or whether the perceived risks of carrying out the investment in Türkiye might have constituted a deterrent factor so that the investment would have taken place in Hungary even without the aid (Section 5.4.1.3).

#### 5.4.1.1. GKN Automotive's mandate

- (127) During the Commission's preliminary examination, Hungary provided documents pointing to Melrose as the decision-making entity for the purposes of selecting the Investment Project's location (recital (44)). Hungary did not provide any contemporaneous evidence on either (i) GKN Automotive ET's mandate and decision-making power to improve the business case payback period by changing the location described in the CER or by deciding upon the location, (ii) the provisional nature of the CER, or on (iii) discussions regarding the unmet decisive threshold of a [4.5 – 5.4]-year payback period (recitals (44) and (46)).
- (128) In its comments on the Opening Decision, Hungary considers that the Commission's serious doubts as to the credibility of the counterfactual scenario are caused by an erroneous assumption that the decision-making processes at stake (within a financial group) should follow the same rules and/or rationale that the Commission observes when dealing with 'conventional manufacturing companies', which may accept longer payback periods to decide on investments.
- (129) The Commission considers this argument irrelevant, as it did not assess Melrose's or GKN's decision-making processes concerning the investment and/or the location, based on a comparison with other companies. It is evident from section 3.3.1.2. of the Opening Decision that such doubts resulted from the Commission's understanding of the beneficiary's own decision-making process, based on the documents and information provided in the context of the preliminary examination. Furthermore, concerning Hungary's observation that Melrose would consider 'much shorter time frames for payback periods', the Commission notes that in the Opening Decision its doubts were not the result of the unreasonableness of the payback period but rather whether, in the case at hand, there was indeed a stringent requirement for a [4.5 – 5.4]-year payback period that forced GKN Automotive to re-open the site selection process and identify scenarios in which the investment could bring the required payback within that [4.5 – 5.4]-year limit.
- (130) Hungary further argued in its observations on the Opening Decision that the location decision was an operational decision which did not fall within Melrose's competence, such competence being limited to matters of 'high financial importance' (recital (56)). As a supporting document, Hungary submitted GKN Automotive's DoA. The Commission notes that the DoA lists, among the matters on which Melrose's approval is required, decisions concerning funding and security as well as capital expenditure above GBP [...] (recital (56)). The Investment Project clearly met this threshold. The Commission further notes that, according to the DoA, Melrose's approval is also necessary for: 'property transactions' (with very limited exceptions). Hungary explained that the DoA does not relate to the operational management or execution of the areas covered by DoA, which would include operational decisions on matters such as market penetration, the specifics of manufacturing footprint changes (e.g., [transfer of business] or new site establishments, or product line refurbishments, which would be for the management team of the business to determine). The Commission considers that, while it might be plausible that Melrose is not involved in every operational aspect of areas it decided upon (such as the Investment Project), the key question is whether the decision to carry out the Investment Project in Hungary can be reduced to an operational decision implementing Melrose's investment decision. For the reasons set out in the following recital, the Commission considers that it is implausible that the location decision can be considered as an operational decision simply implementing Melrose's investment decision.

- (131) First, the argument that GKN Automotive was the entity deciding unilaterally on the location after the CER approval of December 2020 is contradicted by the clear wording of the CER. The relevant capital expenditure referred to a project consisting of ‘consolidating the current footprint in ... into a new site located in Hungary’ (emphasis added). The CER budget approval was, therefore, inherently based on the Investment Project being located in Hungary, a location selected in a multi-stage process, for which the investment costs were specifically calculated in the CER. Second, this conclusion is not called into question by Hungary’s argument that Melrose signed the CER being ‘in agreement with the concept/big picture’ – as stated in Melrose’s email of 9 December 2020 (recital (61)). The CER summarises the project ‘consolidating the current footprint in ... into a new site located in Hungary’. All further details are provided in the annex to the CER <sup>(43)</sup>. The Commission considers, therefore, that the agreement on the ‘concept/big picture’ should be read as including the location of the Investment Project (i.e. Hungary). Based on the evidence in the case file, the Commission does not consider the choice of the Investment Project’s location as a matter of secondary, operational, importance which could be changed unilaterally by GKN Automotive despite having been approved by Melrose.
- (132) In its comments on the Opening Decision, Hungary further commented on the Commission’s interpretation of the meeting notes and preparatory document of the GKN Automotive ET meeting of 12 August 2020, which seemed to point to Melrose as the decision-making body for the site selection (recital (44)). Hungary considers that those documents, which mention Melrose’s approval of the ‘Land selection’ should be read as referring to such approval within the broader context of the overall business case review and argues that the 12 November 2020 presentation shows that Melrose was only asked to approve the business case, and was not asked to approve the investment location. More precisely, Hungary considers that the relevant sentence should read ‘document for Melrose approval of the business case with Hungary as a working hypothesis for the investment location’ <sup>(44)</sup>. The Commission notes, first, that this interpretation goes against the text of the preparatory document for the GKN Automotive ET meeting of 12 August 2020, which, on the same slide, provides as next steps both the ‘Business Case Update’ for ‘approval by Melrose’, and the ‘Land Selection’ for ‘Approval by Melrose’, thereby indicating that Melrose would be asked to approve the land selection after the GKN Automotive ET meeting of 12 August 2020. Although, taking into account the 12 November 2020 presentation, the Commission could accept that the approval of the ‘Land selection’ in the said slide could be read as referring to such approval within the broader context of the overall business case review, this still does not mean that the location selection remained open, after Melrose had approved the Investment Project. This is all the clearer based upon the reasoning set out in the following recital.
- (133) The Commission notes that there is nothing in the 12 November 2020 presentation that points to Hungary being only a working hypothesis or the location analysis not being finalised at the stage when the CER was approved by Melrose. On the contrary, the location was presented as a key element of the Investment Project. In this respect, the first slide has as a subject ‘Recap: [Investment Project] comprises the 2<sup>nd</sup> wave of consolidating our European footprint[transferring business] ... and building a new site in Hungary’ <sup>(45)</sup>. The second slide states ‘Miskolc, HU selected as location for new site to take advantage of lower factor cost in Eastern Europe and to balance exposure in EEU countries’. Moreover, the presentation includes three appendices. Two of them are relevant in this context. The first appendix summarises the work on the business case up until the request for its approval, and includes language such as ‘Approach for production transfer bottom up validated and refined’, which includes the ‘Construction of one new site in Hungary (Miskolc area) sized for the scope of this wave’. Furthermore, the appendix explains that ‘[a]ll core assumptions [are] extensively validated, and based on GKN actuals/references, reputable 3<sup>rd</sup>-party party sources (e.g. Eurostat) or expert interviews (e.g. regarding HUN labour market)’. The third appendix provides an overview of different steps the land selection process had followed, starting from the first selection of the countries in the scope of the analysis until the ‘final recommendation of the focus region and site’. Miskolc was presented as ‘decision proposal’. It is clear, therefore, that Hungary was presented as an inherent element of the business case to be approved by Melrose, as is also evident from the CER.

