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Subject: State Aid SA.45694 (2016/N) – PO SEUR Programme for Clean Buses in Urban Areas. Portugal

Sir,

1. PROCEDURE

- 1) By electronic notification of 20 June 2016, Portuguese authorities notified, according to Article 108(3) of the Treaty on the Functioning of the European Union (the "TFEU"), the state aid scheme "PO SEUR Programme for Clean Buses in Urban Areas" (the "scheme") to support the purchase of new low carbon buses and the cost of the infrastructure necessary to operate these buses.
- 2) By letter of 29 July 2016, the Commission asked the Portuguese authorities for additional information concerning the aid scheme. The requested information was received by letter of 24 August 2016.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Scope, budget and duration of the Clean Buses Scheme

- 3) The main objective of the scheme is to reduce polluting emissions of public buses in Portugal. The scheme will support the purchase of new clean buses (see section 2.2.1) by public passenger transport operators in urban areas and the investment in re-fuel and recharge infrastructure of these buses. The public support of the measure comes from the Cohesion Fund. 85% of the eligible costs are supported by the Cohesion Fund while 15% are supported by the bus operators.

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- 4) The scheme is open to transport operators and transport authorities responsible with a public service remit for carrying out passenger transport in urban areas in Portugal.
- 5) The total budget of the scheme is EUR 60 million and each beneficiary can benefit of a maximum funding of EUR 20 million. The scheme starts after the State aid approval will be given by the Commission. The beneficiaries have maximum 36 months to execute the operation, starting from the signature of the funding agreement. The scheme will last until 31 December 2020.

2.2. Eligible costs and aid intensity

2.2.1. Aid for Clean Buses

- 6) The scheme will be available on a transparent, non-discriminatory basis to any operator with a public service remit that runs a bus service in urban areas in Portugal. The scheme is available for three technologies – (i) Euro VI CNG or LNG buses or (ii) electric buses or electricityhybrid buses and to (iii) hydrogen buses.
- 7) In order to qualify for the scheme, the clean buses should be able to lower the emissions by at least 15% compare to the ceilings set out in Euro VI standards¹. The scheme is open to all manufacturers whose buses comply with the general definition of clean bus set out above. The details of the parameters are provided in the table below:

Table 1

Euro VI standard for diesel engine (applicable to hybrid, electric and hydrogen buses under the scheme, a 15% reduction on each emission standard identified <i>infra</i> must be met by the Clean Bus to be eligible under the scheme)				
Test	CO (g/kWh)	THC (g/kWh)	NO_x (g/kWh)	MP (mg/kWh)
WHSC*	1,5	0,13	0,40	10
Clean Bus	1,275	0,1105	0,34	8,5
Euro VI standard for natural gas engine (applicable to CNG and LNG buses under the scheme, a 15% reduction on each emission standard identified <i>infra</i> must be met by the Clean Bus to be eligible under the scheme)				
Test	CO (g/kWh)	CH₄ (g/kWh)	NO_x (g/kWh)	MP (mg/kWh)
WHTC**	4,0	0,5	0,46	10
Clean Bus	3,4	0,425	0,391	8,5
* WHSC -Worldwide Harmonised Steady state Cycle.				
** WHTC - World Harmonized Transient Driving Cycle.				

- 8) The scheme applies to the purchase of new buses. The aid will be granted on the basis of a bidding process (see below point 2.5). Eligible costs are calculated as the difference between the cost of a clean bus and the equivalent new diesel Euro VI standard bus. However, the grant will not exceed the following amounts: (a) EUR

¹ Commission Regulation (EU) No 582/2011 of 25 May 2011 implementing and amending Regulation (EC) No595/2009 of the European Parliament and of the Council with respect to emission from heavy duty vehicles (Euro VI) and amending Annexes I and III to Directive 2007/46/EC of the European Parliament and of the Council.

100.000 for a natural gas vehicle; and (b) EUR 200.000 for electric, hybrid or hydrogen vehicle. The applicants will submit documentation supporting the difference of cost between clean bus and the equivalent new diesel Euro VI standard bus. Since the measure is co-funded that is, 85% from the Cohesion Fund, 15% from bus operators, the aid intensity will be 85%.

