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**Subject: State Aid SA.46574 (2016/N) – Germany  
Förderrichtlinie Ladeinfrastruktur für Elektrofahrzeuge (Funding  
Guidelines for Electric Vehicle Charging Infrastructure in Germany)**

## **1. PROCEDURE**

- 1) By electronic notification of 7 October 2016, the German authorities notified, according to Article 108(3) of the Treaty on the Functioning of the European Union (the "TFEU"), the above-mentioned measure to support the installation and upgrade of electric charging infrastructure across Germany ("the notified measure").
- 2) By letters of 27 October and 11 November 2016, the Commission asked the German authorities for additional information concerning the notified measure. The German authorities provided the requested information by letters dated 7 November 2016 and 18 November 2016. Two phone conferences were held between the Commission services and the German authorities on 9 November and 7 December 2016. Following the second call, the German authorities provided complementary information by letter dated 9 December and emails of 16 December 2016 and 27 January 2017.
- 3) By letter dated 7 December 2016, the German authorities agreed to waive their rights deriving from Article 342 of the TFEU in conjunction with Article 3 of Regulation 1/1958<sup>1</sup> and to have the present decision adopted and notified in English.

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<sup>1</sup> Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385

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## 2. DETAILED DESCRIPTION OF THE MEASURE

### 2.1. Objective and scope of the measure

- 4) The Federal Government's objective is to bolster the market ramp-up of electric vehicles by launching a user-friendly charging infrastructure network that provides universal coverage and meets the requirements of the market so that users of electric vehicles can recharge them quickly and easily anywhere in Germany.
- 5) According to the German authorities, the deployment of charging infrastructure is not feasible on a purely commercial basis due to the limited number of electric vehicles on the market (approximately 50,000 cars registered in Germany in 2016) and the impossibility for such a market to develop further, absent an adequate charging infrastructure.
- 6) They indicated that one million cars in operation would be the critical mass to be achieved for the market to start developing on a self-sustainable basis. In order to achieve this, the proper infrastructure should be developed in parallel with the development of the electric car market in Germany.
- 7) Article 4 (1) of the Directive 2014/94/EU<sup>2</sup> on Alternative Fuels Infrastructure requires Member States to put in place *"an appropriate number of recharging points accessible to the public (...) by 31 December 2020, in order to ensure that electric vehicles can circulate at least in urban/suburban agglomerations and other densely populated areas, and, where appropriate, within networks determined by the Member States"*. The German authorities indicated they want the measure to cover all users of electric vehicles in all regions (i.e. not only urban and suburban but also rural areas).
- 8) The main features of the notified measure are established in a document entitled *"Funding Guidelines for Electric Vehicle Charging Infrastructure in Germany"* (hereafter "the Funding Guidelines"), to be published prior to the entry into force of the measure. The measure will promote the installation of:
  - (a) high-speed charging points (> 22 kilowatts)<sup>3</sup>;
  - (b) standard charging points (up to and including 22 kilowatts);
  - (c) the upgrading of existing charging infrastructure or the procurement of replacement infrastructure and the boosting of the connection to the grid at locations that were operated prior to the entry into force of the measure if additional added value can be demonstrated. Upgrading by providing additional charging points at a later point in time within the funding period will be eligible for funding.
- 9) The charging infrastructure funded through the notified measure will be publicly accessible and will include the necessary connection of the charging site to the grid and assembly of the charging station.
- 10) The German authorities indicated that the funding under the measure is envisaged *"as start-up funding. In the medium term, the installation and operation are to be ensured"*

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<sup>2</sup> Directive 2014/94/EU of the European Parliament and the Council of 22 October 2014 on the deployment of alternative fuels infrastructure, OJ L 307 of 28.10.2014, p.1

<sup>3</sup> A "charging point" means a device intended for the supply of electricity to an electric vehicle. "Connection to the grid/network" means the technical connection of the charging site to the power supply grid (low and medium voltage grids) and the telecommunications network.

by market players to such an extent that, after the programme has come to an end, there is no longer any need for financial assistance<sup>4</sup>".

