



2024/2710

24.10.2024

COMMISSION DECISION (EU) 2024/2710

of 18 March 2022

on the State Aid SA.53903 (2020/C ex 2019/NN) implemented by Poland for LG Chem

(notified under the document C(2022) 1570)

(Only the English version is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to the comments submitted by those parties and by other third parties,

Whereas:

1. PROCEDURE

- (1) On 4 July 2019, the Polish authorities notified regional aid ('the aid' or 'the measure') they had granted (according to Poland, subject to Commission approval) on 20 September 2017, 2 October 2017, 19 February 2018, and 5 September 2018 in favour of LG Chem Wrocław Energy sp. z o.o. ('LG Chem Energy PL'). After further exchanges, by letter of 19 December 2019 the Commission informed the Polish authorities that the case would be examined under the procedure regarding unlawful aid laid down in Article 12 of Council Regulation (EU) 2015/1589 ⁽²⁾.
- (2) By letter dated 11 August 2020 (the 'opening decision'), the Commission informed Poland that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU' in respect of the measure.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments on the measure.
- (4) The Polish authorities submitted their comments on 19 October 2020.
- (5) Comments were also provided by third parties: Toray Industries, Inc. provided comments on 3 February 2021; the Ministry of Trade, Industry and Energy of South Korea provided comments on 5 February 2021; LG Energy Solution Wrocław sp. z o.o. ('LG Chem PL'), the legal successor ⁽⁴⁾ of LG Chem Energy PL, provided comments on 5 February 2021.

⁽¹⁾ OJ C 7, 8.1.2021, p. 23.

⁽²⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

⁽³⁾ See footnote 1.

⁽⁴⁾ On 1 December 2020, LG Chem Ltd. split its battery business division into the new wholly owned subsidiary LG Energy Solution, Ltd., based in Seoul, South Korea. Consequently, the shares held by LG Chem Ltd. ('LG Chem KR') in its Polish battery business – LG Chem Wrocław Energy Sp. z o.o. (LG Chem Energy PL) – were contributed to LG Energy Solution, Ltd. LG Chem Wrocław Energy Sp. z o.o. also changed its business name into LG Energy Solution Wrocław Sp. z o.o. ('LG Chem PL'), and this change was registered by the Polish registry court on 21 January 2021.

- (6) The Commission forwarded third-party comments to Poland, which was given the opportunity to react. Its comments were registered by the Commission on 13 April 2021.
- (7) The Commission sent an information request on 26 March 2021 to which Poland replied on 13 April 2021.
- (8) A meeting took place between the Commission services and the Polish authorities on 21 April 2021.
- (9) Further information was received from Poland by email on 27 September 2021, 20 January 2022 and 11 February 2022.
- (10) By letter of 8 June 2021, Poland agreed exceptionally to waive the rights deriving from Article 342 TFEU in conjunction with Article 3 of Council Regulation 1 ⁽⁵⁾ and to have this Decision adopted and notified pursuant to Article 297 TFEU in the English language.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Objective

- (11) Poland intends to promote the regional development of the Dolnośląskie region (NUTS 2: PL51) by granting regional investment aid of EUR 85 443 491 (in present value ⁽⁶⁾) for an initial investment of EUR 994 960 440 (in present value) for the expansion of LG Chem PL's existing lithium-ion ('Li-ion') battery production plant in Biskupice Podgórne, situated in the Dolnośląskie region, which is eligible for regional aid under Article 107(3), point (a), TFEU, with a standard regional aid ceiling of 25 %, under the applicable regional aid map 2014-2020 for Poland ⁽⁷⁾.

2.2. The beneficiary

- (12) The recipient of the aid is LG Chem PL, a fully owned subsidiary of LG Energy Solution, Ltd., itself a fully owned subsidiary of LG Chem Ltd. ('LG Chem KR'), which is headquartered in Seoul, South Korea. LG Chem KR is a large undertaking with a turnover of about EUR 20 billion in 2017. LG Chem PL is already active in Poland in the field of electric vehicles ('EV') battery manufacturing.
- (13) The Polish authorities have confirmed that neither LG Chem PL, nor LG Chem KR, are an undertaking in difficulty within the meaning of the Commission's guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽⁸⁾.

2.3. The investment

2.3.1. The notified investment

- (14) The investment project is to extend the capacity of LG Chem PL's establishment in Biskupice Podgórne (Special Economic Zone Tarnobrzeg Euro-Park Wisłosan) that is producing Li-ion batteries for EV. The extension ('Investment 2') creates an additional annual capacity of [20 – 25] ^(*) GWh, which is equivalent to producing batteries for about [200 000 – 400 000] EV per year, which is planned to serve exclusively the European Economic Area ('EEA') market.

⁽⁵⁾ Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

⁽⁶⁾ The present values are calculated using a discounting rate of 2,83 % (base rate 1,83 % plus 100 basis points). All figures are discounted to 2017 as base year.

⁽⁷⁾ Commission decision of 20 February 2014 in case SA.37485 (2013/N) – Poland – Regional aid map 2014-2020 (OJ C 210, 4.7.2014, p. 1), prolonged until 31 December 2021, as approved by Commission decision of 5 October 2020 in case SA.58437 (2020/N) (OJ C 430, 11.12.2020, p. 1).

⁽⁸⁾ OJ C 249, 31.7.2014, p. 1.

^(*) Confidential information.

- (15) Works on the investment started on 1 October 2017, after the relevant aid applications were introduced on 11 September, 14 September, and 21 September 2017. Production started in [...] 2018 and full production was reached in [...] 2020. The investment was completed before [...] 2021.
- (16) As described in recitals (19) and (20) of the opening decision, the investment constitutes, together with a previous project implemented by LG Chem PL in the same location ('Investment 1'), a single investment project ('SIP') pursuant to paragraph 20(t) to the Regional Aid Guidelines 2014-2020 ⁽⁹⁾ ('RAG') ⁽¹⁰⁾.

2.3.2. *Eligible investment costs*

- (17) The notified total eligible costs of the investment (Investment 2) amount to PLN 4 468 941 000 (EUR 1 054 244 161 ⁽¹¹⁾) in nominal value, which corresponds to PLN 4 261 117 075 (EUR 994 960 440) in present value. The eligible costs (only new assets) correspond to the cost of buildings (37 %) and plant, machinery, and equipment (63 %).

