II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 11 December 2002
on the State aid which Germany is planning to implement for BMW AG in Leipzig

(notified under document number C(2002) 4830)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/373/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to those provisions [1],

Whereas:

I. PROCEDURE

(1) On 3 December 2001 Germany notified the Commission of a proposal to grant aid to Bayerische Motorenwerke AG (BMW). The Commission asked for additional information by letter dated 16 January 2002, to which Germany replied on 20 February.

(2) By letter dated 3 April 2002, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid (hereinafter referred to as the decision to initiate the procedure). By letter dated 17 May 2002, Germany submitted comments on the initiation of the procedure.

(3) The decision to initiate the procedure was published in the *Official Journal of the European Communities* of 30 May 2002 [2]. The Commission called on interested parties to submit their comments. It received comments from France on 3 July 2002; these were forwarded to Germany. Germany responded to those comments by letter dated 16 August 2002.

II. DESCRIPTION

A. The proposal and the planned aid

(4) BMW plans to set up a new passenger-vehicle production plant in Leipzig with an eligible investment volume of some EUR 1 204,9 million (net present value). It is initially planned to manufacture passenger vehicles of the [...] (*) 3-series model at the new plant. However, it will also be possible in the medium and long term to manufacture other BMW models there. The project is expected to create some 5 400 direct new jobs.

(5) The aid recipient is BMW. According to the notification, the total amount of planned aid is EUR 418,6 million (net present value). It is to be granted under the *Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur (GA) — 30. Rahmenplan* (30th outline plan for the joint Federal Government/*Länder* scheme for improving regional economic structures) and under the *Investitionszulagengesetz 1999* (1999 Investment Allowance Law). The aid intensity is 34,74 %.

[1] OJ C 128, 30.5.2002, p. 15.

[2] See footnote 1.

(*) […] represents confidential information.

(6) Leipzig was recognised by the Commission as an area eligible for regional aid under Article 87(3)(a) of the EC Treaty in the regional aid map for 2000 to 2003. The regional aid ceiling for large companies in Leipzig, a 'structurally stronger' region in the new *Länder*, is 28 %. However, at the request of one *Land* (Saxony) and with the approval of the GA subcommittee, which is responsible for regional aid at national level, up to 35 % (gross) may be granted to large companies in such regions. Germany has stated that these conditions have been met and has submitted the relevant minutes of the committee in question.

(7) Germany has also indicated that the most viable alternative location to Leipzig would be Kolin (Czech Republic). After BMW issued a public call for expressions of interest in serving as a location for the new plant, around 250 locations submitted a questionnaire concerning the main selection criteria. Following an extensive selection procedure, the five most attractive locations (Augsburg in Bavaria, Arras in France, Leipzig in Saxony, Kolin in the Czech Republic and Schwerin in Mecklenburg-Western Pomerania) were identified. These locations were analysed in detail and assessed over several months, and specific siting and land-purchase contracts were negotiated with the respective authorities. Finally, Leipzig […]* was identified as the best location in Germany and Kolin […]* as the best alternative location abroad. On 18 July 2001 the BMW board decided in favour of Leipzig.

B. **Decision to initiate the procedure**

(8) The Commission justified its decision to initiate the procedure on the basis of the following factors:

(9) Firstly, the notified cost handicap for Leipzig was EUR 591,4 million (net present value). The planned aid of EUR 418,6 million (net present value) would thus still leave additional costs of EUR 172,8 million to be borne by BMW if it located there. The Commission therefore doubted whether Leipzig's regional handicap is in fact as great as indicated.

(10) As regards the level of regional handicap indicated in the cost-benefit analysis (hereinafter referred to as CBA), the Commission considered that, in the case of Kolin, it might be necessary to take into account and quantify certain risks related to BMW's brand image or to the start-up of production, including the integration of suppliers. Germany was asked to provide an estimate of the costs associated with those risks.

(11) Secondly, as regards labour costs, the Commission doubted that a sufficiently high convergence factor for the level of wages had been applied in the CBA to take account of labour-market developments after enlargement. The CBA assumed a real convergence rate lower than applied by the Commission in similar cases (5 % annually).