## **2.2. The current charging infrastructure network in Germany**

- 11) The German authorities indicated that they already supported the development of charging infrastructure, via support for electro-mobility and demonstration projects for charging infrastructure at the local level. The aid was granted under the block-exempted scheme SA.42646<sup>5</sup> ("the block-exempted scheme") that foresees the possibility to grant aid for RDI projects (under Article 25 of the General Block Exemption Regulation, hereafter "GBER"<sup>6</sup>), investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards (Article 36 GBER) and aid for environmental studies (Article 49 GBER). The block-exempted scheme, with an annual budget of EUR 25 million is on-going until 31 December 2019.
- 12) The block-exempted scheme is mainly addressed to local authorities that, in addition to procuring electric vehicles, can build charging infrastructure. The procurement of only charging infrastructure is not possible. The aim of the block-exempted scheme is to incentivize local authorities to move to an electric vehicle fleet rather than encourage the development of a comprehensive charging infrastructure.
- 13) It should nevertheless be noted that, in the framework of the demonstration projects covered by the block-exempted scheme that also supported the deployment of part of the infrastructure, approximately 2500 charging stations (i.e. 6000 normal power recharging points and 230 high-speed charging stations) have been already set up.
- 14) The German authorities indicated that the installation of charging points on a purely private basis has been made but is used as a "marketing tool" by retail chains (e.g. Aldi Süd and Ikea) rather than being a business model for installation and operation of electric charging systems. Other retail chains have isolated sites equipped with recharging infrastructure but this remains marginal. In addition, Tesla has also set up a limited number (about 50) of dedicated charging stations with brand-specific interfaces.
- 15) Regarding the high commercial risks involved in the development of such type of infrastructure, the German authorities gave the example of a charging station installed and operated on the A9 motorway in the framework of a programme supported by Bavaria and Saxony regions that was no longer operated after the end of the programme in the absence of public support.
- 16) It should be noted that the aid granted under the block-exempted scheme is outside the scope of the present notification.

## **2.3. Budget and duration of the measure**

- 17) The total budget of the measure is EUR 300 million coming from federal funds (Energy and Climate Fund). It does not include any EU funding or funding by the Länder. The programme will run for four years, starting in 2017, with the result that

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<sup>4</sup> "Funding Guidelines for Electric Vehicle Charging Infrastructure in Germany", section 1.1 "purpose of grants", p.3

<sup>5</sup> SA.42646 (2015/X) – Germany - Förderrichtlinie Elektromobilität, OJ 12.01.2016. The main features of the support for electro-mobility at local level are established in a document entitled "The Electric Mobility Funding Guidelines".

<sup>6</sup> Commission regulation (EU) n°561/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p.1

the supported charging infrastructure network will gradually be built with state of the art technological means.

#### **2.4. Aid instrument and eligible costs**

- 18) The aid will be provided in form of grants<sup>7</sup>.
- 19) The eligible costs are the following:
  - (a) Costs for acquisition of the charging station;
  - (b) Costs of connecting the station to the grid;
  - (c) Costs for upgrading an existing charging station<sup>8</sup>;
  - (d) Costs for installing buffer storage on a charging point location.
- 20) The German authorities confirmed that personnel costs, costs for acquisition of land, costs for advertising panels, costs for roof construction and operating and maintenance costs are explicitly excluded from the eligible costs. They also indicated that expenditure for planning, approval process and operation are not eligible for funding.

#### **2.5. Beneficiaries**

- 21) The German authorities indicated that the beneficiaries are natural and legal persons, without restrictions.
- 22) The following applicants shall not be eligible for funding:
  - (a) applicants who have not complied with a recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market;
  - (b) applicants who are to be regarded as firms in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty<sup>9</sup>. This includes applicants against whom insolvency or comparable proceedings have been requested or opened and applicants who are obliged to disclose or have disclosed their assets under section 802c of the German Code of Civil Procedure or section 284 of the German Fiscal Code.
- 23) The German authorities indicated that the owner and the operator of the charging infrastructure will normally be the same entity. The operator has an obligation to operate the charging infrastructure for a minimum period of six years<sup>10</sup>.
- 24) In order for the projects to qualify under the measure, the works on the project should not start before the grant has been approved.