2.4. **The measure**

2.4.1. *Forms of aid*

- (18) The measure consists in four instruments:
- (a) a non-refundable cash grant (payment subject to Commission approval) based on a grant agreement between the Minister of Entrepreneurship and Technology and LG Chem PL signed on 5 September 2018. That Agreement limits the maximum cash grant to the amount applied for, namely, PLN 242 000 000 (EUR 57 088 936) in nominal value;
 - (b) a real estate tax exemption, subject to Commission approval, issued on 2 October 2017 by the Mayor of the Commune of Kobierzyce;
 - (c) an ad-hoc aid in the form of sale of land and related infrastructure at preferential price (EUR 1) agreed in a temporary land sale agreement (final agreement and ownership transfer subject to Commission approval) signed on 19 February 2018 by Agencja Rozwoju Przemysłu ('ARP'), a public entity which owns the land plot and manages the relevant Special Economic Zone. That Agreement stipulates the terms of the sale and includes a standstill clause making the conclusion of the final land sale conditional upon the approval of the measure by the Commission;
 - (d) an entitlement to corporate income tax ('CIT') exemptions granted by ARP on 20 September 2017 through permit No 349/2017. That permit allows LG Chem PL to conduct business activities in the Special Economic Zone Tarnobrzeg Euro-Park Wisłosan (the 'SEZ permit') and to request exemptions from CIT for income from the investment. The SEZ permit describes, inter alia, the scope of the business activity to be conducted by LG Chem PL in the SEZ, the number of jobs to be created, the minimum and maximum eligible costs of the investment, the date of the completion of the investment. However, the SEZ permit does not specify the maximum amount of aid that can be granted to LG Chem PL in the form of CIT exemptions, nor does it contain a standstill clause making the granting of aid conditional upon Commission approval.

2.4.2. *Aid amount*

- (19) The total notified aid supporting the investment amounts to PLN 402 525 976 (EUR 94 957 767) in nominal value and PLN 362 194 962 (EUR 85 443 492) in present value, and corresponds to an aid intensity of 8,5 % for the investment. It is planned to pay out the aid in installments.

⁽⁹⁾ Guidelines on regional State aid for 2014-2020 (OJ C 209, 23.7.2013, p. 1).

⁽¹⁰⁾ The Commission approved State aid for the previous investment in its decision of 28 January 2019 in case SA.47662 (2017/N) – Poland – LIP – Aid to LG Chem Wrocław Energy sp. z o.o. (OJ C 93, 20.3.2020, p. 1).

⁽¹¹⁾ Figures expressed in EUR are given based on an exchange rate of 0,24 PLN/EUR.

- (20) The aid in the form of a cash grant (referred to in recital (18)(a)) amounts to PLN 242 000 000 (EUR 57 088 936) in nominal value and PLN 217 785 842 (EUR 51 376 702) in present value.
- (21) The aid in the form of real estate tax exemption (referred to in recital (18)(b)) amounts to PLN 12 220 983 (EUR 2 882 987) in nominal value and PLN 10 876 446 (EUR 2 565 805) in present value.
- (22) The aid resulting from the sale of land and related infrastructure at preferential price (referred to in recital (18)(c)) amounts to PLN 28 758 996 (EUR 6 784 382) ⁽¹²⁾ in nominal value and PLN 26 449 387 (EUR 6 239 535) in present value, calculated as presented in recital (18) of the opening decision.
- (23) The Polish authorities consider that the aid in the form of the CIT exemption (referred to in recital (18)(d)) gives the beneficiary the entitlement to reduce the amount of CIT owed for the duration of the existence of the Special Economic Zone Tarnobrzeg Euro-Park Wisłosan up to the total cumulative amount of PLN 119 545 904 (EUR 28 201 440) in nominal value and PLN 107 083 287 (EUR 25 261 450) in present value. However, that maximum amount of aid was not specified in the aid granting act (i.e. the SEZ permit). The Polish authorities determined the maximum amount of aid in the form of CIT exemption by calculating the maximum amount of aid for the project in relation to the maximum eligible investment costs of the investment specified in the permit ⁽¹³⁾, from which they deduct aid granted for the same investment through the instruments listed in recitals (20) to (22).
- (24) As mentioned in recital (16), the investment is part of a SIP together with the earlier project referred to in the Commission decision in case SA.47662 (2017/N). The total planned aid for the SIP amounts to PLN 572 088 725 (EUR 134 550 256) in nominal value and PLN 506 673 985 (EUR 119 154 997) in present value, for a planned eligible expenditure of PLN 5 821 349 000 (EUR 1 370 028 129) in nominal value and PLN 5 444 427 050 (EUR 1 281 235 227) in present value, corresponding to an aid intensity of 9,3 % ⁽¹⁴⁾.

3. GROUNDS FOR INITIATING THE PROCEDURE

- (25) The Commission opened the formal investigation on 11 August 2020. Based on the results of the preliminary investigation, it could not establish the conformity of the measure with the provisions of the RAG, in particular with respect to the incentive effect and the proportionality of the aid, its contribution to regional development and its appropriateness.

3.1.1. *Doubts as to the counterfactual scenario*

- (26) In the first place, the Commission doubted that the counterfactual scenario ([Location 1], China) that Poland presented was realistic as, without aid in any of the locations, the investment would have been more viable in Poland than in China (with an advantage of EUR 28,6 million in terms of net present value ('NPV') in favour of Poland). Hence, in that counterfactual scenario, the need for the measure could only be justified if the claim were accepted that LG Chem KR would have benefitted from a subsidy from the Chinese authorities, conservatively estimated at EUR 106 million ⁽¹⁵⁾, if the investment had been implemented in China.

⁽¹²⁾ This value is slightly lower than the notified amount of PLN 28 759 089 (EUR 6 784 404). The Polish authorities explained that this small discrepancy (of PLN 93, which is equivalent to EUR 22) results from approximations of exchange rates used in the conversion of the respective value from PLN to EUR and back to PLN.

⁽¹³⁾ By applying the formula specified in the national legal basis: maximum amount of aid = $R \times (\text{EUR } 50 \text{ million} + 0,50 \times B + 0,34 \times C)$, where R is the unadjusted regional aid ceiling, B is the eligible expenditure between EUR 50 million and EUR 100 million, and C is the eligible expenditure above EUR 100 million.

⁽¹⁴⁾ The approved aid amount for the first project amounted to PLN 169 562 749 (EUR 39 592 488) in nominal value.

⁽¹⁵⁾ This represents an aid intensity of approximately [10 – 20] % if the investment had been implemented in China.

- (27) Paragraph 80 of the RAG does indeed allow for accepting aid for investments outside the EEA as revenue, and thus such aid increases the NPV of the investment in the counterfactual scenario where that investment was located outside the EEA. However, the information available at the time of the opening decision was not sufficient for the Commission to establish that the expected aid from the Chinese authorities had a realistic basis and could be taken into account, considering that, on the basis of information submitted at that stage, only a verbal aid offer by a senior local Chinese official was available when LG Chem KR's Corporate Investment Committee decided on the location of the investment (16 August 2017), and the Board of Directors decided on carrying out the investment (29 August 2017). According to information submitted in the preliminary examination phase, written offers were made by the Chinese authorities only after these decisions were taken (a written unstamped offer on 18 September 2017; a stamped offer on 13 November 2017) (see recitals (100) to (104) of the opening decision).
- (28) In addition, the Commission raised further doubts as to the credibility of the counterfactual scenario assuming the location of the investment in China: the Commission could not exclude the possibility that the hostile political and economic climate in China, in combination with factors such as the quickly expanding European market and the proximity of the location in Poland to European customers, constituted overriding strategic considerations that would have led the company to locate its investment in Poland in any event, even in the absence of aid (see recitals (107) to (109) of the opening decision).