2.2.2. Aid for infrastructure

- 9) Through the scheme, the operators will be able to also compete to acquire the necessary infrastructure to operate the clean buses. The aid intensity is 100% of the costs of the equipment to operate and run the infrastructure. This infrastructure has to be used exclusively by the public transport bus operators in urban areas. The eligible costs for this infrastructure may include the following:
- in the case of construction of a CNG/LNG fuel pumps or electricity recharging stations which are added to an existing re-filling diesel station, the following costs are eligible: investments in land², investments in equipment –compressors, storage units and dispensers of CNG and LNG and electricity transformation stations, construction and civil engineering costs, studies and engineering projects, technical assistance, preparatory actions and supervision of works;
 - in the case of *ex novo* construction of a re-filling station for CNG or LNG or electricity recharging station, the eligible costs are the difference between the total cost of building a new re-filling station with alternative fuel and the total costs of building a new re-filling station without alternative fuel pumps.
- 10) The operator can bid either for clean buses or for clean buses and the necessary infrastructure. The infrastructure operator will open it for access, under non-discriminatory terms, to all urban passenger transport bus operators undertaking a public service. The EUR 20 million limit is applicable per bidder and includes the costs of buses, should the bidder opt to bid only for buses, or for both the cost of buses and the necessary infrastructure.³

2.3. Beneficiaries

- 11) The beneficiaries of the scheme are the transport operators and transport authorities responsible with a public service remit for carrying out urban passenger transport in Portugal. The funding will be available on a non-discriminatory and transparent basis to any operator with a public service remit that runs a bus service in urban areas in Portugal. Portuguese authorities confirm that no distinction between private or public nature of the organization will be made during the assessment. The bus operators can purchase the clean buses from manufacturers all across the Europe and beyond.

2.4. National legal basis

- 12) The grant will be paid under the PO SEUR Thematic Operational scheme 2014-2020, approved by European Commission. With the Order No.57-B/2015 of 27 February 2015, amended by Order No.404-A/2015 of 18 November 2015, and by Order No. 238/2016 of 31 August 2016, the PO SEUR specific regulation has been established.

² The Portuguese authorities confirmed that eligible investment in terms of land is equivalent to the additional land necessary to install the new equipment for CNG, LNG, hydrogen, electric or hybrid buses and does not include land which is already part of a concession.

³ The Portuguese authorities estimate that up to 20% of the scheme's budget will be awarded to supporting infrastructure; however the estimation will depend on the quality of each bid.

2.5. Bidding process

- 13) The Portuguese authorities have confirmed that the selection process for bidding for the scheme will be conducted in a non-discriminatory, transparent and open manner. The list of evaluation criteria applied by the managing authority of the scheme includes:
- Number of Clean Buses to be acquired and the passenger capacity of each;
 - environmental performance of each Clean Bus to be acquired (see Table 1);
 - grant required per Clean Bus;
 - information on when the Clean Buses will be procured and when will become operative, in case of approval;
 - plans for using the Clean Buses to ensure that the greatest environmental benefits are achieved, and any plan to replace older existing buses;
 - description of the public passenger transport service remit imposed on the applicant, and the form how materially the access to finance assists the applicant in fulfilling its public service remit, namely as regards the quality of the service provided to the general population.
- 14) As regards CNG and LNG re-fuelling and electricity recharging infrastructures, the main criteria which will be applied is the number of clean buses that will use the respective infrastructure.
- 15) The amounts granted to successful applicants will be based on actual figures. Therefore, applicants must demonstrate, with documents, the values for each acquisition or expenses and an explanation of the figures.
- 16) The scoring system ranges between 0 and 5. Applicants with a final classification equal or above 2.5 are selected and evaluated for the scores reached in respect of the criteria relating to efficiency, for the adequacy of the sectorial strategy and the regarding efficiency, sustainability and innovativeness of the project. Applications with the highest score can access the grant, therefore, not all the participants will necessarily receive the grant.

