COMMISSION

COMMISSION DECISION
of 27 May 2003
on the State aid which Austria is planning to implement for BMW Motoren GmbH in Steyr

(notified under document number C(2003) 1664)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/647/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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1],

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

Whereas:

PROCEDURE

(1) Austria notified the aid proposal to the Commission pursuant to Article 88(3) of the EC Treaty by letters dated 26 April 2002 and 7 May 2002. The Commission asked for additional information by letter dated 4 July 2002. Austria answered by letter dated 2 August 2002.

(2) By letter dated 4 October 2002, the Commission informed Austria that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission called on interested parties to submit their comments. The Commission received no comments from interested parties.

(4) The Commission carried out a visit on site on 12 and 13 December 2003. By letters dated 7 November 2002 and 25 February 2003, Austria submitted comments on the initiation of the investigation procedure.

DETAILED DESCRIPTION

The beneficiary

(5) The beneficiary of the aid is BMW Motoren GmbH (hereinafter 'BMW'), which is a subsidiary of BMW AG, Munich. The engine plant in Steyr is the largest engine plant in the BMW group. It produces 4- and 6-cylinder petrol/diesel engines and develops diesel engines and diesel engine technology. In 2001, the plant produced 630 000 engines (47 % diesel and 53 % petrol engines) and employed around 2 500 persons.

(6) Five distinct measures, relating to regional aid, training aid, innovation aid, research and development aid and environmental aid, are planned for BMW. The total planned aid, which is to be granted under Article 51 of the Labour market promotion act, amounts to EUR 40,25 million.

[1] OJ L 83, 27.3.1999, p. 1.

[2] OJ C 308, 11.12.2002, p. 19.

Regional aid

(7) The overall investment of EUR 459 million is to be carried out during the period 2002 to 2006. It aims at extending the production of internal parts and engines and at making production more flexible. The investment concerns mainly three production lines, for cylinder heads, crankshafts and crank cases, including bedplate, as well as an assembly line.

(8) According to Austria, the mobile part of the investment concerns the production of crank cases and bedplates. This investment could have alternatively been carried out in the existing BMW plant in Landshut (Germany). The eligible costs of the mobile part of the investment amount to EUR 111,7 million (net present value EUR 103,56 million).

(9) The plant in Steyr is located in an area (Upper Austria) that was recognised by the Commission as a regionally assisted area pursuant to Article 87(3)(c) of the EC Treaty, under the regional aid map for the period 2000 to 2006, with a regional ceiling of 12,5 % net grant equivalent for large companies (corresponding to 16,7 % gross grant equivalent). The planned regional aid amounts to EUR 18,99 million (net present value EUR 17,6 million).

Training aid

(10) The training project runs from 2000 to 2006. Austria intends to grant training aid totalling EUR 6,86 million under Article 51(a) of the Labour market promotion act. The eligible investment cost of the general training project is EUR 5,96 million. The eligible investment cost of the specific training project is EUR 11,94 million. The aid for general training measures would amount to EUR 3,28 million and the aid for specific training measures would amount to EUR 3,58 million.

(11) According to the information provided by the Austrian authorities, the training programme affects around 25 % of the workforce fundamentally and another 50 % to a large extent. As there is a large proportion of workers in the age range of 35 to 45, where the basic skills were acquired some time ago, the training needs to focus not so much on specific knowledge as on the updating of basic knowledge. Basic vocational training is given to trainees in several areas, in which the trainees acquire a formal qualification. This is tested and accredited by the State ('Facharbeiterprüfung bzw. Lehrabschlussprüfung'). In 2001, 88 trainees were being trained by BMW.

(12) In the technical field, the following training areas are mentioned in the notification: product knowledge, production/tools-technology, control technology and programming, process knowledge/capability, PC knowledge and web knowledge, visualisation interfaces, CA tools, simulation tools and methods, data interpretation, information and data management, quality and measurement methods, test and inspection technology, combinatory and analytical capabilities, social competence and working structures.

Environmental aid

(13) According to Austria, the purpose of the investment is to bring the inspection technology used to test the engines produced up to 'state of the art', which is the 'cold control technology' (cold engine testing). The aim is to reduce emissions (CO_2, HC, NO_x, CO, particles) and to meet future legislative provisions. The currently used technology (hot engine testing) requires the engine to be fuelled between 8 and 12 minutes, which leads to higher emissions. By 2006, BMW therefore plans to check all engines on the basis of the cold control technology, which will lead to substantial savings in fuel and to a 95 % reduction in emissions. Based on the number of engines produced and fuel savings resulting from the project, according to Austria, the reduction in emissions compared to the current hot engine testing technology amounts for the year 2005 to 3 950 kg for HC, 9 100 kg for NO_x, 16 000 kg for CO and 1 520 000 kg for CO_2.

(14) BMW is investing EUR 23,4 million in the project. The environmental programme covers a four-year period, from 2002 to 2005, and covers the following areas: extension of cold engine testing for 6-cylinder gasoline: EUR 6 million; cold engine testing for 6-cylinder diesel: EUR 8,6 million; cold engine testing for 6-cylinder gasoline: EUR 8,6 million; environmental data collection system: EUR 0,2 million.