<sup>(43)</sup> The section of the CER containing the quoted description of the project is titled ‘Description of capital expenditure (Detail attached)’ and refers to the presentation used at the meeting with Melrose on 12 November 2020 as annex (recital 135 of the Opening Decision).

<sup>(44)</sup> Whereas according to the relevant sentence in the meeting notes of 12 August 2020, the GKN Automotive ET confirmed Miskolc, Hungary ‘as working hypothesis for new site to be presented to Melrose for approval’ and provides for the approval of the land selection by Melrose as one of the next steps (recital 50 of the Opening Decision).

<sup>(45)</sup> In this context ‘2<sup>nd</sup> wave’ does not mean ‘Wave two’ of the Strategy (as referred to at recital 40 of the Opening Decision), but rather the second wave of [transfer of business], within Wave three of the Strategy, which follows the first wave of [transfer of business] under Wave one of the Strategy.

- (134) Hungary did not provide any other contemporaneous evidence that could substantiate its argument that Hungary would only have been an ‘assumed location’, ‘working hypothesis’ or ‘hypothetical scenario’ at the stage when the CER was approved.
- (135) On the basis of the above, the Commission finds that the location was an integral part of the CER approved by Melrose in December 2020, and Hungary has not demonstrated, on the basis of credible evidence, that Hungary constituted only a working hypothesis for the location of the Investment Project and that GKN Automotive was entitled to decide on a different location in the absence of further approval by Melrose.
- (136) Although, on the basis of the evidence assessed at recital (133), the Commission considers that the location was an integral part of the CER approval of December 2020, the Commission nevertheless considers (in line with Hungary’s submissions (recital 57 of the Opening Decision)) that the summary nature of the CER approval left sufficient scope for Melrose to attach certain conditions to its approval. In this respect, and in light of Hungary’s arguments (recital (43)), the Commission needs to examine whether Melrose’s approval was, nevertheless, conditional on a [4.5 – 5.4]-year payback target being met. At recitals (137) to (160), the Commission assesses, therefore, whether such [4.5 – 5.4]-year payback requirement was a decision-making factor prevalent at the time of the investment and location decision.
- (137) In the course of the Commission’s preliminary examination, Hungary argued that although Melrose had approved the CER, in the preceding meeting of 12 November 2020 it had challenged the business case since it did not match Melrose’s general practice of requiring a payback period of maximum [4.5 – 5.4] years for big investments. As noted at recital 135 of the Opening Decision, the Commission could not establish without serious doubts that a payback period of maximum [4.5 – 5.4] years constituted a decisive element to invest or not, prevalent at the time of the investment and location decision.
- (138) The Commission considers that the evidence referred to at recitals 135 and 136 of the Opening Decision supports the conclusion that a payback period of maximum [4.5 – 5.4] years was not a decisive element to invest because: (1) the CER was signed acknowledging a payback period of [5.4 – 7] years; (2) the more detailed description attached to the CER includes a clear reference to a [5.4 – 7] years payback period without any reference to a target timeline not exceeding [4.5 – 5.4] years; (3) the Strategy itself<sup>(46)</sup> recognised that even if some individual waves look unattractive from a payback perspective, the full benefits of the Strategy will not be achieved from a piecemeal approach to projects, suggesting that the payback period was not, in itself, a determinative factor in the decision-making process for individual waves and was not necessarily to be evaluated wave per wave; (4) the preparatory document for the GKN Automotive ET meeting of 12 August 2020 mentioned a target payback of less than [5.6 – 7.2] years for New wave three, without any reference to a policy of [4.5 – 5.4] years; (5) on 10 November 2020, the Site selection project team sent the draft presentation for the Melrose review meeting, referring to a [5.4 – 7] years payback, to the CFO asking for his comments prior to the meeting with Melrose. Neither Hungary nor any of the other interested parties has submitted any evidence indicating a reply to this request from the Site selection project team, nor any comments nor proposals for amendments by the CFO to this presentation, despite the fact that the draft presentation referred to [5.4 – 7] years payback; (6) in November 2020, after Melrose’s alleged challenge to the business case to meet the [4.5 – 5.4]-year target and in the discussions within the Site selection project team on alternative locations, there is no evidence of a payback period calculation/consideration for the alternative locations (Türkiye, Poland, Slovakia, Serbia or Morocco), which, according to Hungary, were considered before concluding to promote Türkiye as the alternative location; (7) the comparison of Hungary and Türkiye by the Site selection project team on 17 December 2020 and the alleged preliminary location decision in January 2021 were based on the NPV comparison and scoring of the two locations without any calculation or consideration of the payback period. The earliest evidence of a payback period calculation for the alternative investment in Türkiye dates back only to December 2021 – that is: one year after the CER approval and the preliminary location decision of January 2021.