2.6. Cumulation of aid

- 17) The aid cannot be cumulated with any aid received from other local, regional national or Union schemes aimed to cover the same eligible costs. A specific clause in the funding agreement signed with each beneficiary guarantees the respect of this provision.

3. ASSESSMENT

3.1. Existence of aid

- 18) By virtue of Article 107(1) of the TFEU “*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain*

goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.”

- 19) Therefore, in order to determine whether the scheme at stake contains State aid elements within the meaning of Article 107(1) of the TFEU, it must be established whether a) the measure confers a selective economic advantage to the undertakings concerned, b) this advantage is financed through State resources, c) this advantage distorts or threatens to distort competition and, finally, d) the measure affect trade between Member States.
- 20) The Commission considers that the notified scheme allows bus operators and local authorities to be relieved, by means of State resources, of a part of the costs which they would normally have to bear themselves, thereby conferring an advantage to them. As not all undertaking will actually benefit from the scheme, such an advantage is selective in nature. In addition, the scheme strengthens the position of these enterprises in relation to their competitors in the Union and therefore, has potentially distorting effects on competition. In view of the fact that the scheme concerns a sector where undertakings from any Member State can operate, the aid is likely to affect trade between Member States.
- 21) The fact that the scheme is funded by the Cohesion Funds does not change the assessment of the Commission with respect the existence of State aid, since the budget of the scheme is spent by and is under the direct control of the Portuguese authorities.
- 22) In view of the above, the Commission considers that the notified measure constitutes state aid within the meaning of Article 107(1) of the TFEU with respect to bus operators and public authorities insofar they exercise economic activities as bus transport provider.

3.2. Legality of the aid measure

- 23) As set out in paragraph (4) above, aid will only be granted under the scheme following the State aid approval by the Commission. Therefore, the Portuguese authorities have fulfilled their obligation according to Article 108(3) TFEU by notifying the scheme before putting the aid into effect.

3.3. Compatibility of the measure

- 24) The aid provided for the purchase of clean buses in the notified scheme constitutes an environmental protection measure, as it aims to improve air quality in urban areas by reducing pollutant emissions of public transportation buses in Portugal going beyond Euro VI standards. Thus, for its compatibility assessment the Commission's "Guidelines on State aid for environmental protection and energy"⁴ (hereinafter the "EEAG") apply. However, the part of the notified scheme concerning aid for the clean buses supporting infrastructure, the infrastructure in question does not fall in the definition of energy infrastructures set out in point (31) of the EEAG, but it constitutes road transport infrastructure. Under point 15(b) of the EEAG, aid for such infrastructure is excluded from the scope of EEAG. Hence,

⁴ Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p.1–55

this part of the notified scheme will be assessed under the Article 107(3) of the TFEU (Section 3.3.2 below).

3.3.1. Compatibility of the aid measure for the purchase of Clean Buses

- 25) The EEAG, Section 3, identify a number of environmental and energy measures for which State aid under certain conditions may be compatible with the internal market under Article 107(3)(c) of the TFEU. One of these measures is the state aid "for going beyond Union standards (including aid for the acquisition of new transport vehicles)"⁵.

3.3.1.1. Contribution to an objective of common interest (3.2.1 EEAG)

- 26) Based on the EEAG⁶, the general objective of environmental aid is to increase the level of environmental protection compared to the level that would be achieved in the absence of the aid.
- 27) The Europe 2020 strategy⁷ focuses on creating the conditions for smart, sustainable growth to support the shift towards a resource-efficient, competitive low-carbon economy. To that end, a number of headline targets have been set, including targets for climate change and energy sustainability: (i) a 20 % reduction in Union greenhouse gas emissions when compared to 1990 levels; (ii) raising the share of Union energy consumption produced from renewable resources to 20 %; and (iii) a 20 % improvement in the EU's energy-efficiency compared to 1990 levels. The first two of these binding targets were implemented by 'The climate and energy package'⁸. In addition, the European Strategy for Low-Emission Mobility adopted in July 2016 states with regard to city buses that an early adoption of zero-emission technologies seems in reach and that a separate zero-emission target should be explored.
- 28) The Commission considers that the implementation of the notified scheme will contribute to the reduction of emissions from buses and support the EU's long term climate goals of reducing GHG emissions. In addition the scheme will help Portugal to reach the target of GHG emission reduction targets within a range of -30% to -40% below 2005 by 2030⁹. The scheme itself is expected to result in the acquisition of around 400 to 500 clean buses, which should deliver CO₂ emissions savings up to 110.000 until 2030, and also to a significant reduction of NO_x, HC and particulate matter emissions in full alignment with EU Environmental policies.
- 29) In addition, spreading buses over a number of different urban areas will allow passengers to experience the buses. Their views can be crucial in encouraging public remit operators to move towards more environmentally friendly public transport. Equally, national authorities consider that setting such limit will promote competition amongst a very significant number of different applicants.

