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**Subject: State Aid SA.59352 (2020/N) – Germany
Federal aid scheme for the acquisition of light and heavy commercial
vehicles with alternative, climate-friendly propulsion systems and
ancillary EV charging facilities**

Excellency,

1. PROCEDURE

- (1) On 6 November 2020, 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 acquisition of light and heavy commercial vehicles with alternative, climate-friendly propulsion. ("**the notified measure**" or "**the notified scheme**").
- (2) By letters of 4 December 2020, 3 March 2021, and 13 April 2021 as well as 28 June 2021, the Commission asked the German authorities for additional information, which was provided on 25 January 2021, 3 March 2021, 10 May 2021 and 2 July 2021. The case was also discussed between the German authorities and the Commission services in two conference calls (25 February 2021, and 9 April 2021).
- (3) By letter dated 11 May 2021, the German authorities agreed to waive their rights deriving from Article 342 of the TFEU in conjunction with Article 3 of

Seiner Exzellenz Herrn Heiko Josef MAAS
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

Regulation 1/1958¹ and to have the present decision adopted and notified in the English language.

- (4) On 4 June 2021, Germany amended the scope of the notified measure.

2. DETAILED DESCRIPTION OF THE MEASURE:

2.1. Objective of the notified measure

- (5) Germany intends to reduce its greenhouse gas ("GHG") emissions by at least 55% by 2030, compared to the 1990 levels, and to achieve GHG neutrality by 2050. The relevant national Climate Protection Plans require, for the transport sector, a reduction of GHG emissions by about 42 % (around 55 million metric tons of CO₂ equivalent), by 2030. The notified measure is to activate and ramp up the market for commercial vehicles with climate-friendly propulsion systems, in order to contribute to the achievement of the aforementioned targets.

2.2. Legal basis

- (6) The notified measure is to be implemented based on a Federal funding guideline ("*Richtlinie über die Förderung von leichten und schweren Nutzfahrzeugen mit alternativen, klimaschonenden Antrieben und dazugehöriger Tank- und Ladeinfrastruktur*") (hereafter "**the Funding Guideline**"), and relevant provisions of German budgetary law.

2.3. Budget and duration of the scheme

- (7) Aid under the notified scheme may be awarded as from its approval until 31 December 2024; it is financed from the Federal Budget and its total budget amounts to EUR 507.5 million.

2.4. Scope of the notified measure

- (8) The notified scheme is open to undertakings² from all sectors, independent of their size and location, and offers aid in form of direct grants for three sub-measures:
- *Sub-measure 1*: a premium of a maximum of 80% of the price difference between a commercial vehicle with an alternative, climate-friendly propulsion system (pure electrical, plug-in hybrid, or hydrogen/cell-fuelled) and that of a comparable conventional diesel model meeting the highest applicable emission EU vehicle class³, currently EURO 6/VI standards;
 - *Sub-measure 2*: a maximum of 80% of the investment costs for electric vehicles ("EV") charging facilities for use by the undertaking acquiring a

¹ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

² Undertakings in difficulty or subject to a recovery order are excluded.

³ Emission standards for exhaust emissions of new vehicles sold in the European Union and EEA member states.

vehicle under Sub-measure 1; eligibility to *Sub-measure 2* requires acquisition of a climate-friendly commercial vehicle under *Sub-measure 1*; the EV charging facilities may be made available for public use; where the facilities are made publicly available, such access is to be granted on non-discriminatory, transparent terms and conditions of use, including corresponding to market conditions.

- *Sub-measure 3*: a maximum of 50% of the costs of environmental studies relating to *Sub-measures 1* and 2.

2.5. Aid beneficiaries

- (9) Eligible as aid beneficiaries are companies under private law, municipal companies and corporations, as well as institutions under public law and registered associations. For municipal undertakings without legal personality, the respective municipality is eligible to apply.
- (10) In terms of vehicle financing, leasing, or rental companies can also be aid applicants, provided they fully pass on the aid received to their customer, the respective aid beneficiary (see recital (9) above), and the aid is explicitly identified in the leasing contract. Irrespective of this, leasing/rental companies are also eligible to apply as private law companies under the usual conditions mentioned in recital (9), so that in this case the leasing or rental companies are direct beneficiaries of the aid.

2.6. Form of aid, eligible costs and aid intensity

- (11) The notified measure is provided in the form of direct grants.
- (12) The eligible costs for *Sub-measure 1* are the additional investment costs (net extra costs) for the acquisition of climate-friendly commercial vehicles (electric, plug-in hybrid, or hydrogen/cell-fuelled), compared to conventional diesel models meeting the EURO 6/VI standards that are equivalent in terms of freight load and other relevant specifications; in cases of retrofitting existing conventional diesel models the corresponding additional investment costs are eligible; for *Sub-measure 2*, eligible costs are the investment cost for setting up/upgrading the EV charging facilities (e.g. the one-off cost for connecting to the electricity distribution system and costs for charging points). Costs for the acquisition or lease of land or the construction of access roads are not eligible. The eligible costs for *Sub-measure 3* are the costs for the commissioned study.
- (13) In addition, eligible expenditure (for new vehicles: net extra costs) under *Sub-measure 1* is capped as demonstrated in Table I below:

Kappungsgrenzen je Antriebstechnologie (in Euro)						
EG-Fahrzeugklasse	Neufahrzeuge				Umrüstfahrzeuge	
	Batterie-elektrischer Antrieb (BEV)	Wasserstoff-Brennstoffzellen-elektrischer Antrieb (H2-BZ)	Oberleitungs-hybrid-elektrischer Antrieb (OH)*	Plug-In-Hybrid-elektrischem Antrieb (PHEV)	BEV umgerüstet	H2-BZ umgerüstet
N1	25.000	90.000	-	-	-	-
N2						
bis 7,5 t	100.000	200.000	-	-	90.000	190.000
bis 12 t	200.000	300.000	-	-	190.000	290.000
N3						
<20 t	350.000	450.000	120.000	100.000	330.000	430.000
20-30 t	400.000	500.000	170.000	150.000	380.000	480.000
30-40 t	450.000	550.000	220.000	200.000	420.000	520.000

* gilt nur für Hybrid-Oberleitungs-Lkw mit Verbrennungsmotor; Hybridisierung mit Batterie bzw. Brennstoffzelle (ohne Verbrennungsmotor) gilt als Batterie- bzw. Brennstoffzellen-Lkw

Table I: Caps on eligible expenditure per propulsion system technology per EU commercial vehicle class (source: German authorities)⁴.