3.1.2. *Doubts as to the incentive effect of the aid*

- (29) For the reasons summarised in section 3.1.1, the Commission doubted that the invoked viability gap (difference of NPV of the investment between Poland and China) of EUR 77,3 million (in present value) existed, and that the aid of EUR 70 million (in present value⁽¹⁶⁾) that the Polish authorities intended to grant (and in part had already granted) to LG Chem PL (see recitals (105) to (106) of the opening decision) had been necessary to attract the investment to Poland. The Commission thus raised doubts as to whether the notified aid had any impact on the location decision, namely, whether there was an incentive effect.

3.1.3. *Doubts as to the proportionality of the aid*

- (30) In view of its doubts regarding the existence of the NPV gap, the Commission also raised doubts as to the proportionality of the aid: if the absence of an NPV gap was confirmed, no aid would have been needed to bridge that gap, and therefore the aid would not have been limited to the minimum necessary to trigger the investment location in favour of Poland (see recitals (114) – (118) of the opening decision).

3.1.4. *Doubts as to the contribution of the aid to regional development*

- (31) In view of its doubts as to the incentive effect, the Commission could not confirm that the aid contributed to regional development (see recitals (78) – (82) of the opening decision).

3.1.5. *Doubts as to the appropriateness of the measure*

- (32) As the Commission could not confirm the existence of a real viability gap between the two alternative locations for the investment, it could also not exclude the possibility that a similar contribution to regional development could be achieved by other more efficient means than the measure (see recital (88) of the opening decision).

⁽¹⁶⁾ For the calculation of the gross grant equivalent, paragraph 20(f) of the RAG requires that the figures are discounted on the basis of the applicable reference rate (see e.g. in recital (11)). However, paragraph 73 (footnote 39) of the RAG states that the NPV is typically calculated using the cost of capital as discount rate. The NPV gap between Poland and China is calculated using LG Chem Ltd. Energy Solution's weighted average cost of capital ('WACC') of [8 – 10.5] % as discount rate. Therefore, when comparing the aid amount with the NPV gap, the aid amount is also discounted using that WACC. For other purposes than comparison of the aid amount with the NPV gap, the discount rate to be used is the one based on the applicable reference rate.

3.1.6. *Doubts as to the respect of the notified maximum aid intensity*

- (33) The Commission noted (see recitals (123) to (127) of the opening decision) that the SEZ permit did not ensure that the maximum aid intensity was respected both for the investment and for the SIP. In fact, the SEZ permit did not identify the maximum amount of entitlements, but only the maximum eligible costs of EUR 1 054 244 195 (PLN 4 468 941 000), in nominal value, on which regional aid may be granted. In the absence of such information from the aid granting act, the Commission considered that it was not obvious that the aid amount in the form of CIT exemption was limited to the notified amount of PLN 119 545 904 (EUR 28 201 440) (in nominal value), as claimed by the Polish authorities. Furthermore, the permit did not mention the other components of the measure to be granted for the same investment, and failed to specify the method by which compliance with cumulation rules would be ensured. As the permit was already issued in September 2017 without a suspensive clause, the Commission considered that the aid had already been granted *in toto* at that point in time and expressed concerns that the maximum allowable aid ceiling had been exceeded and that effective cumulation control at the level of the awarding of the aid was not being ensured.
- (34) In addition, the Commission considered that the control of cumulation at the level of the payment of the aid appeared to be insufficient for two reasons: first, the controls rely on self-declarations of the aid beneficiaries, and second, the respective controls appear to take place only at the level of the fiscal authorities responsible for the payment of some parts of the aid, but not at the level of the other authorities involved in the payment of aid under other components of the measure. Therefore, the Commission raised doubts as to whether there were sufficient safeguards that the total paid aid from all sources would not exceed the maximum permissible aid intensity and was in conformity with paragraph 92 of the RAG (see recitals (128) to (130) of the opening decision).

4. COMMENTS FROM POLAND ON THE OPENING DECISION

4.1. **Comments from Poland on the credibility of the counterfactual scenario**

- (35) In its comments, Poland explained that, in Poland, regional aid beneficiaries rarely receive any written aid offer. Aid applicants know the maximum aid intensity that they can expect upfront based on the applicable regional aid map, and they may decide which instruments would be most suitable for their investment project. This approach was applied also for the investment in the present case, for which therefore no written aid offer was issued. Poland noted that the Commission had never questioned this approach in previous cases. In the view of Poland, a similar method is applied in China, where the applicable rules and information for incentive offers are available to investors, allowing them to calculate a realistic amount of support that they can expect themselves. Furthermore, Poland submitted that LG Chem KR could also take into account its experience from a previous aided project in China. This project consisted of investment in production capacity for mainly EV batteries, for which works started in July 2016 and the Investment agreement with the Chinese authorities was only concluded in January 2019⁽¹⁷⁾. Hence, Poland considered the aid offer from the Chinese authorities to be credible, and argued that there was no justification for discrimination between an aid offer from the Chinese authorities and an aid offer issued by a Member State.
- (36) With regard to negotiations between LG Chem KR and the Chinese authorities on the grant of aid for the investment, Poland emphasised the differences that exist between the Western negotiation culture and the 'Guanxi' culture, practised in China. The 'Guanxi' culture depends on personal relationships between participants, and the need not to 'lose face'. Poland requested the Commission therefore to take into account the specific dynamics of the Chinese business and negotiation culture, where verbal commitments by senior officials are decisive, instead of relying in its assessment on the Western way of doing business.
- (37) Poland also provided several documents showing how negotiations in China proceeded, both concerning the counterfactual location of the investment in China and concerning the previous project of LG Chem KR described in recital (35).

⁽¹⁷⁾ As further described in recital (39) of this Decision and in recital (41) of the opening decision.

- (38) For the case at hand, the following documents were provided: (i) an internal LG Chem KR email dated 27 March 2017 which included, as an attachment, [...]; (ii) an internal LG Chem KR email dated 30 March 2017 requesting information on [...]; (iii) an internal LG Chem KR email dated 9 May 2017 discussing the state of [...]; (iv) an internal LG Chem KR email dated 18 June 2017 which included in attachment [...]; (v) minutes from a meeting of a representative of LG Chem KR with the representatives of the [...] Economic and Technological Development Zone ([...] Development Zone) dated 7 July 2017 mentioning that the discussed project, if implemented in China, should receive at least as much subsidies as the project that was previously implemented in [...]; (vi) an email from the [...] Development Zone to LG Chem KR dated 17 July 2017 [...]; (vii) minutes of a meeting between representatives of LG Chem KR and the Chinese authorities (represented, amongst others, by the Development Zone and the Investment Promotion Bureau) dated 9 August 2017, where the project at hand was discussed and where it was suggested that the subsidies for the investment should reflect those granted to previous LG Chem projects in [...]; (viii) a letter from the [...] Development Zone dated 17 August 2017 to LG Chem KR mentioning which land in the Zone could be offered to LG Chem KR for their project; (ix) an email by the [...] Development Zone to LG Chem KR dated 22 August 2017 [...]; (x) an offer letter (without a stamp) dated 18 September 2017 [...]; (xi) an offer letter (with an official stamp) by the Management Committee of the [...] Development Zone dated 13 November 2017 [...] (on items (x) and (xi), see also recital (44) of the opening decision).
- (39) For the previous project, the following documents were provided: (i) an email from the [...] Development Zone to LG Chem KR dated 5 July 2016, summarising the subsidies offer in form of cash grant for the project to be implemented in years 2016-2018 (RMB 410 million (USD 57 million) for investment of USD [450 – 900] million); (ii) a part of a report to the management of LG Chem KR on the result of the negotiations with the [...] Development Zone from 20 January 2017 explaining that while the cash grant remains at RMB 410 million (USD 57 million), the investment costs have been lowered from USD [450 – 900] million to USD [280 – 630] million; and (iii) the Investment agreement between the [...] Development Zone and [...] LG Chem [China] related to the project (with an official stamp) dated 9 January 2019 in which the investment cost was higher than in previous negotiations (USD [280 – 630] million) but the cash incentive was also higher (USD 79,5 million, amounting to [10 – 20] % of investment costs).
- (40) Poland recalled that economic and political tensions between South Korea and China have a long history. Nonetheless, China continues to be South Korea's largest trading partner (25,1 % of its total exports went to China in 2020). Poland emphasised in particular that the hostile political environment in China did not affect export-oriented businesses. Poland recalled that LG Chem KR decided in 2017 to implement some expansions of the previous project in China in spite of the temporary cooling of the political and business relations between the two countries. Furthermore, Poland pointed out that the negotiations on the counterfactual location of the investment in China took place in 2017, and that the stamped offer of 13 November 2017 was received in spite of the fact that the Chinese government had decided to withdraw subsidies for Chinese EV that ran on batteries from South Korea in late 2016.