⁵ Ibid, page 5, paragraph 1.2.(a)

⁶ Ibid, page 12, paragraph 30.

⁷ COM(2010) 2020 final of 3.3.2010.

⁸ Decision No 406/2009/EC of 23 April 2009 (OJ L 140,5.6.2009, p. 136) and Directive 2009/28/EC of 23 April 2009 (OJ L 140, 5.6.2009, p. 16).(3).

⁹ The transportation sector aims at 14% reduction by 2020 and 26% by 2030 of GHG emission reduction

- 30) In the present case, the aid scheme is aimed at supporting the purchase of new buses that go beyond the current Euro VI standards. In particular, data provided by the Portugal comparing a clean bus and its equivalent new diesel Euro VI standard, shows that a clean bus will reduce the standard pollutants (compared to Euro VI) by 15%¹⁰.
- 31) Therefore, in line with section 3 paragraph (25)(c) of the EEAG, the aid scheme provides for aid for the acquisition of new transport vehicles which increase the level of environmental protection in the absence of Union standards.

3.3.1.2. Need for State intervention (3.2.2 EEAG)

- 32) According to the EEAG, State aid measure is targeted towards a situation where aid can bring about a material improvement that the market alone cannot deliver contributing to an increased level of environmental protection.
- 33) On the basis of the information provided by the Portuguese authorities, the Commission notes that the average age of public passenger transport vehicles in major urban areas in Portugal is about 13 years and 14.4 years on the overall Portuguese national territory. 77% of the buses in Portugal have more than 10 years, 40% have more 15 years and that only 28% of the buses adhere to Euro IV standard or above. The percentage of vehicles in circulation in accordance with Euro V or the latest standard is about 11%¹¹.
- 34) The Commission understands that Portuguese authorities have made a priority to increase bus use in cities by offering to the travelling public more reliable, efficient and cost effective bus services. Moreover, despite reductions in pollution as a result of more stringent emission standards and the use of cleaner fuels, further actions are needed to incentivize transport operators not to renew their transport fleets by simply replacing their oldest vehicles with second hand buses, not in compliance with the most recent EURO standards¹². The Portuguese authorities aim at achieving significant improvements in fuel efficiency and reductions in NOx, particulate matter and CO emissions by public transport buses in urban areas. By choosing a cleaner bus solution, public passenger transport operators can contribute to improve air quality in the cities and to decarbonise urban transport.
- 35) Buses have a significant role to play in delivering such goals, as they may give an important contribution to reduce climate change and other environmental damages like air pollution (reducing in particular CO, NOx, HC and particulate matter emissions), as well as to reduce traffic congestion as a result of modal shift from individual motorized transport to public transport. Relevant is also the contribution to social inclusion by delivering accessibility, particularly for the most vulnerable social groups.

¹⁰ Commission Regulation (EU) No 582/2011 of 25 May 2011 implementing and amending Regulation (EC) No 595/2009 of the European Parliament and of the Council with respect to emissions from heavy duty vehicles (Euro VI) and amending Annexes I and III to Directive 2007/46/EC of the European Parliament and of the Council, establishes common requirements for the type-approval for motor vehicles, engines and replacement parts with regard to their emissions. These common requirements are applicable to buses as well as they are the type M2 as defined in the Annex II of the Directive 2007/46/EC. Euro VI emission standards are CO g/km 1.5, HC g/km 0.13, NOx g/km 0.4 and PM g/km 0.01.