- (14) For *Sub-measures 1* and *2*, the aid intensity will be up to 80 % of the eligible costs defined above. For *Sub-measure 3*, the aid intensity will not exceed 50% of the costs of the study.
- (15) An aid beneficiary must not receive more than EUR 15 million per calendar year.

2.7. Selection of beneficiaries and projects

- (16) Aid will be allocated based non-discriminatory, transparent and open⁵ competitive bidding procedures, implemented by up to four funding calls (“*Förderaufrufe*”) per year.
- (17) The selection of aid beneficiaries will take place based on a competitive bidding process and objective criteria that will be specified in the respective funding calls, in line with the framework parameters set by the Funding Guideline that differentiate between type of propulsion system technology and the EU vehicle class. Key criterion per category will be the expected CO2 reductions linked to required funding⁶ (taking account of the planned annual mileage of the vehicle).
- (18) Germany emphasizes that due to limited budget availability, and the expected high number of applications, not all applications can be considered. To strengthen the competitive component of the application process, the German authorities

⁴ The technical terms used in Table I are: Caps on eligible expenditure per propulsion system technology - in Euro (Kappungsgrenze je Antriebstechnologie - in Euro); new vehicles (Neufahrzeuge); retrofitted vehicles (Umrüstungsfahrzeuge); EU vehicle classification (EG-Fahrzeugklasse); Battery Electric vehicles (BEV) (Batterie-elektrischer Antrieb (BEV)); Hydrogen Fuel Cell Electric Drive (H2-BZ), Wasserstoff-Brennstoffzellen-elektrischer Antrieb (H2-BZ) Overhead Hybrid Electric Drive (OH); BEV converted (BEV umgerüstet); H2-BZ converted (H2-BZ) umgerüstet); *applies only to Hybrid Overhead Truck with internal combustion engine; Hybridisation with battery or fuel cell (without internal combustion engine) is regarded as battery or fuel cell truck (*gilt nur für Hybrid-Oberleitungs-LKW mit Verbrennungsmotor; Hybridisierung mit Batterie bzw. Brennstoffzelle (ohne Verbrennungsmotor) gilt als Batterie- bzw. Brennstoffzellen-LKW).

⁵ The application process is open to eligible applicants throughout the EU and sets non-discriminatory criteria regarding the participation under the notified measure.

⁶ Prioritisation logic: CO2 emissions saved per funding Euro.

have included a so-called "*Minimum Ambition Level*" (MAN), which sets a dynamic threshold in funding calls for a minimum level of CO2 emissions saved per funding Euro. Applications that fall below this minimum threshold will not be considered.

2.8. Cumulation

- (19) Aid under the notified measure will not be combined with any other public support.

2.9. Reporting and monitoring and transparency

- (20) The German authorities will annually submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589⁷. They will maintain for at least 10 years from the date of award of the aid, detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and provide them, on written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request. Germany further confirmed to comply with the transparency rules as provided in Section 3.2.7 of the "*Guidelines on State aid for environmental protection and energy*"⁸ ("**EEAG**"). The funding guideline will be published on the central website of the Federal Gazette (www.bundesanzeiger.de) and thus made public. In addition, the funding guideline will be posted in the Federal funding database (www.foerderdatenbank.de) and publicized as part of the public relations work of the Federal Ministry of Transport and Digital Infrastructure and the federally owned program company NOW GmbH. The federal funding advisory service will also provide advice on funding opportunities under this funding guideline.

3. ASSESSMENT:

3.1. Existence of State aid within the meaning of Article 107(1) TFEU

- (21) By virtue of Article 107(1) 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.*"
- (22) The qualification of a measure as State aid thus requires the following conditions to be met cumulatively: a) the measure must be financed through State resources and be imputable to the State; b) it must grant a selective advantage liable to favour certain undertakings or the production of certain goods; c) the measure must distort or threaten to distort competition and d) the measure must have the potential to affect trade between Member States.

⁷ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

⁸ OJ C 200, 28.6.2014, p. 1.

3.1.1. Imputability and involvement of State resources

- (23) The aid is financed from the Federal budget of Germany, and awarded based on a Federal Funding Guideline (see recitals (6) above). The Commission concludes that the measure is financed from State resources and is imputable to the German State.

3.1.2. Existence of a selective advantage

- (24) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention⁹. Article 107(1) TFEU also requires that a measure, in order to constitute State aid, is selective in the sense that it favours “*certain undertakings or the production of certain goods*”.
- (25) By reducing the investment costs for the acquisition or retrofitting of climate-friendly commercial vehicles (*Sub-measure 1*) and for respective EV charging facilities (*Sub-measure 2*) as well as costs for environmental studies (*Sub-measure 3*), an economic advantage is conferred to the aid beneficiaries that could not have been obtained under market conditions, thus conferring an advantage to them.
- (26) The notified measure is selective as individual aid beneficiaries are selected, in conformity with the provisions of the Funding Guideline, within the limits of the available budget.

3.1.3. Impact on competition and on trade between Member States

- (27) In accordance with settled case law¹⁰, for a measure to impact competition and trade it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (28) The notified measure strengthens the position of selected undertakings, especially those active on the commercial road transport sector, in which trade between Member States exists. Therefore, the measure has potentially distortive effects on competition and is likely to affect trade between Member States.