#### **2.6. Selection of beneficiaries and aid intensities**

- 25) The aid will be awarded progressively by means of calls for application.
- 26) The first call for application will be launched after the approval of the measure by the European Commission and will set the following rules:

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<sup>7</sup> The Federal Government shall provide the grants upon application in accordance with sections 23 and 44 of the Federal Budget Code and the related General Administrative Regulations.

<sup>8</sup> Within the framework of upgrading, grants may be awarded for hardware components such as plugs, required electronic components, IT updates.

<sup>9</sup> OJ C 244, 1.10.2004, p. 2, as amended

<sup>10</sup> The German authorities indicated that the applicant is obliged to ensure operation for six years even if operation is handed over to another party involved.

- (a) Duration of the call for application for funding is four weeks;
  - (b) Applicants will be selected on a “first come, first served” basis;
  - (c) For high-speed charging infrastructure a total of 1,000 high-speed charging points will be eligible for funding with an homogeneous distribution across the country;
  - (d) For normal charging infrastructure, the overall funding level will be limited to EUR ten million, without taking account of the regional distribution;
  - (e) The maximum funding amount is limited to EUR five million per applicant;
  - (f) Funding rates / maximum funding amounts<sup>11</sup>:
    - normal charging points (up to and including 22 kilowatts): 40% of the eligible costs but not more than 2,000 euros per charging point;
    - high-speed charging points  $\leq$  100 kilowatts: 40% of the eligible costs, but not more than 8,000 euros per charging point;
    - high-speed charging points of more than 100 kilowatts: 40% of the eligible costs, but not more than 20,000 euros per charging point;
    - connection to the low voltage grid per site: 40% of the eligible costs, but not more than 3,333 euros;
    - connection to the medium voltage grid per site: 40% of the eligible costs, but not more than 33,333 euros<sup>12</sup>.
  - (g) Access to the charging post should be possible 24 hours a day seven days a week, otherwise the funding rate is reduced by 50%. At the very least, accessibility must be ensured for 12 hours a day from Monday to Saturday.
- 27) The German authorities indicated that the future calls for application will be adapted following the results of the first call in order to ensure an optimal coverage of the national territory. Following a monitoring of the sites (approval/deployment) selected under the first call, supplementary requirements may be imposed in order to provide an incentive for such a process in certain regions of Germany. The subsequent calls might define fixed regions which may be eligible for funding, e.g. providing funds only for the deployment in rural areas. If it is found that in some regions very little action is being taken to deploy charging infrastructure, the adoption of higher funding rates (up to 60%) may create an incentive for further deployment measures at less attractive sites.
- 28) The subsequent calls will set the following rules:
- (a) Duration of the call for application for funding is four weeks;
  - (b) The award of grants to applicants will be assessed on the basis of the criterion of the lowest costs/funding or the best value for money;

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<sup>11</sup> These caps apply regardless of whether the investment is for building new infrastructure or upgrading existing infrastructure.

<sup>12</sup> The German authorities claim that the costs for connection to the medium voltage grid can be very high for some sites, particularly for sites at suboptimal developed locations. This concerns particularly such sites which shall be equipped with charging points of 150 kW /350 kW in future. According to ratings of the industry these grid costs can amount to 400.000 Euro. Compared to hardware for standard and high-speed charging points the costs are lower and depends on the producer. In contrast the costs for grid connection can be vary high and depends on the individual case. To develop a future-proof, area-wide charging infrastructure the funding of such sites is also necessary. Therefore the maximum funding amount for the costs for connection to the medium voltage grid is comparatively high.