(12) Thirdly, the Commission had doubts concerning the estimated number of jobs at both sites. Although productivity is lower in Kolin than in Leipzig, the number of jobs was assumed in the CBA to be higher in Leipzig than in Kolin during the reference period.

(13) Finally, the Commission doubted whether account had been taken at both sites of all the training measures that would be needed during the reference period of the CBA, i.e. the five years after the commercial start-up of production.

III. **COMMENTS FROM INTERESTED PARTIES**

(14) France presented comments on the decision to initiate the procedure in which it essentially supported the doubts raised by the Commission, in particular as regards the extent of Leipzig's regional handicap as compared with Kolin. These comments were received on 3 July 2002, i.e. after the expiry of the one-month deadline set by the Commission. France did not apply for an extension of the deadline or provide any due justification for such an extension. France's comments have therefore not been formally taken into account in the Commission's assessment. Germany, which had the opportunity to respond to France's comments, has backed the Commission's position.

(15) France pointed out that such a high level of aid would lead to distortions of competition between BMW and the other European car manufacturers. French manufacturers would be particularly affected as the French market would be targeted by BMW and as French manufacturers operated in the same market segment. The aid for the plant in Leipzig would not compensate for any regional handicap and was therefore not necessary. Three press articles were submitted to the Commission in support of these arguments ([3]).

([3]) La Tribune, 19 July 2001 (BMW préfère Leipzig à Arras pour sa nouvelle usine de production); Les Echos, 7 July 2001 (BMW construira sa nouvelle usine à Leipzig); Les Echos, 10 July 2001 (Arras serait hors course pour la future usine de BMW).

(16) As regards the proportionality of the aid, France considered that Leipzig's geographical location represented an industrial and economic advantage for BMW. The company already had established suppliers in the region. Moreover, it could more easily profit from an exchange of workers between production plants, depending on demand. France also pointed to the quality, availability and competitiveness of local labour. Finally, the construction of a new car plant by a producer of premium cars in a central European country would involve industrial and economic risks which could be reduced only by means of additional expenditure. A greenfield investment in the Czech Republic, where BMW did not yet have an assembly plant, would involve higher costs and risks, particularly since there might be difficulties with the start-up of production. In addition, manufacturing motor vehicles in central Europe would require additional marketing costs to maintain the BMW's image as a producer of premium cars.

IV. **COMMENTS FROM GERMANY**

(17) In its reply to the comments from France, Germany considered that, for procedural reasons, these comments should not be taken into account by the Commission since they had been received after the deadline laid down in the decision to initiate the procedure. The main purpose of setting a deadline in accordance with the first sentence of Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([4]) is to ensure a correct procedure for treating all parties equally. There did not seem to be any duly justified case for extending the deadline pursuant to the second sentence of Article 6(1).

(18) As for the substance of France's comments, Germany pointed out that they were essentially based on French press articles concerning the Arras site and not on information concerning the two remaining options, Leipzig and Kolin. As regards the question whether regional aid was necessary, Germany rejected France's comments as unjustified, stressing, *inter alia*, that the region was classified as an Objective 1 area. As regards the credibility of Kolin as a viable alternative location, Germany argued that the Commission had not questioned the mobility of the project when initiating the procedure. Moreover, a French motor-vehicle manufacturer (together with a non-European producer) had recently announced its intention to set up a new car plant at the site which BMW had examined as an alternative location. This proved the feasibility and viability of the alternative location. Any effect the project might have on the industry and on competition would be taken into account by the Commission in its 'top-up analysis'. As regards the proportionality of the aid, Germany noted among other things that the French comments on this matter referred to criteria indicated in the French press as grounds for the decision not to choose the Arras site. Such considerations could not be applied to the Kolin site. Germany submitted information on specific points raised by France and concluded that the latter's comments did not contain any tangible elements which called into question the aid's compatibility with the common market.