¹¹ Source: IMT, I.P. website <http://www.imtt.pt/sites/IMTT/Portugues/Paginas/IMTHome.aspx>.

¹² Source: IMT, I.P. website <http://www.imtt.pt/sites/IMTT/Portugues/Paginas/IMTHome.aspx>.

- 36) The Portuguese authorities submitted evidence showing that in spite of the potential fuel savings, the clean buses can each be considerably more expensive than comparable diesel buses¹³. It is clear, therefore, that the state intervention is needed before they can achieve the step change that is needed for the more widespread use of these buses. The nature of the bus market means that government intervention is required to minimise the large cost difference between sustainable technology and diesel vehicles.

3.3.1.3. Appropriateness of the aid scheme (3.2.3 EEAG)

- 37) The Commission considers that the type of aid chosen i.e. grant as opposed to a loan or tax credit is coherent with the market failure that the clean buses aid scheme aims to address. The Portuguese authorities have demonstrated that this form of intervention is supported by the operators as it ensures fairness, it is transparent and can be accessed by public bodies.

3.3.1.4. Incentive effect (3.2.4 EEAG)

- 38) The Commission understands that no grant will be awarded prior to the approval of the scheme by the Commission. Therefore, the formal incentive effect criterion is respected.
- 39) The Commission considers that the incentive effect requirement pursuant to (54)(a) of the EEAG is fulfilled as the aid granted under the Clean Buses scheme is for the purchase of new clean buses which go beyond EURO VI standards.
- 40) Furthermore, data submitted by the Portuguese authorities on the counterfactual scenario indicates that in the scenario in which there would be no grant, bus operators have little to no financial incentive to invest in clean buses (see section 3.3.1.2 above). The scheme has an incentive effect, as the aid will help to incentivise bus operators to replace their buses that are currently mostly Euro III buses (35%), with clean buses providing for better environmental protection, since in the absence of the aid will replace the oldest vehicles with cheap second hand buses operating below Euro VI standards. It is therefore expected that as a result of the scheme, several hundred new clean buses, producing at least 15% less emissions than a new diesel Euro VI standard bus will be introduced.
- 41) The difference of costs between the clean buses and a new diesel Euro VI standard bus has hampered the development of the market for clean buses in Portugal, especially for bus technologies that require charging/refuelling infrastructure which represents an additional commercial risk for clean buses operators.
- 42) In summary, without grant bus operators have little or no financial incentive to invest clean buses technologies. On the other hand the grants incentivise bus operators to move towards fleets comprising clean buses.
- 43) The Commission concludes that the aid scheme has an incentive effect as the aid will help to incentivise bus operators to replace their buses with low emission buses providing for better environmental protection, since in the absence of aid bus operators would only have to comply with Euro VI standards for new buses.

¹³ A Euro VI CNG/LNG bus costs on average EUR 225,000 an Electric bus costs EUR 400,000 whereas a new diesel Euro VI diesel equivalent costs EUR 155,000.

3.3.1.5. Proportionality of the aid (3.2.5 EEAG)

- 44) Environmental aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection or energy objective aimed for. Aid will be considered to be limited to the minimum necessary if the aid corresponds to the net extra cost necessary to meet the objective, compared to the counterfactual scenario in the absence of aid.
- 45) The eligible costs are calculated as the additional costs of a clean bus compared to a standard diesel bus. Therefore, in accordance with paragraphs 72 and 73 of the EEAG, the eligible costs consists of the additional investment costs necessary to achieve a higher level of environmental protection than the undertaking would achieve in the absence of any environmental aid.
- 46) In accordance with paragraph 80 of the EEAG, the aid intensity may reach 100% of these eligible costs if granted through a tender procedure. The Commission notes that in the present case the aid will be granted on the basis of a bidding process where bus operators will compete to obtain grant from a fund with a budget limited to EUR 60 million. Therefore, not all the operators participating in the bidding process will necessarily receive a grant. All the criteria to submit bids are defined in advance in a clear and transparent way and the main criterion is the amount of aid requested, i.e. the bids with the lowest premiums requested will be retained.
- 47) Since the aid intensity of the measure is 85% and in view of the above, the Commission concludes that, in line with paragraph 70 of the EEAG, the notified scheme will ensure that the aid will be limited to the minimum needed to meet the environmental protection sought.
- 48) The Portuguese authorities confirmed that the aid under the scheme will not be cumulated with other types of aid. The Commission takes note therefore of the fact that the notified scheme complies with the provisions of paragraph 81 of the EEAG, regarding the cumulation rules.