- (c) Eligible costs for standard charging points up to and including 22 kilowatts will be funded up to a maximum of 60% and not more than 3,000 euros per charging point;
  - (d) Eligible costs for high-speed charging points will be funded up to:
    - a maximum of 60% and not more than 12,000 euros for charging points  $\leq$  100 kW,
    - a maximum of 60% and not more than 30,000 euros for charging points  $>$  100 kW;
  - (e) Costs for connection to the grid for each location will be funded up to:
    - a maximum of 60% and not more than 5,000 euros for connection to the low voltage grid,
    - a maximum of 60% and not more than 50,000 euros for connection to the medium voltage grid.
  - (f) Access to the charging post should be possible 24 hours a day seven days a week, otherwise the funding rate is reduced by 50%. At the very least, accessibility must be ensured for 12 hours a day from Monday to Saturday.
- 29) At the same time, the funding rate for the deployment of charging infrastructure in attractive regions such as metropolitan areas can be reduced to below 40% if a large number of applications are submitted for these regions, and depending on the financing terms proposed in the relevant bids.
- 30) The German authorities confirmed that the amounts stipulated in the calls may be lower than the provisions set out in the Funding Guidelines.
- 31) The German authorities indicated their intention to control the financial assistance programme by means of subsequent calls since
- (a) the charging infrastructure is to be deployed in parallel to the vehicle ramp-up;
  - (b) no unnecessary charging infrastructure is to be deployed which becomes obsolete without being used;
  - (c) the charging infrastructure is to be deployed according to the latest technical standard;
  - (d) the distribution of the charging sites is to be controlled through a regular review of the existing sites and the assessment of needs based thereon.
- 32) Calculated on the basis of the total level of funding of the financial assistance programme, over the lifetime of the programme, the maximum funding amount per applicant will be limited to a maximum of 20% of the funds. The German authorities also indicated that ceilings may be defined for each applicant within one call for application, as they are for the first call.
- 33) They confirmed, as stated in the Funding Guidelines that *"the objective of this financial assistance programme is that, in the years ahead, properly functioning and broad-based competition should be established between providers of charging infrastructure; this will prevent one company from enjoying a local dominant market position. To this end, subsequent calls for application will be structured so as to ensure that the geographic distribution of charging stations forming part of one call will overlap with charging stations forming part of separate calls, allowing for effective competition across the national territory"*.

- 34) The German authorities indicated that the funding rates and caps were determined on the basis of costs expected by the market to be incurred for investment in the charging infrastructure as well as on experience from research and demonstration projects supported by the Federal Government. These data were collected by the National Platform for Electric Mobility (NPE). They explained that the figures of the NPE show that over the entire minimum duration of operation there is an average deficit (funding gap) of more than 60 %, the value being significantly higher for high-speed charging infrastructure.

### **2.7. Use of electricity from renewable energy sources**

- 35) The German authorities indicated that, as an eligibility condition for the programme, the electricity required for the charging process must come from renewable energy sources (i.e. RES) or from renewable electricity self-generated on site. The owner/operator<sup>13</sup> must prove the supply of renewable energy at the charging station, either by submitting a green electricity contract for the supply of electricity to the charging station or by submitting a proof of self-produced electricity that is supplied directly at the charging station.
- 36) The German authorities indicated that the proof of origin required under the measure is in compliance with the provisions of Article 15 of the Renewable Energy Directive<sup>14</sup>. The Federal Environment Agency (UBA), where the Register of Guarantees of Origin is kept, is obliged to check the eligibility of current guarantees of origin, on a case-by-case basis, with regard to compliance with these standards. The guarantees of origin which comply with the standards, issued by another Member States, may also be used.
- 37) The German authorities estimated that by 2020, one million electric cars will have consumed 1.6TWh compared to the 3.000TWh consumed by the entire German economy (or 0.053%) and will represent 0.165% of the electricity produced by RES during the same period. At the same time, the electric cars are expected to represent approximately 2.3% of the circulating car park in Germany. On the basis of the figures above, the German authorities consider that the measure has a marginal effect on the electricity producers and traditional fuel providers.

### **2.8. Cumulation**

- 38) The German authorities confirmed that funding under the notified measure will not be cumulated with other public financial assistance programmes in relation to the same eligible costs. Both funding programmes (the notified measure and the block-exempted scheme) are run by the Federal Ministry of Transport and Digital Infrastructure. According to the German authorities, this allows a direct comparison of applicants by the grant-awarding agency responsible for the monitoring of the grants, which will ensure there is no double funding. This will be performed in close coordination with the Länder, as some of them may want to develop funding programmes for charging infrastructure.

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<sup>13</sup> The German authorities indicated that the owner and the operator will normally be the same entity.

<sup>14</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC. OJ L 140, 5.6.2009, p. 16-62.