(19) As regards the doubts raised in the decision to initiate the procedure concerning the level of Leipzig's regional handicap, Germany stated that there would be no significant differences in logistical costs between Leipzig and Kolin since, in contrast to Arras, they are both located at the same distance from the existing BMW production network. As for training costs, the main measures would be implemented before the start-up of production (start of the CBA period). Costs relating to vocational training at both sites and further training at both sites had been taken into account during the reference period. Labour costs relating to the exchange of workers between different sites had been included in the CBA. Germany justifies the increase of less than 5 % in real wages in Kolin as compared with Leipzig by pointing out in particular that, for the Leipzig site, a special agreement had been concluded with employees to take account of the specific characteristics of the local wage structure. Under this agreement, individual working hours would be reduced in Leipzig. This implied a real rise in wages and thus a reduction of the real convergence rate of 5 %. As regards productivity and the number of employees, lower productivity and longer working hours per employee had been assumed for Kolin.

(20) With regard to the doubts expressed in the decision to initiate the procedure concerning possible production risks, Germany pointed to the successful Skoda plant in Mlada Boleslav and the recent decision by PSA/Toyota to locate in Kolin. Although Germany considered that the start-up risks in Kolin did not have to be taken into account, this element had been included in a worst-case scenario. The CBA was also based on the conservative and risk-minimising assumption that both sites would receive identical investment in buildings and machinery. On the question of risks to BMW's image, Germany pointed out that BMW successfully operated production plants in different continents. The quality of cars produced in South Africa was the same as in Germany. The BMW 3-series was currently assembled at various locations. Customers who were concerned solely with quality would not normally know where a car had been manufactured.

V. **ASSESSMENT OF THE AID**

(21) The measure notified by Germany in favour of BMW constitutes State aid within the meaning of Article 87(1)

([4]) OJ L 83, 27.3.1999, p. 1.

of the EC Treaty. It is to be financed by the State or through State resources. Furthermore, as it would finance a significant proportion of the costs of the project, the aid is liable to distort competition in the Community by giving BMW an edge over competitors not receiving aid. There is also extensive trade between Member States in the motor-vehicle market.

(22) The aid is to be granted to a company which manufactures and assembles motor vehicles. The company thus forms part of the motor vehicle industry within the meaning of the Community framework for State aid to the motor vehicle industry ([5]) (hereinafter referred to as the relevant Community framework).

(23) The relevant Community framework specifies that aid which the public authorities plan to grant to an individual project under an authorised aid scheme for a firm operating in the motor vehicle industry must, in accordance with Article 88(3) of the EC Treaty, be notified before being granted if either of the following thresholds is reached: (i) total cost of the project equalling EUR 50 million; or (ii) total gross aid for the project; whether state aid or aid from Community instruments, equalling EUR 5 million. Both the total cost of the project and the amount of aid exceed the notification threshold. Thus, in notifying the proposed aid for BMW, Germany complied with the requirements of Article 88(3).

(24) In view of the nature and purpose of the aid and the location of the investment, Article 87(2) is not relevant. Under Article 87(3), certain other types of aid may be regarded as compatible with the common market. Compatibility must be assessed from the standpoint of the Community as a whole and not simply from the point of view of a single Member State. In order to safeguard the proper functioning of the common market and to comply with the principle established in Article 3(g) of the Treaty, the exceptions in Article 87(3) must be interpreted narrowly. With regard to the derogations in Article 87(3)(b) and (d), it is clear that the aid in question is not intended for an important project of common European interest, to remedy a serious disturbance in the German economy or to promote culture and heritage conservation.

(25) As regards the derogations in Article 87(3)(a) and (c), the Commission notes that investments projects implemented in areas of Saxony qualify for aid under subparagraph (a). Under the new regional aid map for Germany, approved by the Commission on 29 July 1999 for assisted areas covered by Article 87(3)(a), the project is located in an area with a regional aid ceiling for large companies of 28 % gross grant equivalent. However, at the request of one *Land* (Saxony) and with the approval of the GA subcommittee, which is responsible for regional aid at national level, up to 35 % (gross) may be granted to large companies in these regions ([6]). Germany has confirmed that these conditions have been met and has submitted the relevant minutes of the GA subcommittee.

(26) In assessing the aid's compatibility with the common market, the Commission has not, as explained in recital 14, formally taken account of the comments submitted during the procedure by France. Since these comments nevertheless repeat and support many of the doubts expressed by the Commission in its decision to initiate the procedure, an indirect response is given to them in this assessment.