(15) According to Austria, the eligible investment amounts to EUR 6,33 million. The eligible investment has been calculated by deducting the saved fuel costs from the planning/development costs and the additional investment costs (compared to the current hot engine testing technology). Austria intends to support the environmental programme with a total aid amount of EUR 1,9 million (net present value EUR 1,77 million) and an aid intensity of 30 %.

Research and development aid

(16) According to Austria, the purpose of the research and development project is to implement 'state of the art' technology in engine control. The 'state of the art' is to

control the operation of the engine in a cold state in order to reduce emissions (CO_2, HC, NO_x, CO, particles) and to comply with future legal standards.

(17) BMW is investing EUR 28,7 million in the project, of which EUR 11,67 million is considered industrial research and EUR 17,03 million precompetitive development. The programme covers a five-year period, from 2002 to 2006. Austria intends to support the research programme with a total aid amount of EUR 11,53 million (net present value EUR 10,63 million), namely EUR 6,42 for industrial research (aid intensity of 55 %) and EUR 5,11 million for precompetitive development (aid intensity of 30 %).

(18) According to Austria, the industrial research programme covers the following areas.

(19) *Homogeneous diesel combustion*: homogenous charge compression ignition (HCCI) is the engine-based method of meeting expected emissions legislation after 2008. A new type of diesel combustion is obtained through prehomogenisation of the directly injected diesel. Because of the very low local temperatures, NO_x formation is extremely low, accompanied by very low soot output […] (*). The investment cost amounts to EUR 4,56 million.

(20) *Soot-filtering technique using plasma technology*: […](*) The plasma particle filter is a possible solution. It consists of an emission electrode and a consecutively arranged porous filter ceramic, on which an alternating current plasma is placed. The soot particles are electrically charged by means of the emission electrode and oxygen is added. The particles are deposited in the next filter and burnt off through the plasma after energy is supplied. The investment cost amounts to EUR 3,15 million.

(21) *Variable valve train for diesel engines*: because of the quality management of the fuel-air mixture without a throttle valve, there is considerably less improvement potential through valve train variability with diesel engines than with petrol engines. Nevertheless, variability in the valve train would bring considerable functional improvements. […](*) In this way, exhaust gas recirculation within the combustion chamber and final discharge pressure are affected as important parameters for the start of ignition. The investment cost amounts to EUR 2,1 million.

(*) Confidential information.

(22) *Advanced development of variable compression ratio with diesel engines*: the high compression ratios in direct-injected diesel engines in motor cars are only needed for reliable cold engine start and warm-up behaviour. With a lowering of the compression ratio it is possible to achieve an increase in performance without an ignition pressure increase through adjustment of the combustion chamber geometry and improvements in emission behaviour. Different adjustment mechanisms are conceivable […](*) to represent the compression ratio. Ultimately, with all known adjustment principles, this involves a change in the distance between the piston and the cylinder head and hence the piston gap as a value relevant to combustion. The investment cost amounts to EUR 1,87 million.

(23) According to Austria, the precompetitive research programme covers the following areas.

(24) […](*) *supercharger concept*: exhaust gas turbocharging is currently the standard with diesel engines in motor cars. BMW mass produces only exhaust gas turbochargers with variable turbine geometry (variable nozzle turbine — VNT). This greatly eases the conflict of aims between starting torque and rated power. Another approach is separation into two units. […](*) The investment cost amounts to EUR 2,56 million.

(25) *Third generation common rail*: The reduction in consumption and emissions offered by modern diesel engines in motor cars has become possible only thanks to the development of ultra-flexible injection systems. BMW uses the common rail system. […](*) current series standard allows maximum pressures of up to 1 600 bar and a maximum of four injections per work cycle. The injection events are controlled by a hydraulic on/off valve with electromagnetic actuators. In […](*) next generation, the actuator is to be replaced with a piezoelectric circuit element. In connection with further far-reaching changes to reduce moving masses and friction, the system speed will be considerably increased. […](*) The investment cost amounts to EUR 2,9 million.

(26) *Dispersion-restricting measures to comply with strictest exhaust gas standards (USA)*: The extremely low American limits for diesel engines are a very big challenge in terms of compliance with the limits and in-use monitoring (on-board diagnosis) of emission variations. Apart from reduction of NO_x and PM mean values, reduction of dispersion is also very important. This is the only way to guarantee the prescribed emission stability, even with very low limits. The investment cost amounts to EUR 3,92 million.

(27) *Soot filter* […](*): There are two ways of using soot filters […](*) at the start of the pre-competition phase: CSF (coated soot filter) = catalytic, coated monolith to reduce soot burning temperature; CRT (continuously regenerating trap) = filter regeneration of the deposited carbon using the NO_2 in the exhaust gas. […](*) For operating conditions without continuous regeneration and therefore with soot collection, burn strategies involving adjustment of the engine are to be worked out. The investment cost amounts to EUR 4,43 million.