## 2.9. Monitoring of the measure

- 39) The German authorities indicated they will monitor the continuous operation and charging operations on the infrastructure. They indicated that the operator of a charging station has the obligation to register the commissioning and decommissioning of the charging infrastructure with the Federal Network Agency<sup>15</sup>.
- 40) The operators must also submit regular reports during the period of operation of the charging station to the National Organization for Hydrogen and Fuel Cell Technology. These reports shall contain basic data relating to the location of the charging station, its capacity, the average rate of utilization, the amount of electricity delivered and a confirmation of continuous operation. On-site inspections of individual locations can also be performed.

## 2.10. Transparency

- 41) The German authorities confirmed the Funding Guidelines will be published on the website of the Federal Ministry of transport and Digital Infrastructure<sup>16</sup> as well as information on each individual aid award exceeding EUR 500 000<sup>17</sup>.

## 3. ASSESSMENT

### 3.1. Existence of aid

- 42) Article 107(1) TFEU states that “*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.*”
- 43) Therefore, in order to determine whether a measure constitutes State aid within the meaning of Article 107(1) TFEU, it must be established whether a) the measure confers a selective economic advantage to the undertakings concerned, b) this advantage has been financed through State resources and the measure is imputable to the State, c) the advantage distorts or threatens to distort competition and, finally, d) the measures affect trade between Member States. These conditions must be cumulatively met, which means that if one is not met the measure does not fall within the scope of Article 107(1) TFEU.
- 44) In this respect, the German authorities claim that the financial support is not selectively granted because it is open to all natural and legal persons, without restrictions. According to the German authorities, the selection of beneficiaries would depend on the outcome of the calls for application and therefore, they are of the opinion that the present measure does not constitute State aid.
- 45) However, the Commission considers that it is not necessary, for the purposes of this decision, to decide whether the notified measure constitutes State aid within the meaning of Article 107(1) TFEU since, for the reasons indicated below, if it were to constitute State aid it would in any event be compatible with the internal market pursuant to Article 107(3)(c) TFEU.

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<sup>15</sup> Obligation under “*the Regulations on Minimum Technical Requirements for the Safe and Interoperable Deployment and Operation of Publicly Accessible Charging Points for Electric Vehicles*” (hereafter “Charging Post Regulations”).

<sup>16</sup> <http://www.bmvi.de/EN/Home/home.html>

<sup>17</sup> i.e. the information being the information mentioned in Annex III of the GBER. The information will be organised and accessible in a standardised manner so as to allow for effective search by the citizen.



### 3.2. Legality of the measure

- 46) Aid will only be granted under the measure following the State aid approval by the Commission. Therefore, Germany has fulfilled its obligation according to Article 108(3) TFEU by notifying the measure before putting it into effect.

### 3.3. Compatibility of possible State aid

- 47) Should the measure granted by Germany for the deployment of charging infrastructure constitute State aid in the meaning of Article 107(1) TFEU, the Commission considers that such aid would in any event be compatible with the internal market under Article 107(3)(c) TFEU.
- 48) Article 107(3)(c) TFEU 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*".
- 49) In order to determine the compatibility of a measure under Article 107(3)(c) TFEU, the Commission performs a balancing test, weighing positive effects in terms of a contribution to the achievement of well-defined objectives of common interest and negative effects on trade and competition in the common market. In this regard, the Commission considers the following principles<sup>18</sup>:
- (a) contribution to a well-defined objective of common interest: a State aid measure must aim at an objective of common interest in accordance with Article 107(3) of the Treaty;
  - (b) need for State intervention: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern;
  - (c) appropriateness of the aid measure: the proposed aid measure must be an appropriate policy instrument to address the objective of common interest;
  - (d) incentive effect: the aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity, which it would not carry out without the aid or would carry out in a restricted or different manner or location;
  - (e) proportionality of the aid: the amount and intensity of the aid must be limited to the minimum needed to induce the additional investment or activity by the undertaking(s) concerned;
  - (f) avoidance of undue negative effects on competition and trade between Member States: the negative effects of aid must be sufficiently limited, so that the overall balance of the measure is positive;
  - (g) transparency of aid: Member States, the Commission, economic operators, and the public, must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder.