(27) In order to be able to determine whether regional aid consistent with Article 87(3)(a) of the Treaty may be deemed compatible with the common market, the Commission must check whether the conditions specified in the relevant Community framework have been met.

(28) To authorise aid under this framework, the Commission, after checking that the region in question is eligible for aid under Community law, establishes whether the investor could have chosen an alternative site for its project so as to establish the need for the aid, with particular reference to the mobility of the project.

(29) Taking into account the nature of the investment (on a greenfield site) and on the basis of the documents received (e.g. location studies, correspondence with the Czech authorities), it is to be assumed that the project was mobile and that Kolin was a viable alternative location.

(30) Regional aid for modernisation and rationalisation measures, which are generally not mobile, is not authorised in the motor vehicle sector. However, the project in question involves setting up a completely new production plant and may therefore be eligible for regional aid. The eligible investment costs amount to EUR 1 204,9 million (net present value).

([5]) OJ C 279, 15.9.1997, p. 1.

([6]) N 195/99, regional aid area for Germany (2002 to 2003) for regions covered by Article 87(3)(a).

(31) Together with an external expert on the motor vehicle industry, the Commission has evaluated the notified CBA with a view to ascertaining whether the proposed aid is proportional to the regional problems. The main reason for Leipzig's regional handicap is the significantly higher level of labour costs in Germany. Following the initiation of the procedure, Germany clarified some aspects of the CBA which had given rise to doubts. These related in particular to the productivity assumptions, the number of employees at both plants and the necessary skill-training measures. The CBA assumes identical investment in buildings and machinery at both locations and thus the same level of automation. However, labour productivity would have been lower in Kolin, reflecting a lower level of skills and a possible need to train the local workforce. Skill-training costs after the start-up of production were taken into account in the CBA. It was also assumed that the working time per employee would be longer in Kolin than in Leipzig. As regards the number of employees at both locations, lower productivity in Kolin would have been more than offset by the longer working hours. On the basis of the information submitted, the Commission considers the assumptions concerning the number of employees and the weekly working hours at both locations to be plausible. Since the labour-cost handicap is the decisive factor in determining the regional handicap, it is of crucial importance that the assumed labour costs are in fact incurred *ex post*.

(32) With regard to productivity, the number of employees and the site-specific working hours, the following assumptions are applicable to Leipzig:

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Weekly working hours	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Local workers	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Relocated workers	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Total	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*

(33) With regard to productivity, the number of employees and the site-specific working hours, the following assumptions are applicable to Kolin:

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Weekly working hours	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Local workers	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Relocated workers	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Total	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*

(34) However, doubts raised in the decision to initiate the procedure concerning other aspects of the CBA cannot be dispelled. These relate to the assumed level of convergence of wage costs, the quantification of certain risks related to the effects of the location decision on BMW's image and possible difficulties in starting up production.

(35) The Commission considers the real convergence of wages in Kolin to have been understated. It has been the consistent practice of the Commission in cases where the comparator plant is located in a central or eastern European country to apply a convergence factor to the level of wages in order to take account of labour-market developments in the wake of enlargement. Although Germany does not, in principle, oppose the application of such a factor, the CBA assumes a lower convergence rate than hitherto applied by the Commission in similar cases. In cases where the chosen location is in the Community and the comparator location is in central or eastern Europe, the Commission consistently assumes a convergence rate of 5 %. Examples of this are Decisions 2002/143/EC (VW/Dresden) ([7]), 2002/781/EC (Daimler-Chrysler/Kölleda) ([8]), and 2002/900/EC (Renault/Valladolid) ([9]), and the decision to initiate the procedure in respect of Opel/Azambuja ([10]). Germany justifies assuming a rate of convergence lower than 5 % by claiming that, under an agreement with its employees ([11]), the workers in Leipzig would benefit from a variety of measures, in particular a likely reduction in weekly working hours ([12]), (which would implicitly increase 'real' wage costs). The Commission considers that such a gradual reduction of weekly working hours in Leipzig from […] * hours in 2002 to […] * hours from 2008 may be regarded as plausible. However, the assumption of a 'real' increase in wage costs in Leipzig cannot necessarily be inferred from this since this assumption would lead to a different wage convergence factor than the consistently applied rate of 5 % and particularly since such an effect could theoretically also be assumed for Kolin. This is why the Commission's assessment is based on a real convergence of wages for Kolin of 5 % per annum. This calculation leads to a labour cost handicap of EUR 332,01 million rather than the notified figure of EUR 433,55 million. Consequently, the regional handicap of Leipzig is reduced to EUR 101,54 million.