<sup>(46)</sup> As summarised in the 29 November 2019 final presentation (recital 38 of the Opening Decision).

- (139) In its comments on the Opening Decision, Hungary maintains that Melrose's approval of the CER did not constitute a definite approval, but only a pre-approval of the business case to allow the release of funding for the Investment Project to move forward (recital (73)). Hungary also maintains that Melrose challenged the payback period of [5.4 – 7] years and tasked the GKN Automotive ET to increase the financial attractiveness of the business case and to comply with the expected payback period of maximum [4.5 – 5.4] years (recital (59)). This position is supported by GKN Automotive and Melrose which provided signed declarations on this part of the decision-making process (recitals (54) and (140)).
- (140) The retrospective minutes of the meeting of 12 November 2020 dated 10 February 2023 and signed by representatives of Melrose and GKN Automotive, constitute an *ex post* declaration, as a reference document for the Commission in the context of the formal investigation, on what had been discussed during the meeting of 12 November 2020. Those retrospective minutes indicate that '[a member of Melrose] raises concerns about the financial viability of the business case on the basis that the payback period exceeded [4.5 – 5.4] years. He elaborated that a long payback period would mean Melrose Industries may not see a full return on their cash investment on the project during their period of ownership. Nevertheless, all participants of the meeting agreed on the strategic necessity of the project to future proof the GKN Driveline business, notwithstanding that the payback was less attractive than would ordinarily be considered acceptable. Following discussion, the Melrose Industries representatives signified their approval of the project business case, thereby permitting the project to proceed on the basis of the project budget. However, they tasked the GKN Automotive team to revisit the project assumptions to identify ways to improve project payback below [4.5 – 5.4] years by increasing value and/or reducing cost'.
- (141) The Commission considers, first, that this wording in the retrospective minutes of the meeting of 12 November 2020, points to the CER being a formal approval of the business case and Investment Project, and not merely an 'initial approval' or 'pre-approval' as Hungary argues. In any event, no further final or definite approval has been provided. Indeed, Hungary stated that no further approval by Melrose was needed (recital (76)). Second, the retrospective minutes support the Commission's view that, due to the Investment Project being of 'strategic necessity', Melrose accepted a [5.4 – 7] year payback period, while expressing their wish to still see the payback period improved. In any event, since this declaration was drafted for the purposes of the present proceedings and at a date far removed from the material time, such declaration is of low probative value and, as such, is not capable of calling into question the documentary evidence relied on that is contemporaneous to the events in question. That conclusion is not called into question by the fact that the declaration was made by an individual who participated in the relevant events <sup>(47)</sup>.
- (142) The Commission considers that the written statement of GKN Automotive's current CEO (recital (54)), due to its *ex post* nature, is also of low probative value for the reasons already stated at recital (141). The Commission also notes that in that statement, GKN Automotive refers to a lack of access to documents of its former parent company, Melrose. However, GKN Automotive also has not provided any information on any reference to contacts with Melrose to obtain relevant documents to further substantiate the statements made during the preliminary and formal investigation. Melrose in its comments also did not provide any contemporaneous documents to support the decision-making process.
- (143) With respect to the contemporaneous, documentary evidence, Melrose's email of 9 December 2020 transmitting the signed CER to GKN Automotive shows that Melrose agreed on the 'concept/big picture' of the project, while clarifying that it was not giving a 'blanket approval to spend £[220 – 400]m' (i.e. the total cost of the project) as it was expecting the final expenditure values would change compared to those in the CER 'as each element progresses and the business case becomes clearer' and that it wanted to be kept updated on each step. Although this document clarifies that there existed a wish to still improve the financial performance indicators of the investment, there is no reference to any decisive target of a maximum [4.5 – 5.4]-year payback or any reference to a scenario that the Investment Project would not be implemented if the 'target' was not met. If such payback target was discussed during the business case review on 12 November 2020 as a strict condition for approval, the Commission would expect to find a reference to it, either in the e-mail in which Melrose listed its main comments on the approved CER, or in the CER itself.

<sup>(47)</sup> See to that effect, Case T-106/17 *JPMorgan Chase and Others v Commission*, ECLI:EU:T:2023:832, paragraph 60.