3.1.4. Conclusion regarding existence of State aid

- (29) In light of the above, the Commission concludes that the notified measure involves State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the Measure

- (30) By notifying the planned measure, which has not been put into effect, the German authorities have respected the notification and standstill obligation laid down in

⁹ Judgment of the Court of Justice of 11 July 1996, SFEI and Others, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, Spain v Commission, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

¹⁰ Judgment of the Court of 30 April 1998, C-214/95, Het Vlaamse Gewest v Commission, ECLI:EU:T:1998:77, paragraph 50.

Article 108(3) TFEU.

3.3. Compatibility of the aid measure

3.3.1. Legal basis for assessment

- (31) The notified measure aims at facilitating the development of certain environmentally friendly economic activities, and thus has to be assessed under the relevant provisions of the Commission's "*Guidelines on State aid for environmental protection and energy*"¹¹ ("**EEAG**"). More precisely, *Sub-measure 1* promotes the development of the low emission/emission-free commercial road mobility, especially commercial transport services, by supporting investments to acquire climate-friendly vehicles in a way which allows going beyond the emission standards currently applicable (EURO 6/VI); it thus qualifies as environmental protection investment going beyond Union standards and is therefore to be assessed under section 3.2 of the EEAG. *Sub-measure 3*, concerns aid for environmental studies relating to *Sub-measure 1* and 2, and thus the respective provisions of paragraph 1.2(c) of the EEAG apply. As the EV charging facilities under *Sub-measure 2* are potentially accessible to third parties, they do not fall within the definition of energy infrastructures set out in paragraph (19), point (31), of the EEAG but, in line with earlier decision practice¹², constitute 'road transport infrastructure', which is explicitly excluded from the scope of the EEAG (see paragraph 15(b) of the EEAG), and relevant aid has thus to be assessed in direct application of Article 107(3)(c) TFEU.

3.3.2. Compatibility of aid for climate-friendly commercial vehicles (*Sub-measure 1*)

- (32) The EEAG lay down that State aid for investments "*for going beyond Union standards (including aid for the acquisition of new transport vehicles)*"¹³ can, subject to certain conditions, be declared as compatible with the internal market under Article 107(3)(c) TFEU: to that end the compatibility criteria outlined in the EEAG, and assessed in the following sections have to be met.

3.3.2.1. Contribution to the development of an economic activity

¹¹ Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1–55, valid until 31 December 2021 (see Communication from the Commission concerning the prolongation and the amendments of the Guidelines on Regional State Aid for 2014-2020, Guidelines on State Aid to Promote Risk Finance Investments, Guidelines on State Aid for Environmental Protection and Energy 2014-2020, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, Communication on the Criteria for the Analysis of the Compatibility with the Internal Market of State Aid to Promote the Execution of Important Projects of Common European Interest, Communication from the Commission - Framework for State aid for research and development and innovation and Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, Brussels, 2.7.2020, COM(2020) 4355 final).

¹² Decision SA.54830 (2020/N)–Scottish ultra-low emission bus (SULEB) scheme, C(2020)2077 final; SA.48190 (2017/N)–Support scheme for the acquisition of electric buses for urban public transport, C(2018) 1098 final, as amended by SA. 50776 (2018/N); SA.45694 (2016/N)–PO SEUR Programme for Clean Buses in urban areas C(2016) 6712 final, as amended by SA.50760 (2018/N, C(2018) 3107 final, and prolonged by SA.59016 (2020/N), C(2020) 8220 final.

¹³ EEAG, p. 5, Section 1.2., paragraph (18) (a).

(33) Article 107(3)(c) TFEU provides that the Commission may declare compatible “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”. Therefore, aid, to be declared compatible under that provision of the Treaty, must first facilitate the development of certain economic activity¹⁴ which needs to be clearly identified and defined.

a) Identification of the supported economic activity

(34) *Sub-measure 1* of the notified scheme aims at supporting the development of the low emission/emission-free commercial road mobility, in particular for commercial transport services as companies receive support for their efforts to make the switch to climate-friendly commercial vehicles in order to “green” their fleet. The Commission therefore considers that *Sub-measure 1* of the aid scheme targets “the development of certain economic activities”, in the meaning of Article 107(3)(c) TFEU.

b) The aid facilitating the development of the economic activity

(35) State aid facilitates the development of the economic activity if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity and if the change in behaviour would not occur without the aid¹⁵. As the respective sub-measure allows financing a part of the extra direct investment costs that result from acquiring or retrofitting commercial vehicles with alternative propulsion systems (that are more expensive than vehicles based on standard internal combustion engines) (*Sub-measure 1*), the scheme under *Sub-measure 1* will reduce risks resulting from that transition, and thus induce more stakeholders to switch to climate-friendly commercial vehicles, than would happen in the absence of aid.

(36) The climate-friendly commercial vehicles, targeted by *Sub-measure 1*, offer a higher level of environmental protection than those required by the applicable EU standard (EURO 6/VI) for internal combustion engine based models that would be acquired in the counterfactual situation.

(37) On this basis, the Commission concludes that *Sub-measure 1* of the scheme has an incentive effect, as the aid will help to incentivise the respective operators to replace or retrofit their vehicles with alternatively fuelled or e-charged models, hence providing for the renovation of their fleet and, moreover, contributing to a positive change of behaviour in terms of environmental protection for the economic activity in the emission-free/low emission commercial road mobility sector, in particular commercial road transport.

¹⁴ C-594/18 P *Austria v Commission* EU:C:2020:742 (so-called *Hinkely Point* judgement), paragraphs 19, 20 and 24.

¹⁵ See in that sense Section 3.2.4. of the EEAG, as well as the *Hinkley Point* judgment, paragraph 60.