(36) As regards the quantification of image risks associated with the location decision, the Commission does consider that a decision to locate in the Czech Republic would have had a negative effect on the image and sales of BMW, in particular in Germany. Germany argues that image risks need not be taken into account in this case since the crucial factor for customers is quality, which is as high at non-German BMW production sites as in Germany. Although Germany was asked to provide an estimate of the costs related to these risks, no such data were submitted.

([7]) OJ L 48, 20.2.2002, p. 25.
([8]) OJ L 282, 19.10.2002, p. 23.
([9]) OJ L 314, 18.11.2002, p. 92.
([10]) OJ C 151, 25.6.2002, p. 2.
([11]) This agreement has not been submitted to the Commission.
([12]) Employees will also increasingly benefit from other measures, e.g. allowances exceeding agreed rates, Christmas bonuses and the 'BMW allowance'.

(37) However, the Commission considers that image risks must be taken into account. In another case concerning the possible production of Rover models in Hungary, this risk was taken into account by BMW itself (loss of 10 % in UK sales or increase in advertising) ([13]). Moreover, BMW models produced at non-German sites (such as South Africa or Spartanburg in the United States) are not primarily intended for the German or European market. However, the situation in the case under consideration is that premium vehicles would be produced in a central or eastern European country largely for sale on the European or German market. It is very likely a decision by BMW to implement a major investment project giving rise to extensive job creation not in a region in the new *Länder* with high unemployment but in Kolin would have had a negative impact on BMW's public image in Germany. In addition, it is plausible to assume that customers' subjective perception of the quality of a premium car produced in an eastern European location might also have a negative impact on sales. The image effect must therefore be included in the CBA.

(38) As Germany has not quantified these risks, the Commission must estimate the costs related to them. As in previous aid cases, these risks have been quantified by assuming that potential negative effects might be offset by additional marketing expenditure. In a prudent estimate made by the Commission together with the external expert, it is assumed that the necessary additional marketing expenditure would represent 1 % of total turnover (ex-factory unit price multiplied by production volume) during the five-year assessment period. The estimate is based on an earlier decision in a comparable case where the comparator plant was also located in an eastern European country ([14]). The resulting additional marketing costs are EUR 85,37 million.

(39) Account must likewise be taken in the CBA of the start-up risks (i.e. the time needed to reach full production capacity) in the event of production in Kolin. These risks also include possible quality problems (because, for example, the workforce is less skilled or it is more difficult for equipment manufacturers to transfer technology or provide support), potential difficulties arising from language barriers and the possibility that suppliers might be more difficult to integrate. However, the last-mentioned risk is limited, as the external expert has confirmed, because virtually the same supplier structure was assumed for both locations. In addition, BMW has confirmed that it generally pursues a policy of global sourcing and that the best suppliers worldwide are chosen for the whole production network of a specific model.

([13]) OJ C 62, 4.3.2000, p. 12.
([14]) OJ L 48, 20.2.2002, p. 25. This case concerned the production of a luxury car by VW in Dresden/Mosel. The alternative site was in the Czech Republic.

(40) Germany considers that the start-up risks for Kolin are relatively minor and do not need to be taken into account. However, the risk was quantified by BMW for the worst-case scenario. This calculation is based on the nominal output being achieved with a delay of [....]* In Kolin, this would lead to a lower volume of […]* vehicles, which would have to be manufactured at other, existing sites. The BMW 3-series model is produced at several different plants within the BMW network (Munich, Regensburg, Rosslyn (South Africa) and Dingolfing). Temporary output reductions in Kolin of […]* vehicles could be offset by increased production of […]* vehicles at the other plants manufacturing the same model (in particular Munich and Regensburg). Such a shift of production within the BMW network would lead to additional costs of EUR […]* per vehicle. In the event of start-up difficulties, additional expenditure of EUR 29,32 million would thus arise. This amount for the start-up risks must be taken into account in the CBA, in particular considering that BMW does not currently produce passenger vehicles in eastern Europe and that it experienced considerable start-up problems at its (greenfield) plant in Spartanburg (United States of America).[…]*. Such quantification of the start-up risks includes possible quality problems. It recognises that the Spartanburg project is not entirely comparable given that it involved setting up a new production plant for a completely new model at some distance from BMW's other plants, whereas the project involved in this case is concerned with the production of an existing model which is already manufactured at three relatively nearby plants (Munich, Regensburg and Dingolfing).