- (144) In its comments on the Opening Decision, Hungary highlights that in its role as a financial investor, Melrose is mainly interested in the financial profitability of investments. Therefore, financial performance indicators such as the [4.5 – 5.4]-year payback threshold are used in the decision-making process ‘based on common practice’; and Melrose ‘tends to look at investments with a payback under [2.1 – 2.9] years’, while for larger/strategic projects a payback above [4.5 – 5.4] years would not be considered. Hungary, in this context, did not submit any contemporaneous evidence but only referred to the e-mail of Melrose of 6 August 2021 (recital (57)), which was drawn up in the context of the preparation of a reply to the Commission’s request for information referred to at recital (3) and, therefore, was only prepared after the period in which the [4.5 – 5.4]-year payback was said to be a prevalent factor in such process (recital (59)). The Commission notes that those considerations by Hungary and the declaration by Melrose, even if they could be considered reliable, can only point to a ‘common practice’ but do not provide any evidence as to the decisive elements concerning the Investment Project specifically, for which concrete evidence showing Melrose’s and GKN Automotive’s openness to accepting a longer payback period is available (specifically, the signed CER, the more detailed description attached to the CER, and the preparatory document for the GKN Automotive ET meeting of 12 August 2020).
- (145) In its comments, Hungary also replies to the other elements, based on which the Commission questioned the application to the Investment Project of a strict investment policy providing for a maximum payback period of [4.5 – 5.4] years:
- (146) Hungary replies to (recital (68)) the Commission’s argument that even a project that is unattractive from the payback perspective could be approved in view of ‘the full benefits’ of the Strategy, as the Strategy itself recognised (point (3) of recital (137)). The Commission notes that Hungary puts forwards elements that it had already provided during the preliminary examination and submits no further evidence in this regard. The Commission accepts the argument that for implementation purposes, each project can be assessed separately based on its own payback period. However, this does not necessarily mean that each project as such needs to comply with a binding individual payback target. In other words, a general strategy, based on several projects could have a certain target in terms of payback period, while the underlying projects could have different targets, that may be higher or lower than the general target. This is recognised in the Strategy itself, which stressed the need to avoid a ‘piecemeal approach to projects’.<sup>(48)</sup>
- (147) Hungary and GKN Automotive also provided evidence on the payback period of other projects in the form of a table listing four projects (recital (68)). However, the fact that those projects had a lower payback period is not decisive and does not evidence the required payback period for the Investment Project. The Commission notes that, in any event, the projects listed in that table are not comparable to the Investment Project, as they are of much lower cost and concern only the [transfer of business] of certain sites and the transferring of operations to already existing sites, instead of the setting up of a new factory. It is reasonable to consider that the construction of a new establishment could require more time to achieve its financial target than the [transfer of business] of a site, so that it could well fall into the category of cases which, according to the Strategy, ‘look unattractive from a payback perspective’ but which were necessary to unlock the full benefits of the Strategy.
- (148) Regarding point (4) of recital (138), Hungary observes (recital (69)) that the payback range of [a range between 5 – 7] years initially identified for New wave three (representing an improvement of the [7.5 – 11] year payback period of Wave three) was ‘only a likely range... sensitive to some core assumptions’. The Commission has no reason to doubt that the change to Wave three was intended to reduce the payback range to approximately [a range between 5 – 7] years. However, the Commission’s main argument was that the preparatory document for the GKN Automotive ET meeting of 12 August 2020 clearly mentioned a target payback period of ‘<[5.6 – 7.2] years’. Hungary explains that this constituted only an internal target for the Site selection project team, different from the [4.5 – 5.4]-year target needed to receive Melrose’s approval on the CER and well known by the GKN Automotive ET. Nevertheless, no further evidence was submitted as to why the Site selection project team would work towards an internal target different to that allegedly necessary to ensure Melrose’s approval of the project a few months later. Hungary explains that the GKN Automotive ET was aware of the [4.5 – 5.4]-year limit applying to the decision-making process at stake.

<sup>(48)</sup> Recital 38 of the Opening Decision.

- (149) The Commission consider that such submissions lack plausibility. First, neither the existence of such a [4.5 – 5.4]-year limit or the GKN Automotive ET's awareness of it are proven with contemporaneous documents, and cannot be deduced from the mere fact that in the past the company accepted payback values much lower than [4.5 – 5.4] years, for projects that do not appear to be comparable to the Investment Project (see also recital (69)). Second, and in any event, even if it were accepted that such a [4.5 – 5.4]-year requirement was strictly applicable – despite the Strategy's acknowledgement that certain steps can involve unattractive payback periods – and the GKN Automotive ET was aware of such requirement, it is doubtful firstly, why the site selection team would have proposed, in August 2020, a project with a payback of under [5.6 – 7.2] years, and secondly, why the GKN Automotive ET would have submitted the Investment Project with a [5.4 – 7] year payback period for Melrose's approval in November 2020.
- (150) Regarding point (5) of recital (138), Hungary explains that, from August 2020 onwards, GKN Automotive involved its CFO in an effort to try and reach the [4.5 – 5.4]-year payback target. In order to substantiate this element, Hungary provides an interim document of 30 October 2020 which refers to a payback period of [5.5 – 7.5] years. The Commission notes that that document does not refer to any 'unmet' payback target. The fact that the payback period still improved from [5.5 – 7.5] years in October 2020 to [5.4 – 7] years in November 2020 does not substantiate that there was a target of maximum [4.5 – 5.4] years. It can merely give an indication that GKN Automotive made an effort to reduce the payback period. Furthermore, throughout the entire decision-making process, there is no evidence of any discussion with - or instruction from – the CFO aiming at reducing the payback period to a maximum of [4.5 – 5.4] years. On the contrary, despite allegedly being aware of a strict [4.5 – 5.4]-year limit, the GKN Automotive ET submitted the Investment Project for Melrose's approval in November 2020 in the CER with a payback period of [5.4 – 7] years and received such approval in December 2020 without any reference to a [4.5 – 5.4]-year limit.
- (151) On point (6) of recital (138), neither Hungary nor the other interested parties provided further arguments or evidence. The Commission therefore maintains its view that the lack of a payback period calculation/consideration for the alternative locations (Türkiye, Poland, Slovakia, Serbia or Morocco) allegedly considered in response to Melrose's challenge of the business case for the Investment Project, supports the conclusion that a payback period of maximum [4.5 – 5.4] years was not a decisive element in the assessment of whether to invest in a specific location.
- (152) On point (7) of recital (138), Hungary submits that after having received Melrose's approval (for which the calculation of the payback period was mandatory), GKN Automotive used the NPV methodology for comparing locations. Hungary argues in this context that in other large investment cases, where the beneficiaries were conventional manufacturing companies, the company decided on the basis of NPV calculations, not of payback periods (recital (73)).
- (153) The Commission does not consider this argument to be convincing. First, if GKN Automotive had a binding target of a payback period of a maximum of [4.5 – 5.4] years, for which a location change would be the solution, it is not credible that in January 2021, Türkiye was selected as an alternative location to Hungary without any verification or reference to that location's potential of meeting that target. Second, even if GKN Automotive had initially assumed that Türkiye was likely to meet the payback requirement, given that it constitutes an ultra-low-cost country, in a situation such as that described by Hungary, where GKN Automotive had to find an alternative location to meet the payback requirement under tight time constraints (recitals (100) and (167)), it is not plausible that the relevant team continued to develop the alternative case involving a location in Türkiye for approximately one year (until December 2021) without being sure that the Turkish location would meet the payback target. Such approach would have risked unnecessarily losing time and might have resulted in the team having to restart the process again with further delays (which would be counter to the alleged urgency of the situation). In this context the Commission recalls that the first verification of the payback period expected in Türkiye was only carried out in December 2021 and it shows payback periods (with and without subsidies) comparable to those expected in Hungary, and in any event not below [4.5 – 5.4] years. <sup>(49)</sup>