3.3.2.2. Aid which does not adversely affect trading conditions to an extent contrary to the common interest

a) Positive effects of the aid measure

- (38) Transport, according to the European Green Deal Communication adopted in December 2019, and the European Sustainable and Smart Mobility Strategy of 9 December 2020, accounts for a quarter of Europe's GHG emissions and is the main cause of air pollution in cities. As the notified sub-measure stimulates the uptake of climate-friendly commercial vehicles in Germany, i.e. commercial vehicles with alternative propulsion systems by compensating the net extra costs for the acquisition of such vehicles or retrofitting borne by selected companies following a competitive bidding process (see section 2.7 above), it incentivises operators to switch from diesel-based fuels run commercial vehicles to more climate-friendly commercial ones. It hence contributes to the development of the supported economic activities and, moreover, contributing to a reduction of CO2 emissions. The notified measure thus has also positive effects on the achievement of national and EU CO2 reduction targets, as set out set out in Section 2.1.5 of the European Green Deal.

b) Negative effects of the aid measure

- (39) Paragraph 97 of the EEAG lays down that, when assessing the negative effects of an aid measure, the Commission assesses the impact on competition between undertakings in the product markets affected and on the location of economic activity.
- (40) The Commission considers that the notified sub-measure could distort competition between different actors on the commercial road transport market as the implementation of the scheme will lead to a situation where some aid beneficiaries will receive the aid, namely those who apply and are selected, and some will not, namely those who are not selected, do not apply and/or those who do not qualify. This will strengthen the position of those who have received grants under the notified sub-measure for their investment compared to those who have had to bear themselves the full high investment costs for the acquisition or retrofitting of commercial vehicles with alternative propulsion systems.

(i) Need for State intervention (Section 3.2.2 of the EEAG)

- (41) According to Section 3.2.2 (paragraph 34) of the EEAG, a State aid measure must be targeted at a situation where aid can bring about a material improvement that the market alone cannot deliver, and moreover should be targeted towards situations contributing to an increased level of environmental protection. In order to demonstrate that the measure is effective to achieve the objective, it has to be established that it is necessary to enable the development of an economic activity, which would not have taken place absent the measure, or at least would not have taken place on the same terms.
- (42) The Commission notes that due to the current market situation in the field of alternatively fuelled commercial vehicles, the market is currently not in a position on its own to produce an efficient result with regard to the climate targets (in particular, due to a low demand/high prices for such vehicles).

- (43) In this context, Germany submitted information¹⁶ demonstrating that, (1) at present, commercial vehicles are almost exclusively diesel-powered, resulting in high CO₂ emissions; (2) comparable models with alternative propulsion systems are currently only available on the market at a small-series (class N1¹⁷) or prototype (N2¹⁸, N3¹⁹) stage - so far there is only a small selection of models (especially for N2, N3) - and (3) high additional investment costs are currently required for vehicles with alternative propulsion systems and for the necessary charging/refuelling facilities.
- (44) The Commission therefore agrees with the German view that it is necessary to promote the market ramp-up of alternatively powered vehicles in order to trigger stronger market demands for such vehicles, which will ultimately also increase their availability.
- (45) *Sub-measure 1* of the notified aid scheme therefore aims to further accelerate such ramping-up of commercial vehicles with alternative propulsion systems that would not happen without aid as the cost of environmental damage is not yet sufficiently internalized in companies' profitability calculations that underpin their investment decisions. Without aid, an appropriate level of investments into clean commercial vehicles would only take place (unless running traditional vehicles was prohibited by law) if the environmental costs charged on the undertaking over the lifetime of the investment were estimated to be higher than the additional investment costs minus any other comparative cost savings resulting from the use of a vehicle with an alternative propulsion method. The additional investment cost do not lead, at this stage of the market and price structures to cost savings that would exceed the additional investment cost based on information provided by the German authorities, in particular transport operators are thus not willing to invest in climate-friendly commercial vehicles, as they would not be able to recoup the additional investment costs (see recitals (44) and (43) above). In this context, and based on the submitted information, the Commission notes that existing regulatory measures (e.g. the fleet target values introduced at European level²⁰) are not sufficient to fully compensate for the market entry barriers described above in recitals (43) to (43), especially with regard to the additional investment costs for such vehicles. According to the submitted information, there are also no other relevant support measures in the area of commercial vehicles (in particular, heavy commercial vehicles) within the scope of the Funding Guideline which would be sufficient to remedy the described market situation with regard to the activation and ramp-up of alternative propulsion systems²¹. Moreover,

¹⁶ *Inter alia* in form of an economic efficiency study (“*Wirtschaftlichkeitsuntersuchung*”), source: German authorities.

¹⁷ Vehicles for the carriage of goods and having a maximum mass not exceeding 3.5 t.

¹⁸ Vehicles for the carriage of goods and having a maximum mass exceeding 3.5 t but not exceeding 12 t.

¹⁹ Vehicles for the carriage of goods and having a maximum mass exceeding 12 t.

²⁰ E.g. the Regulation (EU) 2019/1242 setting CO₂ emission standards for heavy-duty vehicles which entered into force on 14 August 2019, OJ L 198, 25.7.2019, p. 202–240.

²¹ E.g. the earlier Federal subsidy programme (Funding Guideline on the promotion of energy-efficient and/or low-CO₂ heavy-duty vehicles in road haulage companies of 22.05.2018, expired at the end of March 2021 (“*Richtlinie über die Förderung von energieeffizienten und/oder CO₂-armen schweren Nutzfahrzeugen in Unternehmen des Güterkraftverkehrs*”). Germany informed that various municipal and state-specific subsidy programmes exist, however targeting only light commercial vehicles, and

alternative technologies, such as electricity-based fuels, are not only subject to such market entry barriers (see recitals (43) to (43) above) but some of them are even technologically not yet ready for series production (see recitals (43) and (44) above). The notified sub-measure is therefore in its design largely technology-open (i.e. support for vehicles with various propulsion systems, not only battery electric) and aimed to enable a wide targeted selection of drive technologies (i.e. pure electrical, plug-in hybrid, or hydrogen/cell-fuelled)) for the supported sectors.