3.3.1.6. Avoidance of undue negative effects on competition and trade (3.2.6 EEAG)

- 49) The Clean Buses scheme will be operated in a fair, open and transparent way. The scheme will be open to beneficiaries purchasing low emission buses manufactured throughout the EU so that any distortion on the low emission buses market will be kept to a minimum.
- 50) The Commission thus finds that the State aid scheme in question is compatible with the common market because it leads to increased environmental protection without adversely affecting trading conditions to an extent contrary to the common interest.

3.3.1.7. Transparency (3.2.7 EEAG)

- 51) The Commission notes that all the information specified in section 3.2.7 of the EEAG will be published at the relevant Portuguese Government website¹⁴. Therefore, the Commission finds that aid scheme meets the transparency criteria.

¹⁴ <https://poseur.portugal2020.pt/pt/candidaturas/candidaturas-aprovadas/>

Furthermore, the Portuguese authorities comply with their obligations regarding reporting as they undertook to submit annual reports in accordance with section 6 of the EEAG.

3.3.1.8. Conclusion with regard to the compatibility of the measure

- 52) In light of the foregoing the Commission considers that the aid provided for the purchase of clean buses going beyond EURO VI standards fulfils the conditions set up in the EEAG and thus is compatible with the internal market.

3.3.2. Compatibility of the aid measure concerning the aid for the clean buses supporting infrastructure

- 53) The Commission considers that the assessment of the compatibility with the internal market of the aid to the refuelling and charging infrastructure requires an assessment based directly on Article 107(3)(c) TFEU, which states that: "*The following may be considered to be compatible with the internal market: (...) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.*" This is in line with the Commission's case-practice¹⁵, where it decided that the assessment of similar infrastructure schemes had to be based directly on Article 107(3) (c) TFEU considering their contribution to the development of an activity that served the common interest.
- 54) In order to be compatible with Article 107(3)(c) TFEU, aid must fulfil certain criteria, ensuring that on balance the positive effects of the aid are likely to outweigh its potential distortive effects. In its decision practice the Commission has developed the following criteria whose fulfilment allows to conclude that the aid is compatible with the internal market pursuant to Article 107(3)c TFUE because:
- a) it contributes to a well-defined objective of common interest;
 - b) it is necessary to achieve such an objective;
 - c) it is an appropriate policy instrument to address such an objective;
 - d) it has an incentive effect for the beneficiaries to engage in additional activities which they would not carry out without the aid;
 - e) its amount is proportional in the sense that is limited to the minimum needed to incentivise the additional investment or activity in the area concerned;
 - f) it does not entail undue negative effects on competition and trade between Member States.

3.3.2.1. Contribution to a well-defined objective of common interest:

- 55) The funding provided for the supporting infrastructure of clean buses is fully in line with Directive 2014/94/EU¹⁶ on the deployment of alternative fuels infrastructure. This directive requires Member States to develop national policy frameworks for

¹⁵ Decision SA.34719 (2013/N) – The Netherlands Electric transportation scheme in Amsterdam, C(2013) 7886; OJ JOCE C/69/2014 and with Decision SA. 38769 (2015/N) - The Netherlands Green Deal for Publicly Accessible Charging Infrastructure Scheme, C(2015) 5572 (not yet published in the official journal). Decision SA.42167 Low Emission Bus Scheme (LEB Scheme) OJ JOCE C/241/2016

¹⁶ OJ L 307, 28.10.2014, p. 1–20.

the deployment of alternative fuels and their infrastructure. In particular in urban/suburban and other densely populated areas, it entrusts Member States with responsibility to promote the establishment of an appropriate number of publicly accessible charging posts by end 2020.