<sup>(49)</sup> Recital 78 of the Opening Decision.

- (154) Second, if it were correct that GKN Automotive switched to the NPV methodology in its decision-making, it is not explained why the content of the presentation for the 9 December 2021 meeting (i.e. the alleged final location decision) reintroduces the concept of payback period, by providing that 'Incentives (...) will enable the project to meet the target payback period of [4.4 – 5.3] years ([5.5 – 7.1] years w/o incentives)'. The Commission notes in this context that in its request for information of 30 September 2021, it had enquired about the [4.5 – 5.4]-year target (recital (5)). In its memorandum of 25 April 2024 (recital (13)), Hungary argued that the presentation for the meeting of 29 January 2021 was superseded by the presentation for the meeting of 9 December 2021, with the latter including a payback period calculation. The Commission does not consider this argument to be relevant since the Commission's doubt related specifically to the period December 2020 and January 2021 when Türkiye was allegedly reconsidered and selected as an alternative location for the Investment Project.
- (155) In addition, concerning Hungary's argument on the appropriateness of the NPV methodology in general and its comparison with other Commission decisions, the Commission considers this is irrelevant since the RAGs require the Commission to assess the decision-making process of the specific project for which the regional aid is notified.
- (156) Finally, Hungary argued that GKN Automotive had been informed that NPV comparison was 'the standard approach required in order to demonstrate a funding requirement, relevant to regional aid'. The Commission considers however that, according to Hungary's position, supported by Melrose and GKN Automotive, in the period December 2020 and January 2021, GKN Automotive sought to reduce the payback period to below [4.5 – 5.4] years. In that context, a comparison of payback periods would have been relevant, whereas an NPV comparison rather suggests that Türkiye had been introduced with the purpose of building a counterfactual scenario on the basis of which regional aid could be requested in Hungary. This conclusion is, in fact, supported by Hungary's submission that GKN Automotive conducted the NPV calculation because an NPV calculation was 'the standard approach required in order to demonstrate a funding requirement, relevant to regional aid'. The Commission recalls in this context that GKN Automotive's request for incentives to Hungary was updated in this same period, more precisely already on 18 December 2020, with the introduction of Türkiye as the counterfactual location for the Investment Project.
- (157) Hungary further refers to a request for consultancy services dated 27 November 2020 (recital (63)) by quoting a single phrase that reads 'no definite decisions for the project or a site have been made'. The Commission considers, also in light of the other arguments in this section, that this sentence cannot be relied upon as proving that Hungary had not been selected by December 2020. The service request further reads: 'We have already identified potential locations and land plots for the new site; currently we favor a site in North-East-Hungary among the options considered; no definite decisions for the project or a site have been made' and then identifies the 'support needs' by explaining: 'We are seeking guidance on the following questions: Validation of current site selection preference; Which forms of state aid may be available to us?; How to best frame the request for state aid considering our scenario (potential relocation, ...)?; What supplementary material needs to be prepared and what are proven formats for a decision of national and EU authorities?; Hands-on support in preparation of application material'. The Commission notes on this basis that the service request, seen in its entirety, rather shows that following the business case review of 12 November 2020, the Site selection project team contacted the consultancy firm for support to prepare a convincing State aid case.
- (158) With respect to recital 136, point (f) of the Opening Decision, Hungary submits (recital (75)) that it is common practice within GKN Automotive not to consider sales proceeds from land and buildings. As this argument is substantiated by capital expenditure requests from other projects already submitted at the time of the preliminary investigation<sup>(50)</sup>, the Commission accepts this argument but considers this element as non-decisive for its overall assessment as it cannot dispel alone the doubts on the application to the Investment Project of a strict investment policy providing for a maximum payback period of [4.5 – 5.4] years. Hungary further submits that the aid amount in the indicative offer was not considered in the calculations by GKN Automotive because it acted prudently and the aid was not certain. The Commission notes that this argument does not change the fact that those calculations formed the basis for Melrose approval of the CER, which, therefore, clearly did not take into account any aid.

<sup>(50)</sup> Cf. footnote 35.