- (46) By granting aid for additional investment costs for the acquisition of commercial vehicles with an alternative climate friendly propulsion system and therefore the reduction of the overall cost disadvantage compared to an acquisition of conventional diesel model, *Sub-measure 1* is thus a necessary tool to significantly decrease CO₂ emissions in commercial road transport.
- (47) In light of the above, the Commission therefore considers that *Sub-measure 1* is necessary to support the targeted economic activity and, moreover, in a manner that increases environmental protection.

(ii) Appropriateness of the aid scheme (Section 3.2.3 of the EEAG)

- (48) Paragraph 40 of the EEAG lays down that aid measures must be appropriate to address the policy objective concerned, and that an aid measure will not be considered compatible with the internal market insofar as the same positive contribution to the common objective is achievable through other less distortive policies or aid instruments.
- (49) Paragraph 42 of the EEAG warns that different measures to remedy the same market failure may counteract each other, referring in particular to situations where an efficient, market-based mechanism has been put in place to deal specifically with the problem of externalities.
- (50) The Commission notes that other aid and non-aid instruments cannot be considered as an alternative to the notified scheme, but solely as a necessary complement. This is in particular because despite regulatory and supportive (tax) measures that are already in place or recently discussed, such as tax concessions, or fleet target values (e.g. EU fleet-wide CO₂ emission targets²²) and joint initiatives of stakeholders for a market ramp-up of alternatively fuelled commercial vehicles, currently the market share of such climate-friendly models, in particular heavy commercial vehicles in the road transport sector, is very limited, which demonstrates that these measures alone are not sufficient.
- (51) As to the appropriate form of aid, the Commission considers that whilst any form of aid can have distortive effects on the market, the aid amounts necessary to

usually only covering a small part of the additional costs, without supporting the investments into needed company refuelling and charging facilities which are considered, by the above study, an essential step for a successful market ramp-up of climate-friendly vehicles.

²² See Regulation (EU) 2019/631 setting CO₂ emission performance standards not only for new passenger cars but also for light commercial vehicles (vans), OJ L 111, 25.4.2019, p. 13–53. It replaced and repealed the former Regulations (EC) 443/2009 (cars) and (EU) 510/2011 (vans). See also Regulation (EU) 2019/1242 setting CO₂ emission standards for heavy-duty vehicles, OJ L 198, 25.7.2019, p. 202–240.

compensate for additional costs to create sufficient incentives to undertakings to change their investment behaviour constitute the most effective means of achieving the targeted objective.

- (52) In this respect, the Commission notes in particular the German arguments that so-called "soft measures", such as an environmental label visible to consumers, appear insufficient, as instruments based on image do not influence consumer behaviour to an extent that would offset the still significant extra costs generated by the acquisition of the respective commercial vehicles.
- (53) Therefore, the Commission considers the notified *Sub-measure 1* appropriate.

(iii) Proportionality of the aid (Section 3.2.5 of the EEAG)

- (54) According to paragraphs 69 and 70 of the EEAG, environmental aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the targeted objective. For measures which are not subject to an individual assessment, aid will be considered to be limited to the minimum necessary if (see paragraph 71 of the EEAG) they do not exceed an aid intensity calculated with regard to the applicable eligible costs, as defined in paragraphs 72 to 76 of the EEAG. Annex I to the EEAG lays down an aid intensity ceiling of 40% (+ 10%/20% for SMEs, for environmental investment aid for undertakings going beyond Union standards or increasing the level of environmental protection in the absence of Union standards. According to paragraph 80 of the EEAG, however, where aid to the beneficiary for environmental protection investments falling under section 3.2 of the EEAG is granted in application of a competitive bidding process which is based on clear, transparent and non-discriminatory criteria, the maximum aid intensity may reach up to 100 % of the eligible costs. In fact, the competitive application process should allow selecting those beneficiaries that address the targeted objective using the least amount of aid, or using it in the most cost effective way, and thus help maximising the effectiveness of the aid scheme, whilst limiting aid amounts (and thus resulting aid-induced distortions of competition) to a minimum.
- (55) In accordance with Annex II of the EEAG, the eligible costs, under the notified *Sub-measure 1*, are the additional costs of a commercial vehicle with alternative propulsion system compared to an equivalent conventional diesel model. Therefore, in line with paragraphs 72 and 73 of the EEAG, the eligible costs consist of the additional investment costs necessary to acquire or retrofit commercial vehicles with climate-friendly alternative propulsion systems. The eligible costs of *Sub-measure 1* are therefore defined in line with the provisions of the EEAG.
- (56) As explained in Section 2.7 the notified measure involves a competitive bidding process that has been specifically designed to be open to a particularly wide range of projects that may contribute to facilitating the development of the economic activities in question. Furthermore, given the large number of potentially eligible undertakings, 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 (see Section 2.7 above). Furthermore, given the large number of potentially eligible undertakings, 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 (see

Section 2.7 above). As the notified maximum aid intensity for *Sub-measure 1* amounts to 80% of the eligible costs, and the individual aid intensities result from a competitive bidding process, the Commission considers that *Sub-measure 1* is proportionate.