- 56) Reducing the cost of the supporting infrastructure e.g. installation of gas refuelling stations, plug-in charging apparatus for electric or hybrid buses or inductive charging points in the future, and making it easier to charge such clean buses, will encourage operators to purchase such buses. Electrification of transport (electro mobility) is also a priority in the Community Research Programme. It also figures prominently in the European Economic Recovery Plan¹⁷.

3.3.2.2. Need for State intervention

- 57) As it has been illustrated in section 3.3.1 of this decision, there is a need for State intervention for the purchase clean buses. Data provided by the Portuguese authorities demonstrates that the bus operators are not willing to invest in clean buses and the possibility of receiving aid for the supporting infrastructure will increase their interest to do so. In particular, it will increase their interest to invest in different low emission technologies as bidders can apply for the funding of infrastructure along with bidding for buses, for instance for gas refuelling stations, plug-in charging apparatus for electric or hybrid buses or inductive charging points in the road for such buses. So far, the Portuguese market appears not to have developed supporting infrastructures for clean buses. This is mainly due to the intrinsic economic risks, the high investment and the absence of clean buses in Portugal.

3.3.2.3. Appropriateness of the aid measure

- 58) Firstly, the Commission considers that purely regulatory tools would not address the issue of lack of private funding due to the inherent costs of the planned switch to eco-friendly technologies for public urban transports. Aid is therefore an appropriate tool compared to other policy instruments.
- 59) Secondly, the type of aid chosen, i.e. grant as opposed to a loan or tax credit, is coherent with the market failure that the Clean Buses scheme aims to address. Portuguese authorities have demonstrated that this form of intervention is strongly supported by operators and local authorities as it ensures fairness, it is transparent and can be accessed by public bodies. Moreover, the Portuguese authorities have provided data showing that without aid for the supporting infrastructure, the uptake of clean buses will not occur and conversely the lack of clean buses hinders possible investments into their supporting infrastructure. In particular, the Portuguese authorities have demonstrated that from all different types of aid the direct grant is the most appropriate for the Clean Bus scheme. Although all forms of aid could distort the market, grant aid is likely to be the most effective means of achieving the objective of incentivising innovation in the clean buses market by decreasing unit costs and increasing clean buses uptake. Finally this type of support was specifically approved by the European Commission under Decision C(2014) 10110 final¹⁸ that approves the PO SEUR Operational Programme (CCI

¹⁷ COM(2008) 800, 26 November 2008.

¹⁸ Commission Implementing Decision C(2014) 10110, of 16 December 2014, approving certain elements of the operational program “Sustainability and Efficiency in the Use of Resources” for support from the

2014PT16CFOP001) for the 2014-2023 period¹⁹ in the setting of the 2020 Partnership Agreement.

- 60) Consequently the Commission considers that the investment provided by the Clean Buses scheme is an appropriate instrument to fulfil the objectives of common interest identified above.

3.3.2.4. Incentive effect

- 61) The Commission understands that no grant will be awarded prior to the approval of the scheme by the Commission. Therefore, the Commission concludes that the formal incentive effect is respected.
- 62) Moreover, from an economic viewpoint, an incentive effect is present if the aid changes the beneficiary's behaviour, enabling certain investments which are necessary in order to achieve the objective of common interest, but which would not be undertaken, absent the aid.
- 63) Data analysis provided by the Portuguese authorities indicates that without the grant bus operators would have little or no financial incentive to invest in the setup of infrastructure adapted to clean buses technologies. The operation of CNG, LNG, electric, hydrogen or hybrid buses requires the availability of additional recharging or refill infrastructures. For instance, in the case of CNG, data accessed by national authorities estimate the required investment cost for such additional infrastructure between EUR 0.5 and 1 million. The Portuguese authorities estimate the installation cost of a CNG refill station to be used exclusively to refill buses of the relevant public transport operator, at circa 0.75 MEUR (excluding land). Due to the function of the infrastructure, there are no revenues deriving from its operation by the public passenger bus operator and, as such, the project is affected by a funding gap corresponding to the cost of implementing the supporting infrastructure.
- 64) Moreover, the Clean Buses scheme provides that bidders can bid for infrastructure funding as part of a wider bid including the buses themselves. The Portuguese authorities confirmed that the bidders will need to demonstrate in their bids how the creation of new supporting infrastructure will help them to purchase and operate low emission buses in the future. Hence, the aid to such infrastructure has an incentive effect inextricably linked to the objective of promoting a wider uptake of clean buses.
- 65) The Commission finds that the scheme incentivizes the operators to invest in the infrastructure to support the use of the clean buses encouraging the purchase of the least polluting bus types and hence reaching the objective of common interest.