(28) *Barrel technology* […](*): In the case of diesel engines for motor cars, the aluminium crankcase must be resistant to very high thermal and mechanical stress. One problem consists in adhering to the small gap width (distance between adjacent cylinders) in the BMW in-line engines. The barrel technology chosen is the key criterion for this. Essentially one can differentiate between a liner-free design and various liner solutions. In the precompetitive development phase the suitable technology for future BMW in-line engines will be selected from this range of solutions using FEM simulation, unit tests and test runs on engine test beds. The subsequent series development phase requires structural implementation and subsequent development of this technology. […](*) The investment cost amounts to EUR 3,23 million.

Innovation aid

(29) BMW plans to carry out innovation investments of EUR 9,7 million during the period 2002 to 2004. Austria intends to support the investments with an aid amount of EUR 0,97 million. The aid is to be granted for the following projects: measurement of uniform distribution […](*), variable valve train […](*): EUR 4,5 million; dynamic chassis dynamometers: EUR 9,3 million; process development for the measurement of uniform distribution and dynamic chassis dynamometers: EUR 0,4 million.

(30) As regards the measurement of uniform distribution, Austria states that it would be necessary to carry out a full measurement of all cylinder head and valve train parts if the intended measuring procedure failed. In addition, all parts would need to be classified as to their tolerance situation and assigned to a corresponding cylinder head. Such a procedure would not be justifiable from a quality or economic point of view and threaten the deployment of the innovative variable valve train technology […](*). As regards the risks involved in developing dynamic chassis dynamometers, Austria explained that a failure of the highly-sensitive measuring equipment could result in severe disturbance to internal processes, since the realisable sampling rate was still relatively low. In addition, this would lead to longer routing in quality control.

GROUNDS FOR INITIATING THE PROCEDURE

(31) The Commission decided to initiate the procedure on the following grounds.

(32) The doubts concerning the regional investment aid related mainly to the proportionality of the aid and the increase in production capacity. The Commission considered it necessary to verify the investment costs in land and buildings in Steyr, which, according to Austria, would not be necessary to the same extent in Landshut. In addition, the Commission questioned whether, in the event of production in Steyr, the existing building in Landshut could have been used for alternative purposes, reducing the overall cost handicap.

(33) With respect to the planned training aid, the Commission mainly expressed doubts that Austria might have applied an excessively wide definition of general training and questioned whether Austria had combined the training aid with other State aid, possibly relating to the same eligible costs.

(34) As regards the planned environmental aid, the Commission had doubts that the project might not be eligible for environmental aid as the Community guidelines on State aid for environmental protection (referred to below as 'the environmental guidelines') [1] state that the design and manufacture of machines or means of transport which can be operated with fewer natural resources are not covered by the guidelines. In addition, Austria had not demonstrated which existing Community standards or more stringent national standards were being met or improved on by the project. Neither had Austria indicated that no Community standards exist. The Commission therefore had doubts whether the incentive effect of the project was achieved.

(35) The doubts with respect to the planned research and development aid concerned the required incentive effect of the aid. The Commission suspected that the planned aid did not induce the company to carry out additional research, but that the company was conducting normal day-to-day R & D activities. The Commission therefore had doubts whether BMW would not in any case have to undertake the whole of the research in question in order to remain competitive.

[1] OJ C 37, 3.2.2001, p. 3.

(36) The Commission also expressed doubts whether the innovation aid, as required, concerned genuinely new products and whether it carried a risk of failure. The Commission had doubts whether the project was genuinely innovative in the sense that the technology had not yet been used or marketed by other parties operating in the industry. In addition, there were doubts whether the aid provided an incentive for industrial or technological risk-taking.

COMMENTS FROM AUSTRIA

(37) By letters dated 7 November 2002 and 25 February 2003, Austria submitted comments on the opening of the investigation procedure.

(38) As regards the planned regional aid, Austria provided discounted values for the eligible investment and the aid. Additional explanations were given with respect to the transformational character and the costs of the investment, the potential alternative use of available building space in Landshut for the scenario involving production in Steyr, the effects of the project on capacity and the circumstances of the land sale in Steyr.

(39) As regards the planned training aid, Austria confirmed that the general training measures consists of basic vocational training, which is recognised and certified by public authorities. Detailed information and documentation on the content of the training was provided. In addition, Austria gave an assurance that there will be no cumulation of aid in relation to the same eligible costs, resulting in an aid intensity exceeding that fixed by the training aid regulation.

(40) As regards the planned environmental aid, Austria considered that the exception provided for in paragraph 6 ([1]) of the environmental guidelines did not apply to the project in question, which only concerned the process of checking engines already produced. In addition, Austria indicated with respect to the incentive effect of the project that no Community standards for the testing process of engines existed.

(41) As regards the planned research and development aid, Austria stated that the aid in question did not concern the basic development of existing concepts, comprising the maintenance and development of competitiveness, the updating of models and the regional expansion of the diesel range […](*). Instead it focused on the improvement of technological competence and a rapid improvement of functional characteristics of diesel engines. With respect to the incentive effect, Austria stated that, compared to the base year 2001, the company was increasing its R & D expenditure due to the project. In addition, Austria stated that the projects were being carried out with other industrial partners, universities and research institutes.

