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Subject: State Aid SA.63458 (2021/N) – Germany
Aid for ancillary hydrogen refuelling facilities amending the Federal aid scheme for the acquisition of light and heavy commercial vehicles with alternative, climate-friendly propulsion systems (ex SA.59352)

Excellency,

1. PROCEDURE

- (1) On 18 August 2021, the German authorities notified, according to Article 108(3) of the Treaty on the Functioning of the European Union (the "TFEU"), an amendment to the measure ("existing aid scheme") approved by the Commission on 22 July 2021 under the procedure SA.59352 (2020/N) - DE - Federal aid scheme for the acquisition of light and heavy commercial vehicles with alternative, climate-friendly propulsion systems and ancillary EV charging facilities ("existing decision").
- (2) By letter dated 18 August 2021, the German authorities agreed to waive their rights deriving from Article 342 of the TFEU in conjunction with Article 3 of Regulation 1/1958¹ and to have the present decision adopted and notified in the English language.

¹ 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. DESCRIPTION OF THE EXISTING AID SCHEME (SA.59352 (2020/N))

- (3) The legal basis of the existing aid scheme is the 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.
- (4) The main objective of the existing aid scheme 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 climate targets (reduce greenhouse gas ("GHG") emissions by at least 55% by 2030, compared to the 1990 levels, and achieve GHG neutrality by 2050.
- (5) As set out in Section 2.4, recital (8) of the existing decision, the scheme supports under
 - *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 class, currently EURO 6/VI standards. However, the grant will not exceed the caps on eligible expenditure per propulsion system technology per EU commercial vehicle class as demonstrated in Table I, recital (13) of the existing decision;
 - *Sub-measure 2*: a maximum of 80% of the investment costs for electric vehicles ("EV") charging facilities for use by the undertaking acquiring a 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;
 - *Sub-measure 3*: a maximum of 50% of the costs of environmental studies relating to Sub-measures 1 and 2.
- (6) The total budget of the existing aid scheme amounts to EUR 507.5 million and is financed from the German Federal Budget. The scheme expires after the 31 December 2024.
- (7) As explained in Section 2.7, recital (17) of the existing decision, the selection of aid beneficiaries, and the determination of aid intensities in the individual cases of application of the scheme, will take place based on a competitive bidding process and objective criteria that will be specified in the respective funding calls ("*Förderaufrufe*")².
- (8) Where public access is given to recharging facilities, such access has to be granted on non-discriminatory, transparent terms and conditions of use as well as corresponding to market conditions.

² Up to four funding calls ("*Förderaufrufe*") per year.

3. THE NOTIFIED MODIFICATION TO THE EXISTING AID SCHEME

- (9) By the present notification, the German authorities intend to modify the existing aid scheme exclusively by extending *Sub-measure 2* to include financial support for low carbon hydrogen refuelling facilities on the site of the aid beneficiary, which may be optionally made available for public use (the “notified measure”). All other provisions of the existing scheme, including its budget, remain unchanged, and apply also to the notified measure. Pursuant to Section 1.2 para. 3 of the Funding Guideline, funding for the refuelling infrastructure pursuant to section 2.7.2 for hydrogen fuel cell trucks in accordance with section 2 number 4 of the Electromobility Act “*Elektromobilitätsgesetz*” (EMoG) is subject to the approval by the European Commission.
- (10) Eligibility to the extension of *Sub-measure 2*, provided for by the notified measure, will require the acquisition of a hydrogen-fuelled low-carbon commercial vehicle under *Sub-measure 1*. “Low carbon hydrogen refuelling facilities” are defined for the purpose of the notified measure by the requirement that there must be a mixing ratio of the hydrogen refuelled that consists of at least 50% from renewable energy sources (**RES**). The German authorities explained that compliance with this requirement must be demonstrated in the case of third-party procurement of hydrogen by means of supplier contracts or delivery bills under civil law. In the case of in-house production of the low-carbon hydrogen, suitable proof of the production process must be provided, for example proof of the operation of an in-house electrolysis plant fed with renewable electricity.
- (11) In view of the ongoing revision of the “*Guidelines on State aid for environmental protection and energy*”³ (**EEAG**), Germany confirmed that it will align the notified measure with the provisions of the future “*Climate, Energy and Environmental Aid Guidelines*” (**CEEAG**)⁴ which will replace the EEAG, after their adoption, but not later than 30 June 2022.
- (12) Germany further confirmed that the planned support for the aforementioned so-called low carbon hydrogen refuelling facilities would not lead to any lock-in effects with respect to the use of carbon-intensive forms of hydrogen supply from the date of the Commission’s approval until the date of alignment of the planned measure with the future CEEAG.
- (13) The German authorities also confirmed that their commitments, set out in the decision approving the existing aid scheme, will be fully applicable to *Sub-measure 2*, as amended by the notified measure.