4.2. Comments from Poland on the design of the measure

- (41) The Polish authorities confirmed that LG Chem PL had not utilised any aid, and that they were working to improve their cumulation control system. Poland also confirmed that the CIT exemption aid scheme had been amended to include a standstill clause⁽¹⁸⁾. In addition, Poland informed the Commission that LG Chem PL had offered to submit annual reports prepared by an independent certified auditor establishing the State aid amounts received by the company from all sources. Based on those reports, the aid granting authorities can verify the State aid amounts and ensure that the maximum aid intensity would not be exceeded by actual aid payments.
- (42) Poland also proposed to amend the SEZ permit so that it contains both a standstill clause and a list of all the components of the measure related to the investment.

⁽¹⁸⁾ On 24 June 2020, the Polish authorities amended the CIT exemption aid scheme in force on that date, namely, the Act of 10 May 2018 on Supporting New Investments, by adding Art. 15 Sec. 2, with the following wording: 'If the obligation to notify the European Commission applies, the decision on support indicates that the entrepreneur is not entitled to use the aid until the European Commission takes a decision authorising such aid.'

5. COMMENTS FROM THIRD PARTIES ON THE OPENING DECISION

5.1. Comments from LG Chem PL

5.1.1. Comments from LG Chem PL on the credibility of the counterfactual

- (43) LG Chem PL expanded further on the relevance of the ‘Guanxi’ culture which depends heavily on verbal communication and personal relationships in the negotiation process. LG Chem PL explained that negotiations on aid incentives in China normally take place at local government level. The local authorities are held responsible for any issues that might arise in relation to the investments that they are negotiating with foreign investors. Therefore, those authorities are interested in complying with their promises to investors. This argument was confirmed by the testimony of a senior member of the LG Chem KR’s negotiation team in China. In his testimony, he describes his working experience in relation to negotiations for investment incentives in China, sets out the investment environment and the way incentives are negotiated in China, and provides details of the negotiation process of the project at hand in China.
- (44) LG Chem PL provided information about LG Chem KR’s negotiation experience in China, including a table summarising its latest projects in China (mainly concerning EV) which is reproduced below in Table 1. No letter of incentive offer ever existed for any of the projects listed in that table, whilst in less than half of the listed cases the respective investment agreement had been signed before the start of works. Despite that, LG Chem KR actually received the incentives indicated in the investment agreements for the projects that were fully implemented. For LG Chem PL, that table proves that business in China is done based on verbal commitments and mutual confidence.

Table 1

Record of LG Chem KR investment in China

Item	Capital expenditure (in KRW hundred millions)	Range of cash aid intensity (%)	Start of works	Date of investment agreement	Letter of incentive offer	Investment agreement
EV/ESS	[6 000-7 800]	[...]	[...]2018	[...]2019	No	Yes
EV	[1 000-1 500]	[...]	[...]2014	[...]2014	No	Yes
EV	[5 000-6 900]	[...]	[...]2016	[...]2019	No	Yes
EV	[16 600-23 800]	[...]	[...]2018	[...]2018	No	Yes
Polarizer	[4 000-5 300]	[...]	[...]2018	[...]2018	No	Yes

- (45) In addition, LG Chem PL explained in detail the concrete aid negotiation process for the counterfactual location of the investment in China, and submitted evidence related to the aid offer from the Chinese authorities. In particular, LG Chem PL submitted several documents that were also submitted by Poland (described in recital (38) under points (i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x) and (xi)), many of which pre-date the location decision. In addition, it submitted an internal LG Chem KR email dated 17 August 2017 referring to an email of 5 July 2016 (described in recital (39)) in which the [...] Development Zone provided an overview of subsidies to be offered for the previous project. The email mentions that the amount of cash incentives compared to the total investment for that project was [10 – 20] %⁽¹⁹⁾ and suggested that the same aid intensity level should be the basis for the feasibility study for the project at hand.

⁽¹⁹⁾ This is explained by the fact that in January 2017 the investment cost of the previous project was reduced from USD [450 – 900] million to USD [280 – 630] million, while the amount of subsidy was maintained, therefore leading to the cash subsidy amounting to [10 – 20] % of the investment cost. Although there was also a tax incentive granted for that investment (amounting to USD [12 – 26] million, i.e. additional [3 – 7] % of the investment costs), this was not to be taken into account for the feasibility study of the project at hand.

- (46) LG Chem PL also submitted confirmation provided by the Management Committee of the [...] Development Zone as regards the negotiation process, which took place with LG Chem KR throughout 2017, including a meeting on 9 August 2017 during which the Committee suggested that if LG Chem proceeds with the investment in [Location 1], the incentives would be similar to those provided for the previous project of LG Chem in Nanjing, dated 28 January 2021. It also submitted two testimonies of members of the LG Chem KR team that negotiated the Chinese aid offer. In these testimonies, the team members describe both their general experience regarding negotiations with Chinese authorities, and concrete details of the negotiation process in 2017. One of the testimonies, already referred to in recital (43), describes how its author was scheduling and arranging on-site meetings with the Chinese local government. The author of the other testimony also summarises his work experience, explains the usual way of communicating with the Chinese authorities and describes the negotiations with the Chinese authorities, focusing on the period of June – November 2017. He confirms that the Chinese authorities stated in a meeting on 7 July 2017 that subsidies for the investment would be similar to those for the previous project and that this was confirmed in a meeting on 9 August 2017. These testimonies are in line with the comments provided by Poland on this matter.
- (47) Further, LG Chem PL pointed out that the RAG do not require any formal or written aid offer for Member States, claiming that the burden of proof on it is disproportionate, and such burden of proof appears to interfere with the legitimate right of third countries to protect sovereign information from disclosure to other countries, or Union institutions.
- (48) As to the relevance of the political environment, LG Chem PL pointed out that LG Chem KR had implemented a project in China shortly before the counterfactual location of the investment in China was discussed (that project is described in recital (35)), and another one shortly after that discussion (for an overview of projects started in China see recital (44)). It also provided written documents showing that a good long-term relationship existed between LG Chem KR and the Chinese authorities since 2003, as confirmed by the Chinese authorities in their letter of 28 January 2021 (see recital (46)). In addition, LG Chem PL provided a letter by LG Chem KR to the Chinese authorities dated 6 July 2017 [...] and an internal LG Chem KR email dated 24 July 2017 related to preparations for a meeting between LG Chem KR – [...] – and the China International Trade Promotion Committee that was to take place on 25 July 2017).