(42) As regards the planned innovation aid, Austria explained that the new element in the measurement of uniform distribution was the measurement of air volume. This technology would be unique for the measurement of series of 6-cylinder engines. As regards dynamic chassis dynamometers, Austria stated that this technology had been used by other manufacturers only in the R & D area and not, as in the case of the project in question, for the measurement of engine series.

ASSESSMENT OF THE AID

(43) The Commission considers that the measures constitute State aid within the meaning of Article 87(1) of the EC Treaty. They are evidently being financed by the State or through State resources; moreover, given that they represent a significant proportion of the project funding, they are likely to distort competition within the Community, giving an advantage to BMW over other companies not receiving aid. Lastly, the market for motor vehicles is characterised by extensive trade between Member States.

(44) Article 87(2) of the EC Treaty lists certain types of aid that are compatible with the EC Treaty. In view of the nature and purpose of the aid, and the geographical location of the firm, those provisions are not applicable to the project. Article 87(3) specifies other forms of aid which may be regarded as compatible with the common market. The Commission notes than the project is located in Upper Austria (Steyr), a region which qualifies for assistance under Article 87(3)(c).

(45) The aid is intended for BMW, which manufactures and assembles engines for motor vehicles. The firm is therefore part of the motor vehicle industry within the meaning of the Community framework for State aid to the motor vehicle industry (hereinafter 'the motor vehicle framework') ([2]).

([1]) 'The design and manufacture of machines or means of transport which can be operated with fewer natural resources are not covered by these guidelines'.

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

Regional aid

(46) The motor vehicle framework [1] specifies that all aid which the public authorities plan to grant to an individual project under authorised aid schemes for a firm operating in the motor vehicle industry must, in accordance with Article 88(3) of the Treaty, be notified before being granted if either of the following thresholds is reached: (i) the total cost of the project amounts to EUR 50 million; (ii) the total gross aid for the project, whether State aid or aid from Community instruments, amounts to EUR 5 million.

(47) Both the total cost of the project and the amount of aid exceed the notification thresholds. Thus, in notifying both the training aid and the regional aid proposed for BMW, Austria has complied with the requirements of Article 88(3) of the EC Treaty.

(48) Under the motor vehicle framework, the Commission must ensure that the aid is both necessary for the realisation of the project and proportional to the gravity of the regional problems. Both tests, necessity and proportionality, must be satisfied if the Commission is to authorise State aid in the motor vehicle industry.

(49) Under point 3.2(a) of the motor vehicle framework, in order to demonstrate the necessity for regional aid, the aid recipient must clearly prove that it has an economically viable alternative location for its project. The existence of a viable alternative defines the 'mobility' of the project; no regional aid may be authorised for a project which is not geographically mobile.

(50) Austria stated that the best viable alternative location to Steyr was the existing BMW plant in Landshut (Germany). The final location decision in favour of Steyr was taken on 10 October 2001. Austria provided a copy of the minutes from the meeting in which the decision was taken. In addition, the Commission received a copy of the location analysis. The analysis contains a comparison of costs of both locations and the respective layouts of the plants in Steyr and Landshut for both scenarios. The Commission notes that the location analysis is dated 22 June 2001, i.e. it was carried out prior to the location decision. On the basis of the documents submitted by Austria, Landshut is considered a viable alternative location to Steyr. The Commission concludes that the project is mobile in character and can therefore be considered eligible for regional aid, since the aid is necessary to attract the investment to the assisted region.

(51) Regional aid intended for modernisation and rationalisation, which is generally not mobile, is not authorised in the motor vehicle sector. However, a transformation, involving a radical change in production structures on the existing site, is eligible for regional aid. The Commission verified on site that the planned project, which concerns the setting-up of completely new production facilities in a new building, does not include any elements of modernisation. It is considered to constitute a transformation, which is eligible for regional aid.

(52) As regards the sale of land to BMW, Austria informed the Commission that the necessary area in Steyr was sold to BMW not by public authorities, but by a real estate company (Oberösterreichische Baulandentwicklungsfonds AG & Co) at market price. The purchase price corresponded to the price estimated by an independent, certified real estate expert before the purchase of the land. The Commission therefore considers that BMW did not receive any aid in relation to the purchase of the land.

(53) Under point 3.2(c) of the motor vehicle framework, when considering the mobile aspects of a project, the Commission needs to ensure that the planned aid is in proportion to the regional problems it is intended to resolve. To that end, the cost-benefit analysis method (hereinafter referred to as 'CBA') is used.

(54) A CBA compares, with regard to the mobile elements, the costs which an investor would bear in order to carry out the project in the region in question with those it would bear for an identical project in a different location, which makes it possible to determine the specific handicaps of the assisted region concerned. The Commission authorises regional aid within the limit of the regional handicaps resulting from the investment in the comparator plant.

(55) The Commission notes that Austria has provided with the notification a CBA comparing the two locations, Steyr and Landshut. The investments are being carried out between 2002 and 2007. In accordance with point 3.2(c) of the motor vehicle framework, operating handicaps are assessed over three years, as from the start of commercial production in 2005, since the project in question concerns an extension of an existing site.

(56) The Commission has evaluated the notified CBA with a view to ascertaining to what extent the proposed regional aid is in proportion to the regional problems it seeks to solve.