3.3.2.3. Avoidance of undue negative effects on competition and trade and balancing test (Section 3.2.6 of the EEAG)

- (57) On the negative side, the Commission notes that the measure might strengthen the competitive position of some economic actors, in particular supported commercial road transport companies, as opposed to potential competitors and thus could distort competition between different actors especially on the commercial road transport market (see recitals (39) and (40) above).
- (58) However, the competitive bidding process, combined with a cap on eligible costs (for *Sub-measure 1*) and aid intensity ceilings (80% for *Sub-measure 1*), already minimises the potential for distortions of competition²³, and the additional cap limiting the maximum aid volume per beneficiary per calendar year allows avoiding situations where aid is concentrated on individual beneficiaries. Furthermore, the Commission notes that as demonstrated by the submitted information²⁴, the measure is unlikely to create additional capacity in a declining market or a market characterised by overcapacity. It is also unlikely to crowd out other market participants or investments by other market participants. Therefore, the measure is designed in a way that limits any distortions of competition as much as possible.
- (59) The Commission also welcomes that *Sub-measure 1* of the aid scheme is designed in a way which is open to different alternative climate friendly systems of propulsion.
- (60) In light of the above, the Commission considers that the negative effects of *Sub-measure 1* on competition and trade are limited to an extent which is not contrary to the common interest, and are outweighed by the positive effects for the low emission/emission-free mobility sector, especially the commercial road transport sector, and the broader environmental positive effects of that the aid will bring about.

3.3.2.4. Transparency (Section 3.2.7 of the EEAG)

- (61) The Commission notes that the German authorities comply with the applicable transparency criteria as set out in Section 3.2.7 EEAG (see Section 2.9 above).
- (62) Furthermore, the German authorities comply with their obligations regarding reporting as they undertook to submit annual reports in accordance with Section 6 of the EEAG.

²³ A rational investor would acquire climate-friendly commercial vehicles only if his net additional costs were compensated by the aid, the prestige of “greening the fleet” for a stronger corporate image that demonstrates environmental awareness and maybe due to reduced operating costs of the alternative propulsion systems’ vehicles.

²⁴ See selection process described in Section 2.7 above.

- (63) Therefore, the Commission considers that the German authorities comply with transparency as well as reporting obligations set out in the EEAG.

3.3.2.5. Conclusion with regard to the compatibility of aid for climate-friendly commercial vehicles (*Sub-measure 1*)

- (64) In light of the foregoing (see Section 3.3.2.1 to Section 3.3.2.4 above) the Commission considers that the aid provided for the acquisition of climate-friendly commercial vehicles (*Sub-measure 1*) going beyond EURO 6/VI standards, fulfils the conditions set up in the EEAG and thus is compatible with the internal market.

3.3.3. *Compatibility of aid for EV charging facilities (Sub-measure 2)*

- (65) As explained in recital (31), the compatibility of *Sub-measure 2* with the internal market is assessed in direct application of Article 107(3)(c) TFEU.
- (66) 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*”. *Sub-measure 2* concerning respective EV charging facilities is compatible with the TFEU if the compatibility criteria assessed in the following sections are met.

3.3.3.1. Contribution to the development of certain economic activity

- (67) Article 107(3)(c) TFEU provides that the Commission may declare compatible “*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*”. Therefore, compatible aid under that provision of the Treaty must contribute to the development of a certain economic activity²⁵.

(a) Identification of the supported economic activity

- (68) *Sub-measure 2* concerning EV recharging facilities constitutes an integral part of the above mentioned environmental protection investment measure identified under *Sub-measure 1* and contributes to the development of climate-friendly road mobility, in particular commercial road transport services as the availability of a geographically comprehensive electric charging infrastructure is essential for the operation of climate-friendly vehicles, in particular in the commercial road transport sector. In this context, the notified sub-measure supports the development the low/emission-free road mobility sector, in particular the commercial road transport sector, as the respective operators are supported in their efforts to “green their fleets” by, besides acquiring climate-friendly vehicles, also installing the respective recharging facilities. The sub-measure thus serves as an additional incentive for operators to “green” their fleet, as it specifically removes another obstacle that would otherwise have an additional negative impact on the acceptance of climate-friendly vehicles, namely as regards EV. For example, especially in road transport, trucks cannot spend several hours at a location outside the company's fleet for recharging, making the possibility of

²⁵ C-594/18 P Austria v Commission EU:C:2020:742, paras 20 and 24.

recharging on the company's premises particularly important. In addition, the possibility of access to third parties leads to a situation where e-vehicle owners can also charge such vehicles at locations other than their own charging facilities, which makes the acquisition of such vehicles even more attractive and thus supports the respective economic activity.

- (69) The Commission therefore considers that *Sub-measure 2* will contribute to the development of certain economic activities as required by Article 107(3)(c) TFEU.

(b) The aid facilitating the development of the economic activity

- (70) In this context, the Commission notes that *Sub-measure 2* first contributes to the development of the production and installation of recharging facilities, by cutting the construction/set-up costs borne by selected operators, following the application procedure and thus incentivising them to install the respective infrastructure. In so doing, the measure also facilitates the acquisition and use by transport operators of climate-friendly commercial vehicles.

- (71) On the basis of the information provided by the German authorities, the Commission understands that without the aid for the procurement of charging infrastructure, operators of commercial vehicle fleets would have little or no incentive to invest, namely in EV, as the investment costs could not be offset by corresponding financial savings. In fact, making aid available to cover part of the costs associated with setting up recharging facilities will eliminate some of the risks borne by the respective operators. It will thus likely incentivise those companies to make the necessary investments or increase their investments in electric charging infrastructure compared to absent the aid.

- (72) The Commission further understands that there is a need for State intervention for the acquisition of low/-free emission commercial vehicles in order to give the necessary incentives to operators active in all sectors supported by the measure, in particular in the commercial road transport sector (see recitals (42) to (46) above). The replacement/retrofitting of conventional models by vehicles with climate-friendly alternative propulsion systems is however only possible if a suitable infrastructure, namely EV charging facilities in the case of EV, are built in parallel.

- (73) On this basis, the Commission concludes that the scheme has incentive effects, as the aid will help to incentivise companies, in particular transport operators, to install respective EV charging facilities providing a (positive) change of behaviour for the economic activity in in the low/-free emission road mobility sector, in particular the commercial road transport sector.