5.1.2. *Comments from LG Chem PL on the design of the measure*

- (49) LG Chem PL informed the Commission that the SEZ permit had been amended on 18 January 2021: it now includes a standstill clause, lists all the components of the measure, and provides that the maximum amount of the CIT exemption would be the difference between the maximum permissible aid amount for the investment ⁽²⁰⁾, and the total value of all the other aid elements included in the measure. A copy of the amended permit was provided to the Commission.
- (50) LG Chem PL also offered to submit annual reports prepared by an independent auditor certifying the amounts of State aid, received from all sources, to all aid-granting authorities involved.

5.2. **Comments from Toray Industries, Inc.**

- (51) Toray Industries, Inc. ('Toray') is a company headquartered in Japan, active in the manufacturing and processing of materials such as fibres and textiles, performance chemicals and carbon fibre composite materials. Toray has stressed the importance of subsidies in Europe for Asian companies: for Toray, 'the subsidy in the EU is very critical for Asian EV battery related companies to invest and operate manufacturing in the EU'. Toray informed the Commission that the Chinese local authorities (at province level) are very keen to attract new investments and that the incentives which they offer are more generous than those offered in the EU. Toray also suggested that the process is simpler and faster than in the EU. Toray stressed in particular the difference in negotiation practices between the EU and China, highlighted the importance of verbal offers, and informed the Commission that in China investors normally receive an aid offer once they decide on their investment. For this reason, investors rely on the verbal statements of the Chinese authorities and assume, in the preparation of their investment decisions, that the incentive offers that are made verbally are valid.

⁽²⁰⁾ Meaning the aid amount that could be awarded for the project given its size, in the region concerned and in application of the Regional aid map 2014-2020 for Poland and the scaling down provisions of paragraphs 86 and 20(c) of the RAG.

5.3. **Comments from Ministry of Trade, Industry and Energy of South Korea**

- (52) The Ministry requested to re-examine the evidence regarding the aid offer from the Chinese authorities based on the documents submitted by LG Chem PL, and defended the decision to base the expected incentive amount on previous investment experience. In addition, it emphasised the limited impact of the 'hostile political climate' on the investment, noting that, in 2017, South Korean companies made substantial investments in China, and that investment activity even increased in 2018.

6. **COMMENTS FROM POLAND ON THIRD-PARTY COMMENTS**

- (53) Poland supported the views presented by LG Chem PL and welcomed the comments provided by South Korea and Toray.
- (54) Poland confirmed that the initial SEZ Permit given to LG Chem PL had been amended in the way indicated by LG Chem PL in its observations (see recital (49)), and provided a copy of the decision amending the permit.

7. **ASSESSMENT OF THE AID**

7.1. **Existence of aid**

- (55) For the reasons set out in the opening decision, the Commission considers that the notified aid measure constitutes State aid within the meaning of Article 107(1) TFEU, as the measure is imputable to the State and granted through State resources, is selective, procures an economic advantage to LG Chem PL, is likely to affect trade between Member States, and distorts or threatens to distort competition. The amendments to the measure described in recital (49) of this Decision do not affect that assessment.

7.2. **Legality of the measure**

- (56) The Commission established in the opening decision that the Polish authorities had put part of the measure (CIT exemption granted under the SEZ Permit) into effect before a final Commission decision on its compatibility was adopted. The Commission therefore has considered that the measure constitutes illegal aid from the date of its granting as it was implemented in breach of Poland's standstill obligation under Article 108(3) TFEU.
- (57) As explained in recital (54), the initial SEZ Permit granted to LG Chem PL has been amended to include a standstill obligation. As, so far, no tax exemption for income resulting from the investment covered by the permit has been invoked, all components of the measure are now subject to Commission approval; the Commission thus concludes that the illegality of that aid measure has been removed without having had any effects on competition.

7.3. **Compatibility of the measure**

- (58) As explained in recital (69) of the opening decision, the notified aid measure falls to be assessed by applying the provisions applicable to regional aid laid down in Article 107(3), point (a), TFEU, as interpreted by the relevant guidelines adopted by the Commission. Given that the aid granting acts have already been adopted (subject only to Commission approval⁽²¹⁾) between 2017 and 2018, the applicable interpretative acts include the RAG 2014-2020⁽²²⁾, and the regional aid map 2014-2020 for Poland⁽²³⁾.

⁽²¹⁾ Except for the CIT exemption that was initially granted without stand-still clause.

⁽²²⁾ As referred to in footnote 9.

⁽²³⁾ As referred to in footnote 7.

- (59) The Commission concluded in the opening decision that part of the compatibility criteria laid down in the RAG were met (namely, that there is need for state intervention, that the aid does not create overcapacity in a market in absolute decline, that there is no counter-cohesion effect and that the aid is not causal for any closure and relocation); the formal investigation did not reveal any elements that call into question the underlying preliminary assessment of the compliance by the Polish authorities with those compatibility criteria. The amendments to the measure described in paragraph (49) do not affect the State aid assessment made in the opening decision. Those criteria have therefore not been re-assessed in this Decision. By contrast, the remaining elements over which doubts were raised in the opening decision are assessed below.

7.3.1. *Doubts as to the counterfactual scenario*

- (60) Paragraph 64 of the RAG requires that aid has formal incentive effect, namely that works on a project can start only after submitting the application form for aid. The existence of the formal incentive effect has been established in recital (90) of the opening decision.
- (61) In addition, the RAG (see their Section 3.5) require that aid has substantive incentive effect, and that this incentive effect has to be proven by comparing the investment supported by the aid to a counterfactual scenario where no aid is awarded for that investment. The RAG identify in this context two possible counterfactual scenarios. In scenario 1 situations (investment decisions), the aid gives its beneficiary an incentive to adopt a positive investment decision because an investment that would otherwise not be sufficiently profitable anywhere can take place in the area concerned. In scenario 2 situations (location decisions), the aid gives its beneficiary an incentive to locate a planned investment in the targeted area instead of in an alternative location where the project achieves a higher NPV than in the targeted location, because the aid compensates for the viability gap between the two locations (difference of NPVs in the two locations). For scenario 2 situations in which the alternative location is located outside the EEA and thus not subject to the Union State aid rules, paragraph 80 of the RAG allows accepting in the NPV comparison aid in the location outside the EEA as revenue which increases the NPV of the investment in the counterfactual location.
- (62) At the stage of preliminary examination, the Commission did not have enough evidence concerning the aid offer from the Chinese authorities to be able to conclude that it was realistic for LG Chem KR to expect to receive such aid, and thus to conclude that the presented counterfactual scenario was realistic (see recitals (26) and (27)). There were additional doubts concerning the counterfactual scenario which were due to the hostile political and economic climate in China that, in combination with other factors, might have constituted overriding strategic considerations that would have led the company to locate its investment in Poland in any event (see recital (28)).
- (63) Poland and LG Chem PL submitted that the RAG do not require formalised aid offers from Member States (see recitals (35) and (47)). However, that argument as such is not relevant, because the RAG do not refer to any such offers. On the contrary, it is clear from paragraph 69 of the RAG that the counterfactual scenario must not assume the grant of any aid by any public authority in the EEA in the context of the assessment of the incentive effect. Therefore, by definition the notifying Member State will not rely on a (written or verbal) aid offer from any other EEA country to prove the existence of incentive effect (and/or the proportionality of the aid). The Commission also notes comments made by Poland that, in China, the applicable rules and information about incentive offers are available to investors, allowing them to calculate a realistic amount of support that they can expect themselves (recital (35)). This statement alone is however of a general character and it has not been substantiated; taken alone, it cannot demonstrate the credibility of the subsidy offer in China in the case at hand.
- (64) Rather, what is important is to provide sufficient documentary proof of a credible counterfactual scenario and the credibility of NPV calculations for the counterfactual scenario, as required by paragraphs 67, 71 and 72 of the RAG. Notably, where the basis for the counterfactual and the relevant viability gap calculations is a verbal subsidy offer from a country outside the EEA, and where the Member State demonstrates the existence and contents of such offer on the basis of sufficient documentary evidence, the counterfactual and viability gap calculations can still be assessed as credible.

- (65) The Commission considers that, in the present case, the incentive effect of the aid has been demonstrated to the standard required by the RAG. Poland and LG Chem PL have submitted documentary evidence showing that a realistic comparison has been made between the costs and benefits of locating the investment in the areas concerned in Poland and in China. That evidence includes documents that corroborate Poland's position concerning the existence and the content of the subsidy offer from the Chinese authorities (see recitals (38), (39) and (45)). Documents dated before 16 August 2017, which is the date of the location decision, include the following: (i) LG Chem KR internal e-mails [...] (dated 27 March 2017, 30 March 2017 and 18 June 2017); (ii) minutes of a meeting between LG Chem KR and the representatives of the [...] Development Zone dated 7 July 2017 where the project was discussed and which confirmed the level of subsidies for it (that should be similar to the subsidies for the previous project ⁽²⁴⁾ – see recitals (35), (39) and (45) for more details on that project); (iii) email from the Nanjing Development Zone dated 17 July 2017 [...]; and (iv) minutes of a meeting between LG Chem KR and the Chinese authorities dated 9 August 2017 where the project at hand was discussed and where it was suggested that the subsidies for the investment should reflect those granted to previous LG Chem projects in the development zone. In addition, LG Chem KR provided testimonies of certain of its employees who were in charge of incentive negotiations in China concerning, among others, the negotiation process of the project (see recitals (43) and (46)), and also a document provided by the [...] Development Zone, dated 28 January 2021, in which they confirm LG Chem KR's description of the negotiation process of the project at hand, and notably confirming that, by 16 August 2017, LG Chem KR had received a realistic and reliable subsidy offer from the Chinese authorities providing for an aid intensity comparable to the one applicable to the cash grant supporting the previous project started in 2016 (see recital (46)). All those elements demonstrate that negotiations with the Chinese authorities on the possible location of the investment in China were ongoing, and were concrete with respect to the amount of subsidies that LG Chem KR could expect to be offered.
- (66) This evidence was supplemented by several additional documents received by LG Chem KR after 16 August 2017: namely, (i) a letter dated 17 August 2017 from the [...] Development Zone discussing which land in the Zone could be offered to LG Chem KR; (ii) an LG Chem KR internal email dated 17 August 2017 explaining that for the feasibility study for this project, the same aid intensity ([10 – 20] %) should be used as for the previous project described in recital (35); (iii) an email by the Development Zone dated 22 August 2017 [...]; and (iv) two offer letters from the [...] Development Zone (one, dated 18 September 2017, without a stamp, and the second one, dated 13 November 2017, with an official stamp) (for more details see recitals (38) and (45)).
- (67) To further demonstrate that LG Chem KR could, and did, rely on verbal subsidy offers from the Chinese authorities as a sufficient basis to start works on its investments, LG Chem PL also provided a list of projects implemented by LG Chem KR in China, including the investment preceding Investment 2, for several of which works started before the conclusion of the investment agreement (see recital (44)). Accordingly, the prior experience of LG Chem KR concerning previous investments in China allowed LG Chem KR to consider the verbal aid offer from China for the project as binding.
- (68) In conclusion, there is sufficient genuine and contemporary evidence proving that China had made an aid offer to LG Chem KR before 16 August 2017, that such offer related to a subsidy which LG Chem KR could realistically and conservatively estimate to be in the order of at least EUR 106 million and that the corporate bodies of LG Chem KR relied on that offer when deciding on the location of the investment. The conclusion that LG Chem KR's expectations were realistic is in addition corroborated by the fact that the offer was later formalised, and that the content of the formalised offer corresponded to the offer made verbally, namely, it also proposed a subsidy with an intensity of approximately [10 – 20] %, in line with the intensity which LG Chem KR and the Chinese authorities had agreed for the previous investment project referred to in recital (35) ⁽²⁵⁾. Additionally, LG Chem KR showed that, after having decided on the location of the investment project at hand, they have decided on and implemented investments in China, benefitting from subsidies, despite the absence of a formalised offer or an investment agreement (see Table 1).

⁽²⁴⁾ Several documents were also provided concerning this previous project, see recital (39).

⁽²⁵⁾ The Commission notes that Poland and LG Chem PL have submitted that this approach of negotiating mainly verbally is in line with the Guanxi culture of negotiation (see recitals (36) and (43)).

- (69) As regards the doubts of the Commission in the opening decision that the counterfactual investment in China might be not credible due to the general hostile political environment encountered by South Korean undertakings at the time, evidence was submitted to show that the general political climate would not affect the specific investment and the credibility of China as a counterfactual location. This is because the investment, as indicated in recitals (35), (36) and (38) of the opening decision, would serve as a basis for exports, as the production would not be sold on the Chinese domestic market but exported to Europe. The credibility of such export-based business orientation of the counterfactual investment in China has not been called into question by any of the parties who submitted comments in the course of the formal investigation.
- (70) In addition, LG Chem PL has submitted documents showing ongoing good business relationships of LG Chem KR in China (see recital (48)) and showing that, in general, the political tensions between China and South Korea have had negligible impact on business cooperation with or investment of South Korean companies in China. These documents support the position of Poland and South Korea on this matter.
- (71) Therefore, the Commission considers that it was proven that the hostile environment would not have affected the counterfactual investment, as that environment only meant that Chinese consumers would not receive subsidies for purchases of EV with South Korean batteries. However, since the counterfactual investment would have targeted, like the one actually carried out, the European market, that domestic subsidy policy would have had no impact on the prospective sales of the batteries to be manufactured at the facility.
- (72) To conclude, the Commission considers that LG Chem PL has provided sufficient additional evidence concerning the aid negotiations in China. The Commission therefore concludes that, against this background, the Chinese aid offer can be considered to have been submitted before 16 August 2017 in spite of a lack of written stamped aid offer at that point in time when LG Chem KR's Corporate Investment Committee decided on the location of the investment. In particular, the Commission accepts that LG Chem KR had carried out negotiations with the local Chinese authorities on the counterfactual location of the investment in China, and that the conservative estimate of LG Chem KR, according to which it would be able to benefit from an aid intensity of approximately [10 – 20] %, can be considered realistic.
- (73) Moreover, based on the explanations and documentation provided, the Commission accepts that the hostile political environment in China, largely preventing South Korean EV battery producers from supplying the Chinese market due to the restrictions on subsidies supporting EV purchases in China, did not have an impact on the credibility of a possible location of the investment in China. This is because that investment was intended to expand the production of batteries to be sold outside China, in Europe, whereas China did not object to exports of cells by foreign-owned China-based EV cell factories.
- (74) Considering these elements, the Commission concludes that the location of the investment in China was a realistic counterfactual scenario to its location in Poland.

7.3.2. *Doubts as to the incentive effect of the aid*

- (75) As explained in recital (61), according to the RAG, in scenario 2 situations, the aid is to give its beneficiary an incentive to locate a planned investment in the relevant area rather than elsewhere because it compensates for the net disadvantages and costs linked to a location in the area concerned.
- (76) At the stage of the preliminary examination, the Commission doubted that the supposed viability gap of EUR 77,3 million existed, and that the aid of EUR 70 million to be granted to LG Chem PL was necessary to attract the investment to Poland (see recital (29)). At that time, the Commission did not have sufficient elements to find that the notified aid had any impact on the location decision, namely, that there was an incentive effect.

- (77) Given the conclusions in recital (74), in view of all the evidence provided, and accepting that the conservative estimate of an aid from the Chinese authorities of [10 – 20] % of the investment costs, which is reflected in the NPV calculation for China, has a realistic basis, the Commission concludes that the supposed viability gap of EUR 77,3 million between the locations in Poland and in China indeed existed. Therefore, the Commission concludes that the measure has an incentive effect.

7.3.3. *Doubts as to the proportionality of the aid*

- (78) According to section 3.6 of the RAG, a double cap applies to the aid amount. First, regional aid must be limited to the minimum needed to induce additional investment or activity in the area concerned. In the case of notified individual aid, the aid amount must not be higher than the difference between NPVs of the project in the alternative locations considered (without taking into accounts any subsidies granted in those locations if they are in the EEA). Second, maximum aid intensities are used as a cap to this viability gap approach: aid to compensate the NPV difference must not exceed the maximum amount of aid that may be granted in application of the regional aid ceiling applicable to the target region for an investment project of the given size (taking into account the scaling down rules laid down in paragraph 86 and 20(c) of the RAG and, where relevant, the circumstance that the investment may be part of a SIP, as defined in paragraph 20(t) of the RAG, and previous aid granted for the other components of the SIP).
- (79) At the stage of preliminary examination, the Commission was not in a position to conclude that the aid was proportionate because it could not confirm that there had existed an NPV gap between the two alternative investment locations. In the absence of such a gap, the aid would not be limited to the minimum necessary to trigger the investment location in favour of Poland (see recital (30)).
- (80) In recital (74), the Commission concludes that the counterfactual scenario assuming the location of the investment in China was realistic, and thus there had existed an NPV gap between the two locations. The Commission has no grounds to call into question the amount of that gap (i.e. EUR 77,3 million), and thus concludes that the notified aid of EUR 70 million ⁽²⁶⁾ (in present value) does not exceed the amount necessary to bridge that gap.
- (81) The Commission notes that, based on the regional ceiling of 25 % laid down in the regional aid map 2014 – 2020 for Poland for the Dolnośląskie region, and applying the scaling-down rules of paragraphs 86 and 20(c) of the RAG, the corresponding maximum total aid for the SIP with planned eligible expenditure of EUR 1 281 235 227 is EUR 119 154 994 ⁽²⁷⁾ in present value, resulting in a maximum aid intensity of 9,3 %.
- (82) The Commission notes that, for the SIP, the total planned aid amounts to PLN 506 673 985 (EUR 119 154 997) in present value for planned eligible costs of PLN 5 444 427 050 (EUR 1 281 235 227) in present value (see recital (24)). For the notified investment, the planned eligible costs amount to EUR 994 960 440 in present value, the notified aid amounts to EUR 85 443 491 in present value and the resulting aid intensity is 8,5 % (see recitals (17) and (19)).
- (83) The notified aid, combined with the earlier aid, thus does not exceed the maximum amount of aid of EUR 119 154 994 and the allowable maximum aid intensity of 9,3 % for the SIP. Therefore, the Commission concludes that the maximum adjusted aid intensity ceiling for the SIP is not exceeded.
- (84) Given the above, the Commission concludes that the aid is proportionate.

⁽²⁶⁾ When discounted with the same rate as the viability gap, i.e. WACC (for more details, see footnote 16).

⁽²⁷⁾ The difference of EUR 3 compared to the amount of EUR 119 154 997 referred to in recital (82) is due to rounding.

7.3.4. *Doubts as to the contribution of the aid to regional development*

- (85) The RAG (paragraph 36) require regional investment aid to make a real and sustained contribution to the development of a disadvantaged region.
- (86) As explained in recital (31), in view of its doubts as to the incentive effect of the aid at the stage of preliminary examination, the Commission could not confirm that the aid contributed to regional development.
- (87) Given the overall and uncontested positive assessment of the measure's contribution to regional development in the opening decision (see recitals (77) – (80) of the opening decision) which the Commission confirms in this Decision, and since this Decision confirms that the aid has an incentive effect (see recital (77)), the Commission concludes that the measure promotes the development of a region eligible for regional aid pursuant to Article 107(3), point (a), TFEU.

7.3.5. *Doubts as to the appropriateness*

- (88) The RAG (paragraphs (50) and (57)) require regional aid to be an appropriate policy instrument to address the policy objective concerned, and to be awarded in a form that is likely to generate the least amount of distortions to trade and competition.
- (89) The Commission concluded already in the opening decision (recitals (86) and (87)) that regional investment aid is an appropriate form of support to promote the development of the area concerned.
- (90) As explained in recital (32), in view of its doubts as to the existence of a real viability gap between Poland and China, in the opening decision, the Commission could not confirm that a similar contribution to regional development could not be achieved by other more efficient means.
- (91) Given the positive assessment in the opening decision (see its recital (88)) and as the Commission has confirmed that a real viability gap existed between the alternative locations in Poland and China (see recital (74)), the Commission concludes that the measure is an appropriate instrument to influence the location decision.

7.3.6. *Doubts as to the respect of the notified maximum aid intensity*

- (92) According to paragraph 119 of the RAG, a manifest negative effect would exist where the maximum aid intensity of the project is exceeded. This would be the case where the proposed aid amount exceeds, compared to the eligible (standardised) investment expenditure ⁽²⁸⁾, the maximum (adjusted) aid intensity ceiling that applies for a project of the given size, taking into account the required 'progressive scaling down' ⁽²⁹⁾.
- (93) The Commission accepted in the opening decision (see its recitals (124) and (125)) that the notified aid did respect the maximum adjusted aid intensity ceiling for the project and also as part of the SIP. However, as the SEZ permit did not identify the maximum amount of entitlements, but only the maximum eligible costs of EUR 1 054 244 195 (PLN 4 468 941 000), in nominal value, on which regional aid might be granted, it was not guaranteed that the amount of the aid in the form of CIT exemption was limited to the notified amount of PLN 119 545 904 (EUR 28 201 440) (in nominal value), as claimed by the Polish authorities. Furthermore, the permit did not mention the other components of the measure, to be granted for the same investment, and failed to specify the method by which compliance with cumulation rules would be ensured. As the permit had already been issued in September 2017 without a standstill clause, the Commission expressed concerns that the maximum allowable aid ceiling was exceeded and that effective cumulation control at the level of the awarding of the aid was not ensured.

⁽²⁸⁾ The standardised eligible expenditure for investment projects by large undertakings is described in detail in sections 3.6.1.1 and 3.6.1.2 of the RAG.

⁽²⁹⁾ See paragraphs 86 and 20(c) of the RAG.

- (94) In addition, as explained in recital (34), the Commission noted, in the opening decision, that cumulation control only at the level of the payment of the aid appeared to be insufficient. Therefore, the Commission raised doubts as to whether there were sufficient safeguards that the total paid aid from all sources would not exceed the maximum permissible aid intensity and was in conformity with the provisions laid down in paragraph 92 of the RAG.
- (95) Poland confirmed that LG Chem PL had not utilised any aid and that the CIT exemption aid scheme had been amended to include a standstill clause.
- (96) Both LG Chem PL and Poland informed the Commission that the SEZ permit was amended on 18 January 2021, and now includes a standstill clause, lists all the components of the measure, and states that the amount of the CIT exemption would be the difference between the maximum permissible aid amount ⁽³⁰⁾ and the total value of all the other components of the measure.
- (97) In addition, LG Chem PL also agreed to submit annual reports to be prepared by an independent auditor, certifying the amounts of State aid, used from all sources, to all aid granting authorities involved. Based on those reports, the aid granting authorities can verify the State aid amounts and ensure that the maximum aid intensity would not be exceeded. The fact that the aid in other forms is implemented before advantages from the CIT exemption can be (fully) exploited, minimizes the risk of the maximum aid intensity being exceeded.
- (98) Given the amendment of the permit and the introduction of an ad-hoc monitoring mechanism, the concerns of the Commission as to the respect of the overall cumulation ceilings, both at the time of granting and in terms of payments, and as to the overall amount of entitlements created by the permit, are allayed. The Commission therefore concludes that the notified maximum aid intensity ceiling has been respected.

7.3.7. *Balancing of positive and negative effects of the aid*

- (99) The assessment of the criteria referred to in recitals (60) to (98) showed that State intervention is needed, that the aid is appropriate, that the counterfactual scenario presented is credible and realistic, and that the aid has an incentive effect and is limited to the amount necessary to change the location decision of the beneficiary. By triggering the location of the investment in an assisted region, the aid contributes to the regional development of the Dolnośląskie region. The assessment also showed that the aid has no manifest negative effect in the meaning of paragraphs 120 – 122 of the RAG: it does not lead to the creation or maintenance of overcapacity in a market in absolute decline, or to excessive effects on trade; it respects the applicable regional aid ceiling; it has no manifest counter-cohesion effect; and it is not causal for the closure of activities elsewhere in the EEA and their relocation to Biskupice Podgórne.
- (100) Undue negative effects on competition (other than manifest negative effects) that are to be taken into account in the remaining balancing test if the investment addresses two distinct geographic markets are identified in paragraphs 114, 115 and 132 of the RAG, and concern the creation or reinforcement of a dominant market position, or the creation or reinforcement of overcapacities in an underperforming market (even if this market is not in absolute decline). As the aid is limited to the amount necessary to change the location decision and thus does not make available more resources to the aid beneficiary than needed to trigger the location decision, and as the sales from the investment, whatever its location, would have addressed the same geographic market, and the potential competition effects of the investment on the relevant geographic market (for example in the form of its contribution to overcapacity or to an increase or creation of a dominant market position) would have taken place with and without aid, they do not have to be analysed and taken into account in the remaining balancing test, as they are not caused by the aid.
- (101) In the light of the considerations set out in recitals (99) to (100), the Commission considers that the aid has no undue negative effect on competition.

⁽³⁰⁾ In accordance with the RAG.

- (102) As the aid respects paragraph 107 of the RAG concerning the applicable regional aid ceiling, and has no counter-cohesion or relocation effects within the meaning of paragraphs 121 and 122 of the RAG, the Commission considers, as already stated in recital (99), that the aid has no manifest negative effects on trade. The remaining (negative, but not manifest) effects on trade, namely, the effect of the aid on the choice of, and resulting from, the location of the investment in the region concerned, are sufficiently limited, as the investment is implemented within the limits of the approved regional aid map.
- (103) By contrast, the aid has substantial positive effects, in particular through employment (job creation), clustering effects and knowledge spillovers (see section 4.3.3.1 of the opening decision). Those positive effects further facilitate the regional development of the Dolnośląskie region, which is a region eligible for regional aid pursuant to Article 107(3), point (a), TFEU under the applicable regional aid map authorised by the Commission.
- (104) As the aid meets all minimum requirements, has no manifest negative effects on competition and trade, nor undue negative effects on competition, and only very limited effects on trade the Commission considers that the substantial positive effects of the aid on the regional development of the Dolnośląskie region clearly outweigh any negative effects.

7.3.8. *No relevant breach of EU law*

- (105) It does not result from the notification and the information collected in the course of the formal investigation that the aid or the conditions attached to it, or the economic activities facilitated by the aid, could entail a violation of a relevant provision of Union law⁽³¹⁾. In particular, the Commission has not sent a reasoned opinion to Poland on a possible infringement of Union law that would bear a relation to this case, and the Commission has not received any complaints or information that might suggest that the State aid, the conditions attached to it or the economic activities facilitated by the aid might be contrary to relevant provisions of Union law.

8. CONCLUSION

- (106) The Commission finds that Poland has unlawfully implemented part of the measure in breach of Article 108(3) TFEU, but that this illegality has been removed in the meantime, without having had effects on competition.
- (107) Given that the aid fulfils all the compatibility criteria laid down in the RAG 2014-2020, and as the Commission found that the substantial positive effects of the aid clearly outweigh any of its negative effects, the Commission concludes that the aid is compatible with the internal market in accordance with Article 107(3), point (a), TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The State aid notified by Poland for LG Energy Solution Wrocław sp. z o.o., amounting to a maximum amount of PLN 362 194 962 (in prices of 2017) and corresponding to a maximum aid intensity of 8,5 % in gross grant equivalent, is compatible with the internal market within the meaning of Article 107(3), point (a), of the Treaty on the Functioning of the European Union.

⁽³¹⁾ See paragraph 28 of the RAG.

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 18 March 2022.

For the Commission
Margrethe VESTAGER
Executive Vice-President