[1] Under paragraph 39 of the multisectoral framework on regional aid for large investment projects (OJ C 70, 19.3.2002, p. 8), notifications registered by the Commission before 1 January 2003 for the motor vehicle sector will be examined in the light of the criteria in force at the time of notification.

(57) The CBA indicates a cost handicap of EUR 19,07 million (net present value) for the location in Steyr. While the CBA assumes slightly higher labour costs and material costs in Landshut compared to Steyr, the regional handicap of Steyr is mainly due to the investment costs in land (handicap of EUR 8 million) and buildings (handicap of EUR 15,05 million) in Steyr, which are not necessary to the same extent in Landshut. The reason for this is that, for the production of the crank cases and bedplates in Steyr, BMW needed to invest in the acquisition of land for a new production building. In Landshut the production of the crank cases could have been carried out in existing, slightly extended buildings and bedplates would have been purchased externally (costs for vendor tooling were taken into account in the CBA).

(58) However, the Commission has modified the CBA with respect to another element. In Landshut, the production of crank cases would have taken place in an existing, extended building. As was noted on site, this building is currently used for the production of cylinder heads, which will be phased out in 2003. Therefore, in the event of production in Steyr, this building in Landshut could be used for alternative purposes. The Commission considers that the possibility of an alternative use of the existing building in Landshut, which would reduce the overall cost handicap in the Steyr scenario, should be taken into account in the CBA. On the basis of the information provided by Austria, these costs have been estimated at EUR 0,66 million (net present value of EUR 0,54 million) [1].

(59) This modification introduced in the analysis produces a cost-benefit result that slightly differs from the one initially notified. The net present value of the eligible investment costs in Steyr amount to EUR 103,56 million. The net present value of the regional handicap amounts to EUR 18,53 million, leading to a handicap intensity of the project, compared to Landshut, of 17,89 %.

(60) The Commission finally needs to take into account the question of a 'top up', which means a change in the allowable aid intensity depending on the change in the group's production capacity and the assisted area status of the region. Aid proposals in support of investments that potentially aggravate the overcapacity problem of the industry can be modulated by the Commission by reducing the 'regional handicap ratio' by up to two percentage points. If the ratio between the capacity of the group after the investment and the capacity of the group before the investment is 1,01 or over, the 'regional handicap ratio' resulting from the CBA would be reduced by two percentage points, as provided in the motor vehicle framework for projects in an Article 87(3)(c) region that have a 'high' impact on the industry.

(61) Following the initiation of the procedure, Austria explained that the capacity […](*), for which the crank cases are intended, will increase due to the investment in question […](*), which is a significant increase […](*). In addition, according to the motor vehicle framework, the relevant market for engine production by a vehicle manufacturer is the vehicle market for which the engines are built. As the crank cases and bedplates are intended for engines for passenger cars, the relevant capacity consequently is the production capacity for passenger cars. The Commission notes that the production capacity of the group amounts to […](*) before the investment and to […](*) after the investment. The capacity increase of the BMW group is due to the capacity of […](*) created by a new plant in Leipzig (Germany). Therefore, taking into account the significant capacity increase and the Article 87(3)(c) area status of the region, the motor vehicle framework requires a reduction of the 'regional handicap ratio' by two percentage points in the case in question. Consequently, the Commission reduced the allowable aid intensity of the project by two percentage points to 15,89 % for the investment in Steyr.

(62) The net present value of the planned aid amounts to EUR 17,6 million, resulting in a planned aid intensity of 17 % gge. The planned aid intensity is higher than the regional handicap ratio as calculated in the CBA and modified by the top-up amounting to 15,89 % of the eligible investments. The regional aid ceiling is 16,7 % gge. Consequently, the Commission can only authorise an aid amount of 15,89 % of the eligible investment of EUR 103,56 million (net present value), which corresponds to EUR 16,46 million (net present value). The excess aid of EUR 1,14 million (net present value) is incompatible with the common market.

Training aid

(63) Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid [2] ('the Regulation') applies to training aid in all sectors and provides that aid fulfilling all the conditions laid down in the Regulation is compatible with the common market and is exempt from the notification requirement of Article 88(3) of the EC Treaty, provided that the measure contains an express reference to the Regulation.

[1] Calculation based on an available area of 2 450 m² and a potential rent of EUR 90/m².

[2] OJ L 10, 13.1.2001, p. 20.

(64) Article 5 of the Regulation provides that the notification requirement continues to apply if the amount of aid granted to one enterprise for a single training project exceeds EUR 1 million. The Commission notes that the notified aid in this case amounts to approximately EUR 6,86 million (net present value EUR 6,29 million); that it is to be paid to one enterprise; and that the training project is a single project. The Commission also notes that the notification relates to an individual aid measure that is not granted under an approved scheme. The Commission therefore considers that the notification requirement applies to the proposed aid and that the notification must be assessed by the Commission in the light of the criteria set out in the Regulation.

(65) Under Article 3(1) of the Regulation, individual aid is compatible with the common market within the meaning of Article 87(3) if it fulfils all of the conditions of the Regulation.