3.3.3.2. Aid which does not adversely affect trading conditions to an extent contrary to the common interest

(a) Positive effects of the aid measures

- (74) The notified sub-measure can be expected to have a range of positive effects in facilitating the development of the economic activity of the low/-free emission road mobility sector, in particular commercial road transport (see reference to the

reasoning provided in relation to the aid for the acquisition of climate-friendly commercial vehicles and environmental studies, at recital (38) above).

- (75) The Commission further notes that the notified *Sub-measure 2* will have positive effects in terms of environmental protection, as it supports respective operators to establish EV charging facilities, thereby actively promoting the development of economic activity in the respective sector in an environmental friendly manner. By facilitating support for EV charging facilities, the measure is expected to encourage more operators to make the switch away from diesel-based fuels run commercial vehicles to low emission/-free commercial ones. Therefore, the eligible activities also directly contribute to environmental protection and thus positively affect climate change mitigation in form of CO₂ emissions and local pollution. In this context, the Commission refers to the reasoning provided in relation to the aid for the acquisition of climate-friendly vehicles (see recital (38) above).
- (76) In addition, this initiative is also in line with Directive 2014/94/EU²⁶ on the deployment of alternative fuels infrastructure, as according to this directive, Member States should develop an appropriate national legal framework for the provision of alternative fuels and related infrastructure, in order to minimise dependence on oil and mitigate the environmental impact of transport²⁷. Member States shall take measures within their national policy frameworks to encourage and facilitate the deployment of publicly accessible and private recharging points in order to ensure the circulation of electric vehicles²⁸.
- (77) The Commission therefore concludes that *Sub-measure 2* also creates incentives for emission reductions in line with the relevant EU objectives such as e.g. clean transport as well as a net-zero GHG emissions by 2050, which constitute positive 'effects'.

(b) Negative effects of the aid measures

- (78) In addition, the Commission needs to assess whether and how the aid measure minimizes the distortions on competition and trade. In this regard, the Commission considers the following principles:
- a) 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;
 - b) appropriateness of the aid measure: the proposed aid measure must be an appropriate policy instrument to address the contribution to an economic activity; and
 - c) 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.

²⁶ OJ L 307, 28.10.2014, p. 1–20.

²⁷ *Ibid*, Article 1.

²⁸ *Ibid*, Article 4 (1) and (3).

(79) The Commission refers to the reasoning provided in relation to the aid for the acquisition of climate-friendly commercial vehicles and environmental studies (see recital (40) above).

(i) Need for State intervention

(80) In order to demonstrate the necessity of the measure, it has to be established that the measure enables the development of an economic activity, which would not have taken place absent the measure, or at least would not have taken place on the same terms.

(81) As demonstrated above (see recitals (42) to (47) above), there is a need for State intervention for the acquisition of climate-friendly commercial vehicles with alternative propulsion systems in particular in the commercial road transport sector. This need for State intervention is linked to the fact that operators who intend to use such vehicles instead of comparable diesel models would not be able to recoup the additional investment cost.

(82) The likelihood of user-side investment in the procurement of climate-friendly commercial vehicles would be significantly reduced if support for the procurement of the charging infrastructure were not provided. In this case, vehicle procurers would face considerable additional costs, which, however, could not be added to the price of the transport service due to the challenging competitive environment.

(83) As outlined above, several factors and risks, in particular the novel and thus uncertain development of the market for alternative fuels for commercial road transport and the associated high investment costs currently prevent operators to make the climate-friendly transition without incentives.

(84) The possibility of receiving support for respective infrastructure will hence increase their interest in investing in such vehicles and contribute to the development of the economic activities related to the supply chain of EV charging facilities, and at the same time in a climate-friendly manner, by contributing to the attainment of the CO₂ emission reduction in that sector in Germany.

(85) In light of the elements detailed in recitals (81) to (84) above, the Commission therefore considers that the notified sub-measure is necessary to support the targeted economic activity and, moreover, in a manner that increases environmental protection.

(ii) Appropriateness of the aid measure

(86) 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 contribute to the development of the targeted economic activities.

(87) 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 contribute to the development of economic activities

and where it can demonstrate the alternative, less distortive, aid instruments would not deliver equally efficient outcomes.

- (88) As regards the form of the aid, the Commission considers, based on the information provided by the German authorities that compared with other types of aid, a direct grant is the most appropriate also for *Sub-measure 2*, as it is likely to be the most effective means to contribute to the development of the construction of the respective alternative fuels infrastructure and the acquisition of climate-friendly commercial vehicles due to its accessibility and little administrative burden (compared to e.g. tax incentives).
- (89) Therefore, the Commission considers that the type of aid chosen is appropriate to address the observed market weaknesses.

(iii) Proportionality

- (90) Under Article 107(3)(c) TFEU, 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.
- (91) The maximum aid intensity for respective EV charging facilities is 80% of the eligible investment costs. Although the present assessment is based on Article 107(3)(c) TFEU, it can be regarded as a strong indication in terms of proportionality that the aid intensity is below the maximum aid intensity which would be applicable on the basis of paragraph 80 EEAG (namely up to 100% as the aid will be granted on the basis of a competitive bidding process, see Section 2.7 above).
- (92) In addition, the Commission refers to the reasoning provided in relation to *Sub-measure 1* (see recital (54) to (56) above).
- (93) Therefore, the Commission considers that *Sub-measure 2* is proportionate.

(c) Avoidance of undue negative effects on competition and trade and balancing test

- (94) The Commission refers to the reasoning provided in relation to *Sub-measure 1* (see recitals (57) to (60) above). The aid under *Sub-measure 2* therefore will not have any undue negative effects on competition and trade.

3.3.3.3. Transparency

- (95) The Commission considers that the German authorities comply with their transparency obligations (see Section 2.9 above).

3.3.3.4. Conclusion with regard to the compatibility of aid for EV charging facilities (*Sub-measure 2*)

- (96) In the light of the above, the Commission considers that *Sub-measure 2* contributes to the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest and is thus compatible with the internal market on the basis of Article 107(3)(c) TFEU.