- (159) Finally, Hungary expresses concerns with the Commission's assumptions that a formal investment policy needed to be in place for Melrose to be able to challenge the business case for the Investment Project (recital (77)). The Commission clarifies that the Opening Decision is not based on Hungary needing to prove the business case challenge exclusively on the basis of the existence of a 'formal' investment policy. Rather, Hungary had claimed that a 'strict investment policy' existed in the present case, and which was applicable to the decision-making process. The serious doubts expressed in the Opening Decision are based on Hungary having failed to provide any documentary evidence substantiating the existence of such 'strict investment policy'. Although the existence of an investment policy (formal or informal) providing for the [4.5 – 5.4]-year target and applicable to the Investment Project might have helped to substantiate the applicability of such criteria to the decision-making process at issue, the Commission has never contested that, in the absence of it, Melrose could have requested that the Investment Project comply with the said target. However, no evidence has been provided that Melrose made such a request and that locating the Investment Project in Hungary would not have been approved unless it respected a [4.5 – 5.4]-year target.
- (160) The Commission therefore concludes that Hungary has failed to demonstrate that Melrose's investment policy included a decisive threshold of a [4.5 – 5.4]-year payback period and to adduce convincing evidence against the Commission's understanding that through its approval of the CER in December 2020, Melrose had already decided to invest in Hungary after GKN Automotive had explored Poland and Slovakia as alternatives, and without any consideration having been given to any aid (recital 129 and 136 point (f) of the Opening Decision).
- (161) Finally, Hungary reacts to the serious doubts that the Commission expressed at recital 133 of the Opening Decision that GKN Automotive might have investigated Türkiye only for the purposes of being able to present an alternative location as part of the State aid review. Hungary argues that HIPA provided the beneficiary with all of relevant information, including information concerning relocation, in August 2020. Therefore, GKN Automotive could have started preparing the alternative scenario involving a location in Türkiye already in August 2020. While this hypothesis could be correct, it is clear from the evidence submitted that Türkiye was not considered before November 2020. The Commission also notes that in the presentation for the 12 November 2020 meeting, GKN Automotive presented the potential for incentives in Miskolc to Melrose by referring to the aid values in the 5 November 2020 informal offer (recital (45)) and by considering certain key eligibility criteria for receiving aid. One of the criteria reads 'Investment in new assets in regional aid target region (e.g., Miskolc) that would without a grant financially not [be] viable or would result in a different location decisions (more developed/non-EU)'. There was also a reference to the relocation aspect and the need for Commission approval. In other words, GKN Automotive seemed to be well aware that a counterfactual scenario would be needed for GKN Automotive to be able to receive regional investment aid for the Investment Project. At the same time, no such counterfactual scenario existed at that point in time and consequently no aid was taken into account in the business case presented to Melrose. Considering those observations together with the Commission's findings on the approval of the Investment Project based on the CER, the Commission considers it plausible that Türkiye was introduced as a counterfactual scenario specifically for the purposes of improving GKN Automotive's chances of receiving State aid from Hungary.
- (162) In any event, it follows from the foregoing, that Hungary has failed to prove, on the basis of clear evidence – including genuine, official and contemporaneous documents related to GKN Automotive's and Melrose's decision-making process – that Türkiye constituted a realistic and credible alternative location for the Investment Project in the absence of aid.

#### 5.4.1.2. Türkiye as the only counterfactual

- (163) At recitals 138 and 139 of the Opening Decision, the Commission raised doubts as to why Türkiye was considered as the only counterfactual scenario for the Investment Project and questioned whether it could be the case, instead, that Türkiye was only investigated for the purposes of being able to present an alternative location as part of the State aid review, and thereby improve the chances of aid to be granted by Hungary in favour of the Investment Project being found compatible with the internal market. Hungary and GKN Automotive submit (recitals (79) and (100)) that Türkiye, with existing operations demonstrating a very good operational performance and a local team matching the timeline, was the only feasible low-cost option in November and

December 2020, when the location selection was turned into a purely cost-centred exercise, which would enable the Investment Project to be implemented within the required timeframe. Hungary and GKN Automotive also submit that despite the limited size of the existing GKN Automotive operation in Türkiye, this site has continually demonstrated very good operational performance.

- (164) In his signed declaration of 11 April 2024 (recital (54)), GKN Automotive's CEO explained what had happened in the period just before and after the meeting of 12 November 2020. According to that declaration, between 12 November 2020 and early December 2020, multiple discussions took place between the Site selection project team, the CEO and his colleagues in the GKN Automotive ET on how to improve the project payback period. 'These discussions took the form of specific project reviews, regular team meetings, individual catch-ups and informal discussions. Scheduled meetings took place in various participant settings on November 16, 18, 19, 26, 27, December 4, 10. Further discussions took place outside of scheduled meetings during this time via phone or when meeting in person at the company's offices.' The CEO further declared: 'during these internal discussions, we reached the conclusion that to improve the project payback to the expected level, we would have to consider an even lower cost location. As "ultra-low-cost" locations, we considered at various stages Bulgaria, Romania, Serbia, Morocco and Turkey as options. These countries were considered as genuine counterfactuals where the investment project could take place.'
- (165) In order to substantiate these arguments, Hungary submitted three online meeting invitations in November/December 2020. Hungary claims that in those meetings, GKN Automotive concluded that Türkiye was the appropriate counterfactual to explore (recital (80)). The meeting invitations relate to meetings on 19 November and 4 December 2020 with the subject 'catch -up call' between two GKN Automotive individuals involved in the Investment Project and a meeting on 10 December 2020 involving GKN Automotive staff involved in the Investment Project and local staff in Türkiye for a 'quick [Investment Project] review to agree on the next steps'. Such documents do not include any reference to locations other than Türkiye or Hungary. Furthermore, neither Hungary nor GKN Automotive provided any supporting documentation or meeting minutes relating to those meetings, which could evidence what was discussed during those meetings and calls.
- (166) The Commission finds that, notwithstanding the additional evidence described at recital (165), there is nothing that points to more detailed follow-up on alternative locations, or an actual comparison between alternative locations and Türkiye. This supports the Commission's conclusion at recital (135) that in December 2020, the location selection process had been finalised and Hungary was not only a 'working hypothesis' or an 'assumed location'.
- (167) Regarding the argument that the time factor (i.e. the urgency of the Investment Project) was an element affecting the decision-making process, the Commission notes that, even if this were a consideration, Hungary or GKN Automotive did not submit any document to substantiate this urgency in the period November/December 2020. Nor did they provide any evidence to substantiate that this alleged urgency led to Türkiye being explored as the only alternative location to Hungary, without detailed follow-up on alternative locations, or an actual comparison between alternative locations and Türkiye. Moreover, the Commission finds that argument contradictory to the Hungarian argument that, on 12 November 2020, Hungary was only a 'working hypothesis'. If it were correct that Hungary was only a 'working hypothesis', the project timeline, as set out in the presentation for the meeting of 12 November 2020, ought to have provided for a time period after the CER to investigate alternative locations. The project timeline, however, as it stood on 12 November 2020, refers to a 'Decision' and 'Land purchase, permits, preparation of construction' in the last quarter of 2020, therefore not leaving sufficient time for investigations into alternative locations.