(66) A distinction between specific and general training measures is drawn in Article 4 of the Regulation. Specific training is defined in Article 2 as training involving tuition directly and principally applicable to the employee's present or future position in the assisted firm and providing qualifications which are not, or only to a limited extent, transferable to other firms or fields of work.

(67) General training is defined in Article 2 as training involving tuition which is not applicable only or principally to the employee's present or future position in the assisted firm, but which provides qualifications that are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee. It is linked to the overall activities of the firm and provides qualifications which are largely transferable to other firms or to other fields of work. Training is considered general if, for example, it is jointly organised by different independent enterprises, or if employees of different employees may avail themselves of the training; or if it is recognised, certified or validated by public authorities or bodies or by other bodies or institutions on which a Member State or the Community has conferred the necessary powers.

(68) The eligible costs in the context of the training aid project are listed in Article 4(7) of the Regulation. As regards trainees' personnel costs, Austria confirmed that only hours during which the trainees effectively participate in the training have been taken into account. In accordance with Article 4(7)(f) of the Regulation, trainees' personnel costs have been taken into account only up to the amount of the total of the other eligible costs referred to in Article 4(7)(a) to (e). On the basis of the information provided by Austria, the Commission notes that the total eligible costs of the training programme amount to EUR 17,90 million.

(69) Under Article 4(2) and (3), training aid is compatible with the common market if it complies with the specified aid intensities, in relation to eligible costs. Under the terms of the Regulation, the maximum aid intensities that can be authorised for the project in question, which is carried out by a large firm in an Article 87(3)(c) area, are 30 % for specific training and 55 % for general training.

(70) In its decision to initiate proceedings, the Commission mainly noted that it had not received sufficient documentary evidence to allow it to verify the classification of a large part of the training measures as general training. In addition, the Commission expressed doubts as regards the possible combining of aid with other Community funding in relation to the same eligible costs, thus possibly exceeding the allowable aid intensity.

(71) In its comments on the initiation of proceedings, Austria confirmed that the general training measures consist of basic vocational training which is jointly organised with another, independent company (MAN Steyr). Detailed information and documentation on the content of the basic vocational training was provided to the Commission. In all the basic vocational training measures, trainees will acquire a formal qualification which is recognised and certified by public authorities ('Facharbeiterprüfung bzw. Lehrabschlussprüfung').

(72) This additional information and documentation have allowed the Commission to verify the general training character of the notified measures. The tuition provided is not only applicable to the employee's present or future position in the assisted firm, but provides qualifications which are largely transferable to other firms or fields of work and thereby substantially improve the employability of the employee.

(73) The Commission concludes that the general training costs amount to EUR 5,96 million and the specific training costs to EUR 11,94 million. The applicable aid intensity ceiling for specific training is 30 % of eligible costs and the applicable aid intensity ceiling for general training is 55 % of eligible costs.

(74) The allowable aid amounts to EUR 3,58 million for specific training (30 % of eligible costs) and to EUR 3,28 million for general training (55 % of eligible costs). The total allowable aid for the project is EUR 6,86 million and will be paid in yearly instalments until 2006 (net present value EUR 6,29 million).

(75) Under Article 6(2) of the Regulation, aid exempted by the Regulation may not be cumulated with other State aid or with other Community funding in relation to the same eligible costs, if such cumulation would result in an aid intensity exceeding that fixed by the Regulation. Austria has assured the Commission that there will be no cumulation of aid in relation to the same eligible cost, such as would result in an aid intensity exceeding that fixed by the Regulation.

Environmental aid

(76) The Commission considers that the environmental guidelines apply to the project in question. The exception provided for in paragraph 6 of the guidelines does not apply to the project in question, as the planned environmental aid does not concern the development or production of engines, but only the process of checking engines already produced.

(77) Paragraphs 28 to 40 of the environmental guidelines lay down the rules when investment aid for environmental reasons can be authorised. Under paragraph 29 of the guidelines, investment aid enabling firms to improve on the Community standards applicable may be authorised up to 30 % gross of the eligible investment costs. These conditions also apply to aid where firms undertake investment in the absence of mandatory Community standards or where they have to undertake investment in order to comply with national standards that are more stringent than the applicable Community standards.

(78) Paragraphs 33 and 34 of the guidelines lay down further rules for bonuses for firms located in assisted regions, according to which the maximum rate of aid applicable is the higher of the following options:

— either the basic rate for environmental investment aid, i.e. 30 % gross (standard system), 40 % gross (investments in energy saving, in renewable sources of energy or to promote the combined production of electric power and heat) or 50 % gross (investments in renewable sources of energy that supply an entire community), plus five percentage points gross in the regions covered by Article 87(3)(c) and 10 percentage points in the regions covered by Article 87(3)(a),

— or the regional aid rate plus 10 percentage points gross.

(79) Pursuant to paragraphs 33 and 34 of the environmental guidelines, the maximum aid allowed for a company investing in Steyr, an assisted region, amounts to 35 % gross.

(80) Paragraph 37 of the environmental guidelines lays down the rules concerning eligible costs. Eligible costs must be confined strictly to the extra investment costs necessary to meet the environmental objectives. This has the following consequences: where the cost of investment in environmental protection cannot be easily identified in the total cost, the Commission will take account of objective and transparent methods of calculation, e.g. the cost of a technically comparable investment that does not though provide the same degree of environmental protection. In all cases, eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period.