(41) Including these considerations in the CBA gives rise to a different result from that indicated in the original notification. The net present value of the regional handicap of Leipzig becomes EUR 375,16 million. Since the net present value of the eligible costs in Leipzig is now EUR 1 204,9 million, the site handicap compared to Kolin is 31,14 %.

(42) Lastly, the relevant Community framework requires that account be taken of the change in the group's production capacity before and after the project (according to a top-up analysis). As a result of the so-called 'top-up', the permissible aid intensity changes according to variations in production capacity and the assisted-area status of the region. According to Germany, the group's production capacity is […]* million vehicles/year before the investment and […]* million vehicles/year after the investment. This means that the increase in capacity is attributable solely to the 160 000-vehicle rise in capacity provided by the Leipzig plant. Taking account of this significant capacity increase and the region's status as an area eligible for regional aid under Article 87(3)(a), the relevant Community framework requires a reduction of the 'regional handicap ratio' by one percentage point in this case. Consequently, the Commission has reduced the permissible aid intensity for the investment in Leipzig by one percentage point to 30,14 %.

VI. **CONCLUSION**

(43) The Commission notes that the project is mobile and that the aid is necessary for its implementation. The net present value of the aid to be granted to BMW for the project in Leipzig is EUR 418,6 million, with an aid intensity of 34,7 % gge. Even though this is lower than the regional aid ceiling of 35 % gge, it is nevertheless higher than the regional handicap ratio, as calculated in the CBA and reduced in accordance with the 'top-up' procedure, of 30,14 % of the eligible investment costs.

(44) Consequently, the Commission can only authorise aid of 30,14 % of the eligible investment costs of EUR 1 204,9 million (net present value), or EUR 363,16 million (net present value). Any aid exceeding this amount is incompatible with the common market.

(45) In view of the potential distortion of competition arising from the high aid amount and aid intensity in this case, the Commission deems it necessary for Germany to monitor the implementation of the eligible investment and the precise amount of aid granted. The relevant Community framework stipulates that *ex post* monitoring and assessment of aid already granted may be required, the amount of detail varying according to the case and the potential distortion of competition. The Commission accordingly requires Germany to submit its annual reports concerning the result of such monitoring before the aid is disbursed.

(46) The purpose of such monitoring and reporting is not only to ensure that the regional aid intensity expressed in terms of gross grant equivalent, as defined in this Decision, is complied with by Germany but also to confirm the assumptions in the CBA concerning the labour-cost handicap, which is the crucial factor in determining the regional handicap. Although the Commission has no prior doubts as to the plausibility of the labour-cost handicap, Germany should be required to submit annual reports to the Commission over the reference period of the CBA (2005 to 2010) indicating total labour costs, the number of jobs created, weekly working hours and the number of vehicles manufactured. Should the labour costs differ from those notified in the CBA, the Commission reserves the right to reduce the amount of compatible aid accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany is planning to implement for Bayerische Motorenwerke AG (BMW) in respect of its investment project in Leipzig is compatible with the common market to the extent of EUR 363,16 million (net present value), corresponding to an aid intensity of 30,14 % of the eligible investment costs, subject to the conditions set out in Article 3.

Article 2

The amount of the planned aid for BMW's investment project in Leipzig that exceeds this aid intensity is incompatible with the common market and may not therefore be granted.

Article 3

Germany shall submit annual reports concerning the implementation of the eligible investment under the project and the precise amounts of aid disbursed. It shall also submit annual reports covering the period 2005 to 2010 indicating total labour costs, the number of jobs created, weekly working hours and the number of vehicles manufactured.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 11 December 2002.

For the Commission

Mario MONTI

Member of the Commission