

Amtsblatt der Europäischen Union

C 82



Ausgabe
in deutscher Sprache

Mitteilungen und Bekanntmachungen

65. Jahrgang
18. Februar 2022

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⁽¹⁾ Text von Bedeutung für den EWR.



II

(Mitteilungen)

MITTEILUNGEN DER ORGANE, EINRICHTUNGEN UND SONSTIGEN STELLEN
DER EUROPÄISCHEN UNION

EUROPÄISCHE KOMMISSION

**Genehmigung staatlicher Beihilfen nach den Artikeln 107 und 108 des Vertrags über die
Arbeitsweise der Europäischen Union****Vorhaben, gegen die von der Kommission keine Einwände erhoben werden**

(Text von Bedeutung für den EWR)

(2022/C 82/01)

Datum der Annahme der Entscheidung	20.12.2021
Nummer der Beihilfe	SA.57969
Mitgliedstaat	Rumänien
Region	
Titel (und/oder Name des Begünstigten)	Romania — Modification of State Aid N 437/2009 and SA.45976 (2016/NN) for promoting high-efficiency cogeneration
Rechtsgrundlage	Government Decision no. 1.215/2009 on the establishment of criteria and conditions necessary for the implementation of the support scheme for promoting high efficiency cogeneration based on heat demand, as modified and completed by the Government Decisions GD 494/2014, GD no. 925/2016, GD no. 129/2017 and GD no. 846/2018.
Art der Beihilfe	Regelung
Ziel	Umweltschutz, Energieeffizienz
Form der Beihilfe	
Haushaltsmittel	Haushaltsmittel insgesamt: 11 148 000 000 RON
Beihilfemaximalintensität	
Laufzeit	bis zum 31.12.2033
Wirtschaftssektoren	Elektrizitätserzeugung
Name und Anschrift der Bewilligungsbehörde	Ministry of Energy Academiei Street, no. 39-41, Bucharest, district 1, zip code 010013

Sonstige Angaben	
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Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	20.12.2021
Nummer der Beihilfe	SA.58731
Mitgliedstaat	Österreich
Region	Österreich
Titel (und/oder Name des Begünstigten)	RRF Austria — Operating aid to electricity from RES in Austria
Rechtsgrundlage	Erneuerbaren-Ausbau-Gesetz- EAG Elektrizitätswirtschafts- und organisationsgesetz 2010 (EIWOG 2010)
Art der Beihilfe	Regelung
Ziel	Umweltschutz, Erneuerbare Energien
Form der Beihilfe	Zuschuss/Zinszuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 10 000 000 000 EUR Jährliche Mittel: 1 000 000 000 EUR
Beihilfehöchstintensität	100 %
Laufzeit	bis zum 1.1.2031
Wirtschaftssektoren	Elektrizitätserzeugung
Name und Anschrift der Bewilligungsbehörde	EAG-Förderabwicklungsstelle (EAG Funding Processing Office) —
Sonstige Angaben	

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<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	20.12.2021
Nummer der Beihilfe	SA.59197
Mitgliedstaat	Frankreich
Region	Frankreich
Titel (und/oder Name des Begünstigten)	RRF France — Régime cadre pour la prévention et la réparation des dommages causés par des organismes nuisibles ou des maladies végétales aux forêts en lien avec des phénomènes climatiques extrêmes

Rechtsgrundlage	Articles D 156-7 à D 156-11 du Code forestier Article L 251-3 du Code rural et de la pêche maritime
Art der Beihilfe	Regelung
Ziel	Beihilfen für die Vorbeugung gegen Schäden und die Wiederherstellung des ursprünglichen Zustands von Wäldern nach Waldbränden, Naturkatastrophen, Naturkatastrophen gleichzusetzenden widrigen Witterungsverhältnissen, sonstigen widrigen Witterungsverhältnissen, Schädlingsbefall und Katastrophenereignissen, Beihilfen für spezifische forstliche Maßnahmen und Interventionen, deren Hauptziel darin besteht, zur Erhaltung oder Wiederherstellung des forstlichen Ökosystems, der forstlichen Biodiversität oder der Kulturlandschaften beizutragen
Form der Beihilfe	Bürgschaft, Zuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 500 000 000 EUR Jährliche Mittel: 0 EUR
Beihilfehöchstintensität	80 %
Laufzeit	bis zum 31.12.2027
Wirtschaftssektoren	Forstwirtschaft und Holzeinschlag
Name und Anschrift der Bewilligungsbehörde	Ministère de l'Agriculture et de l'Alimentation 3, rue Barbet de Jouy 75007 PARIS
Sonstige Angaben	

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Datum der Annahme der Entscheidung	20.12.2021
Nummer der Beihilfe	SA.61149
Mitgliedstaat	Lettland
Region	Lettland
Titel (und/oder Name des Begünstigten)	Support scheme for energy intensive industry for 2021 in Latvia
Rechtsgrundlage	Cabinet Regulation No. 831 of 22 December 2020 "Amendments to the Cabinet Regulation No 395 of 14 July 2015 „Procedures by Which Energy-Intensive Manufacturing Companies acquire the Right to Reduced Participation for the Payment of the Mandatory Procurement Component“
Art der Beihilfe	Regelung
Ziel	Umweltschutz, Sektorale Entwicklung

Form der Beihilfe	Zuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 7 000 000 EUR Jährliche Mittel: 7 000 000 EUR
Beihilfemaximalintensität	85 %
Laufzeit	1.1.2021 — 31.12.2021
Wirtschaftssektoren	VERARBEITENDES GEWERBE/HERSTELLUNG VON WAREN, BERGBAU UND GEWINNUNG VON STEINEN UND ERDEN
Name und Anschrift der Bewilligungsbehörde	The State Construction Control Bureau, Republic of Latvia Kr. Valdemāra Street 157, LV-1013
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

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Datum der Annahme der Entscheidung	23.9.2021
Nummer der Beihilfe	SA.62193
Mitgliedstaat	Frankreich
Region	Frankreich
Titel (und/oder Name des Begünstigten)	Covid-19: Compensation du dommage subi par Brittany Ferries en raison de l'épidémie de COVID-19
Rechtsgrundlage	Les bases juridiques pouvant être utilisées par l'État français seront les suivantes, selon le format de l'aide qui sera retenu: — Loi n° 2005-1719 du 30 décembre 2005 de finances pour 2006, notamment ses articles 46 et 48; — Arrêtés du 21 décembre 2020 et du 13 janvier 2021 portant report de crédits; — Code monétaire et financier, notamment ses articles L313-13 à L313-20; — Loi n° 2020-289 du 23 mars 2020 de finances rectificative pour 2020; — Loi n° 2010-237 du 9 mars 2010 de finances rectificative pour 2010. Concernant l'aide que la région Bretagne envisage d'octroyer, les bases légales sont les suivantes: — Les articles L. 4211-1, 6° et L. 1511-2 du code général des collectivités territoriales, relatifs à l'octroi des aides aux entreprises et plus largement au développement économique, dans la région; — La délibération du conseil régional n° 21_DFE_SBUD_05 du 9 avril 2021 portant décision modificative n° 1 au budget de l'exercice 2021; — Une convention formalisera l'octroi de l'aide.
Art der Beihilfe	Ad-hoc-Beihilfe SA BAI Brittany Ferries
Ziel	Ausgleich für Schäden aufgrund von Naturkatastrophen oder sonstigen außergewöhnlichen Ereignissen
Form der Beihilfe	Zinsgünstiges Darlehen, Zuschuss, Nachrangiges Fremdkapital

Haushaltsmittel	Haushaltsmittel insgesamt: 0 EUR Jährliche Mittel: 0 EUR
Beihilfemaximalintensität	0 %
Laufzeit	ab 30.6.2021
Wirtschaftssektoren	Personenbeförderung in der See- und Küstenschifffahrt
Name und Anschrift der Bewilligungsbehörde	Ministère de l'économie, des finances et de la relance 139 rue de Bercy- 75572 Paris Cedex 12
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	1.2.2022
Nummer der Beihilfe	SA.63946
Mitgliedstaat	Deutschland
Region	BRANDENBURG, BERLIN
Titel (und/oder Name des Begünstigten)	aid to Flughafen Berlin Brandenburg
Rechtsgrundlage	Shareholder resolution of 10 December 2021, Article 272 (2) of the German Commercial Code, Article 48 of the Law on Limited Liability Companies and the budget laws of the Land Berlin, the Land Brandenburg and the Federal Government.
Art der Beihilfe	Ad-hoc-Beihilfe Flughafen Berlin Brandenburg GmbH
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Eigenkapitalinstrumente
Haushaltsmittel	Haushaltsmittel insgesamt: 1 717 000 000 EUR Jährliche Mittel: 0 EUR
Beihilfemaximalintensität	100 %
Laufzeit	
Wirtschaftssektoren	Luftfahrt
Name und Anschrift der Bewilligungsbehörde	State of Berlin: Senatsverwaltung für Finanzen Klosterstraße 59, 10179 Berlin — State of Brandenburg: Ministerium der Finanzen und für Europa des Landes Brandenburg Heinrich-Mann-Allee 107, 14473 Potsdam — Federal government: Bundesministerium für Digitales und Verkehr Invalidenstraße 44, 10115 Berlin

Sonstige Angaben	
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Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	24.1.2022
Nummer der Beihilfe	SA.64772
Mitgliedstaat	Dänemark
Region	Dänemark
Titel (und/oder Name des Begünstigten)	Ændring af refusionsordningen for sandsugere.
Rechtsgrundlage	Lov om beskatning af søfolk (sømandsbeskatningsloven), jf. lovbekendtgørelse nr. 131 af 7. februar 2020, som ændret ved lov nr. 1583 af 27. december 2019 (Udvidelse af sømandsfradrag til søfolk på forsknings- og havundersøgelsesskibe)
Art der Beihilfe	Regelung
Ziel	Sektorale Entwicklung
Form der Beihilfe	Andere Formen der Steuervergünstigung
Haushaltsmittel	Haushaltsmittel insgesamt: 152 000 000 DKK Jährliche Mittel: 19 000 000 DKK
Beihilfehöchstintensität	0 %
Laufzeit	1.1.2022 — 31.12.2029
Wirtschaftssektoren	Schifffahrt
Name und Anschrift der Bewilligungsbehörde	Skatteministeriet Nicolai Eigtvæds Gade 28 1402 København K
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	7.1.2022
Nummer der Beihilfe	SA.100474
Mitgliedstaat	Deutschland
Region	Deutschland

Titel (und/oder Name des Begünstigten)	Richtlinie der Beauftragten der Bundesregierung für Kultur und Medien „German Motion Picture Fund“ (GMPF)
Rechtsgrundlage	§ § 23, 44 Bundeshaushaltsordnung (BHO) in Verbindung mit dem jeweils geltenden jährlichen Haushaltsgesetz (s. Anlage 6)
Art der Beihilfe	Regelung
Ziel	Kultur, Erhaltung des kulturellen Erbes
Form der Beihilfe	Zuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 150 000 000 EUR Jährliche Mittel: 75 000 000 EUR
Beihilfemaximalintensität	20 %
Laufzeit	1.1.2022 — 31.12.2023
Wirtschaftssektoren	Herstellung von Filmen, Videofilmen und Fernsehprogrammen
Name und Anschrift der Bewilligungsbehörde	Filmförderungsanstalt (FFA) Große Präsidentenstraße 9, 10178 Berlin
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	13.12.2021
Nummer der Beihilfe	SA.100494
Mitgliedstaat	Lettland
Region	Lettland
Titel (und/oder Name des Begünstigten)	Equity investments in the companies whose operations have been affected by the Covid-19 impact
Rechtsgrundlage	Cabinet of Ministers Regulation No. 458 Riga, 14 July 2020 „Regulations on equity investments in the companies whose operations have been affected by the Covid-19 impact“
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Andere Formen der Kapitalintervention

Haushaltsmittel	Haushaltsmittel insgesamt: 100 000 000 EUR Jährliche Mittel: 100 000 000 EUR
Beihilfemaximalintensität	
Laufzeit	bis zum 30.6.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	JSC Development Finance Institution Altum Dome Square 4, Riga, LV-1050
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	15.12.2021
Nummer der Beihilfe	SA.100598
Mitgliedstaat	Lettland
Region	Lettland
Titel (und/oder Name des Begünstigten)	COVID-19 — LV — Support to taxpayers for the continuation of their activity under the conditions of the crisis caused by Covid-19
Rechtsgrundlage	Regulation No 675 „Support to taxpayers for the continuation of their activity under the conditions of the crisis caused by Covid-19,“ as amended by the Council of Ministers on 10 November 2021 and 17 December 2021 (list of Sectors included in Annex III and Annex IV of Regulation No 675)
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Zuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 64 000 000 EUR Jährliche Mittel: 64 000 000 EUR
Beihilfemaximalintensität	
Laufzeit	bis zum 30.6.2022