(81) The eligible investment amounts to EUR 6,33 million. The eligible investment has been calculated by deducting the saved fuel costs from the planning/development costs and the additional investment costs (compared to the current hot engine testing technology).

(82) The Commission takes the view that, in accordance with paragraphs 20 and 29 of the guidelines, aid is not justified in the case of investments designed merely to bring large companies into line with new or existing Community technical standards. Aid may though be useful where it serves as an incentive to achieve levels of protection which are higher than those required by Community standards. This is the case when a Member State decides to adopt standards which are more stringent than the Community standards so as to achieve a higher level of environmental protection. It will also apply when a firm invests in environmental protection over and above the strictest existing Community standards or where no Community standards exist.

(83) However, it has not been shown that aid has an incentive effect of this kind where it is designed merely to help firms to comply with existing or new Community technical standards. Such standards constitute the ordinary law with which firms must comply, and it is not necessary to provide them with aid in order to encourage them to obey the law. In view of the fact that no specific Community standards for engine testing technology exist, as made clear by Austria after the initiation of proceedings, the Commission concludes that the required incentive effect on the part of the project is achieved.

(84) The environmental aid planned for BMW amounts to EUR 1,9 million (net present value EUR 1,77 million), corresponding to an aid intensity of 30 % gross. The Commission notes that the aid intensity is below the maximum ceiling of 35 % that may be authorised under the environmental guidelines.

Research and development aid

(85) In view of the amounts of the investment and aid, the project was notified under paragraph 4.7 of the Community framework for State aid for research and development (referred to below as 'the R & D framework') ([1]). When it assesses compatibility of R & D aid, the Commission pays particular attention to the type of research carried out, the recipients of the aid, the accessibility of the results, the planned intensity and the incentive effect of the aid.

(86) Pursuant to point 6.2 of the R & D framework, the aid must induce firms to pursue research which they would not otherwise have pursued or could not have pursued within the same time-frame. State aid for R & D should therefore serve as an incentive for firms to undertake R & D activities in addition to their normal day-to-day operations. Member States are therefore required, when notifying R & D aid, to demonstrate that the aid is necessary as an incentive, and is on no account operational aid. Where this incentive effect is not evident, the Commission may consider such aid less favourably than it usually does. In order to verify that the planned aid will induce firms to pursue research which they would not otherwise have pursued, the Commission also takes account of quantifiable factors.

(87) The Commission attributes particular importance to the incentive requirement of R & D aid in the case of individual, close-to-the-market research projects to be undertaken by large firms and in all cases in which a significant proportion of the R & D expenditure has already been made prior to the aid application.

(88) The Commission notes that BMW qualifies as a large firm and, given the nature of the project, it assumes that the research is close-to-the-market. For these reasons, the Commission attributes particular importance to the incentive requirement of R & D aid in this case.

(89) With respect to the incentive effect, Austria stated in its comments on the initiation of proceedings that, compared to the base year 2001, the company was increasing its R & D expenses as a result of the project. The Commission notes that the R & D expenditure as a proportion of total turnover over the same period only slightly increased […](*), back to the same level as in 1999. The number of employees working in R & D decreased slightly during the same period from […](*).

(90) Following the initiation of proceedings, Austria explained that the project focused on the improvement of technological competence and a rapid improvement of the functional characteristics of diesel engines. The Commission recognises that some parts of the envisaged R & D programme qualify as ambitious high-risk research in the public interest which would not be included in the normal day-to-day operation of the company. This concern the subprojects 'homogeneous diesel combustion', 'soot-filtering technique using plasma technology' and 'variable valve train for diesel engines'.

(91) Homogeneous diesel combustion aims at reducing noxious exhaust and particulate emissions. Nitrogen oxides, produced at significant levels during the diesel combustion, and particulate emissions can be considerably reduced by means of this technology. It also allows significant fuel economy to be achieved. However, while the technology is relatively easy to apply in a small part of an engine's operating range, i.e. at low torque and low engine speed, it is very difficult to expand this range to the full engine power. This requires a large-scale and ambitious research effort and involves a very high risk. Variable valve control (VVC) is used for increasing fuel efficiency. Because of the completely different combustion processes, VVC technology is less efficient in diesel engines than in petrol engines. The application of homogeneous diesel combustion could however offer new opportunities for the application of VVC to diesel engines in future. Research in this area is very costly, and the success of the research is far from assured. Research into the 'soot-filtering technique using plasma technology' in conjunction with particle filters is still at a very early stage and therefore risky. It could however prove to be promising in terms of the objective of removing fine particles in particular from diesel engines.

(92) The Commission also notes that the sixth framework programme of the European Community for research, technological development and demonstration activities, adopted pursuant to Decision No 1513/2002/EC of the European Parliament and of the Council ([2]), encompasses similar research topics for the development of a future generation of clean and economical engines for cars, as part of the thematic priority 'sustainable surface transport'. The Commission concludes that the three subprojects 'homogenous diesel combustion', 'soot-filtering technique using plasma technology' and 'variable valve train for diesel engines' are carried out in addition to the company's day-to-day operations. The research aid for the three subprojects is thus necessary as an incentive to carry out the research activities.