- (168) The Commission also considers that the 'good operational performance' of the small site in Türkiye, which has been in operation since 2008, was not a new factor as compared to the situation in 2019, when the option to expand the existing site in Türkiye in the context of the Strategy was discarded. Therefore, the Commission does not consider this an element that could justify why Türkiye was considered the only alternative location to Hungary to be explored. In any event, neither Hungary nor any of the other interested parties submitted any evidence on this element.
- (169) The Commission therefore finds that the comments provided by Hungary and the other interested parties do not justify why only Türkiye was introduced as alternative location in an attempt to improve project payback below [4.5 – 5.4] years.
- (170) In addition, the Commission notes that the retrospective minutes of the meeting of 12 November 2020 note that 'Melrose Industries representatives tasked the GKN Automotive team to revisit the project assumptions to identify ways to improve project payback below [4.5 – 5.4] years by increasing value and/or reducing costs'. With the email dated 9 December 2020, Melrose requested to be kept updated. The Commission understands the notion of 'identifying ways to improve' to be wider than only pointing to a location analysis. Neither Hungary nor the other interested parties provided any evidence relating to such identification nor any evidence pointing to feedback being provided to Melrose thereon. Also, if reopening the location analysis were the only possibility for increasing the financial attractiveness of the business case (for which neither Hungary nor any of the other interested parties have provided any evidence), the Commission would expect to have evidence of follow-up and a comparison between various alternative locations before GKN Automotive concluded on Türkiye as the counterfactual location for the Investment Project.
- (171) Based on the considerations recorded at recitals (127) to (161), the Commission finds that the evidence in the case file does not dispel its serious doubts as to whether the investment and location decision was not taken already in December 2020 without consideration being given to the availability of State aid or to carrying out the investment elsewhere than in Hungary. The Commission could also not establish that Türkiye was considered as an actual counterfactual location where GKN Automotive would have implemented the Investment Project in the absence of State aid from Hungary (recitals (163) to (170)). Rather, it appears that Türkiye had been introduced for the purposes of increasing the chances of the aid from Hungary being found compatible with the internal market.

#### 5.4.1.3. Türkiye as a genuine counterfactual

- (172) At recital 140 of the Opening Decision, the Commission noted that the investigation of Türkiye as a counterfactual scenario remained relatively high level until mid-2021. A senior management site visit was only organised in July 2021. At that point in time, the State aid offered by Hungary had already been pre-notified to the Commission and first contacts with the Commission services had been established. However, the Commission acknowledged that, even if Türkiye had originally been introduced into the analysis only for the purposes of improving the chances of the proposed State aid being declared compatible, it might be possible that carrying out the investment in Türkiye subsequently evolved into a genuine alternative location where GKN Automotive and Melrose were prepared to invest. However, for the reasons set out at recitals 141 to 145 of the Opening Decision, the Commission expressed serious doubts that this was the case.
- (173) The Commission notes that neither Hungary, nor the interested parties argue that the location in Türkiye 'evolved' into a genuine alternative after being introduced for State aid purposes. In the absence of such arguments and supporting evidence, the Commission considers that, for the reasons set out at recitals 141 to 145 of the Opening Decision, and based on the conclusion at recital (171), Hungary has failed to demonstrate to the requisite standard the existence of an incentive effect under scenario 2 as set out in paragraph 61 RAG 2014 and paragraph 59 RAG 2022.
- (174) Nevertheless, and for the sake of completeness, at recitals (175) to (182), the Commission addresses the arguments of Hungary and the other interested parties on 'Türkiye as a genuine counterfactual'.