³ OJ C 200, 28.6.2014, p. 1.

⁴ The Commission has published for consultation the draft revised Guidelines on State aid for environmental protection and energy 2014-2020, available at: https://ec.europa.eu/competition-policy/public-consultations/2021-ceeag_de.

4. ASSESSMENT:

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

- (14) A measure constitutes State aid in the meaning of Article 107(1) TFEU if it is “*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.*”
- (15) Therefore, in order to determine whether the scheme at stake contains a State aid element within the meaning of Article 107(1) of the TFEU, it must be cumulatively established that 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.
- (16) In the decision approving the existing aid scheme, in Sections 3.1.1 to 3.1.4, at recitals (23) to (29), the Commission found that the scheme is financed through State resources which are imputable to the Member State. The Commission also found that the respective undertakings, which are awarded aid under the scheme, benefit from a selective advantage, which strengthens their competitive position. The same findings apply to *Sub-measure 2*, as amended by the notified measure.

4.2. Legality of the measure

- (17) By notifying the amendment of the measure, which has not been put into effect (see recital (9)), the German authorities have respected the notification and standstill obligation laid down in Article 108(3) TFEU.

4.3. Compatibility of the aid

- (18) The Commission finds that the notified measure, modifying the scope of *Sub-measure 2*, does not affect the compatibility assessment conducted by the Commission pursuant to Section 3.3 of the existing decision with respect to *Sub-measures 1* and *3*, and the initial scope of *sub-measure 2*.
- (19) In the following, the Commission will assess whether the conclusions on the compatibility of the initial *Sub-measure 2*, provided under Section 3.3.3. (Compatibility of aid for EV charging facilities (Sub-measure 2)) of the existing decision, are pertinent also for its notified amendment.

4.3.1. Contribution to the development of an economic activity

- (20) In Section 3.3.3.1. of the existing decision, the Commission concluded that the aid granted under *Sub-measure 2* will contribute to the development of certain economic activities as required by Article 107(3)(c) TFEU as it 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. The Commission notes that the present extension to hydrogen refuelling facilities equally supports the

development of the low or 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 hydrogen refuelling facilities.

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

4.3.2.1. Positive effects

- (21) In Section 3.3.3.2 of the existing decision, the Commission concluded that *Sub-measure 2* can be expected to have a range of positive effects in facilitating the development of the economic activity of the low or free emission road mobility sector, in particular commercial road transport as it supports the respective operators to establish EV charging facilities, thereby actively promoting the development of economic activity in the respective sector, moreover in an environmental friendly manner. By now facilitating support for other types of refuelling sources, namely hydrogen refuelling points, the amended sub-measure is expected to encourage as many, if not more, operators to switch from diesel-fuelled commercial vehicles to low or free emission commercial vehicles.
- (22) The extension of the scope of sub-measure 2 stays also in line with Directive 2014/94/EU⁵ 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 transport⁶. Member States which decide to include hydrogen refuelling points accessible to the public in their national policy frameworks shall also ensure that, by 31 December 2025, an appropriate number of such points are available, to ensure the circulation of hydrogen-powered motor vehicles⁷.
- (23) Moreover, the Commission positively notes that financial support for hydrogen refuelling facilities require so-called low carbon hydrogen with a mixing ratio of the hydrogen refuelled that consists of at least 50% hydrogen from RES refuelling facilities on the site of the aid beneficiary (see recital (10)), which will facilitate reaching the aforementioned climate targets (see recital (4) of the present decision), moving towards zero pollution.
- (24) In this regard, the Commission notes that Germany committed to align the aid scheme in its modified form to the provisions of the future CEEAG after its adoption, and by 30 June 2022 the latest (see recital (11)).

⁵ OJ L 307, 28.10.2014, p. 1–20.