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<sup>18</sup> For example, SA 32835 (2011/N) - Northwest Urban Investment Fund (JESSICA) (OJ C 281 of 24.09.2011, p.2, [http://ec.europa.eu/competition/state\\_aid/cases/240234/240234\\_1247477\\_97\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/240234/240234_1247477_97_2.pdf) and SA 38769 (2015/N) - Green Deal for Electric Vehicle Charging Infrastructure, to be published, [http://ec.europa.eu/competition/state\\_aid/cases/258489/258489\\_1710979\\_137\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/258489/258489_1710979_137_2.pdf)

### ***3.3.1. Contribution to a well-defined objective of common interest***

- 50) The Commission notes that the Directive 2014/94/EU makes it mandatory for all Member States to deploy an adequate charging infrastructure for electric vehicles by 2020, in particular in urban/suburban and other densely populated areas. Within this framework, Germany's objective is to ensure, by the end of 2020, the establishment of an area-wide charging network that meets the demands of the market and offers to every user of an electric vehicle the possibility to recharge fast and easily anywhere in Germany.
- 51) In setting up the measure, in addition to the requirements set out in Directive 2014/94/EU, the German authorities require a higher technical standard for the equipment of the charging infrastructure. They also intend to cover not only urban and suburban areas but also rural areas. Finally, the German authorities impose the obligation for the operators to operate the charging stations with electricity coming from renewable sources.
- 52) First, the Commission considers that the measure is aligned with the European strategy to ensure low-emission mobility, as set out in Directive 2014/94/EU. The Commission also notes that this measure is in line with the Community Research Programme and the European Economic Recovery Plan<sup>19</sup> in which electrification of transport (electro mobility) is a priority. Increased uptake of electric vehicles will make a major contribution towards cutting of CO<sub>2</sub> and pollutant emissions (such as NO<sub>x</sub> or PM). In this way, both the climate goals (mitigation of consequences of climate change) and air quality goals (decreasing of pollutant concentrations exceeding the limit values in Ambient air quality directive<sup>20</sup>) will be met. Boosting electric mobility also benefits the national economy, because it results in increasing independence from the import of fossil fuels, thereby strengthening energy supply security in Europe.
- 53) Second, by stipulating that the charging posts must be supplied with green electricity, the measure aims at enhancing the use of renewable energy in the transport sector. In the Commission's opinion, this is key for the transport sector to achieve the climate change targets and to enhance the level of environmental protection beyond existing EU standards.
- 54) Finally, the Commission notes that the measure goes beyond the prescriptions of Directive 2014/94/EU as it covers not only urban and sub-urban but also the rural areas, so as to ensure a homogeneous distribution of charging stations across the federal territory. This additional requirement aims in particular at improving customer acceptance, interoperability and social fairness.
- 55) In light of the considerations set out in recitals 50) to 54) the Commission considers that the measure contributes to a well-defined objective of common interest.

### ***3.3.2. Need for State intervention***

- 56) According to the German authorities, the deployment of charging infrastructure is not feasible on a purely commercial basis due to the limited number of electric vehicles on the market (approximately currently 50,000 cars registered in Germany) and the impossibility for such a market to develop further, absent an adequate charging

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<sup>19</sup> COM(2008) 800, 26 November 2008.

<sup>20</sup> Directive 2008/50/EC of the European Parliament and the Council of 21 May 2008 on ambient air quality and cleaner air for Europe. OJ L 152 of 11.6.2008, p.1

infrastructure. According to the German authorities one million cars in operation would be the critical mass to be achieved for the market to start developing on a self-sustainable basis. In order to achieve this, the proper infrastructure should be developed in parallel with the expansion of the electric car market in Germany.