Wirtschaftssektoren	HANDEL; INSTANDHALTUNG UND REPARATUR VON KRAFTFAHRZEUGEN, VERKEHR UND LAGEREI, GASTGEWERBE/BEHERBERGUNG UND GASTRONOMIE, Herstellung, Verleih und Vertrieb von Filmen und Fernsehprogrammen; Kinos; Tonstudios und Verlegen von Musik, Rundfunkveranstalter, GRUNDSTÜCKS- UND WOHNUNGSWESEN, ERBRINGUNG VON FREIBERUFLICHEN, WISSENSCHAFTLICHEN UND TECHNISCHEN DIENSTLEISTUNGEN, Verwaltung und Führung von Unternehmen und Betrieben; Unternehmensberatung, ERBRINGUNG VON SONSTIGEN WIRTSCHAFTLICHEN DIENSTLEISTUNGEN, Reisebüros, Reiseveranstalter und Erbringung sonstiger Reservierungsdienstleistungen, Wach- und Sicherheitsdienste sowie Detekteien, Erbringung sonstiger wirtschaftlicher Dienstleistungen für Unternehmen und Privatpersonen a. n. g., Hausmeisterdienste, Reinigung von Gebäuden, Straßen und Verkehrsmitteln, Messe-, Ausstellungs- und Kongressveranstalter, Erbringung sonstiger wirtschaftlicher Dienstleistungen für Unternehmen und Privatpersonen, GESUNDHEITS- UND SOZIALWESEN, ERZIEHUNG UND UNTERRICHT, KUNST, UNTERHALTUNG UND ERHOLUNG, Reparatur von Datenverarbeitungsgeräten und Gebrauchsgütern, Gesundheitswesen, EXTERRITORIALE ORGANISATIONEN UND KÖRPERSCHAFTEN, PRIVATE HAUSHALTE MIT HAUSPERSONAL; HERSTELLUNG VON WAREN UND ERBRINGUNG VON DIENSTLEISTUNGEN DURCH PRIVATE HAUSHALTE FÜR DEN EIGENBEDARF OHNE AUSGEPRÄGTEN SCHWERPUNKT, Reparatur von Datenverarbeitungs- und Telekommunikationsgeräten, Reparatur von Gebrauchsgütern, Erbringung von sonstigen überwiegend persönlichen Dienstleistungen
Name und Anschrift der Bewilligungsbehörde	Valsts ieņēmumu dienests/ State Revenue Services Talejas iela 1, Rīga, LV-1978
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	6.12.2021
Nummer der Beihilfe	SA.100633
Mitgliedstaat	Lettland
Region	Lettland
Titel (und/oder Name des Begünstigten)	Latvia COVID-19: Tax Deferrals due to the Lockdown
Rechtsgrundlage	Section 4 of the Law on the Suppression of Consequences of the Spread of COVID-19 Infection
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Steueraufschub
Haushaltsmittel	Haushaltsmittel insgesamt: 21 900 000 EUR Jährliche Mittel: 21 900 000 EUR
Beihilfemaximalintensität	
Laufzeit	bis zum 30.6.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige

Name und Anschrift der Bewilligungsbehörde	The State Revenue Service Talejas Str. 1, Riga, Latvia, LV-1978
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	16.12.2021
Nummer der Beihilfe	SA.100635
Mitgliedstaat	Rumänien
Region	
Titel (und/oder Name des Begünstigten)	Prolongation of the scheme RES District heating projects, State Aid SA.55433 (2020/N)
Rechtsgrundlage	Governmental Decision no. 1037 / 2020 on the approval of the State aid scheme for supporting the production and distribution in centralised system of green thermal energy from less exploited renewable sources, respectively biomass, biogas, geothermal energy
Art der Beihilfe	Regelung
Ziel	Energieeffizienz
Form der Beihilfe	Zuschuss/Zinszuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 742 425 000 RON
Beihilfemaximalintensität	100 %
Laufzeit	bis zum 31.12.2023
Wirtschaftssektoren	Wärme- und Kälteversorgung
Name und Anschrift der Bewilligungsbehörde	Ministry of Investments and European Projects Sos. București-Ploiesti, nr. 1 — 1B, Victoria Office, Intrarea Menuetului, nr. 7, Sector 1, Bucuresti
Sonstige Angaben	

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Datum der Annahme der Entscheidung	2.12.2021
Nummer der Beihilfe	SA.100663
Mitgliedstaat	Tschechien

Region	
Titel (und/oder Name des Begünstigten)	COVID 19 — Amendment to Mode A of the wage subsidy scheme „Antivirus“
Rechtsgrundlage	Resolution of the Government of the Czech Republic No. 353 of 31 March 2020, as amended, adopted in accordance with Act No. 435/2004 Coll., Employment Act.
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben
Form der Beihilfe	Zuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 27 500 000 000 CZK
Beihilfehöchstintensität	
Laufzeit	14.10.2020 — 30.6.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Ministry of Labour and Social Affairs Na Poříčním právu 1/376, 128 01 Praha 2, Czech Republic
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	21.12.2021
Nummer der Beihilfe	SA.100743
Mitgliedstaat	Deutschland
Region	
Titel (und/oder Name des Begünstigten)	COVID19 modifications to schemes SA.56790, SA.59289, SA.56814, SA.58504, SA.56787, SA.58021, SA.57100, and SA.57447
Rechtsgrundlage	Legal basis of schemes SA.56790, SA.59289, SA.56814, SA.58504, SA.56787, SA.58021, SA.57100, and SA.57447
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Zuschuss, Zinsgünstiges Darlehen, Rückzahlbare Vorschüsse, Bürgschaft, Andere Formen der Kapitalintervention
Haushaltsmittel	
Beihilfehöchstintensität	

Laufzeit	bis zum 30.6.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Bundesministerium für Wirtschaft und Energie Scharnhorststraße 34-37, D-10115 Berlin
Sonstige Angaben	

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Datum der Annahme der Entscheidung	8.2.2022
Nummer der Beihilfe	SA.100752
Mitgliedstaat	Portugal
Region	
Titel (und/oder Name des Begünstigten)	Mapa dos auxílios com finalidade regional para Portugal (1 de janeiro de 2022 — 31 de dezembro de 2027)
Rechtsgrundlage	N/A
Art der Beihilfe	Regelung
Ziel	Regionale Entwicklung (einschließlich der territorialen Zusammenarbeit)
Form der Beihilfe	
Haushaltsmittel	
Beihilfehöchstintensität	50 %
Laufzeit	1.1.2022 — 31.12.2027
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Direção-Geral dos Assuntos Europeus Rua da Cova da Moura, 1, 1350-115 Lisboa
Sonstige Angaben	

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<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	14.12.2021
Nummer der Beihilfe	SA.100845
Mitgliedstaat	Slowakei

Region	
Titel (und/oder Name des Begünstigten)	COVID-19: Prolongation and amendment of schemes SA.59240 and SA.62256
Rechtsgrundlage	Multiple
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben
Form der Beihilfe	
Haushaltsmittel	
Beihilfemaximalintensität	
Laufzeit	bis zum 30.6.2022
Wirtschaftssektoren	Luftfahrt, GASTGEWERBE/BEHERBERGUNG UND GASTRONOMIE
Name und Anschrift der Bewilligungsbehörde	Ministerstvo dopravy a výstavby Slovenskej republiky Námestie slobody č. 6, P.O.BOX 100, 810 05 Bratislava, Slovenská republika
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	17.12.2021
Nummer der Beihilfe	SA.100937
Mitgliedstaat	Litauen
Region	
Titel (und/oder Name des Begünstigten)	COVID-19: Prolongation of Deferral of social security contributions (SA.58885 as prolonged by SA.63496) / Socialinio draudimo įmokų mokėjimų atidėjimas
Rechtsgrundlage	Valstybinio socialinio draudimo fondo valdybos 2020 m. lapkričio 25 d. įsakymu Nr. V — 618 patvirtintos Valstybinio socialinio draudimo fondo valstybės pagalbos teikimo įmonėms, nukentėjusioms nuo COVID — 19 protrūkio, taisyklės
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Steueraufschub
Haushaltsmittel	Haushaltsmittel insgesamt: 100 000 000 EUR

Beihilfemaximalintensität	
Laufzeit	1.1.2022 — 30.6.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Valstybinio socialinio draudimo fondo valdyba prie Socialinės apsaugos ir darbo ministerijos Konstitucijos pr. 12-101, 09308 Vilnius Lietuva
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	17.12.2021
Nummer der Beihilfe	SA.100941
Mitgliedstaat	Kroatien
Region	
Titel (und/oder Name des Begünstigten)	COVID-19: Prolongation of the scheme SA.64716 (2021/N)
Rechtsgrundlage	Act on Agriculture (Official Gazette 118/2018, 42/2020 and 127/20. — Decision of the Constitutional Court of the Republic of Croatia, 52/21)
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	
Haushaltsmittel	
Beihilfemaximalintensität	
Laufzeit	bis zum 30.6.2022
Wirtschaftssektoren	Haltung von Geflügel
Name und Anschrift der Bewilligungsbehörde	Ministry of Agriculture Ulica grada Vukovara 78, 10000 Zagreb
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	1.2.2022
Nummer der Beihilfe	SA.101055

Mitgliedstaat	Italien
Region	
Titel (und/oder Name des Begünstigten)	COVID-19: Aid to companies holding port concessions
Rechtsgrundlage	Article 199, paragraph 10-sexies of Decree Law 34/2020 converted into Law 77/2020 and amended by Article 4, paragraph 5, letter d) of Decree Law 121/2021, converted into Law 156/2021
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats, Ausgleich für Schäden aufgrund von Naturkatastrophen oder sonstigen außergewöhnlichen Ereignissen
Form der Beihilfe	Zuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 22 417 487 EUR Jährliche Mittel: 22 417 487 EUR
Beihilfemaximalintensität	
Laufzeit	bis zum 30.6.2022
Wirtschaftssektoren	Schifffahrt
Name und Anschrift der Bewilligungsbehörde	Ministry of Sustainable Infrastructure and Mobility Viale dell'Arte n. 16 — 00144 ROMA
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	11.1.2022
Nummer der Beihilfe	SA.101133
Mitgliedstaat	Belgien
Region	
Titel (und/oder Name des Begünstigten)	COVID-19: bridge loans in the Flemish Region
Rechtsgrundlage	Decision of the Flemish Government regarding the granting of a bridge loan for undertakings
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Zinsgünstiges Darlehen

Haushaltsmittel	Haushaltsmittel insgesamt: 100 000 000 EUR Jährliche Mittel: 100 000 000 EUR
Beihilfemaximalintensität	
Laufzeit	bis zum 30.6.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Agentschap Innoveren & Ondernemen (VLAIO) Koning Albert II-laan 35, bus 12
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	9.2.2022
Nummer der Beihilfe	SA.101400
Mitgliedstaat	Litauen
Region	Litauen
Titel (und/oder Name des Begünstigten)	State Aid SA.101400(2022/N) — Lithuania COVID-19: Reintroduction of the „Direct COVID-loans“ scheme (SA.60379) and new aid in the form of investment support towards a sustainable recovery
Rechtsgrundlage	Draft Order amending Order No 4-45 of the Minister of Economy and Innovation of Republic of Lithuania of 19 January 2021 'On the Approval of the Scheme of the Financial Incentive Instrument „Direct COVID-19 Loans“
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats, Sektorale Entwicklung
Form der Beihilfe	Zinsgünstiges Darlehen, Zuschuss/Zinszuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 435 000 000 EUR Jährliche Mittel: 435 000 000 EUR
Beihilfemaximalintensität	
Laufzeit	bis zum 31.12.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Ministry of the Economy and Innovation of the Republic of Lithuania Gedimino Ave. 38, 01104 Vilnius, Lithuania

Sonstige Angaben	
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Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	2.2.2022
Nummer der Beihilfe	SA.101417
Mitgliedstaat	Luxemburg
Region	Luxemburg
Titel (und/oder Name des Begünstigten)	COVID-19: Amendments to the schemes SA.59428 and SA.59322, as already amended
Rechtsgrundlage	Modification of existing aid schemes SA.59428 and SA.59322 — Loi du 19 décembre 2020 ayant pour objet la mise en place d'une contribution temporaire de l'État aux coûts non couverts de certaines entreprises — Loi du 19 décembre 2020 ayant pour objet la mise en place d'une nouvelle aide de relance
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Zuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 300 000 000 EUR Jährliche Mittel: 300 000 000 EUR
Beihilfehöchstintensität	
Laufzeit	bis zum 30.6.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Ministry of the Economy (DG Classes Moyennes) 19-21 boulevard Royal — L-2914
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	25.1.2022
Nummer der Beihilfe	SA.101574
Mitgliedstaat	Deutschland