⁶ *Ibid*, Article 1.

⁷ *Ibid*, Article 5 (1).

- (25) Based on the submitted information, in particular references to the German national hydrogen strategy⁸ and the provided commitment (see recital ((12) of the present decision) as well as the aforementioned 50% RES requirement for supported hydrogen refuelling facilities (see recital ((10) of the present decision), the Commission further concludes that the notified support for hydrogen refuelling facilities will not lead to any lock-in effects with respect to the use of carbon-intensive forms of hydrogen supply from the date of the Commission's approval until the date of alignment of the planned measure with the future **CEEAG**.

4.3.2.2. Negative effects

- (26) In Section 3.3.3.2 (b) of the existing decision, the Commission assessed potential negative effects of *Sub-measure 2*. Its extension to hydrogen refuelling facilities does not change the initial assessment as the risk remains that *Sub-measure 2*, as amended by the notified measure, potentially distorts competition between different actors on the commercial road transport market due to the fact that its implementation 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, who do not apply or who do not qualify.

(a) Need for State intervention

- (27) As stated in recitals (80) to (83) of the existing decision, the Commission concluded that *Sub-measure 2* is necessary to promote the targeted economic activity, in a way that enhances environmental protection. The possibility to receive aid also for the corresponding infrastructure for hydrogen-fuelled commercial vehicles supported under *Sub-measure 1* should increase the interest of the respective operators to invest in such models and thus lead to the development of economic activities related to the supply chain for low carbon hydrogen and hydrogen powered vehicles, thus continuing to contribute to the achievement of CO₂ emission reductions in this sector in Germany.

(b) Appropriateness of the aid measure

- (28) In recitals (86) to (89) of the existing decision, the Commission concluded that granting of aid under the respective Sub-measure for the construction of EV charging facilities used by the supported electric commercial vehicles under *Sub-measure 1* is an appropriate tool compared to other policy instruments. Furthermore, the aid instrument chosen, i.e. direct grant, as opposed to a loan or tax credit, is coherent with the market failure that the existing Sub-measure aims to address. The notified amendment to extend aid to hydrogen refuelling facilities does not change the Commission's assessment carried out under the existing decision.

⁸ The German government stipulates in the National Hydrogen Strategy that only hydrogen produced on the basis of renewable energies ("green" hydrogen) is sustainable in the long term. Therefore, it is the goal of the German government to use green hydrogen, to support its rapid market ramp-up and to establish corresponding value chains.

(c) Proportionality

- (29) In recitals (90) to (93) of the existing decision, the Commission concluded that the aid granted for the funding of the supporting facilities under *Sub-measure 2* is proportionate, as the scheme provides for a number of safeguards ensuring that aid granted under it is limited to the minimum necessary to achieve the scheme's objective, in particular, the notified maximum aid intensity for *Sub-measure 2* of 80% of the eligible costs, and the determination of individual aid intensities through a competitive bidding process. As these safeguards apply also to the extension of *Sub-measure 2* to hydrogen refuelling facilities, the conclusion in the existing decision is not altered.

4.3.2.3. Avoidance of undue negative effects on competition and trade and balancing test

- (30) In recital (94) of the existing decision, the Commission concluded that *Sub-measure 2* will not have any undue negative effects on competition and trade. This assessment remains valid for the notified amendment in form of extending *Sub-measure 2* to hydrogen refuelling facilities covered by this decision.

4.3.3. Transparency

- (31) The Commission notes that the German authorities confirmed that they will continue to comply with their transparency obligations set out in Section 6.7 of Annex of Regulation 2015/2282, as well as Section 3.2.7 of the EEAG (see Section 2.9 of the existing decision).

4.3.4. Conclusion with regards to the compatibility of the modified *Sub-measure 2*

- (32) The Commission notes that with respect to the notified extension of *Sub-measure 2* of the existing aid scheme, the German authorities commit to respect all compatibility conditions laid down in the decision approving the existing aid scheme. The Commission further notes that, given that the only modification to the existing scheme is a modification to *Sub-measure 2*, this amendment does not change the compatibility assessment as carried out by the Commission in the decision approving the other sub-measures of the existing aid scheme.

5. CONCLUSION

- (33) The Commission finds that the aforementioned amendment to the existing aid scheme as approved by Commission decision SA.59352 (2020/N) 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:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President