3.3.2.5. Proportionality of the aid

- 66) The Commission considers that the aid granted for the funding of the supporting infrastructure is proportionate, as the Clean Buses scheme provides for a number of safeguards ensuring that any aid is limited to the minimum necessary to achieve the schemes objective.

Cohesion Fund under the Investment for growth and jobs goal in Portugal.
http://ec.europa.eu/regional_policy/en/atlas/programmes/2014-2020/portugal/2014pt16cfop001

¹⁹ https://poseur.portugal2020.pt/media/4076/po_seur_texto-oficial-do-programa.pdf.

- 67) Although the aid intensity for infrastructure is 100%, the Commission notes that the bidders have to bid for infrastructure along with clean buses and (i.e. bids only for infrastructure are not allowed). Therefore, the measure is supported partially with private resources, which lowers the actual aid intensity. In addition, since the operators willing to bid for infrastructure have to bid also for buses, a higher aid intensity for infrastructure, compared to the aid intensity for buses (i.e. 85%) appears reasonable since the risk of running the infrastructure is strengthened by the underlying risk represented by the currently low uptake of clean buses.
- 68) Finally, the bidders are required to fully justify the value for money of the infrastructure and in particular to demonstrate how the infrastructure will enable the buses to operate optimally in tackling air quality on the routes set out in the bid.

3.3.2.6. Avoidance of undue negative effects on competition and trade

- 69) The Clean Bus scheme will be operated in a fair, open and transparent way as it foresees bidding criteria open to all urban passenger transport operators, including via local authorities, private or public bus operators, and sets non-discriminatory criteria regarding manufacturers and suppliers of the clean buses supporting infrastructure. In particular, the scheme is open to beneficiaries purchasing Clean Buses supporting infrastructure manufactured and supplied throughout the EU. Further, beneficiaries under the scheme must also take into account the applicable national and EU public procurement rules when acquiring works, services or supplies.
- 70) The Commission thus finds that the State aid scheme in question is compatible with the common market because it leads to increased environmental protection without adversely affecting trading conditions to an extent contrary to the common interest.

3.3.2.7. Transparency

- 71) As mentioned above, the Portuguese authorities confirm that the scheme for Clean Buses, including the aid for supporting infrastructure, will comply fully with the transparency requirements set in section 6.7 of Annex of Regulation 2015/2282²⁰, as well as Section 3.2.7. of the EEAG. In particular the information will be published in the relevant Portugal 2020 website (<https://poseur.portugal2020.pt/pt/candidaturas/candidaturas-aprovadas/>) and the list of successful bidders shall be released in a specific dedicated webpage of the PO SEUR website at <https://poseur.portugal2020.pt/Autocarroslimpos> and further undertake to submit annual reports (also in relation to the infrastructure) in accordance with Section 6 of the EEAG.

3.3.2.8. Conclusion with regard to the compatibility of the measure

- 72) In light of the above, the Commission considers that the part of the Clean Buses scheme that allows aid for supporting infrastructure pursues an objective of common interest in a necessary and proportionate way and thus is compatible with the internal market on the basis of Article 107(3)(c) TFEU.

²⁰ OJ L 325, 10.12.2015, p. 1–180

4. CONCLUSION

- 73) The Commission has accordingly decided not to raise objections to the relevant measure on the ground that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Registry
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