Region	Deutschland
Titel (und/oder Name des Begünstigten)	Modification to scheme SA.56814
Rechtsgrundlage	Gesetz zur Errichtung eines Finanzmarkt- und eines Wirtschaftsstabilisierungsfonds (Stabilisierungsfondsgesetz — StFG) and Gesetz zur Änderung des Stabilisierungsfondsgesetzes und des Wirtschaftsstabilisierungsbeschleunigungsgesetzes (SA 56814)
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Bürgschaft, Andere Formen der Kapitalintervention, Nachrangiges Fremdkapital
Haushaltsmittel	Haushaltsmittel insgesamt: 150 000 000 EUR
Beihilfemaximalintensität	
Laufzeit	bis zum 30.6.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Bundesministerium der Finanzen Wilhelmstraße 97, 10117 Berlin
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Datum der Annahme der Entscheidung	7.2.2022
Nummer der Beihilfe	SA.101601
Mitgliedstaat	Lettland
Region	
Titel (und/oder Name des Begünstigten)	COVID-19 — LV — Amendments to SA.100605: Reduction of the lease payment for lessees of publicly-owned property
Rechtsgrundlage	Cabinet Regulation No 453 of 14 July 2020 as amended, Property and a Property of a Capital Company Controlled by a Public Person due to the Spread of Covid-19
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Zuschuss
Haushaltsmittel	
Beihilfemaximalintensität	

Laufzeit	1.1.2022 — 14.4.2022
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	Ministry of Finance of the Republic of Latvia Smilsu street 1, Riga, Latvia
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

Genehmigung staatlicher Beihilfen nach den Artikeln 107 und 108 des Vertrags über die Arbeitsweise der Europäischen Union**Vorhaben, gegen die von der Kommission keine Einwände erhoben werden**

(2022/C 82/02)

Datum der Annahme der Entscheidung	4.11.2020
Nummer der Beihilfe	SA.59209
Mitgliedstaat	Finnland
Region	Finnland
Titel (und/oder Name des Begünstigten)	COVID-19: Maatalouden alkutuotannon yritysten väliaikainen tuki
Rechtsgrundlage	Valtionavustuslaki 688/2001
Art der Beihilfe	Regelung
Ziel	Behebung einer beträchtlichen Störung im Wirtschaftsleben eines Mitgliedstaats
Form der Beihilfe	Zuschuss
Haushaltsmittel	Haushaltsmittel insgesamt: 70 000 000 EUR Jährliche Mittel: 48 000 000 EUR
Beihilfemaximalintensität	0 %
Laufzeit	bis zum 30.6.2021
Wirtschaftssektoren	Alle für Beihilfen in Frage kommende Wirtschaftszweige
Name und Anschrift der Bewilligungsbehörde	ELY-keskus PL 1000, 50101 Mikkeli (Keha-keskus)
Sonstige Angaben	

Die rechtsverbindliche(n) Sprachfassung(en) der Entscheidung, aus der/denen alle vertraulichen Angaben gestrichen sind, finden Sie unter:

<https://ec.europa.eu/competition/elojade/isef/index.cfm>

V

(Bekanntmachungen)

VERFAHREN BEZÜGLICH DER DURCHFÜHRUNG DER WETTBEWERBSPOLITIK

EUROPÄISCHE KOMMISSION

STAATLICHE BEIHILFEN — UNGARN

Staatliche Beihilfe SA.48556 (2019/C) (ex 2018/N) — Regionale Investitionsbeihilfe für Samsung SDI

Aufforderung zur Stellungnahme nach Artikel 108 Absatz 2 des Vertrags über die Arbeitsweise der Europäischen Union

(Text von Bedeutung für den EWR)

(2022/C 82/03)

Mit Schreiben vom 29. Juni 2021, das nachstehend in der verbindlichen Sprachfassung abgedruckt ist, hat die Kommission Ungarn von ihrem Beschluss in Kenntnis gesetzt, das Verfahren nach Artikel 108 Absatz 2 des Vertrags über die Arbeitsweise der Europäischen Union (AEUV) in Bezug auf die genannte Maßnahme auszuweiten.

Alle Beteiligten können innerhalb eines Monats nach Veröffentlichung dieser Zusammenfassung und des Schreibens zu den Maßnahmen, die Gegenstand des von der Kommission ausgeweiteten Verfahrens sind, Stellung nehmen. Die Stellungnahmen sind an folgende Anschrift zu richten:

Europäische Kommission
Generaldirektion Wettbewerb
Registratur Staatliche Beihilfen
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Fax +32 22961242
Stateaidgreffe@ec.europa.eu

Alle Stellungnahmen werden Ungarn übermittelt. Beteiligte, die eine Stellungnahme abgeben, können unter Angabe von Gründen schriftlich beantragen, dass ihre Identität nicht bekannt gegeben wird.

ZUSAMMENFASSUNG

Am 14. Oktober 2019 leitete die Kommission das förmliche Prüfverfahren ein, da sie Zweifel an der Vereinbarkeit einer regionalen Investitionsbeihilfe von 108 Mio. EUR hatte, die Ungarn dem Unternehmen Samsung SDI für eine Investition in Höhe von 1,2 Mrd. EUR zu gewähren beabsichtigt und mit der das Unternehmen die Kapazität einer bestehenden Anlage in Göd (Ungarn) zur Produktion von Batterien für Elektrofahrzeuge auszubauen plant. In der Phase der vorläufigen Prüfung hatte Ungarn geltend gemacht, die Beihilfe sei dadurch gerechtfertigt, dass ein Nachteil von netto 173 Mio. EUR ausgeglichen werden müsse, den der ungarische Standort gegenüber einem alternativen Investitionsstandort in Xi'an (China) aufweise, an dem Samsung SDI über ein Gemeinschaftsunternehmen eine andere Produktionsanlage für Elektrofahrzeugbatterien kontrolliert.

Im Einleitungsbeschluss⁽¹⁾ vertrat die Kommission aufgrund von Zweifeln an der Höhe und dem Bestehen der vorgeblichen Rentabilitätslücke gegenüber dem Standort in China sowie an der Glaubwürdigkeit des kontrafaktischen Investitionsszenarios die vorläufige Auffassung, dass die Beihilfe für einen zugunsten Ungarns ausfallenden Standortbeschluss nicht entscheidend war.

⁽¹⁾ Staatliche Beihilfe — Ungarn — Staatliche Beihilfe SA.48556 (2019/C) (ex 2018/N) — Regionale Investitionsbeihilfe für Samsung SDI — Aufforderung zur Stellungnahme nach Artikel 108 Absatz 2 des Vertrags über die Arbeitsweise der Europäischen Union (Abl. C 112 vom 3.4.2020, S. 12).

In ihrer auf die Einleitung des förmlichen Prüfverfahrens hin übermittelten Stellungnahme legten Samsung SDI und Ungarn weitere Angaben und Belege zu den Faktoren vor, die für die Entscheidung von Samsung SDI, in Ungarn zu investieren, relevant waren, und änderten die Begründung der Beihilfe erheblich. Mit diesen neuen Angaben und Belegen wurden widersprüchliche frühere Darstellungen wieder zurückgenommen.

Ungarn hielt es für angebracht, neben den Elementen, zu denen die Kommission im Einleitungsbeschluss Zweifel geäußert hatte (d. h. die Investitionskostendifferenz und die Glaubwürdigkeit der lokalen Beschaffung usw.), weitere Faktoren zu überarbeiten und neue, zuvor nicht geltend gemachte Faktoren anzuführen, die sich nach Angaben Ungarns auf das unternehmerische Risiko der in Betracht gezogenen Standortscenarien hätten auswirken können.

Angesichts der von Ungarn und Samsung SDI vorgelegten neuen Informationen weitet die Kommission den ursprünglichen Einleitungsbeschluss nun aus, um diese neuen Elemente einzubeziehen, sich daraus ergebende Zweifel geltend zu machen und allen Beteiligten die Möglichkeit zu geben, zu den von Ungarn und Samsung SDI vorgelegten neuen Belegen Stellung zu nehmen.

Ungarn und Samsung SDI machten im Wesentlichen nachstehende vier neuen Angaben und übermitteln zusätzliche Belege, um diese zu untermauern: *Erstens* räumten sie ein, dass ein realistischeres Szenario hinsichtlich der lokalen Beschaffung in China in der Annahme bestanden hätte, dass der Beihilfeempfänger rund [25-30] % (*) bis [31-35] % (gegenüber 100 %) der Investitionsausrüstung vor Ort hätte erwerben können. *Zweitens* machten sie geltend, dass der Beihilfeempfänger in China einen Investitionszuschuss in Höhe von [15-20] % der förderfähigen Investitionskosten hätte erhalten können, was durch ein informelles Subventionsangebot belegt werde, das vor der Investitionsentscheidung von der chinesischen Kommunalverwaltung eingegangen sei. *Drittens* hätte Samsung SDI bei der Bewertung des chinesischen Szenarios durchaus einen wesentlich niedrigeren durchschnittlichen Körperschaftsteuersatz von 15 % (gegenüber dem tatsächlich herangezogenen Satz von 25 %) zugrunde legen können, was den komparativen Vorteil der chinesischen kontrafaktischen Investition erheblich erhöht hätte. *Viertens* brachten sie im Zuge der im Einleitungsbeschluss enthaltenen Aufforderung der Kommission, die Rentabilitätslücke auf der Grundlage realistischerer Annahmen zur lokalen Beschaffung neu zu berechnen, vor, dass eine Neuberechnung der Rentabilitätslücke auf der Grundlage eines probabilistischen Ansatzes (auch unter Berücksichtigung der oben beschriebenen neuen Elemente) den Entscheidungsprozess von Samsung in realistischerer Weise darstelle. Schließlich nimmt die Kommission zur Kenntnis, dass den von Ungarn vorgelegten neuen Belegen zufolge bei der Standortsuche für das Investitionsvorhaben auch eine Reihe von Greenfield-Investitionsstandorten in Europa (in Polen, der Slowakei, Ungarn und der Tschechischen Republik) und ein weiterer in Asien in Betracht gezogen wurden. Auf der Grundlage einer internen Bewertung scheint der Greenfield-Standort in Polen, der sich in einer Region befindet, die nach Artikel 108 Absatz 3 Buchstabe a AEUV für Regionalbeihilfen in Betracht kommt, zumindest in einer ersten Phase neben den Standorten in Göd (Ungarn) und Xi'an (China) als wettbewerbsfähig in Betracht gezogen worden zu sein.

Zusätzliche Zweifel an der Vereinbarkeit der Beihilfemaßnahme mit dem Binnenmarkt

Die Kommission macht nun zusätzliche Zweifel hinsichtlich aller neuen Elemente, die von den ungarischen Behörden und dem Beihilfeempfänger vorgelegt wurden, geltend.

Erstens hat die Kommission zum gegenwärtigen Zeitpunkt Zweifel, dass die angegebene lokale Beschaffung in China in einem Umfang von [25-30] bis [31-35] % als zum Zeitpunkt der Investitionsentscheidung realistisch akzeptiert werden kann. Grund hierfür ist, dass sich die vom Beihilfeempfänger zur Rechtfertigung dieser Zahlen vorgelegten Belege auf Erfahrungen mit weniger innovativen und kleineren Investitionen in China stützen, die auf den ersten Blick nicht auf die angemeldete Investition übertragbar zu sein scheinen, und diese Belege dem Beihilfeempfänger zum Zeitpunkt der Investitionsentscheidung zumindest zum Teil nicht bekannt sein konnten, da sie im Nachhinein erstellt und zusammengestellt wurden. Die Kommission hat ferner Zweifel an der korrekten Anwendung und an der Höhe des Aufschlags von [18-22] % bei der Neuberechnung der Rentabilitätslücke beim ungarischen Szenario.

Zweitens bezweifelt die Kommission auf der Grundlage der vorliegenden Belege, dass das geltend gemachte Investitionszuschussangebot in China in Höhe von [15-20] % ein relevanter Faktor für die Investitionsentscheidung war, denn die vorgelegten Belege deuten darauf hin, dass sich das Beihilfeangebot in China auf ein Investitionsvorhaben bezog, das sich von dem präsentierten kontrafaktischen Szenario unterscheidet. Darüber hinaus scheinen neu vorgelegte interne Unterlagen von Samsung SDI darauf hinzuweisen, dass der Beihilfeempfänger zum Zeitpunkt der Investitionsentscheidung regionalisierte Investitionsstrategien verfolgte, die den Aufbau separater zusätzlicher Produktionskapazitäten für Elektrofahrzeugbatterien sowohl in Europa als auch in China erforderten, welche den EWR (plus [...]) bzw. den chinesischen Markt versorgen sollten.

Drittens ist die Kommission zum gegenwärtigen Zeitpunkt der Auffassung, dass die anfängliche Zugrundelegung eines Körperschaftsteuersatzes von 25 % bei der Berechnung der Rentabilitätslücke durch Samsung SDI einen soliden umsichtigen Ansatz darstellte. Auf der Grundlage der verfügbaren Belege sieht sie keine überzeugenden Argumente dafür, warum das Unternehmen einen anderen Ansatz hätte wählen können bzw. sollen. Die Kommission stellt fest, dass die Rechtsgrundlagen für beide geltend gemachten Steuerbefreiungen Ende 2020 ausliefen, und es ist nicht klar, warum der Beihilfeempfänger der Ansicht ist, dass er — zum Zeitpunkt der Investitionsentscheidung im November 2017 — davon ausgehen konnte, dass eine oder beide Steuerbefreiungen über diesen Zeitpunkt hinaus verlängert würden, wohingegen der größte Teil der Einnahmen aus der Investition nach diesem Datum erzielt worden wäre.

(*) Vertrauliche Angaben.

Die oben genannten Zweifel an der Glaubwürdigkeit der geltend gemachten staatlichen Unterstützungsmaßnahmen in China werden noch dadurch verstärkt, dass der Beihilfeempfänger sie nicht quantifiziert und in den zu den wichtigsten Entscheidungsschritten vorgelegten Berichten vom 26. Oktober und 27. November 2017 noch nicht einmal erwähnt hat.

Die Kommission ist der Auffassung, dass die vorstehend genannten Zweifel sowie die Tatsache, dass Samsung SDI die chinesischen Behörden nicht über seine Entscheidung unterrichtet hatte, in Ungarn zu investieren, sondern die Verhandlungen über die Subventionen wahrscheinlich bis mindestens Mai 2018, als ein neues und verbessertes — wenn auch noch informelles — Subventionsangebot für eine Investition in China einging, fortführte, darauf schließen lassen, dass Samsung SDI in China keine echte kontrafaktische Investition, die mit einer Investition in Europa konkurrierte, in Betracht zog, sondern zum Zeitpunkt der Investitionsentscheidung regionalisierte Investitionsstrategien verfolgte, die Produktionskapazitäten auf jedem seiner Zielmärkte (d. h. China, Europa und [...]) erforderten. Daher hat die Kommission Zweifel an der Glaubwürdigkeit der kontrafaktischen Investition in China.

Viertens ist die Kommission zum gegenwärtigen Zeitpunkt der Auffassung, dass der vorgeschlagene probabilistische Ansatz zur Neuberechnung der Rentabilitätslücke nicht mit Samsung SDIs Leitlinien 2016 für Ausrüstungsinvestitionen vereinbar zu sein scheint und nicht den tatsächlichen Entscheidungsprozess widerspiegelt.

Schließlich stellt die Kommission fest, dass neu vorgelegte interne Unterlagen — die im Widerspruch zu den ursprünglichen Angaben des Beihilfeempfängers stehen — zeigen, dass in Polen ein zusätzlicher wettbewerbsfähiger europäischer Standort in Betracht gezogen wurde. Zum gegenwärtigen Zeitpunkt kann nicht ausgeschlossen werden, dass die Beihilfe für den ungarischen Standort, der für eine Regionalbeihilfe nach Artikel 107 Absatz 3 Buchstabe c AEUV in Betracht kam, eine kohäsionsabträgliche Wirkung gehabt haben könnte, da sie Investitionen von einer weniger entwickelten polnischen Region abgelenkt hat.

Aus den genannten Gründen hegt die Kommission Zweifel an der Vereinbarkeit der Beihilfe mit dem Binnenmarkt und hält es für notwendig, den Umfang des förmlichen Prüfverfahrens auf diese neuen Elemente und die sich darauf beziehenden Zweifel auszuweiten.

Die Beteiligten werden aufgefordert, zu dieser Beihilfe und insbesondere zu den Aspekten, die in dem beigefügten Schreiben an Ungarn näher ausgeführt sind, Stellung zu nehmen.

WORTLAUT DES SCHREIBENS

The Commission wishes to inform Hungary that, having examined the comments on the opening decision on the measure referred to above submitted by your authorities and by the aid beneficiary, as well as the additional information submitted subsequently by your authorities, it has decided to extend the scope of the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

1. PROCEDURE

- (1) On 14 October 2019, the Commission adopted a decision (hereinafter 'the Opening Decision')⁽¹⁾ to initiate the formal investigation procedure in relation to a regional investment aid measure (hereinafter 'the measure' or 'the notified measure') in favour of Samsung SDI Magyarország Zrt (hereinafter 'Samsung SDI' or 'the beneficiary').
- (2) Hungary submitted comments on the Opening Decision on 30 January 2020, presented its observations on third party comments on 9 July 2020, and replied on 3 November 2020 to a request for information from the Commission dated 25 August 2020. Samsung SDI submitted comments on the Opening Decision on 3 May 2020.

2. DESCRIPTION OF THE FACTS RELEVANT FOR THE EXTENSION OF THE FORMAL INVESTIGATION PROCEDURE

2.1 Subject matter of the Opening Decision and doubts raised as to the compatibility of the measure with the internal market

- (3) The Opening Decision was based on the information at the disposal of the Commission at the moment of its adoption, as provided by Hungary. On that basis, the Commission raised doubts regarding the incentive effect of the aid and the credibility of the alternative (Chinese) investment scenario presented by Hungary (see section 3.4.1.4 of the Opening Decision). In particular, the Commission took the preliminary view that the proposed regional aid was not crucial for a positive location decision in favour of Hungary. This was because the Commission had doubts as to the size and existence of the claimed gap of EUR 173 million in the net present value ('NPV') of the investment in favour of China, which was largely based on significant differences in investment costs between the two alternative investment locations, justified by Hungary and the beneficiary on the basis of a 'local sourcing policy'⁽²⁾ which however was *prima facie* considered unrealistic by the Commission in the Opening Decision. In addition, the Commission could not exclude that a combination of strategic factors such as the quickly expanding European market, the proximity to European customers, the risk of forced transfer of technology and the hostile political and economic climate in China to South Korean undertakings, would not have constituted overriding strategic considerations that would have led the company to locate its investment in Hungary in any event, even in the absence of aid.
- (4) The Commission also raised doubts regarding the contribution of the aid to regional development (see section 3.4.1.1 of the Opening Decision), the appropriateness of the form of aid (see section 3.4.1.3 of the Opening Decision), and the proportionality of the aid (see section 3.4.1.5 of the Opening Decision). Finally, the Commission could not exclude that the investment concerned caused a relocation of Samsung SDI's battery pack production activities from Austria to Hungary, which would constitute a manifest negative effect on trade within the meaning of paragraph 122 of the Guidelines on regional State aid for 2014-2020 ('the RAG')⁽³⁾ (see section 3.4.2.4 of the Opening Decision).

2.2 Additional information submitted by Hungary and Samsung SDI after the adoption of the Opening Decision

- (5) In their comments on the Opening Decision, Hungary and Samsung SDI rescinded certain statements (see recital (13)) made during the preliminary assessment phase and presented new claims and evidence concerning the assumptions made by the beneficiary in the counterfactual scenario. That new information had not been shared with the Commission in the course of the preliminary examination, and was thus not reflected in the Opening Decision. Partially, the new statements contradict earlier information reflected in the Opening Decision, or underpinning the tentative Commission conclusions in it.
- (6) Hungary claims the newly submitted information was relevant for Samsung SDI's decision to invest in Hungary as it related to factors that could affect the entrepreneurial risks of the location scenarios under consideration. Therefore, Hungary contends that the Commission is required to consider such new information when conducting the comprehensive assessment of the counterfactual scenario in order to verify the incentive effect of the proposed aid, as required by paragraph 69 of the RAG.

- (7) The new evidence and claims are summarised in sections 2.2.1 to 2.2.4 below:

⁽¹⁾ OJ C 112, 27.3.2020, p. 12.

⁽²⁾ The 'local sourcing policy' required the company to buy from local sources the equipment and machinery and the other inputs necessary for the investment.

⁽³⁾ OJ C 209, 23.7.2013, p. 1.

2.2.1. *Local sourcing in Xi'an (China) between [25-30] (*) % and [31-35] %*

- (8) Hungary explained that, although Samsung SDI's local sourcing counterfactual analysis was based on a premise which reflected the company's settled policy (i.e. full local sourcing), Samsung SDI's Investment Committee ex-ante assessment 'may have been [...] too presumptive regarding its local sourcing capabilities'. At the same time, Hungary challenges the Commission's assumption that Samsung SDI would not have sourced **any** equipment in China if it had chosen Xi'an as the investment location. Instead, it claims that, based on Samsung SDI's ex-post calculations⁽⁴⁾, a proportion of local sourcing of equipment/assets between [25-30] % and [31-35] %⁽⁵⁾ of the eligible investment expenditure would have been realistic in Xi'an.
- (9) The minimum local sourcing of [25-30] % is based on the hypothesis that:
- a) Samsung SDI would have sourced about [15-20] % of the value of the equipment necessary for the counterfactual investment in Xi'an from Chinese suppliers from which Samsung SDI had already purchased similar equipment in China for its factory in Tianjin⁽⁶⁾. In support of this claim, Hungary and Samsung SDI provided the names of [5-10] Chinese suppliers for equipment and machinery which had supplied its Tianjin factory and provided partial records on equipment transactions spanning from 2015 to 2019, as well as summaries of the technical characteristics of those equipment.
- and
- b) Samsung SDI would have sourced about [10-15] % of the value of the equipment necessary for the counterfactual investment in Xi'an from Chinese suppliers without a transaction record with Samsung SDI in China, but that had sold to other Chinese customers, including EV battery manufacturers, equipment based on the same technology as used in the counterfactual investment project. In support of this claim, Hungary provided the names of 4 Chinese producers, summaries of the technical characteristics of their respective equipment, as well as summaries of meetings with them that took place in between 2014 and 2019.
- (10) The upper local sourcing bound of [31-35] % is based on the hypothesis that, in addition to the scenarios described in recital (9) a) and b) above
- c) Samsung SDI would have also sourced about [3-8] % of the value of the equipment necessary for the counterfactual investment in Xi'an from Chinese suppliers without a transaction record with Samsung SDI in China, but that had sold to other Chinese customers, including EV battery manufacturers, equipment used in the same production processes as those used in the counterfactual investment project. In support of this claim, Hungary provided the names of 2 Chinese producers and summaries of meetings with them that took place in between 2014 and 2019.
- (11) Hungary presents two further arguments in support of its claim that local sourcing in China was realistic at the time of the investment decision in November 2017. First, it contends that during 2015-2016 Samsung SDI had achieved a local sourcing ratio of machinery/equipment between [10-15] % and [25-30] % in its Tianjin plant.⁽⁷⁾ Hungary considers that those investments constituted a relevant benchmark for the notified investment project because the respective manufacturing lines have 'similar characteristics' and 'rely on analogous machinery and equipment'. Second, Hungary presents circumstantial evidence on the level of technological development in the Chinese equipment/machinery market in 2017, namely: (1) evidence as to the number of patent filings related to the manufacturing of batteries in China which, according to Hungary, had increased by 323.3 % over the period 2010-2016, and (2) evidence regarding China's share of the world battery electric vehicle market which, according to Hungary, had increased from 9 % in 2013 to 64 % in 2017.

(*) Confidential information.

(4) In these calculations, Samsung SDI outlined the machinery and equipment actually supplied by Korean producers for the investment in Göd (Hungary) up to September 2020. For each machinery/equipment it identifies a Korean supplier and the actual price paid by Samsung SDI. Then, for the same machinery/equipment, Samsung SDI identifies corresponding Chinese suppliers which it considers would have been able to provide comparable machinery/equipment if the investment would have been located in Xi'an. The price Samsung SDI estimates it would have paid to these Chinese suppliers is not based on actual price offers but on the rough estimation that that price would have been about [70-75] % of the price actually paid to the Korean suppliers in Göd, Hungary. Samsung SDI explains that this coefficient reflects the assumptions underlying the counterfactual analysis, which used the indexes calculated on the basis of a market report (see recital (43) of the Opening Decision). Samsung SDI's assumption is that, if the investment would have been located in Xi'an, Samsung SDI would have indeed sourced from these identified Chinese suppliers, and not from elsewhere.

(5) In Samsung SDI's comments of 3 May 2020 to the Opening Decision, a range of [25-30] % to [30-40] % was considered realistic. Upon questioning by the Commission, the upper bound of the range was corrected by Samsung SDI and Hungary, on 3 November 2020, to [31-35] %.

(6) Samsung SDI's Tianjin plant is in operation since 1996 and manufactures cylindrical batteries for mobile devices.

(7) See footnote 7.

- (12) Concerning the share of local sourcing that could have been more credibly assumed in Göd, Hungary does not present any new evidence and maintains that it has ‘no ground to question that local sourcing was a credible ex-ante assumption for Samsung SDI at the time it decided to invest in Göd’. It considers that it is ‘irrelevant how the sourcing of equipment and machinery for Hungary played out ex post, compared to what Samsung had initially envisaged in line with its settled local sourcing policy’. Finally, Hungary contends that since the assumed costs of local sourcing from South Korean suppliers were virtually identical to those of sourcing in the European Economic Area (‘the EEA’) (barring the transport costs), a local sourcing percentage lower than 100 % in Hungary would have a very limited impact on the ex-ante NPV outcome of the investment in Hungary.

2.2.2. Public support for the proposed alternative location in China

- (13) The Commission notes that, when it inquired — during the preliminary assessment phase — about potential public support for the investment project in its alternative location in China, the Hungarian authorities answered on 11 December 2018 that although ‘[...] there were some unofficial and informal discussions on possible subsidies in China, there is no documentation on these discussions. The Chinese system is a considerably different system than the strongly formalized European one — as there are no written general rules. Central and local governments act case by case [...]. Furthermore, HQ [Samsung SDI’s Headquarters team in South Korea] had difficulties in Xi’an because the Chinese Government sanctions the xEV [hybrid electric vehicles] battery industry. The Chinese Government does not provide any subsidy for xEV, which has battery cells manufactured by non-Chinese companies. [...] During the decision-making procedure, the beneficiary didn’t get any subsidy offer or documentation from the Chinese Government. As such a huge investment needs exact timing and planning this would have been hard to execute with [...] Chinese aid possibilities.’
- (14) In their comments on the Opening Decision, the Hungarian authorities and Samsung SDI retracted the above statement and explained that Samsung SDI’s local management team in Hungary — which had been responsible for supporting Hungary with the notification — were ignorant of HQ strategy and the situation in China. They declared that major errors, misunderstandings, and the transmission of wrong information had occurred, and subsequently changed substantial parts of the narrative justifying the necessity of the aid by introducing two new claims, namely that (1) a direct investment grant covering [15-20] % of the investment costs would have been available in China and (2) if the investment had been carried out in China it would probably have benefitted from a corporate income tax (CIT) rate of 15 % (instead of a standard rate of 25 %).

2.2.2.1. Potential investment grant in China of [15-20] % of investment costs

- (15) In contradiction with statements made during the preliminary examination phase (please see recital (13) above), Hungary now submits that Samsung SDI could also benefit in China from an investment grant of ‘up to ⁽⁸⁾ [15-20] % of investment costs’, as evidenced by an unsigned, unstamped subsidy offer from the Gaoxin local government, dated 23 February 2017.
- (16) Hungary explained that, in the document referred to above, the Gaoxin local government offered essentially two options ⁽⁹⁾ to the beneficiary. The **first option** provided for ‘preferential policies’ pursuant to which the aid grantor would provide funds ‘of [15-20] % of the total project investment’ and ensure that (unspecified) ‘[...] the past MoU ⁽¹⁰⁾ would be complemented with additional aid’. It would also exempt Samsung SDI from ‘infrastructure costs in Xi’an’, which averaged ‘[200-300] yuan/m²’. In addition, the Gaoxin government would provide some unquantified service support relating to the [...]. The document also specifies that Samsung SDI is expected to construct a [...] at its own cost. Under the **second option**, the aid grantor offers to construct [...]. However, under this option, none of the subsidies offered under the first option would be available. The offer from the Gaoxin local government does not provide any details on the characteristics of the aided investment project, nor the financial terms under which the buildings would be subsequently leased/sold to Samsung SDI.
- (17) In addition to the Chinese subsidy offer described in recital (16), the Hungarian authorities submitted, at the Commission’s request, further evidence documenting the course of the negotiations between Samsung SDI and the Gaoxin local government from January to July 2017, as well as the internal documents concerning Samsung SDI’s investment plan for its second plant in Xi’an from the same period. Hungary also provided an updated (but still unstamped and unsigned) aid offer dated 23 May 2018 in which the Gaoxin local government commits to provide subsidies ‘on a similar scale to the first project’ (i.e. [25-30] % of eligible investment costs) for Samsung SDI’s second battery plant in Xi’an, as well as a [...] dedicated for the beneficiary’s use.

⁽⁸⁾ The Hungarian authorities argue that this translation provided by the aid beneficiary is imprecise: “up to” should be replaced by “of”.

⁽⁹⁾ A third option, i.e. ‘Construction by [...]’ is described in the document but this is not retained as a relevant by Samsung SDI in a Directors’ meeting to discuss the ‘incentive negotiation result’ on 3 March 2017.

⁽¹⁰⁾ The “past MoU” refers to an investment agreement between Samsung SDI and the Gaoxin local government, according to which Samsung’s Joint Venture in Xi’an (Samsung SDI-ARN Power Battery Co. Ltd.) had benefited from a [25-30] % subsidy for its first (2014) investment in Xi’an (please see also recital (39) and footnote 13 of the Opening Decision).

- (18) The investment in Xi'an, China, as demonstrated by the documentary evidence submitted by Samsung SDI and the Hungarian authorities, either in the course of the preliminary assessment phase or later on, after the opening of the formal investigation procedure, would have the following characteristics:
- (a) Firstly, the Chinese counterfactual investment notified to the Commission has investment costs of EUR [850-950] million and consists of [6-10] production lines. At the same time, several Samsung SDI internal documents⁽¹¹⁾ submitted after the Opening Decision describe an investment project in Xi'an with investment costs of around USD [650-750] million (app. EUR [500-600] million), consisting of '[2-5] additional production lines'.
- (b) Secondly, according to the implementation timeline envisaged for the Xi'an counterfactual investment by Samsung SDI on 21 September 2017⁽¹²⁾, construction works were planned to start in [...] 2018 and the start of production was planned for [...] 2020. At the same time, as evidenced by an email report of 21 July 2017 documenting the subsidy negotiation process with the Gaoxin local government⁽¹³⁾, the timeline of the allegedly same Xi'an investment appears to be aligned with and dependent on the timing of the expected withdrawal of the subsidies for the acquisition of electric vehicles in China (and thus aligned and dependent on the opening of the Chinese EV market to foreign battery producers). Thus, the respective email report explains that *'...in practice, since SDI already operates a factory in Xi'an, SDI will make additional investment in Xi'an if the investment is decided, and the investment period will be before December 2018, at the latest, **considering that the subsidy will be abolished from January 2021**'*. In this case start of works is thus envisaged six months later than the notified counterfactual investment (i.e. at the latest by end of 2018), and the start of production envisaged one year later than the notified counterfactual investment (i.e. by [...] 2021). Finally, as described in point (c) below, the full implementation of the investment in Xi'an was not to take place before — and therefore was dependant on — the *'resolution of Chinese policy risk'*, which the Commission understands to mean the withdrawal of the Chinese protectionist measures against foreign EV battery manufacturers targeting the Chinese battery market (see recitals (137) and (139) of the Opening Decision).
- (c) Thirdly, as described in the notification (see recital (9) of the Opening Decision), although the counterfactual investment was located in China, it was intended to provide electric batteries only for the EEA and [...] geographical market, and not the Chinese geographical market. However, the Commission notes that a report from Samsung SDI's Directors' meeting of 3 March 2017 to discuss incentive negotiation results for the second plant in Xi'an suggests that the investment subject to the subsidy discussions with the Gaoxin local Government was in fact targeting the Chinese geographical market. In particular, the above-mentioned report indicates that *'... minimizing [...] is necessary until resolution of Chinese policy risk'*. It results from this document that Samsung SDI was attempting to hedge against the mentioned *'Chinese policy risk'* by trying to convince the Chinese local government to provide a subsidy of [25-30] % of the investment costs and construct, from its own resources, the fixed assets (i.e. [...]) needed by Samsung in Xi'an. Upon finalization of the construction, Samsung intended to [...] the respective fixed assets until the *'resolution of the policy risk'*, at which point Samsung would be prepared to buy them. Given the refusal of the Chinese aid grantor to meet both of Samsung's demands (see the options described in recital (16)), Samsung's planning team proposes to accept the Chinese option 1 (i.e. the [15-20] % subsidy) but hold off '[...]' until *'policy risk resolution'*. Instead, it proposes to proceed only with land purchase, the construction planning phase (e.g. designs, authorisation), and the construction of the [...]. According to this action plan, the investment decision was to be made only once the policy risk is resolved. On the basis of the above, the Commission understands the above-mentioned *'Chinese policy risk'* to refer to the Chinese protectionist measures in force at that time against foreign EV battery manufacturers who were seeking to sell their products on the Chinese market (see recitals (137) and (139) of the Opening Decision). This interpretation is coherent with the comments of Hungary and Samsung SDI on the Opening Decision claiming that this Chinese policy risk would not have been relevant enough to hold up the investment decision if that respective investment was targeting export markets.
- (19) Hungary claims that although the Chinese subsidy offer was not specific to a certain investment project, Samsung SDI had nevertheless sufficient reasons to expect that it would receive a subsidy of at least [15-20] % and possibly more for any ramp-up investment in Xi'an, given that its 2014 investment agreement for the construction of Samsung SDI's first Chinese EV battery plant stipulated that funding *'will increase by the same ratio'* if Samsung SDI's Chinese Joint venture were to make additional investments in Xi'an.⁽¹⁴⁾ In answer to the question why the alleged aid offer was not presented to Samsung SDI's decision-makers, Hungary and the beneficiary provided internal documents, for the first

⁽¹¹⁾ An internal document of 5 January 2017 entitled 'Xi'an Plant #2 Investment Plan', the minutes of a 9/10 January 2017 business trip to China where Samsung representatives aimed to 'persuade partners regarding Xi'an Plant 2 investment and to negotiate incentives',

⁽¹²⁾ According to the 21 September 2017 report 'New investment review for EU/[...]'

⁽¹³⁾ The report is contained in an email of 21 July 2017 sent by a Samsung SDI employee to its colleagues in Samsung's headquarters to brief them on the results of a meeting with the Deputy Director of the Chinese aid grantor on 20 July 2017.

⁽¹⁴⁾ According to article 2 of the Support Policy annexed to the Memorandum of Understanding between the Xi'an Hi-tech Industries Development Zone (referred to as 'A') and Samsung Huaxin (Xi'an) Power Battery Co., Ltd.(referred to as 'B'), *'Xi'an Hi-tech Zone grants a specialized fund, equivalent to [25-30] % of the total investment of the PJT [i.e. Samsung SDI's automotive power battery project], to enterprises that satisfy the requirements. A makes the payment at the same rate as the rate of investment by B. [...]. If the PJT Company increases investment, this fund will increase at the same ratio. [...]'*.

time disclosed to the Commission on 3 May 2020 (i.e. after the adoption of the Opening Decision), which reveal that an additional step in the decision-making process (see section 2.12.4. of the Opening Decision) took place during an internal meeting to discuss 'New investment review for EU/[...]' ⁽¹⁵⁾, held on 21 September 2017 and attended by a number of senior Samsung SDI managers, including Samsung SDI's CFO. The report presented in that meeting and prepared by the Automotive and ESS ⁽¹⁶⁾ Business Division's planning team contains — among others — a brief reference to an incentive offer of '[15-20] % of the investment amount offered by the Chinese Government in Feb 2017', which shows — in Hungary's opinion — that Samsung SDI was aware of the potential Chinese subsidy.

- (20) The Commission notes that the minutes of that meeting do not contain any indication that the respective subsidy offer was discussed, nor do they indicate instructions for follow-up. However, the respective minutes do contain an instruction for Samsung's planning team that they should 'develop plan to exploit the existing sites' merits', 'review final site candidates (Göd in Hungary and Xi'an in China)', and 'keep in mind the factor that it could be helpful to diversify major sites in each continent so that production capability is not concentrated in one or two sites when it comes to suggestion for the new location. Cell production currently concentrated in Ulsan and Xi'an.'
- (21) Hungary explains in its comments of 30 January 2020 on the Opening Decision that the quoted Chinese offer did not constitute 'sufficiently firm assurances that it [Samsung] might benefit from an attractive additional subsidy in China if it were to invest further in Xi'an', but nevertheless maintains that 'the possibility that the granting of such aid would materialize was by no means unrealistic'. The fact that Samsung SDI's did not quantify and include the Chinese subsidy in the viability gap comparison is, according to the Hungarian authorities, the result of a 'conservative approach in view of the uncertainty surrounding the Chinese offer compared to the Hungarian offer'.
- (22) Hungary submits that on 23 May 2018 ⁽¹⁷⁾, i.e. almost six months after Samsung SDI's location decision of 27 November 2017 in favour of Hungary, the Chinese authorities — who had allegedly not yet become aware of the fact that Samsung SDI had already opted for Göd as the location for its investment — on their own initiative, reiterated and improved ⁽¹⁸⁾ their offer for the ramping up of the investment in Xi'an (see recital (17)).
- (23) To the question why Samsung SDI had not informed the Chinese authorities of its decision to implement the investment project in Hungary, Hungary answered that 'Samsung SDI never excluded that, depending on market circumstances, there could subsequently also be additional investment projects in EV battery production, including possibly in China', and thus it was not in Samsung's 'best interest to inform the Chinese authorities of the investment in Göd'. The Commission notes that, according to several press reports ⁽¹⁹⁾, ⁽²⁰⁾, Samsung SDI did indeed pursue an important ramp-up investment in Xi'an at the end of 2018.

2.2.2.2. Corporate income tax in China of 15 % instead of 25 %

- (24) In its comments on the Opening Decision, Hungary explained that Samsung SDI's assumption — in the NPV calculations submitted in the notification — of a corporate income tax ('CIT') rate differential of 16 percentage points between Hungary (CIT rate: 9 %) and China (CIT rate: 25 %) that generated a NPV advantage of approximately [480-520] million euros (in present value) in favour of Hungary was based on a rather conservative estimate of the CIT in China. Hungary claims that it would have been legitimate for Samsung SDI to take a much lower average tax rate of 15 % in China as basis for its NPV calculations, and explains that this lower Chinese CIT rate would have significantly increased the advantage of an investment in Xi'an.
- (25) Hungary further submits that a 10 percentage points reduction from the basic corporate income tax rate of 25 % was offered under the Chinese law in application at the time of the location decision, up until 31 December 2020, to any enterprise located in the Western Regions ⁽²¹⁾ that applied for it, was engaged in certain industrial activities, and achieved 70 % of its revenues from its main business. It appears that Samsung SDI had qualified and benefited from this lower CIT rate of 15 % for the years 2011 to 2016, until the Chinese tax authorities decided (without stating any specific reasons for this change) to remove the production of EV batteries from the Foreign Investment Industrial Guidance Catalogue for the years 2017/2018, with the effect that in those years the basic CIT rate of 25 % applied to EV battery producers located in the 'Western Regions', including Samsung SDI. The reduced corporate income tax rate of 15 % was applied again to Samsung SDI, after the catalogue was revised again by the Chinese Government in 2019.

⁽¹⁵⁾ European Union/[...].

⁽¹⁶⁾ Energy Storage Systems.

⁽¹⁷⁾ The Commission notes that by that time the protectionist measures referred to in recital (18)(c) had been lifted.

⁽¹⁸⁾ Promising to grant a subsidy of [25-30] % of the investment costs and to build the required [...].

⁽¹⁹⁾ Online press report of 10 December 2018 (National Business Daily) titled 'Samsung begins construction of second-phase power battery project in Xi'an' available at: <http://m.nbdpress.com/articles/2018-12-10/5778.html>

⁽²⁰⁾ Online press report of 11 December 2018 (Yicai Global) titled 'Samsung Unit to Invest USD1.5 Billion, Restart Xi'an Power Battery Project', available at: <https://www.yicai.com/news/samsung-unit-to-invest-usd1.5-billion-restart-xian-power-battery-project>

⁽²¹⁾ Where Xi'an is located.

- (26) Samsung SDI explained — but did not provide any documentary evidence to that effect — that it expected in 2017 the delisting from the catalogue to be reverted by 2019, when it estimated that the Chinese government would want to support the domestic EV battery cell production industry (because such a measure would not only benefit Samsung SDI, but also its Chinese competitors). Furthermore, the Commission notes that Samsung SDI and Hungary did not provide any documentary evidence or justification as to why they consider that it was foreseeable — at the time of the location decision in November 2017 — that the legislative provisions for this advantageous, time-limited derogation (until 2020) from the normal CIT rate would be renewed and become applicable also after 2020, when most revenues from the envisaged counterfactual investment would have been generated.
- (27) Hungary submitted that Samsung SDI had also considered ⁽²²⁾, in June 2017, an alternative possibility to benefit from a reduced corporate tax rate, again of 15 %, under the ‘High and New Technology Enterprise’ (HNTE) regime ⁽²³⁾, which was also limited to a time period ending by December 2020. The benefit of that advantageous tax regime was subject to certain conditions ⁽²⁴⁾ (of which two were not fulfilled by Samsung SDI at that time ⁽²⁵⁾) that, according to Samsung SDI, could have been met ‘through further actions’. Samsung SDI claims that it was reasonably confident that it would be able to benefit from the HNTE regime even though, ultimately, it decided not to pursue the HNTE track since it expected low profits in 2017-2018.
- (28) Samsung SDI submits that the allegedly foreseeable change of the Chinese CIT rate as a result of Samsung SDI’s future qualification under the HNTE regime was considered by the SDI Headquarters planning team ⁽²⁶⁾ — and mentioned on 21 September 2017 in the internal meeting ⁽²⁷⁾ mentioned in recital (19) — but that this element was ultimately not factored into the viability gap calculations submitted to SDI’s Investment Committee and to Samsung SDI’s Chief Executive Officer in the successive decision-making steps leading to the location and investment decision.
- (29) Just as for the invoked CIT reduction for Western Regions, Samsung SDI and Hungary did not provide evidence as to why they consider that it was foreseeable — at the time of the location decision in November 2017 — that the validity of the HNTE regime (expiring in 2020) would be prolonged and remain applicable after 2020, when most revenues from the envisaged counterfactual investment would have been generated.

2.2.3. Discrete and probabilistic approach for plausible viability gap calculations

- (30) In its Opening Decision, the Commission considered that the viability gap presented by the Hungarian authorities in the notification documents should be recalculated based on the more realistic hypothesis of 0 % local sourcing for both investment scenarios (i.e. Hungary and China).
- (31) Hungary’s position is that a recalculation is not needed ‘essentially because the cost of local sourcing in the EEA for Göd was almost identical to the cost of local sourcing from South Korea’ and thus any share of local sourcing assumed in Hungary would have a minimal impact on the NPV of the investment to be made in Hungary. However, Hungary explained that it was prepared to compare a few other plausible viability scenarios, strictly on a ‘without prejudice basis’, with the purpose to illustrate how the viability gap between Hungary and China would remain significant in these scenarios and that, as a result, the State aid offered to Samsung SDI by the Hungarian authorities would maintain its incentive effect. More specifically, Samsung SDI recalculated the NPV gaps, envisaging two approaches: a ‘discrete’ approach and a ‘probabilistic’ one.
- (32) Under the discrete approach, Samsung SDI calculated two NPV gaps without any local sourcing in China or Hungary (i.e. the Commission’s suggestion in the Opening Decision), but taking into account either a local Chinese grant of [15-20] % of the investment, or a 15 % CIT rate. Samsung argues that these recalculations lead to viability gaps that are comparable or in excess of the original gap of EUR 173 million, which was submitted to the Investment Committee and based on which the location decision of 27 November 2017 was made. A third NPV gap recalculated based on [31-35] % local sourcing in China (and 0 % local sourcing in Hungary, no subsidy and a 25 % CIT rate in China) leads to an NPV gap that is lower than the original one but on par with the amount of State aid proposed by Hungary. Finally, a fourth NPV gap recalculated based on [25-30] % local sourcing in China (and 0 % local sourcing in Hungary, no subsidy and a 25 % CIT rate in China) leads to an NPV gap that is lower than both the original NPV gap and the amount of State aid proposed by Hungary.

⁽²²⁾ As documented in a Samsung SDI internal report dated 5 June 2017 and titled ‘Discussion on responding to revision on China’s Catalogue for the Guidance of Foreign Investment Industries’

⁽²³⁾ Notice of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Revising and Issuing the Measures for the Administration of the Certification of High-tech Enterprises (2016).

⁽²⁴⁾ Linked, among other things, to the number and share of employees working on research and development, costs of research and development activities, ownership of intellectual property rights.

⁽²⁵⁾ Namely: [...].

⁽²⁶⁾ In support of this statement Samsung SDI submits documentary evidence in the form of a report titled ‘Review for new production investment to EU&[...]’, dated 21 September 2017, and the minutes of the respective meeting.

⁽²⁷⁾ The meeting was attended by a number of senior Samsung SDI managers, including Samsung SDI’s Chief Financial Officer, an executive vice president, a senior vice president and five vice-presidents. Its purpose, as suggested by the title of the report, was to discuss ‘New investment review for EU/[...]’.

- (33) Samsung SDI argues that the discrete methodology above does not accurately reflect the decision-making process leading to the investment. Instead, it considers that a probabilistic approach would be a more realistic reflection that takes into account all factors that were relevant to Samsung SDI when it decided on the location of the investment.
- (34) The three 'probabilistic scenarios' proposed by Samsung SDI combine the three different factors (i.e. local sourcing of [25-30] % in China, a [15-20] % Chinese grant, and a 15 % CIT rate) to which different probability coefficients are applied to reflect the uncertainty relating to the materialisation of these factors. The proposed probability coefficients are 100 % for the factor relating to [25-30] % local sourcing in China for all three scenarios, and alternatively 25 % or 0 % for the other two factors (in two scenarios) or both 25 % (in the third scenario). Samsung explains all three resulting recalculated NPV gaps are in the range of the original NPV gap, and all three are higher than the amount of State aid proposed by Hungary. In view of the above, Hungary argues the State aid that it proposed to Samsung SDI maintains its incentive effect.
- (35) The Commission notes that in Samsung SDI's NPV recalculation scenarios above, the NPV of the investment to be made in Hungary is recalculated (and thus significantly reduced) on the basis of a 0 % local sourcing policy which leads to investment costs increased by [18-22] % as compared to the notified values due to the application of a [18-22] % mark-up justified by Samsung on the basis of the fact that its headquarters in South Korea needs to act as intermediary in the procurement of equipment sourced from South Korea.

2.2.4. Additional potential locations in the EEA

- (36) In its comments on the Opening Decision, Samsung SDI submitted new documents ⁽²⁸⁾ that show that the location search for the investment project had not only included Samsung SDI's existing three battery cell plants in China, South Korea, and Hungary (as claimed in the notification and during the preliminary assessment phase), but that also greenfield investment sites had been considered in China (Wuxi), Poland (Środa), Slovakia (Sereď), Hungary (Tatabánya) and the Czech Republic (Most Joseph). Samsung SDI explained that these other possibilities were excluded 'at an early stage' in the decision-making process. The Commission notes that except for the locations mentioned above, no other locations in Asia or in America ⁽²⁹⁾ are considered.
- (37) The internal Samsung SDI document cited above shows thus that several sites in Europe and China were assessed using a quantitative evaluation (taking into account investment costs and annual costs) and a qualitative evaluation (taking into account 'labor environment, industrial infrastructure, State aid, others'). While the Czech, Slovak, and another Hungarian greenfield sites appear to have been excluded after these evaluations, a possible greenfield site in Poland appears to have been retained, at least in a first stage, (together with the Hungarian existing site in Göd and the existing Chinese site in Xi'an) as competitive after these two evaluations.
- (38) The Commission notes that the retained alternative EEA site (i.e. the greenfield site in Środa, Poland) is located in a more disadvantaged area than the chosen Göd area in Hungary. ⁽³⁰⁾

2.2.5. Conclusions

- (39) In the light of new information presented by Hungary and Samsung SDI, the Commission extends the scope of the formal investigation procedure initiated by the Opening Decision to cover the new elements submitted by Hungary and Samsung SDI, as well as the Commission's doubts concerning those new elements, and to allow all interested third parties to comment on the new evidence presented by Hungary and Samsung SDI as relevant for the compatibility assessment.

3. ASSESSMENT

3.1. Local sourcing in Xi'an (China) between [25-30] % and [31-35] %

- (40) The Commission notes that Samsung SDI and the Hungarian authorities currently admit that the hypothesis of 100 % local sourcing in China might have been unrealistic at the moment of the location decision, and that a correction to substantially reduced quotas of [25-30] % to [31-35] % is proposed instead. The evidence put forward to justify these numbers (see recitals (9) to (11)) is based on:
- (a) the sourcing experience with [5-10] Chinese suppliers, from 2015 to 2019 (so partly after the location 2017 decision), of another factory in Tianjin (China) owned by Samsung SDI which was set up in 1996 and produced batteries for mobile devices ⁽³¹⁾;

⁽²⁸⁾ A report titled 'Review for new production investment to EU&[...]', dated 21 September 2017 and presented in a meeting attended by several Samsung SDI Managers and its Chief Financial Officer, as well as the minutes of the respective meeting.

⁽²⁹⁾ A quarter of the new capacity to be created by the investment targets sales on the [...] market (see recital (9) of the Opening Decision).

⁽³⁰⁾ The former was designated in accordance with Article 107(3)(a) TFEU while the latter: in accordance with Article 107(3)(c) TFEU.

⁽³¹⁾ Mobile phones, laptops, tablets, wearable devices, scooters, power tools, etc.

- (b) partly ex-post evidence regarding the capabilities achieved by 4 Chinese suppliers of equipment/machinery using 'the same technology' as Samsung SDI and
- (c) mostly ex-post evidence regarding the capabilities of other 2 Chinese suppliers offering 'equipment used in the same production processes' as the ones employed by Samsung SDI in the notified investment project.
- (41) With regards to point (a) of recital (40), the Commission considers that it is doubtful that Samsung SDI's experience concerning significantly smaller⁽³²⁾ investments for less sophisticated batteries for mobile devices would be fully transferable to the EV pouch battery cells manufacturing business based on innovative processes and equipment introduced in the sector for the first time world-wide (see recital (21) of the Opening Decision). The Commission further notes that the invoked [10-15] % to [25-30] % local sourcing rates in the Tianjin factory were only achieved after nearly 20 years of operation of the plant and some of the invoked transactions occurred after the location decision. It is also not clear to what extent the respective numbers cover machinery/equipment or also spare parts or services used in the production process.
- (42) Concerning the arguments under points (b) and (c) of recital (40), the Commission observes that they rely on ex-post assembled evidence (partially referring to experiences in 2018 and 2019) that were mostly not available to Samsung SDI at the moment when the investment and location decision was prepared in 2017. The Commission recalls that in the course of the preliminary examination, when the Commission inquired why Samsung did not choose to source (significantly cheaper) equipment and machinery from China for the Hungarian investment, the Hungarian authorities answered on 31 May 2019 that '[...] notwithstanding the improvements compared to the past, the contacted Chinese suppliers did still not fully meet SDI's [...] requirements'. The Commission notes that the above conclusion was based on Samsung SDI's technical assessment⁽³³⁾ of five Chinese equipment manufacturers (which are however different from the ones invoked in recitals (9) and (10)) in January 2017 (i.e. preceding the investment decision) (please see also recital (50) of the Opening Decision).
- (43) Furthermore, the Commission notes that the shares of local sourcing proposed under points (a) to (c) of recital (40) are based on estimations that take account of only a sample⁽³⁴⁾ and not the entire equipment required for the investment project. The Commission considers at this stage that this sample cannot be considered representative of the entire investment project since it appears to correspond, to a large extent, to the first (and less innovative) of the two successive phases of the investment project⁽³⁵⁾. It is thus not clear why Samsung SDI considers that its local sourcing simulation covering largely the first investment phase would be transferable to the second (more innovative) phase of the investment⁽³⁶⁾.
- (44) The Commission also notes that the Samsung SDI's 'local sourcing policy' does not seem to have been applied in the past for greenfield investments based on new innovative technologies (such as, for example, their first EV battery investments in Xi'an and Göd). The Commission recalls that the technology for phase 2 was still under development in Samsung SDI's South Korean research facilities at the time of the preliminary examination (see recital (20) of the Opening Decision). The Commission therefore strongly doubts at this stage that any local sourcing could have been assumed in November 2017 (i.e. at the time of the location decision) to take place in China with regard to equipment for phase 2 of the investment that should reflect some [50-60] % of all investment expenditure. The Commission also notes that the disclosure of details of needed equipment for phase 2 would entail a strong risk of intellectual property theft (see recital (43) of the Opening Decision).
- (45) The Commission considers at this stage that, if the scenario of partial local sourcing in China — for phase 1 of the investment — should be assessed as realistic at the time of the investment/location decision to a certain extent, Hungary does not convincingly explain why the machinery/equipment needs in Hungary should not be sourced from much cheaper Chinese suppliers (instead from South Korea). In such a case the viability gap between the two locations would *prima facie* be limited to differences in transport costs for the concerned machinery/equipment.
- (46) Finally, the Commission notes that Hungary does not submit any data as to the share of local sourcing that could have reasonably been assumed in the Hungarian investment scenario on the basis of the justification that a share of local sourcing below 100 % would have had a minimal impact on the NPV of the Hungarian project. The Commission has serious doubts with regard to that assessment and notes that in all viability gap recalculations, the Hungarian investment costs for machinery and equipment are increased by [18-22] % (in Hungary's comments to the Opening

⁽³²⁾ The local sourcing rates of [10-15] to [25-30] % in Tianjin are based on investments that are more than 10 times smaller than the size of the investment in equipment envisaged in Xi'an.

⁽³³⁾ Specifically, the Hungarian authorities explained that in January 2017, Samsung's production engineers and purchasing staff had technical meetings with five Chinese companies producers of equipment related to winding, coater/press, welding and charge/discharge. Their conclusion was that, while they had made significant technical improvements compared to 2014/2015 '... further developments were required to satisfy the requirements in automation/quality and precision. For example, [...]'

⁽³⁴⁾ The sample consists of the equipment that was put in place in Hungary between the start of the investment project (scheduled for December 2017 (see recital (11) of the Opening Decision)) and September 2020.

⁽³⁵⁾ According to the information provided by the Hungarian authorities in the notification, approximately [40-50] % of the investment costs were assigned to phase 1, and the remaining [50-60] % to phase 2.

⁽³⁶⁾ See section 2.3.1 of the Opening Decision which describes the highly innovative character of the investment as well as Table 1 which describes the breakdown into phases of the investment.

Decision) compared to the initial prices (as presented in the planning documents and notification), which has a significant (negative) impact on the NPV of the investment project to be made in Hungary (please see recital (37) of the present decision). Hungary informs that this is due to the application of the assumption that all equipment for the Hungarian scenario would be sourced via the Samsung headquarters in South Korea (i.e. that there would be no local sourcing in Hungary). The Commission notes that the [18-22] % mark-up used is substantially higher than the medial value of the mark-up calculated by a December 2018 Deloitte study submitted by Samsung SDI (medial value of [13-18] %). That study also shows that the mark-up used for SDI Hungary in 2017 was [14-18] % (not [18-22] %). It is also unclear why the mark-up used for Hungarian subsidiary was higher than the mark-up (of [12-15] %) used for similar transactions with Samsung SDI's joint venture in China.

- (47) On the basis of the above, the Commission has doubts as to the correct application of the [18-22] % mark-up in the recalculation of the viability gap and maintains its doubt expressed in the Opening Decision on whether the [18-22] % mark-up results in a market conform price and does not artificially inflate the eligible costs of the scenario in which the investment is located in Hungary.

3.2. Public support for alternative location in China

3.2.1. Potential investment grant in China of [15-20] % of investment costs

- (48) The Commission notes that the invoked Chinese grant aid offer from February 2017 was neither signed, nor stamped, nor was it specific⁽³⁷⁾ to the envisaged counterfactual investment project, and is conditional upon the construction of a [...] by Samsung SDI, which would likely imply important additional investment costs.
- (49) The Commission also notes a number of inconsistencies between the investment project described in reports documenting the subsidy negotiation with the Gaoxin local government and the counterfactual Chinese investment described in the notification. These inconsistencies refer to essential characteristics of the investment project, i.e. its scope and investment amount (see recital (18) point (a)), the implementation timeline (see recital (18) point (b)), and its target market (see recital (18) point (c)) — and suggest that the Chinese subsidy offer and the entire negotiation with the Chinese local authorities concerned — contrary to what Samsung SDI and the Hungarian authorities claim — a different investment project than the Chinese counterfactual to the Hungarian investment.
- (50) The Commission therefore has strong doubts that the Chinese aid offer described in recital (16) refers to the counterfactual Chinese investment notified to the Commission. At this stage, it rather appears that the Chinese aid offer and the respective negotiation process with the Chinese authorities in 2017 envisaged a smaller investment, with a different timeline, aiming to ramp up EV battery production capacity in Xi'an to serve the Chinese market, and not for the notified counterfactual investment that was aiming to supply EV batteries for the European and [...] markets.
- (51) The Commission notes that, although the Chinese aid grant offer was very briefly mentioned in a single internal company document submitted for the decision-making steps of the notified investment (see section 2.12.4. 'The decision making process' in the Opening Decision and the additional step described in recital (19)), it was never actually included in the NPV comparisons between the alternative investment scenarios. By contrast, the Hungarian aid offer was included in the respective comparisons and is presented as a key factor justifying the investment decision in favour of Hungary. At this stage, the Commission interprets the minutes of the meeting of Samsung directors of 21 September 2017 where the Chinese subsidy offer was presented (see recitals (19) and (20)) as guidance from Samsung SDI's top management that overall production capacity should not remain concentrated in Ulsan (South Korea) and Xi'an (China), as was the case at the time⁽³⁸⁾, despite the many advantages of the Xi'an site described in the report. The Commission notes that, possibly in implementation of the above guidance to prioritise a regional diversification of the undertaking's global production capacities, in the fourth and fifth(last) decision-making steps which followed the September meeting (see recitals (68) and (69) of the Opening Decision) no reference whatsoever is made to the Chinese subsidy offer although the Hungarian aid offer of EUR 106 million features in the documents submitted to Samsung SDI's Chief Executive Officer on 27 November 2017 as a 'decision factor'.
- (52) The Commission notes that Samsung SDI admits (see recital (23)) that after it had taken the location decision in favour of Hungary, it never informed the Chinese authorities about it. The Commission notes that according to Samsung SDI, no negotiations took place with the Chinese authorities between the location decision for Hungary in November 2017 and May 2018 when the second subsidy offer was received (see recital (22)). The Commission considers it highly unlikely that the Chinese authorities, on their own initiative and without further discussions with Samsung SDI suddenly increased their subsidy offer of February 2017 in May 2018, i.e. more than 8 months after the last documented interaction⁽³⁹⁾ between Samsung SDI and the Chinese aid grantor. The Commission therefore invites Hungary to submit all communication, whatever its form, between Samsung SDI, respectively its joint venture in Xi'an, and the responsible local government authorities in China that took place after July 2017.

⁽³⁷⁾ The aid offer refers only to 'Samsung Huanxin Power Battery's project to build a 2nd plant' and does not include any other information regarding the characteristics of the investment.

⁽³⁸⁾ Samsung SDI's presence in Hungary at the time consisted of its initial battery cell manufacturing facility, with a very limited production capacity, which was not yet operational at that time.

⁽³⁹⁾ I.e. an email of 21 July 2017 referred to in recital (18)(c).

- (53) The Commission considers at this stage that the corroboration of the facts and doubts expressed above suggests that Samsung was not envisaging in China a real counterfactual investment, competing with an investment in Europe, but was pursuing, at the latest as from July 2017, regionalised investment strategies that required manufacturing capacity to be located in each of its target markets (i.e. China, Europe, and [...]). This doubt is further reinforced by the minutes of the internal high-level Samsung meeting on 21 September 2017 (see recitals (20) and (21)) which might be understood as guidance to the '[...]', by a high level steering group charged with reviewing investment strategies to serve the rapidly expanding EU and [...] markets, to enable a positive location decision in favour of Europe. This guidance might explain why the grant offer of February 2017, and the claimed possibility of a reduced CIT rate (see section 2.2.2.2), both mentioned in the documents for the high-level meeting of 21 September 2017, were not factored in into the calculations submitted for the following planning steps, or even mentioned there.
- (54) The Commission reminds that Samsung SDI in fact admits that it never excluded (see recital (23)) an additional investment⁽⁴⁰⁾ in China, which appears to be a plausible explanation of why Samsung SDI did not inform the Chinese authorities of the investment in Göd.
- (55) Under the hypothesis of regionalised investment strategies, the investment decision for the Chinese market (ramping up of the Xi'an facility) appears to have been delayed not because the aid proposed by Hungary rendered the implementation of the investment in Europe more viable, but because the conditions to open the access of South Korean EV battery producers to the domestic Chinese market were not yet given.
- (56) Indeed, the Commission notes that, according to a press report, China's pledge to phase out subsidies for electric cars and plug-in hybrids by 2020 and the publication in May 2018 of a new 'white list'⁽⁴¹⁾ of approved battery suppliers by two Chinese auto industry associations constituted important signals that China was starting to open its car battery market to foreign producers. The timing of the second Chinese subsidy offer of May 2018 appears thus to have not been coincidental. It appears that in June 2019, China decided to not apply anymore the respective 'white list'⁽⁴²⁾,⁽⁴³⁾.
- (57) In view of the above, the Commission considers, at this stage, that only the regionalised investment strategy can explain why Samsung SDI decision-makers — although at least the planning team and senior executives were aware of it — dismissed the Chinese subsidy offer of [15-20] % in the course of the decision-making process for the notified investment while putting a significant emphasis on the aid offer of 9.1 % from Hungary, which was presented as a 'key decision factor' in the report to Samsung SDI's Chief Executive Officer in November 2017.

3.2.2. Corporate income tax (CIT) in China of 15 % instead of 25 %

- (58) Hungary and Samsung SDI also argue that a CIT rate of 15 % instead of 25 % could have been legitimately used in the calculations underpinning the NPV viability gap, and anticipated by Samsung SDI at the time of the investment decision, either on the basis of the Chinese policies for the Western Regions, or based on the possibility that Samsung SDI could have qualified for a reduced CIT rate under the HNTE regime.
- (59) The Commission notes that Samsung SDI does not provide convincing arguments as to why it could have reasonably foreseen in 2017 that any of the abovementioned favourable measures would have been prolonged, under the same or comparable conditions, beyond their expiration date in 2020, when most of the revenues from the notified investment would have been generated.
- (60) It appears in fact that the rules for qualifying for the invoked reduced CIT rate for the Western Regions were highly volatile at the moment of the investment decision, as evidenced by the fact that its benefits were unexpectedly withdrawn to the EV battery industry that qualified for it in China in 2017 and 2018 without any official justification (see recital (25)). It would thus *prima facie* appear implausible to assume that Samsung SDI, instead of adopting a sound precautionary approach, instead chose to rely on an extension of such favourable tax treatment without any grounds for such reliance.
- (61) Concerning the alternative possibility to benefit from a reduced CIT rate under the HNTE regime invoked by Samsung SDI, the Commission notes that — as it results from its internal analysis — Samsung SDI did not comply at the moment of the investment decision with two of its conditions (see footnote 26). *Prima facie*, it appears doubtful that Samsung SDI would have been prepared to fulfil the respective conditions, in particular the required transfer of intellectual property rights to a Chinese joint venture (see footnote 26), and the implementation of a major effort in research and development, exceeding 3 % of sales.

⁽⁴⁰⁾ According to press reports (LG Chem, Samsung SDI gain access to China's EV market, dated 10 April 2019, available at: <https://www.argusmedia.com/en/news/1882342-lg-chem-samsung-sdi-gain-access-to-chinas-ev-market>; and Samsung SDI to invest \$1.15 bn to expand battery facility in China, dated 12 December 2018, available at: <https://pulsenews.co.kr/view.php?year=2018&no=776192>), Samsung SDI made informal announcements in December 2018 (when it was still discussing investment details) of plans to ramp-up Chinese battery production in Xi'an.

⁽⁴¹⁾ That 'white list' included South Korean producers such as Samsung SDI, LG Chem or a venture between SK Innovation and China's BAIC Group.

⁽⁴²⁾ On line press report of 28 June 2019 (Neware battery testing system expert) titled 'China's "white list" of power battery companies abolished', available at: <https://newarebattery.com/chinas-white-list-of-power-battery-companies-abolished/>

⁽⁴³⁾ On line press report of 1 July 2019 (Roskill) titled 'Batteries: China opens its battery market to foreign companies', available at: <https://roskill.com/news/china-opens-its-battery-market-to-foreign-companies/>

- (62) Finally, the Commission considers at this stage that, if Samsung SDI had seen in 2017 a realistic chance to benefit from a continued tax reduction, it would have probably pointed out the significant effect of that reduction in quantitative terms in the NPV comparisons between the alternative investment locations.

3.3. Discrete and probabilistic approach for plausible viability gap calculations

- (63) Hungary argues that that even if it were to admit — as the Commission suggests in the Opening Decision — that local sourcing was not credible at all in either investment scenario, a recalculation of the viability gap on the basis of either a Chinese grant of [15-20] %, or a CIT rate of 15 % in China, would result in an NPV viability gap comparable to the original one of EUR 173 million. With regard to the above, the Commission evokes the doubts it already raised in sections 3.2.1 and 3.2.2 regarding both invoked public support measures in China.
- (64) Hungary and Samsung SDI equally argue that a recalculated viability gap based on [25-30] to [31-35] % local sourcing in China and 0 % local sourcing in Hungary would result in a viability gap of EUR [80-85] to [105-110]. The gap based on [31-35] % local sourcing in China, although smaller than the original one, would nevertheless remain higher than the aid proposed by the Hungarian authorities, which means that its incentive effect would be maintained. The Commission notes however that a recalculated gap based on the lower bound of the [25-30] % local sourcing estimation in China (i.e. [25-30] %) would lead to an updated NPV gap of EUR [80-85] which is lower than the proposed aid (i.e. EUR 108 in present value, see recital (26) of the Opening Decision, which means the respective aid is not proportionate, as it would not be limited to the minimum required to compensate for the net disadvantage of Hungary (see recital (145) of the Opening Decision). The Commission also points to the doubts entertained in relation to the [25-30] to [31-35] % local sourcing hypothesis in China and described in section 3.1.
- (65) Finally, Samsung SDI submits three probabilistic approaches (see recital (34)) for the recalculation of the NPV viability gap in which it assigns probability estimates of 100 % to the revised local sourcing of [25-30] % in China and probability estimates of 25 % and 0 % (in the first scenario), 0 % and 25 % (in the second scenario) and 25 % and 25 % (in the third scenario) to the other two invoked factors, namely the [15-20] % Chinese grant and the reduced CIT rate in China. All three approaches result in a recalculated NPV gap similar to the one originally submitted by Hungary.
- (66) The Commission notes that a probabilistic approach to calculating the NPV viability gap does not appear to be compatible with Samsung SDI 2016 Guidelines on Facility Investment, which contain guidance for the decision-making process concerning investments in new plants or for the expansion of existing plants in excess of KRW [...] billion (app. EUR [...] million). Samsung did not provide any contemporary internal documents on the location choice that would support this weighing approach. In addition, the value of the proposed probability factors appears at this stage arbitrary and has not been substantiated by the beneficiary.

3.3.4. Additional potential locations in the EEA

- (67) From the documents submitted by Samsung SDI in response to the Opening Decision, it was revealed that the location search for the investment project had not only included Samsung SDI's existing three battery cell plants in China, South Korea, and Hungary (as claimed during the preliminary assessment phase), but that also other greenfield investment sites had been considered in China, Poland, Slovakia, Hungary, and the Czech Republic. Samsung SDI explains that these other possibilities were excluded at an early stage in the decision-making process and refers to an internal document in support of this fact that had not been shared with the Commission before the adoption of the Opening Decision (see recital (36)).
- (68) The Commission notes that the newly submitted information shows however that greenfield investments had been considered in the EEA (Poland, Slovakia, and the Czech Republic⁽⁴⁴⁾) in a rather **late stage** of the decision making process (i.e. on 21 September 2017). In particular, the report presented during that meeting shows that several sites were assessed using a quantitative evaluation (taking into account investment costs, total estimated operating costs for 2022, and the time required to complete the investment) and a qualitative evaluation (taking into account 'labor environment, industrial infrastructure, State aid, others'). While the Czech and Slovak greenfield sites (and a second Hungarian greenfield site) were excluded after these evaluations, the possible greenfield site in Poland (Środa) appears to have been retained in a first stage (together with the Hungarian existing site in Göd and the existing Chinese site in Xi'an).
- (69) It appears that the Polish location was not assessed under the next step i.e. a 'detailed analysis of the final candidates' involving a profit and loss simulation, timeline simulation and the potential for expansion, but it is not clear exactly on what basis it was dismissed. It is thus necessary to precisely determine at which stage and for which reasons the alternative locations in Poland (Środa) was discarded and to which extent it could have constituted a credible alternative location for the investment.

⁽⁴⁴⁾ Member States in which regions are mostly eligible for regional aid pursuant to Article 107(3)(a) TFEU i.e. in which regions are more disadvantaged (with higher or similar aid intensity) than the chosen Hungarian c-region.

- (70) In recital (175) of the Opening Decision, the Commission noted — on the basis of the information available to it at the time when that decision was adopted — that Hungary considered the Chinese location (existing site in Xi'an) as constituting the counterfactual scenario for the purpose of the compatibility assessment and that no other area in the EEA was considered as a feasible location, so that no 'counter-cohesion effect' could occur. In recital (39) of the Opening Decision, the Commission noted that the aid beneficiary excluded **from the outset** (this does not appear to be confirmed however by the 21 September 2017 report) a greenfield investment due to time constraints.
- (71) The Commission recalls in this context that in accordance with paragraph 121 of the RAG, where without State aid the investment at hand would have been located in a region in the EEA with a regional aid intensity which is higher or the same as that of the target region, such circumstance would constitute a negative effect that is unlikely to be compensated by any positive effect because it would run counter to the very rationale of regional aid⁽⁴⁵⁾.
- (72) Accordingly, the Commission at this stage cannot exclude that aid to the Hungarian site, eligible for regional aid pursuant to Article 107(3)(c) TFEU might have had a counter-cohesion effect by attracting investments away from a less-developed Polish region, eligible for regional aid pursuant to Article 107(3)(a) TFEU.

4. CONCLUSION

- (73) For the reasons set out above, in addition to the doubts raised in the Opening Decision, the Commission, after a preliminary assessment of the new information submitted by the beneficiary and the Hungarian authorities, is therefore of the preliminary view that the regional aid was not crucial for a positive location decision in favour of Hungary and raises doubts on the incentive effect of the aid and on the credibility of the counterfactual investment scenario. More specifically, the Commission has doubts about the credibility of the [25-30] % to [31-35] % local sourcing hypothesis in China, the sourcing and investment costs assumptions in Hungary considering that alleged availability of significantly cheaper equipment from Chinese producers, the correct application and the size of the mark-up in the Hungarian scenario, the credibility of the counterfactual investment scenario in Xi'an in light of the regionalised investment strategies likely applied by the beneficiary, the credibility of the public support measures invoked by the beneficiary in China, as well as regards the acceptability of the probabilistic approach in the recalculation of the viability gap. In addition, the Commission considers that it cannot be excluded that the aid may have a counter-cohesion effect by attracting investments away from a less developed Polish region.
- (74) Consequently, the Commission extends the procedure laid down in Article 108(2) of the TFEU to cover the elements summarised in recital (73). The extension will give the opportunity to third parties whose interests may be affected by the granting of the aid to provide comments in light of the new information provided by Hungary and Samsung SDI after the adoption of the Opening Decision. In light of both the information submitted by the Member State concerned and that provided by third parties, the Commission will assess the measure and will take its final decision.
- (75) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Hungary to submit its comments on the additional doubts raised by the Commission in the present decision and to provide all such information as may help to assess the measure, within one month of the date of receipt of this letter. It requests the Hungarian authorities to forward a copy of this letter to the potential recipient of the aid without delay.
- (76) The Commission wishes to remind Hungary that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 16 of Council Regulation (EU) 2015/1589, which provides that all unlawful aid may be recovered from the recipient.
- (77) The Commission warns Hungary that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.
- (78) Finally, the Commission notes that Hungary exceptionally agreed to have the present decision adopted in the English language.

⁽⁴⁵⁾ See also paragraph 117 of the Communication from the Commission Guidelines on regional State aid 2021 (OJ C 153, 29.4.2021, p. 1).

BERICHTIGUNGEN**Berichtigung der Genehmigung staatlicher Beihilfen nach den Artikeln 107 und 108 des Vertrags über die Arbeitsweise der Europäischen Union — Vorhaben, gegen die von der Kommission keine Einwände erhoben werden**

(Amtsblatt der Europäischen Union C 500 vom 10. Dezember 2021)

(2022/C 82/04)

Die Veröffentlichung der staatlichen Beihilfe SA.60655 (2020/N) auf Seite 2 ist als null und nichtig anzusehen.

ISSN 1977-088X (elektronische Ausgabe)
ISSN 1725-2407 (Papierausgabe)



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