- 57) The Commission considers that the deployment of a user-friendly electric vehicle charging infrastructure network that meets the needs of the market and provides universal coverage is one of the crucial conditions for the success of electric mobility. The German authorities demonstrated that, on the one hand, the fact that the number of electric vehicles in circulation continues to be very low constitutes a capacity utilization risk for (potential) charging stations operators and thus represents a commercial obstacle to the development of a sustainable charging infrastructure and, on the other hand, the demand for electric vehicles remains low, mainly due to an insufficient development of charging infrastructure.
- 58) In addition, the German authorities explained that the support measures provided so far were more limited in scope as they served for RDI projects or, in the case of the Electric Mobility Guidelines, as an additional incentive for the procurement of electric vehicles for the local authorities' fleets. Moreover, the private initiatives were very limited and essentially used as "marketing tools" as, according to the German authorities, there was no business model viable for such investment.
- 59) Thus, the notified measure is aimed at deploying a nationwide charging infrastructure as prescribed by Directive 2014/94/EU and the Federal Government's objective is to have industry sustain this infrastructure in the future, without having to continue to provide public funding.
- 60) The Commission therefore considers that the State intervention for the construction of charging infrastructure will create the necessary incentive to invest in this emerging market. In turn, the availability and accessibility of charging infrastructure that meets the demands of the market will encourage consumers to switch to electric vehicles.
- 61) In light of the elements detailed in recitals 56) to 60) above, the Commission concludes that public intervention is needed in order to ensure the development of a proper infrastructure in parallel of the development of the electric car market in Germany.

### *3.3.3. Appropriateness of the aid measure*

- 62) Member States can make different choices with regard to policy instruments and State aid control does not impose a single way to intervene in the economy. However, State aid under Article 107(1) TFEU can only be justified by the appropriateness of a particular instrument to meet the public policy objective and contribute to one or more of the common interest objectives<sup>21</sup>.
- 63) The Commission normally considers that a measure is an appropriate instrument where the Member State can demonstrate that alternative policy options would not be equally suitable to achieve the common interest objective and where it can demonstrate the alternative, less distortive, aid instruments would not deliver equally efficient outcomes.

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<sup>21</sup> See for a discussion of appropriateness Cases C 25/2004 — DVB-T Berlin-Brandenburg (OJ L 200, 22.7.2006) or N 854/2006 — Soutien de l'agence de l'innovation industrielle en faveur du programme mobilisateur pour l'innovation industrielle TVMSL, OJ C 182, 4.8.2007.

- 64) The German authorities have provided data showing that regulatory interventions<sup>22</sup> would not solve the funding gap problem which is currently holding up investments in this sector (see recital 34) above). Moreover, they have indicated that, compared with other types of aid, a direct grant is the most appropriate for the measure, as it is likely to be the most effective means of achieving the objective of incentivising the construction of charging infrastructure and the use of electric cars. According to them, instruments like guarantees or loans have not created the expected incentive for private investment under the previous pilot projects<sup>23</sup>. Thus, grants will allow for a swift implementation of the measure that will enable Germany to meet its obligation by the end of 2020 under the above EU Regulation.
- 65) The Commission agrees that an area-wide charging infrastructure serves as a basic prerequisite for stepping up electric vehicle sales. For this reason, directly funding the deployment of publicly accessible charging infrastructure is likely to achieve results. The Commission notes that this measure is complementary to other measures aimed at making the electric mobility system attractive as a whole and to enable users to switch to more sustainable forms of mobility.
- 66) The Commission therefore 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 aid measure aims to address (i.e. the existence of a funding gap for such investment).

#### *3.3.4. Incentive effect*

- 67) In order to be compatible with Article 107(3)(c) TFEU, State aid must have an incentive effect. The required incentive effect is present if the aid changes the behaviour of the beneficiary in relation to reaching the objective of common interest and addressing the identified market failure.
- 68) The German authorities confirmed that funding can only be granted if the respective projects have not yet been initiated prior to the aid application by potential beneficiaries. Moreover, the measure will not be implemented prior to the approval of the measure by the European Commission.
- 69) On the basis of the information provided by the German authorities, the Commission understands that without the aid the investors would have little to no financial incentive to invest in the infrastructure. In fact, new charging infrastructure would not be deployed without funding, as the currently small number of electric vehicles in circulation, the high investment costs and the relatively small amount of electricity supplied at a charging station do not allow for a cost-effective operation.
- 70) The Commission positively notes that the measure is designed in such a way as to incentivise private investors to invest in the infrastructure by creating a viable business model for such investment.
- 71) Moreover, the Commission considers that the support for the ramp-up phase of the electric charging infrastructure in Germany will lead to a wider up-take of electric vehicles which, in turn, will enable a cost-effective operation of the infrastructure in the future. On the basis of the current findings it is to be expected, therefore, that the

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<sup>22</sup> i.e. demonstration projects deployed in Electric Mobility Pilot regions for example.