- (175) Hungary and GKN Automotive submit that immediately after the introduction of the alternative location in Türkiye into the location selection process, GKN Automotive started actively developing this option. Hungary also notes that the aid applications of 8 April 2021 for the cash grant and 31 March 2021 for the tax benefit in Hungary did not imply a final location decision for GKN Automotive. The pre-notification of the case to the Commission on 11 June 2021 was necessary for GKN Automotive to understand the likelihood of obtaining incentives but GKN Automotive was in parallel developing the option of carrying out the investment in Türkiye, which, according to GKN Automotive, by June 2021 had been developed to a considerable degree.
- (176) From the material available in the context of the preliminary examination, the Commission already acknowledged the documentary evidence as of December 2020 from which it appeared that Eskişehir in Türkiye, as an investment location, was compared with the selected region in Hungary. That documentary evidence showed that until June 2021 the preparatory activities in Türkiye involved contacts with local GKN staff in December 2020 on the availability of land (recital 60 of the Opening Decision), contacts with national authorities in December 2020, January 2021 and May 2021 on the availability of incentives (recital 62 and 65 of the Opening Decision) and engaging a local consultant to deal in the period February to May 2021 with building design and project planning and preparation of a general layout of works to be carried out (recital 72 of the Opening Decision). On that basis, the Commission expressed the preliminary view that the investigation of Türkiye as a counterfactual location for the investment remained relatively high level until mid-2021. The Commission considers that this reality contradicts Hungary's argument on the time pressure which led to only Türkiye being considered as an alternative location. If indeed the time factor was a consideration, the Commission would expect activities in Türkiye to intensify immediately after Türkiye was selected as the only counterfactual location to explore. Hungary submits that the majority of activities in Türkiye were undertaken by the local team. Neither Hungary nor GKN Automotive, except for one document (recital (81)), bring further evidence of activities during that period.
- (177) Hungary further submits that the reason why Türkiye was not included in the shortlist of countries drawn up at the end of 2019 in the context of the Strategy was not that its political risks were considered as deterrent, but the fact that at that time the cost was not the most important decision-making factor for GKN Automotive. Hungary and GKN Automotive also submit that in November and December 2020, the perceived risk levels of Türkiye had not materially changed and were still considered high compared to other locations. However, given that the location selection at the time turned into '*a purely cost-centred exercise*', GKN Automotive decided that the perceived risk levels of Türkiye were tolerable.
- (178) The Commission finds, first, that the alleged preliminary location decision in January 2021 and the alleged final location decision in December 2021 (recital (43)) do not support the argument that the site selection became cost-centred as of November 2020. This is because the decision in favour of Hungary was taken on the basis of non-financial advantages of the location in Hungary, despite a significant financial advantage of Türkiye (in terms of NPV gap) (recital (179)). Second, it is also not further substantiated that the perceived risk levels of Türkiye became, as from December 2020, acceptable to locate this strategic project in Türkiye.
- (179) In addition, with respect to Hungary's and GKN Automotive's reaction to the Commission's observation at recital 145 of the Opening Decision which questioned why a financial incentive covering less than 50 % of the NPV gap was considered as to 'largely offset the financial advantage of the Turkey option', Hungary considers this as an element related to the proportionality of the aid. The Commission however notes that this element is also relevant for assessing the incentive effect of the aid since the aid should influence the beneficiary's decision-making. Hungary and GKN Automotive argue that the qualitative criteria in favour of Hungary in combination with a payback period of [4.4 – 5.3] years, with incentives, were sufficient for GKN Automotive ET to decide to locate the investment in Hungary (recitals (86) and (103)). The Commission considers this argument as contradictory to the argument that the location selection had turned into a purely cost-centred exercise. In a purely cost-centred exercise, with the NPV as the appropriate methodology after the business case challenge of November 2020 as argued by Hungary (recitals (73) and (74)), this should have resulted in Türkiye being selected, given that even taking the aid into account, a considerable NPV difference remained.

- (180) Concerning Hungary's reference to earlier Commission practice, the Commission notes that each case is to be assessed on its merits and that according to paragraph 68 RAG 2014 and paragraph 66 RAG 2022, a counterfactual scenario is considered credible if it is genuine and relates to the decision-making factors prevalent at the time of the aid beneficiary's decision regarding the investment. While, in certain cases, State aid allowing only a partial coverage of the NPV gap may be found to provide a sufficient incentive in combination with other, qualitative factors, the allegedly cost-centred nature of the selection process contradicts Hungary's argument in this regard.
- (181) Finally, Hungary and GKN Automotive submit that the fact that Türkiye has been considered and/or selected by several other investors for their investments confirms, in principle, its credibility as potential location. The Commission considers that the perception of other enterprises is not relevant in this context given that paragraph 68 RAG 2014 and paragraph 66 RAG 2022 indicate that a counterfactual scenario is credible if it is genuine and relates to the decision-making factors prevalent at the time of the aid beneficiary's decision regarding the investment.
- (182) The Commission finds that the comments and evidence provided by the interested parties did not allay the Commission's serious doubts as to whether Türkiye was a genuine counterfactual location where the beneficiary would have invested in the absence of aid in Hungary.

#### 5.4.1.4. Conclusion on the substantive incentive effect

- (183) On the basis of its conclusion at recital (171) and its assessment at recitals (172) to (182), the Commission finds that Hungary failed to demonstrate that the substantive incentive effect of the aid in the context of a scenario 2 situation as notified by Hungary. As neither Hungary nor the other interested parties invoked a scenario 1 situation during either the preliminary examination or the formal investigation, it was not for the Commission to assess the incentive effect of the aid in the context of a scenario 1 situation <sup>(31)</sup>.
- (184) Since the evidence collected in the course of the preliminary examination and the formal investigation does not allay the Commission's serious doubts concerning the substantive incentive effect of the aid, the Commission cannot conclude that the aid would be compatible with the internal market. As the presence of substantive incentive effect has not been demonstrated and this finding is, on its own, sufficient to exclude the possibility of finding the measure compatible with the internal market, it is unnecessary to determine whether the measure meets the other eligibility and compatibility criteria set out in the RAG 2014 and in the RAG 2022.

## 6. CONCLUSION

- (185) The Commission concludes that the substantive incentive effect of the measure in favour of GKN Automotive Hungary Kft. (previously Rubin NewCo 2021 Kft.) set out in the RAG 2014 and in the RAG 2022 has not been demonstrated.
- (186) This measure may not, therefore, be considered to be compatible with the internal market on the basis of Article 107(3), point (a), TFEU,

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<sup>(31)</sup> At recital 183 of the Opening Decision the Commission preliminarily considered that, if, following the formal investigation, the Commission concludes that Türkiye was not a credible counterfactual scenario, while it transpires that the aid was still needed for the investment in Hungary to be sufficiently profitable (scenario 1 situation), then a causal link between the aid the relocation would be present, which would constitute a manifest negative effect.

HAS ADOPTED THIS DECISION:

*Article 1*

1. The State aid which Hungary is planning to implement in favour of GKN Automotive Hungary Kft. (previously Rubin NewCo 2021 Kft.), amounting to HUF 15 917,4 million (EUR 43.76 million) in discounted value is incompatible with the internal market.
2. The aid may accordingly not be implemented.

*Article 2*

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

*Article 3*

This Decision is addressed to Hungary.

Done at Brussels, 11 June 2024.

*For the Commission*  
Margrethe VESTAGER  
*Executive Vice-President*