([1]) OJ C 45, 17.2.1996, p. 5.

([2]) OJ L 232, 29.8.2002, p. 1.

(93) On the basis of the project description provided by the Austrian authorities, the Commission takes the view that these three subprojects can be regarded as industrial research with eligible investment costs of in total EUR 9,81 million. The allowable aid intensity for industrial research projects amounts to 55 %. Consequently, an aid amount of EUR 5,39 million is considered to be compatible with the R & D framework.

(94) However, the Commission considers that the purpose of the remaining notified subprojects ('advanced development of variable compression ratio with diesel engines', '[…](*) supercharger concept', 'third generation common rail', 'dispersion-restricting measures to comply with strictest exhaust gas standards', 'soot filter […](*)', 'barrel technology for […](*) crankcase') is simply to make the diesel engines more competitive by improving diesel engine technology. In the motor vehicle industry, such research activities are carried out continuously as part of the normal activities of an engine manufacturer. Given the highly competitive world market for the product, it is commercially imperative to constantly develop completely new diesel engine technology. Therefore, BMW would in any case have had to undertake the research for these subprojects in order to stay competitive.

(95) The Commission concludes that the remaining R & D subprojects carried out by BMW are normal for a company in the motor vehicle industry. As a consequence, the Commission takes the view that Austria failed to prove the incentive effect of these R & D projects. Thus, the planned aid for these projects is not compatible with the common market. Given that the incentive effect with regard to these subprojects has not been proven, the Commission does not consider that further analysis of the case, and notably of these single subprojects and of the admissible aid intensities, is necessary.

(96) In addition to the points above, the Commission also notes that, although Austria claims that the projects are carried out with other industrial partners, universities and research institutes, it did not provide any substantial evidence which would support this claim. Neither did Austria demonstrate that the projects involve effective cross-border cooperation between independent partners in at least two Member States. The Commission therefore has to conclude that competitors will not necessarily benefit from the progress achieved through the research projects.

Innovation aid

(97) According to the motor vehicle framework, innovation means the development and industrialisation in Europe, the EEA and the countries of central and eastern Europe (CEEC) of genuinely or substantially new products or processes, that is products or processes which have not yet been used or marketed by other parties operating in the industry. A genuine innovation carries a risk of failure, and the Commission will take account of the scale of this risk when it assesses the intensity of the aid envisaged.

(98) Investment aid for innovation can therefore be authorised only in duly justified cases, as an incentive to industrial or technological risk-taking. The maximum intensity of such aid is set at 10 % of all eligible costs, corresponding to engineering activities and investments of direct and exclusive relevance to the innovative part of the project.

(99) The Commission has analysed the project with the technical assistance of an external automotive expert. As a result of the analysis, the Commission takes the view that the project cannot be regarded as genuinely innovative in the sense that the technology has not yet been used or marketed by other parties operating in the industry.

(100) As regards the measurement of uniform distribution VVT […](*), the Commission notes that Austria stated that this technology is for the first time used for 6-cylinder engines. However, the technology has in fact already been implemented for 4- and 8-cylinder engines and can therefore not be considered genuinely innovative. As regards the dynamic chassis dynamometers, the Commission notes that according to Austria, this technology is for the first time used in series production. However, the Commission does not consider the technology genuinely innovative as it is already used by other manufacturers (for individual engines).

(101) In addition, the Commission considers that the aid in question does not provide an incentive for industrial or technological risk-taking. In order to remain competitive, it is a necessary day-to-day activity for engine manufacturers to invest in 'state of the art' testing-and-measuring equipment. It can be assumed that BMW would have carried out the investment even in the absence of the planned aid,

HAS ADOPTED THIS DECISION:

Article 1

EUR 16,46 million (net present value) of the regional State aid amounting to EUR 17,6 million (net present value) which Austria is planning to implement for BMW Motoren GmbH, Steyr (BMW) for its investment in Steyr is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

EUR 1,14 million (net present value) of that regional State aid is incompatible with the common market and may not be implemented.

Article 2

The State aid which Austria is planning to implement for BMW for training measures is compatible with the common market within the meaning of Article 87 of the Treaty up to a maximum of EUR 6,86 million in nominal value (net present value EUR 6,29 million).

Article 3

The State aid which Austria is planning to implement for BMW for environmental protection measures is compatible with the common market within the meaning of Article 87 of the Treaty up to a maximum of EUR 1,9 million in nominal value (net present value EUR 1,77 million).

Article 4

EUR 5,39 million of the State aid for research and development amounting to EUR 11,53 million which Austria is planning to implement for BMW for its investment in Steyr is compatible with the common market.

EUR 6,14 million of that aid is incompatible with the common market and may not be implemented.

Article 5

The State aid amounting to EUR 0,93 million (net present value) which Austria is planning to implement for BMW to promote innovation is incompatible with the common market within the meaning of Article 87 of the Treaty and may not be implemented.

Article 6

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

Article 7

This Decision is addressed to the Republic of Austria.

Done at Brussels, 27 May 2003.

For the Commission

Mario MONTI

Member of the Commission