3.3.4. Compatibility of aid for environmental studies (*Sub-measure 3*)

- (97) As explained in recital (31), *Sub-measure 3* concerns aid for environmental studies linked to *Sub-measures 1* and 2, so that the relevant provisions of the EEAG apply (see paragraph 1.2(c) thereof). According to paragraph 25(a) of the EEAG, Section 3.2 contains the general compatibility conditions also applicable to aid for environmental studies, as such aid is not covered by the more specific sections of Chapter 3.

3.3.4.1. Contribution to the development of an economic activity

- (98) The Commission refers to the reasoning provided in relation to the aid for the acquisition of climate-friendly commercial vehicles (see recitals (33) to (37) above).
- (99) Moreover, aid for environmental studies needs to be directly linked to investments eligible under the EEAG (here costs for the acquisition of climate-friendly commercial vehicles under *Sub-measure 1*²⁹). In this case, it is without prejudice to its compatibility, if following the findings of a preparatory study, the investment under investigation is not undertaken (cf. paragraph 32 of the EEAG).
- (100) With reference to recital (35), State aid facilitates the development of the economic activity if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity and if the change in behaviour would not occur without the aid. As the respective sub-measure allows covering parts of the costs undertakings would have to incur to study and prepare the transition of their fleet of commercial vehicles (including linked problems) to alternative forms of propulsion as well as the set up/construction of EV charging facilities, the scheme under *Sub-measure 3* will reduce risks resulting from that transition, and thus induce more stakeholders to switch to climate-friendly commercial vehicles, than would happen in the absence of aid. In light of the above, *Sub-measure 3* will, besides the uptake of climate-friendly commercial vehicles (*Sub-measure 1*), also support the deployment of EV charging facilities (*Sub-measure 2*) by covering costs for the preparation of related studies as well.
- (101) On this basis, the Commission concludes that *Sub-measure 3* contributes to the development of an economic activity, as the aid will help to incentivise the respective operators to replace or retrofit their vehicles with alternatively fuelled or e-charged models as well as to install related EV charging facilities for electric commercial vehicles, thereby contributing to a positive change of behaviour in terms of environmental protection for the economic activity in the emission-free/low emission commercial road mobility sector, in particular commercial road transport.

3.3.4.2. Aid which does not adversely affect trading conditions to an extent contrary to the common interest

- (102) As regards the positive effects of the measure, the Commission refers to the reasoning provided in relation to the aid for the acquisition of climate-friendly commercial vehicles (see recital (38) above). These positive effects are increased by aid under *Sub-measure 3* covering the costs of feasibility studies that companies would have to carry out in order to prepare the acquisition of vehicles

²⁹ In addition to investment costs for related EV charging facilities which are assessed directly under the Treaty (*Sub-measure 2*).

to be supported under *Sub-measure 1* in order to convert their commercial vehicle fleet as well as costs of feasibility studies on related EV charging facilities supported under *Sub-measure 2*.

- (103) In relation to the negative effects of the aid measure, the Commission refers to the reasoning provided in relation to the aid for the acquisition of climate-friendly commercial vehicles (see recitals (39) to (40) above).
- (104) Further, the Commission considers that Sub-measure 3 is necessary to support the targeted economic activity and, moreover, in a manner that increases environmental protection and refers to the reasoning provided in relation to the aid for the acquisition of climate-friendly commercial vehicles (see recitals (41) to (47) above). The Commission also considers aid under Sub-measure 3 appropriate and refers to the reasoning provided in relation to the aid for the acquisition of climate-friendly commercial vehicles (see recitals (48) to (52) above).
- (105) Further, the Commission considers that the sub-measure is proportionate, as for studies under *Sub-measure 3*, the eligible costs are the costs of the studies, thereby defined in line with the provisions of the EEAG (in particular, paragraph 32 and Annex 2), and as the notified aid intensity for *Sub-measure 3* amounts to 50% of the costs of studies, and thus corresponds to the applicable aid intensity ceiling laid down in Annex 1 of the EEAG. In addition, the Commission refers to the reasoning provided in relation to the aid for the acquisition of climate-friendly commercial vehicles (see recitals (54) to (55) above).

3.3.4.3. Avoidance of undue negative effects on competition and trade and balancing test (Section 3.2.6 of the EEAG)

- (106) The Commission refers to the reasoning provided in relation to *Sub-measure 1* (see recitals (57) to (60) above). The scheme therefore will not have any undue negative effects on competition and trade.

3.3.4.4. Transparency (Section 3.2.7 of the EEAG)

- (107) The Commission notes that the German authorities comply with the applicable transparency obligations and refers to the reasoning provided in relation to the aid for the acquisition of climate-friendly commercial vehicles (see recitals (61) to (63) above).

3.3.4.5. Conclusion with regard to the compatibility of aid for environmental studies (*Sub-measure 3*)

- (108) In light of the foregoing (see Section 3.3.4.1 to Section 3.3.4.4 above) the Commission considers that the aid provided for the promotion of related environmental studies (*Sub-measure 3*), fulfils the conditions set up in the EEAG and thus is compatible with the internal market.

3.3.5. Conclusion with regard to the compatibility of the measure

- (109) The aid provided under the notified scheme (*Sub-measures 1, 2 and 3*) meets the relevant criteria of the EEAG (*Sub-measures 1 and 3*), does not adversely affect trading conditions to an extent contrary to the common interest and is thus compatible with the internal market.

3.3.6. Compliance with other provisions of EU Law

- (110) Based on the submitted information in the notification by the German authorities, the Commission has no reason to consider that the notified measure, or the conditions attached to it (including its financing method when it forms an integral part of it), violates any related provisions of EU law outside the field of State aid (in particular aid for the deployment of EV charging facilities under *Sub-measure 2* follows Art. 1 and 4 (1) and (3) of the Directive 2014/94/EU, see recital (77) above).

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

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Your request should be sent electronically to the following address:

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President