<sup>23</sup> The German authorities indicated that the KfW (Federal Promotional Bank) tried to support the deployment of charging infrastructure in Germany by providing low-interest loans in some programmes. According to KfW information, there was hardly any demand for loans for charging infrastructure. The reason for this is that the financing gap for a positive business case is considerable for the deployment and the operation of charging infrastructure and these KfW loans do not provide a significant contribution to closing this gap. Moreover, companies are currently able to obtain very low-interest loans on the capital market.

financial support will create the conditions for the further expansion of the charging infrastructure by the industry without any need for additional aid.

### ***3.3.5. Proportionality of the aid***

- 72) The amount and intensity of the aid must be limited to the minimum needed to induce the additional investment or activity by the undertaking(s) concerned.
- 73) The Commission notes that the award of grants will be assessed on the basis of the criterion of the lowest costs/funding or the best value for money, except on the first call where applicants will be selected on a “first come, first served” basis. The Commission notes that the first call was designed in a way to allow the German authorities to apprehend the needs of the market and also has a limited budget. The subsequent calls are set through tendering procedures and are designed in a way that the funding requirements by each individual bidder will ultimately determine the winning bid, thereby ensuring that the aid is kept at the minimum necessary.
- 74) The Commission notes in addition that the aid intensity is modulated on the basis of several elements such as the timing of the tender or geography. In order to maximise the impact of the measure within the limits of the available budget, a funding rate of 40 % is to be applied in the first call for applications to prevent overfunding of attractive locations. In the course of the procedure, unattractive locations can be promoted by higher funding rates, if need be, thus creating an incentive for an area-wide distribution of charging infrastructure in Germany. In addition, while the first call will for aid intensity of 40% on the charging infrastructure, the subsequent calls allow for aid intensity up to 60% based on the geography of the project.
- 75) The Commission considers that a funding of up to 60 % of the investment costs is reasonable to provide a sufficient incentive for investors but also to ensure considerable involvement of the industry in the deployment of charging infrastructure.
- 76) Finally, the Commission notes positively that Germany provides a one-time investment grant for the deployment of charging infrastructure so as to provide incentive to investors to enter the measure but insists on the fact that the operation must be financed by the investors, hence ensuring involvement of the industry in the deployment and operation of the charging infrastructure .
- 77) The Commission therefore considers that the aid granted for the funding of the charging infrastructure is proportionate, as the measure provides for a number of safeguards ensuring that any aid is limited to the minimum necessary to achieve the objectives.

### ***3.3.6. Avoidance of undue negative effects on competition and trade***

- 78) The measure will be operated in a fair, open and transparent way as it provides for bidding criteria open to all potential suppliers of the charging infrastructure, throughout the EU and sets non-discriminatory criteria regarding the participation in the measure. In particular, the measure is open to all beneficiaries willing to invest in charging infrastructure for electric cars.
- 79) The Commission notes that any beneficiary could be awarded a maximum of 20% of the funds over the lifetime of the programme (see recital 32) above). In complement, the German authorities confirmed that *"subsequent calls for application will be structured so as to ensure that the geographic distribution of charging stations forming part of one call will overlap with charging stations forming part of separate calls, allowing for effective competition across the national territory"*. The German

authorities confirmed that the structure of the calls will be designed so as to ensure that one company does not enjoy a local dominant market position.

- 80) The Commission considers that these safeguards, by preventing the creation of market powers in local markets, is of such nature as to avoid risks of distortion of competition in the downstream market for recharging services.

### ***3.3.7. Transparency of aid***

- 81) The Commission considers that the German authorities comply with their transparency obligations (see sections 2.9 and 2.10 above).

### ***3.3.8. Conclusion with regard to the compatibility of the measure***

- 82) In light of the above, the Commission considers that the measure can be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU.

## **4. CONCLUSION**

- 83) The Commission has decided not to raise objections to the measure on the grounds that, should the measure constitute State aid within the meaning of Article 107(1) TFEU, it would be 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>.

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Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission

