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C(2022) 9395 final

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**Subject: State Aid SA.104749 (2022/N) – Germany
Aid scheme for High Power Charging infrastructure for electric vehicles in Germany**

Excellency,

1. PROCEDURE

- (1) By letter dated 11 September 2021 and subsequent communications¹, third parties informed the Commission about a planned measure to finance the deployment of a network of High Power Charging ('HPC') infrastructure for electric vehicles in Germany. On 16 September 2021, the Commission services forwarded this information to the German authorities requesting information on the proposed measure. On 23 December 2021, the German authorities submitted responses to issues raised by the third parties. Further exchanges between the Commission

¹ Those include letters of 22 November 2021, 15 December 2021, 20 January 2022, 19 and 23 April 2022, 25 June 2022, and 4 October 2022.

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services and the third parties took place between September 2021 and December 2022.

- (2) On that basis, the German authorities initiated pre-notification contacts, in the context of which they submitted information on the planned measure, including a comprehensive description of the measure and updated documents by emails of 13 and 28 October and 18 November 2022.
- (3) On 24 November 2022, the German authorities notified a scheme to support the deployment of HPC infrastructure for electric vehicles in Germany (the ‘notified measure’ or the ‘notified scheme’).
- (4) The Federal Republic of Germany agrees to exceptionally waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958² and to have the present decision notified and adopted in English.

2. DESCRIPTION OF THE NOTIFIED MEASURE

2.1. Background and objective of the notified measure

- (5) Under Directive 2014/94/EU on the deployment of alternative fuels infrastructure³, Member States are required to develop an appropriate national legal framework for the provision of alternative fuels and related infrastructure.
- (6) In the European Green Deal Communication⁴, the Commission set the objective of having at least one million publicly accessible recharging and refuelling points in place by 2025. Together with other measures, reducing greenhouse gas emissions in transport should contribute to reducing net greenhouse gas emissions at least 55% by 2030 compared to 1990 levels⁵, and to achieving no net emissions of greenhouse gases by 2050⁶. Those targets have been enshrined in the European Climate Law⁷.

² Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

³ Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions ‘The European Green Deal’, COM(2019) 640 final.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Stepping up Europe’s 2030 climate ambition Investing in a climate-neutral future for the benefit of our people’, COM(2020) 562 final.

⁶ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions ‘The European Green Deal’, COM(2019) 640 final.

⁷ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (OJ L 243, 9.7.2021, p. 1).

- (7) The ‘Fit for 55’ package of legislative proposals supports the achievement of the targets referred to in recital (6) and aims to put the Union on track to climate neutrality by 2050. As part of the ‘Fit for 55’ package, the Commission put forward a proposal for a Regulation on the deployment of alternative fuels infrastructure⁸, which includes the setting of minimum targets for Member States for the deployment of publicly accessible recharging infrastructure. Also part of the ‘Fit for 55’ package is a proposal for a Directive revising the European Emissions Trading System (‘EU ETS’)⁹. The Commission proposed a new EU ETS for buildings and road transport to complement Member States’ national emissions reduction targets under the ‘Effort Sharing Regulation’¹⁰ and to address growing emissions from those sectors¹¹. However, this new EU ETS would cover upstream emissions from fuels used in buildings and road transport and would hence regulate fuel suppliers rather than end-users. It has not been adopted yet and would only be applicable as of 2026. None of those legislative initiatives set specific requirements or obligations on any individual undertakings, but only on the Member States themselves.
- (8) In its Climate Protection Programme 2030¹² and the Federal Climate Protection Act (‘KSG’)¹³, Germany established the ambition to reduce its greenhouse gas emissions by 65% by 2030 compared to 1990 and to become climate-neutral as early as 2045. In order to achieve this, Germany set ambitious greenhouse gas emissions reduction targets for individual sectors, including transport.
- (9) The German authorities explained that the transport sector is the third-largest cause of greenhouse gas emissions in Germany. In 2019, the transport sector

⁸ Proposal for a Regulation on the deployment of alternative fuels infrastructure on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council, 2021/0223 (COD).

⁹ Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757 (2021/0211 COD).

¹⁰ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).

¹¹ Furthermore, as of 1 January 2021, the German authorities introduced a national fuel emission trading scheme for transport and heat in buildings and installations not covered by the EU ETS. One of the aims of this national fuel emission trading scheme is to contribute to the achievement of climate targets in the transport sector by encouraging users to switch to electric vehicles. However, the German authorities explained that the national fuel ETS is not a suitable instrument since it does not cover recharging infrastructure.

¹² ‘Klimaschutzprogramm 2030 der Bundesregierung zur Umsetzung des Klimaschutzplans 2050’, available online at: [Klimaschutzprogramm 2030 der Bundesregierung zur Umsetzung des Klimaschutzplans 2050](#). The Climate Protection Programme 2030 is a comprehensive package of measures aimed at meeting the target of reducing greenhouse gases by 55% compared to the 1990 level by 2030, with which the German government has created a new level of commitment in German climate policy.

¹³ ‘Bundes-Klimaschutzgesetz – KSG 2021’, available online at: <https://www.gesetze-im-internet.de/ksg/>. The KSG increases the level of ambition of Germany's greenhouse gas reduction target for 2030 from 55% to 65% compared to 1990 levels. By 2040, greenhouse gases must be reduced by 88% compared to 1990, and greenhouse gas neutrality must be achieved by 2045.

caused a share of 20% of Germany's total greenhouse gas emissions. In the same year, motorised road traffic alone was responsible for 94% of greenhouse gas emissions in the transport sector.

- (10) According to the German authorities, a consistent switch to zero-emission vehicles, namely to electric vehicles, is necessary to reduce transport-related emissions. In the coalition contract of December 2021, Germany committed that 15 million electric vehicles would be deployed on German roads by 2030. The German authorities note that, while the number of electric vehicles is growing significantly¹⁴, as of 1 January 2022, the market penetration rate of electric passenger cars is extremely limited, as they account for approximately 1.3% of the passenger cars registered in Germany¹⁵.
- (11) According to the German authorities, however, the transition will only succeed if the required recharging infrastructure is available. HPC infrastructure is necessary to allow owners of electric vehicles to charge their vehicles swiftly and, consequently, to render the use of electric vehicles more popular. The German authorities explained that the existing HPC infrastructure (i.e. such with power output of at least 150 kW)¹⁶ is not sufficient to provide an adequate network coverage in Germany¹⁷. As of October 2022, recharging points with more than 150 kW, which allow for recharging within 15 to 30 minutes, account for only 7.7% of all existing recharging points in Germany. A demand planning made by Germany showed that at least 33 000 HPC points would be necessary by 2025 and 80 000 by 2030¹⁸ (recital (36)).
- (12) With the notified measure, Germany intends to contribute to the attainment of the targets and objectives referred to in recitals (6) and (8) above, by establishing a backbone of essential HPC infrastructure for electric vehicles in urban, suburban and rural areas in Germany, the so-called *Deutschlandnetz 'Regionallose'*. More precisely, the German authorities plan to fund the deployment of publicly accessible HPC infrastructure in approximately 900 locations in those areas, which would provide an adequate level of accessibility for users as well as a level of services aligned with the type and quality of services offered to conventional vehicles' drivers (e.g., essential amenities, sufficient lighting). In total, the notified measure is estimated to enable the deployment of approximately 8 500

¹⁴ The number of electric vehicles in the 2021 stock increased by 100.1% compared to the previous year.

¹⁵ The German authorities indicate that there were over 49 million passenger cars in Germany, of which only 618 460 passenger cars were electric. See: https://www.kba.de/DE/Presse/Pressemitteilungen/Fahrzeugbestand/2022/pm10_fz_bestand_pm_komplett.html. The German authorities – and notably the National Centre for Charging Infrastructure – commissioned an independent market study that concluded that approximately 15 million electric vehicles could be expected to come into circulation in Germany by 2030 (recital (36)).

¹⁶ Recharging infrastructure can be divided into three main categories: AC (alternating current) recharging up to approx. 22 kW, DC (direct current) recharging up to approx. 150 kW and HP (high power) recharging from approx. 150 kW.

¹⁷ According to the Federal Network Agency, as of 1 October 2022 there were about 71,000 publicly accessible recharging points in operation, of which about 5,500 have a charging capacity of at least 150 kW.

¹⁸ National Centre for Charging Infrastructure (Nationale Leitstelle Ladeinfrastruktur), Number of Charging Infrastructure in 2022, 2025 and 2030 https://www.now-gmbh.de/wp-content/uploads/2020/11/Studie_Ladeinfrastruktur-nach-2025-2.pdf.

HPC points by 2025, to contribute to Germany's demand planning mentioned in recital (11) above.

2.2. National legal basis

- (13) The legal basis for the notified measure is the German Act on the Provision of Comprehensive Fast Charging Infrastructure for Pure Battery Electric Vehicles ('national Fast Charging Act') of 25 June 2021¹⁹. The national Fast Charging Act obliges the German Ministry for Digital and Transport to ensure the provision of a nationwide and demand-oriented HPC infrastructure²⁰. The national Fast Charging Act covers two separate measures within the *Deutschlandnetz* project: the *Deutschlandnetz 'Regionallose'* and a measure targeting the deployment of recharging infrastructure in 200 locations on German motorways (*Deutschlandnetz 'Autobahnlose'*), which is outside the scope of the notified scheme.
- (14) Individual aid under the scheme will be governed by contracts to be concluded between the successful applicants and the German authorities following the notification of the Commission decision, approving the notified scheme. Aid under the scheme will only be granted through those contracts.

2.3. Administration of the notified measure

- (15) The notified scheme is administered by the German Federal Ministry for Digital and Transport.

2.4. Aid beneficiaries

- (16) The notified measure is open to undertakings with experience in the construction and operation of recharging infrastructure (recital (49) and footnote 54).
- (17) The beneficiaries will be selected following a competitive bidding process, as described in Section 2.7.4.
- (18) The German authorities indicate that in order to be eligible for aid under the notified measure, undertakings must not be undertakings in difficulty, as defined in the Commission Guidelines on State aid for rescuing and restructuring non-financial enterprises in difficulty²¹. Moreover, undertakings must not be subject to an outstanding recovery order by a previous Commission decision, declaring aid illegal and incompatible with the internal market.

¹⁹ German Act on the Provision of Comprehensive Fast Charging Infrastructure for Pure Battery Electric Vehicles, Federal Law Gazette (Bundesgesetzblatt Jahrgang), Volume 2021 I Nr. 37 of 30.06.2021, p. 2141, available online at <https://www.gesetze-im-internet.de/schnelllg/BJNR214100021.html>.

²⁰ § 3 paragraph 1. To fulfil these objectives, § 3 para. 5 of the national Fast Charging Act states that the 'Federal Ministry for Digital and Transport [...] shall select companies in one or more award procedures in accordance with the provisions of Part 4 of the Act against Restraints of Competition [...]'. These are to be commissioned to 'provide the fast-charging locations during a specified period of time'.

²¹ Communication from the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.07.2014, p. 1).

2.5. Form of aid and level of support

- (19) Under the notified measure, the German authorities will grant aid in the form of direct grants and recurring payments, including (i) a one-off payment for grid connection costs, (ii) a one-time payment for the installation of each HPC point and (iii) a yearly remuneration for the operation of each HPC point. The German authorities argue that direct grants are the most suitable aid instrument in order to achieve the objective of the measure with the greatest possible effect within shortest possible time. Other aid instruments, such as loans, guarantees or tax incentives, would, according to Germany, not be appropriate to incentivise beneficiaries to undertake the high investment costs and would involve a higher administrative burden.
- (20) In order to receive support, the beneficiaries must submit a written application²² to participate in the competitive bidding process (Section 2.7.4) before the start of works²³ on the projects. Moreover, works on the projects will only start after the award of the contract in the context of the competitive bidding process.

2.6. Budget and duration of the notified measure

- (21) The total budget for the notified scheme is approximately EUR 1.8 billion. The notified scheme will be financed through Germany's general budget.
- (22) The German authorities will grant the aid under the notified measure in 2023, once the tender procedure has been completed. The granted aid will be disbursed through subsequent payments for the construction and operation of the HPC infrastructure throughout the duration of the contracts, which have a planned duration of eight years.

2.7. Basic elements of the notified measure

2.7.1. Reasons for the public support for the deployment of HPC infrastructure

- (23) The notified measure provides support for the deployment of publicly accessible HPC infrastructure in 900 locations in Germany²⁴. The HPC infrastructure supported under the notified measure is a fixed infrastructure that supplies electricity to vehicles falling within the definition of "clean vehicle" as set out in point 19(20)(b)(i) and (ii) of the CEEAG.

²² Any application must at least include the applicant's name, a description of the project or activity, including its location, and the amount of aid needed to carry it out.

²³ 'Start of works' means the first firm commitment (for example, to order equipment or start construction) that makes an investment irreversible. The buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment.

²⁴ The aid under the notified measure may cover also the extension of existing infrastructure through the deployment of additional recharging points.

- (24) According to the German authorities, in the absence of the aid, undertakings would not invest in the deployment of an adequate HPC infrastructure network coverage in Germany.
- (25) First, the German authorities explain that, on the one hand, costs of investing in the deployment of recharging infrastructure are high (Section 2.7.5) and on the other, the limited share of electric vehicles in circulation in Germany does not allow undertakings to rely on the expected utilisation rate necessary to recoup the investment (recital (10)).
- (26) Second, the German authorities state that, in order to establish the necessity of the notified measure, they gathered information via consultations as well as market studies (Section 2.7.3).
- (27) Third, the German authorities explain that there are no Union standards in place that require undertakings to deploy publicly accessible recharging infrastructure for electric vehicles (recital (7)).

2.7.2. *Eligible projects*

- (28) Aid will be granted under the notified measure on the basis of a competitive bidding process (Section 2.7.4). All successful bidders of the competitive bidding process will be subject to a contractual binding obligation to construct and operate the HPC points for eight years, in line with the conditions described in recital (31). In return, they will receive compensation for constructing and operating the HPC infrastructure in line with their bid.
- (29) The German authorities explain that the notified measure is designed to ensure that competition can take place in the market for recharging services. First, for the purpose of the competitive bidding process, the German territory is divided into (i) six regions and (ii) 23 lots²⁵, with a view to ensuring ample participation in the tender, including by small and medium-sized enterprises ('SMEs'). Second, while only one contract would be awarded for each lot, each region comprises three to five lots, which overlap geographically (see figure 1). That design ensures that in any given region there will be at least three beneficiaries present, thus maintaining a sufficient level of competition within the region (given that the lots are spread over the regions and overlap within a given region, there will always be competition within a region and adjacent regions). Third, to avoid the creation or strengthening of market power positions, the notified measure provides that any one bidder can be awarded a contract for maximum (i) one lot in any of the six regions and (ii) three lots in total. According to the German authorities, this allocation method, together with the methodology for selecting the locations of the stations (i.e. in areas where there is no or not enough existing infrastructure to meet demand) recharging would ensure that the measure does not unduly distort competition.

²⁵ There will be three to five lots in each region (see figure 1, where the lots are represented as a certain number of lots in a specific color). A lot allows for the placing of recharging stations in an overlapping manner with the other lots in the same region.

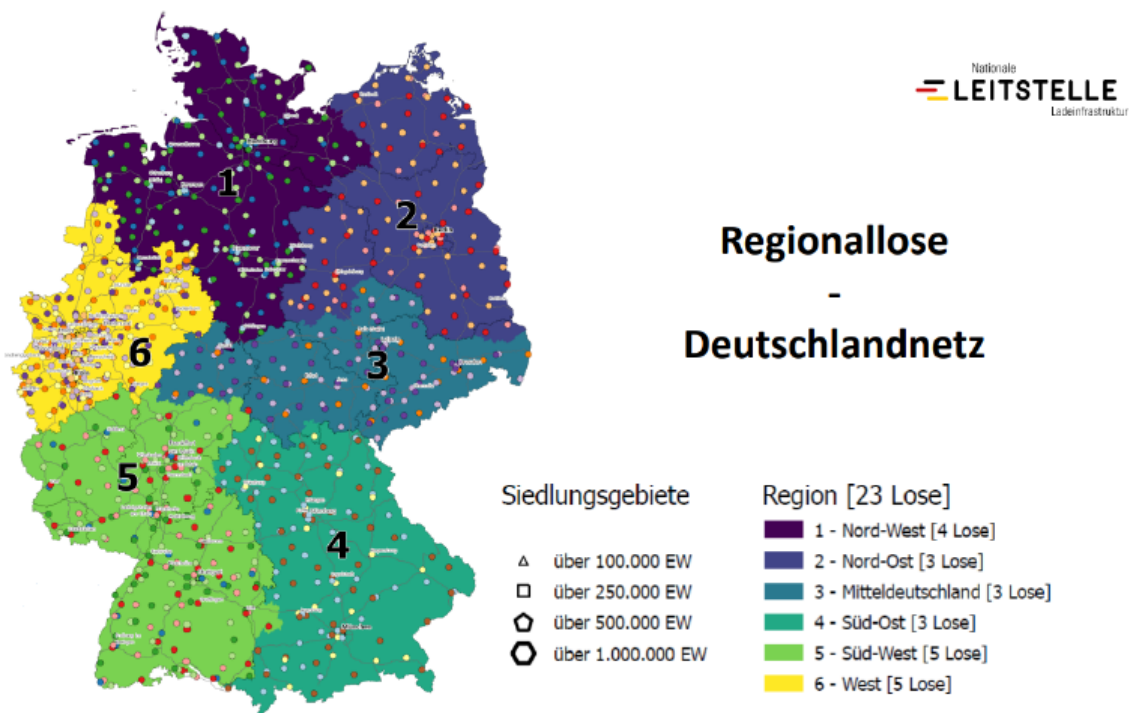


Figure 1 – Overview of the six regions and the 23 lots as defined under the notified measure

- (30) The 23 lots consist of predefined “search areas²⁶” in which the HPC infrastructure will be built within a radius of around two kilometres. The applicants have to identify suitable locations within the search areas (approximately 900 locations in total) for a multitude of (between 4 and 16) HPC points. The deployment is not limited to new locations but can also concern the extension of existing infrastructure through the deployment of additional recharging points.
- (31) In order to be eligible for support, projects have to fulfil a number of general conditions:
- (a) The construction must take place in the search areas defined by the German authorities;
 - (b) The HPC infrastructure must have a technical capacity of at least 300 kW, which allows simultaneous charging with 200 kW;
 - (c) The site location has to be attractive for customers (for example, it must provide for essential amenities, sufficient lighting or [...](*), a canopy);
 - (d) The beneficiaries must guarantee continuous availability (24/7) of the HPC infrastructure to the public;
 - (e) The prices charged must, according to the contract, be reasonable and in line with market prices. The German authorities will monitor the fulfilment of this condition and evaluate the level of market transparency

²⁶ Each search area is a dot in Figure 1.

* Confidential information.

and the competitive impact of the new HPC infrastructure supported by the notified measure. To this end, beneficiaries will have an obligation to provide information to the German authorities on their tariffs and notify them of any planned changes in the latter. If prices are significantly higher (by more than 10%) than those of structurally comparable providers in consideration of the long-term marginal costs for the development of comparable recharging infrastructure²⁷, the German authorities might report the matter to the national competition authority²⁸;

- (f) The HPC infrastructure must be accessible on non-discriminatory terms to electro-mobility service providers (EMSPs) and end users in case of ad-hoc recharging, including in relation to tariffs, authentication and payment methods and other terms and conditions of use;
- (g) The access charges paid by EMSPs to the charge point operator ('CPO'²⁹) for recharging sessions by EMSPs' customers must be reasonable and in line with market conditions;
- (h) CPOs cannot unduly discriminate between prices charged to end users for ad hoc recharging and prices charged to electro-mobility service providers for access to the infrastructure; such prices may differ only if this can be objectively justified³⁰;
- (i) Beneficiaries have to pay back to the State an amount of EUR [0.00 – 0.50] per kWh delivered, [...] ³¹. This so called 'balancing component'³² is regularly reviewed³³ and aims at ensuring that the beneficiaries are not

²⁷ To determine whether the prices are “*structurally comparable providers in consideration of the long-term marginal costs for the development of comparable recharging infrastructure*” the German authorities will take into account, in particular, the following criteria: (i) whether the same recharging infrastructure is operated (i.e. publicly-accessible HPC infrastructure), (ii) whether the same user group is addressed (i.e. cars and light commercial vehicles) and (iii) whether there is geographical proximity (in order to take into account the costs of the different network operators).

²⁸ The national competition authority carries out price abuse control for companies with market power. If the authority comes to the conclusion that prices are not in line with the market, it can issue an abuse order or a price reduction order.

²⁹ A Charging Point Operator is the entity responsible for the management and operation of a recharging point, which provides a recharging service to end users, including in the name and on behalf of an electro-mobility service provider.

³⁰ By way of example, an objective reason may exist if one of the recharging methods involves increased billing costs, e.g. for credit card payments, or if costs arise for a roaming platform.

³¹ In order to counteract the uncertainty about the cost development, the German authorities will [...] examine whether the level of EUR [0.00 – 0.50] per kWh [...] is appropriate in view of the development of the energy markets.

³² The balancing component does not apply if the construction or operation of the HPC infrastructure has not started yet.

³³ For the purpose of determining the balancing component, the German authorities explained that the following parameters were considered: (i) observable market prices for recharging services; (ii) greenhouse gas certificate revenues linked to the sale of certificates; (iii) electricity procurement costs; and (iv) a buffer for costs components that are not directly observable such as billing or structuring electricity procurement. The high and fluctuating electricity procurement costs were taken into account. The balancing component is without prejudice to the fulfilment of the condition set out in set out in recital (31)(e) regarding market prices.

incentivised to set tariffs based only on short-term variable costs (which could be sufficient if investment costs were covered through the granted aid upfront), as this could crowd out any investments outside the tender which – without financial support – would need to recover investment costs through mark-ups on short-term variable costs; and

- (j) The German authorities confirm that any concession or other entrustment to a third party to operate the supported recharging infrastructure must be awarded on a competitive, transparent and non-discriminatory basis, having due regard to the Union public procurement rules, where applicable.

2.7.3. *Preliminary market analysis and consultations*

- (32) The German authorities explain that in the context of preparing the notified measure they gathered information via market consultations, as well as market studies.
- (33) First, in order to determine whether a call for tenders for HPC infrastructure was necessary at all, the German authorities had to estimate how many electric vehicles could be expected in the coming years. For this reason, in 2020 the Federal Government consulted German and international car manufacturers to obtain estimates on the expected electric vehicles' sales in the next 10 years. On this basis, it was estimated that approximately 15 million electric vehicles could be expected to come into circulation in Germany by 2030³⁴. This finding confirmed the need for a call of tenders for HPC infrastructure.
- (34) Second, in order to determine the number of additional HPC infrastructure necessary by 2025, the German authorities conducted the assessment of the existing HPC infrastructure based on the official database of the Federal Network Agency³⁵, in which all public recharging infrastructure in Germany must be reported³⁶. On that basis, the German authorities (i) established that the existing HPC infrastructure in Germany is not sufficient to provide an adequate network coverage, as only 5 395 HPC points were in operation in August 2022, compared to 33 000 HPC points expected to be needed by 2025, and 80 000 points expected to be needed by 2030 (recital (11)); and (ii) were able to identify areas that completely lack HPC infrastructure and areas where HPC points already exist but are insufficient to address the anticipated demand.

³⁴ This estimate is reflected in study (pages 8 and 48-49) available at: <https://nationale-leitstelle.de/wp-content/pdf/broschuere-lis-2025-2030-final-web.pdf>.

³⁵ The figures from the database of the Federal Network Agency formed the basis for the location of the search areas and the number of recharging points per search area at the beginning of the preparatory phase of the tender. Immediately before publication of the tender, i.e. on 4 October 2021, they were retrieved again and the number of recharging points in some search areas was corrected downwards. This process was repeated before the call for indicative tenders in March 2022. The procedure was described in the tender documents published with the invitation to tender.

³⁶ The only exceptions are individual locations where the recharging infrastructure operator has not consented to the publication of the geo-coordinates of its recharging infrastructure. As of 1 October 2022, these recharging points represented 5.83% of the registered recharging points.

- (35) For the best possible consideration of the existing and planned infrastructure the German authorities assumed, on the basis of the assessment referred to in recital (34) and of the market consultations carried out, that the number of already existing HPC recharging points (i.e. with a recharging capacity of at least 150 kW) will be increased by 50 per cent in the existing locations.³⁷ If this assumption leads to at least 50 per cent of the recharging point demand calculated for 2025 being achieved without the measure, the German authorities would exclude an area from the tender³⁸. For the tender, the sizes of the recharging hubs were derived from the calculated recharging demand and categorised in four categories and assigned to each search area: small (S) (4 recharging points³⁹), medium (M) (8 recharging points), large (L) (12 recharging points) and extra-large (XL) (16 recharging points)⁴⁰. Search areas could be assigned a different category (S, M, L or XL) prior to the call for final bids, for instance to reduce the number of recharging points to be funded by the notified measure so as to consider recharging infrastructure that was built between the time of the initial consultation of the official database of the Federal Network Agency and the moment of the call for final bids.
- (36) Third, taking into account the results of the consultation with the car manufacturers (recital (33)), the German authorities – and notably the National Centre for Charging Infrastructure – commissioned an independent market study to determine the status of existing recharging infrastructure as well as the forecasted demand for HPC infrastructure.⁴¹ The study concluded that, considering the expected increase in the market uptake of electric vehicles, a considerable demand for HPC points will develop within a few years. Moreover, the study also found that the existing funding measures alone are not suitable to promote the deployment of recharging infrastructure to the necessary extent. According to Germany, this conclusion mainly resulted from the following circumstances:

³⁷ The German authorities explained that this rule takes into account the expected scale up of existing recharging hubs in response to increases in demand for recharging services. Germany observed that market players generally scale the number of recharging points up to 50%, while adding more than 50% of recharging capacity is rare because of the higher costs linked to such expansion and the additional space needed for transformers.

³⁸ As an illustrative example, if the recharging point projected demand at respective location for 2025 is 50 points; the number of recharging points already in operation is 20; the number of recharging point already in operation plus 50% is 30; the result is that the area would not be included in the tender, as more than 50% of calculated recharging point demand would be already covered by private investments.

³⁹ In the case of the category S, the recharging demand is low, but new investments are necessary to reach a nationwide coverage, and to ensure that HPC infrastructure is reachable by the user within an acceptable distance.

⁴⁰ The German authorities explain that in the case of categories L and XL, the recharging demand for most of the search areas is much higher than the number of HPC points to be built as a result of the notified measure. According to the German authorities, this will allow market players to expand their position or new players to enter the market.

⁴¹ National Centre for Charging Infrastructure (Nationale Leitstelle Ladeinfrastruktur), Number of Charging Infrastructure in 2022, 2025 and 2030 https://www.now-gmbh.de/wp-content/uploads/2020/11/Studie_Ladeinfrastruktur-nach-2025-2.pdf. The study was undertaken by the Reiner Lemoine Institut, an independent institute specialized in clean mobility and was published on 19 November 2020.

- (a) The implementation rate of the supported projects is extremely limited⁴²; and
 - (b) The existing measures, while supporting the deployment of recharging infrastructure in certain locations, did not allow for the emergence of a nationwide network of recharging infrastructure.
- (37) The German authorities also assessed the traffic volumes in the regions concerned with the StandortTOOL⁴³, which is the planning tool of the National Centre of Charging Infrastructure.
- (38) Fourth, the German authorities conducted individual consultations with selected representative market players⁴⁴ as well as associations representing approximately 3 500 members.
- (39) Through this process, which lasted for about two years from the beginning of 2020⁴⁵, the German authorities sought to obtain input on a number of elements, including, the design of the tender with regard to the search areas for HPC points, the remuneration of the CPOs in the context of the tender, but also the challenges faced by market players in the deployment of HPC points.
- (40) Fifth, during the legislative process for the national Fast Charging Act, stakeholders were given the opportunity to comment on the draft law describing the tender in the context of the hearing of associations⁴⁶.
- (41) Sixth, on the basis of the legislative process, the German authorities commissioned a study to a third party independent consultancy firm, aimed at analysing how a tender should be designed to meet the required policy goals in an economically efficient manner⁴⁷. The study determined the specifications for financing leading to the most economic result. Accordingly, to maximize economic efficiency, the pricing model should consist of a mechanism to ensure market prices and a balancing component.

⁴² Germany explained that only 45% of the projects that were granted support under existing funding measures have actually been implemented.

⁴³ <https://www.standorttool.de/>

⁴⁴ Those are entities potentially interested in a support measure (e.g., charge point operators – ‘CPOs’) as well as entities that would be involved in such a measure without being direct participants (e.g. supermarkets as providers of space).

⁴⁵ The first preliminary consultation took place on 18 February 2020. The relevant discussions lasted up to July 2020 and the clean-room talks with car manufacturers took place in July 2020. These consultations were conducted in accordance with Article 40 of the Directive 2014/24/EU.

⁴⁶ The statements are available at the following link: <https://www.bmdv.bund.de/SharedDocs/DE/Gesetze-19/schnellladegesetz.html?nn=382740>.

All documents from the legislative process are available on the following web-site: <https://dip.bundestag.de/vorgang/gesetz-%C3%BCber-die-bereitstellung-fl%C3%A4chendeckender-schnellladeinfrastruktur-f%C3%BCr-reine-batteri-eelektrofahrzeuge-schnellladegesetz/273944>.

⁴⁷ Frontier Economics, Profitability analysis (*Wirtschaftlichkeitsanalyse für die Ausgestaltung des Aufbaus einer Schnellladeinfrastruktur: Kurzgutachten im Auftrag des BMVI und der Nationalen Leitstelle Ladeinfrastruktur*), June 2021; Frontier Economics, Recommendation for the pricing model (*Ausschreibungen für Schnellladestationen: Empfehlung zum Preisbindungsmodell*), June 2021.

- (42) Seventh, before the formal publication of the tender, the German authorities published a prior information notice in the EU Official Journal⁴⁸, setting out the concrete framework of the tender, the applicable conditions and the relevant areas for the development of the HPC stations, with the purpose of allowing third parties to comment on the tender conditions and the identified search areas.
- (43) Moreover, on 16 August 2021, before the publication of the tender, the Federal Government organised an open event to present the upcoming measure and to inform the public that the tender would be published a few weeks later. More than 700 participants took part in the event⁴⁹. The contact details of the procurement office at the Ministry for Digital and Transport were published with the prior information notice.
- (44) Following such preliminary analysis and consultations⁵⁰, the German authorities adapted the tender documents which were subsequently published on 4 October 2021.
- (45) On the basis of the elements described in recitals (33) to (43) as well as on the basis of the funding gap analysis described in section 2.7.5, the German authorities concluded that there was a market failure and aid was necessary to facilitate and accelerate the switch to electric vehicles by building HPC infrastructure.

2.7.4. *Aid allocation procedure*

- (46) Aid will be allocated under the notified scheme through a competitive bidding process open to all interested undertakings, in order to ensure that projects compete for the available aid in a transparent and non-discriminatory manner. Germany explained that the overall aid budget will be allocated through one call for tender, which is expected to be concluded in 2023.

⁴⁸ Prior information notice, 2021/S 159-420398, sent on 13.08.2021, published in the Supplement to the Official Journal of the EU on 18.08.2021, available online at: <https://ted.europa.eu/udl?uri=TED:NOTICE:420398-2021:HTML:EN:HTML&tabId=0>. The German authorities clarified that pursuant to the public procurement rules, the publication of preliminary information could be used to simplify the tender procedure (for example, it allows to shorten the deadlines in the award procedure). However, in the present case, the German authorities did not make use of those possibilities, as the aim of the prior publication was to obtain information and adapt the tender documents if necessary, on the basis of the feedback received.

⁴⁹ The event can be viewed in its entirety at the following link: <https://www.youtube.com/watch?v=G5PGdSybwaM>

The participants came from the following industries, among others: recharging infrastructure manufacturers and operators, energy industry, vehicle manufacturers and suppliers, consulting, engineering services, media, politics and associations.

The presentation of the event is available here: https://nationale-leitstelle.de/wp-content/uploads/2021/08/presentation_zur_vorinformation.pdf

⁵⁰ The search areas and the number of charging points were presented at the open event in August 2021 and have been available online to interested parties. Following information by third parties, the German authorities adjusted the search areas in 14 cases prior to the publication of the tender.

- (47) The German authorities explained that the allocation procedure was organised as a competitive procedure with negotiation as set out in Article 29 of Directive 2014/24/EU⁵¹. Such a procedure provides for the following phases:
- (a) Publication of a call for competition, providing the information for qualitative selection that is requested by the authorities and submission of a request by economic operators to participate in the procedure.
 - (b) Invitation by the authorities to economic operators selected on the basis of the information provided in response to the call for competition and submission of an initial bid by the invited economic operators;
 - (c) Subsequent screening, discussions, revision of the tender documents by the authorities and of the bids by the economic operators; and
 - (d) Submission of the final bid based on the revised tender documents. The final bids are not subject to negotiations between the bidders and the authorities, so no *ex post* adjustments to the bidding process outcome can be made.
- (48) The German authorities explain that the tender notice was published in the Supplement to the Official Journal of the EU on 4 October 2021. An unlimited number of enterprises were able to submit a request to participate to the procedure for all lots. Undertakings were allowed to submit a request until 10 November 2021. The German authorities explain that more than 400 requests from [40 – 50] different companies and bidding consortia for the 23 lots were submitted, and most parties submitted a request to participate for a plurality of lots.
- (49) Following the submission of the requests by economic operators, the German authorities assessed the suitability of the companies for the contract on the basis of the selection criteria communicated in the contract notice, namely: (i) the applicants' ability to pursue the activity⁵², (ii) their economic and financial capacity⁵³, and (iii) their technical and professional capacity⁵⁴.

⁵¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁵² This includes the submission of a certificate of absence of grounds of exclusion pursuant to public procurement rules, and of a tax clearance certificate issued by the competent authorities.

⁵³ The contract notice provides that this criterion be assessed on the basis of a letter from a financial institution confirming the applicants' financial soundness.

⁵⁴ The contract notice provides that this criterion be assessed by reference to prior experience by the applicant, by at least one member of the consortium, or by the subcontractor, as relevant, in the installation and operation of recharging infrastructure. As a minimum requirement, the applicants would have to demonstrate proof of experience in: (i) the installation and operation of at least 10 publicly accessible recharging points of at least 50 kW; or (ii) the installation and operation of at least five publicly accessible recharging points of at least 100 kW.

- (50) Subsequently, a limited number of parties [0 –10] per lot – were invited to submit an initial bid on the basis of criteria made public in a transparent manner in the tender document⁵⁵. The initial bids had to be submitted by 12 May 2022, i.e. within a period of approximately eight weeks, from the invitation to submit indicative offers of 17 March 2022. On the basis of the information submitted, the German authorities invited more than [20 – 30] different companies and bidding consortia to submit an initial bid, and [10 – 20] different companies exercised this option. This resulted in the submission of [100 – 200] initial bids over all 23 lots.
- (51) The initial bids that were found to be formally eligible were evaluated against the minimum requirements as set out in the procurement documents, i.e., the location of the search areas.
- (52) On the basis of the initial bids, discussions took place between the German authorities and all the participating parties covering topics ranging from technical requirements⁵⁶ to legal aspects as laid down in the draft contract. In line with public procurement rules, the German authorities confirmed that the minimum requirement (i.e., the location of the search areas and their methodological derivation) and the award criteria were not subject to negotiations.
- (53) Subsequently, the German authorities revised the procurement documents to take account of the information obtained in the context of the procedure. The German authorities confirmed that all bidders who submitted an initial bid will be invited to submit a final bid based on the revised procurement documents.
- (54) The German authorities explain that the procedure and especially the negotiations are strictly confidential. In particular, participating parties will not obtain any information about the number or identity of other bidders or about the initial bids submitted by other bidders.
- (55) The selection of the most economically advantageous bids (best price-performance/quality ratio) to which the contract is awarded is based on award criteria referred to in recital (56) of this decision and that were also published in the contract notice.
- (56) The aid will be awarded on the basis of the final binding offer only. To this end, Germany will select the most economically advantageous bids, i.e. the bids presenting the best price-quality ratio, based on the following award criteria:

⁵⁵ The selection criteria and the mechanism for selecting tenderers were published in the contract notice for the tender. The selection was based on the following criteria, established in accordance with Articles 58 and 65 of Directive 2014/24/EU, based on the reference data: 1) amount of publicly accessible charging points installed and operated, 2) experience with high-capacity charging (publicly accessible DC charging infrastructure), and 3) amount of installed and operated fast charging stations.

⁵⁶ Before the bidders submit the final bid, there might be several rounds of discussions. These discussions can concern matters like whether a roof is necessary for the erection of four or more recharging stations or whether a limited personal servitude is necessary.

- (a) Price (65%); and
 - (b) Quality (35%), comprising:
 - Site availability⁵⁷ (15%);
 - User friendliness⁵⁸ (15%); and
 - Design concept⁵⁹ (5%).
- (57) The German authorities explain that during the procedure, relevant information is communicated to all participants in writing via the award platform. This is done to ensure an adequate level of transparency, so that all bidders receive the same information at the same time.
- (58) The German authorities explain that the volume of HPC points related to the bidding process has been set at a level that is lower than the expected supply, and is, therefore, a binding constraint, which will ensure effective competition in the bidding process. In this respect (i) the measure aims to deploy a fixed number of HPC points, i.e. approximately 8 500; (ii) under the measure, the German territory is divided into 23 lots across six regions; (iii) each lot will be allocated to one bidder, and each bidder will be awarded aid for the deployment of an identified number of HPC points in maximum one lot per region and three lots in total (recital (29)); (iv) in the first phase of the procedure, the German authorities received approximately 400 requests for participation from [40 – 50] different undertakings and bidding consortia (recital (48)); (v) subsequently [0 – 10] bidders per lot were invited to submit an initial offer (recital (50)); (vi) this resulted in the participating parties submitting [100 – 200] initial bids over all 23 lots (recital (50)); and
- (59) The German authorities indicate that after the submission of the final bids, no ex post adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) can be made.

2.7.5. *Reference project*

- (60) The German authorities submitted a quantification of the cost and revenues of a reference project, consisting in the installation of one HPC point with the characteristics required by the notified measure (recital (31)). The German

⁵⁷ The site availability criterion aims to ensure that bidders already specify as many locations as possible where they will install HPC points with their bid since the German authorities do not determine the locations in the framework of the tender. The bidders are responsible for finding the sites which can be a lengthy process. The criterion considers the fact that a rapid infrastructure build-up is important. The criterion also aims to increase the acceptance of electric mobility given that the lack of recharging infrastructure is an obstacle for the switch to zero emission vehicles.

⁵⁸ The user-friendliness of the sites and the recharging infrastructure equipment aim to assess, for example, how accessible and barrier-free a site is, how high the service level is in the event of faults and damage, and how easy it is to operate the recharging infrastructure equipment. User-friendliness, both in terms of availability and in terms of the ease of use of the charging infrastructure, is a central component in increasing the acceptance of electro-mobility.

⁵⁹ The design concept is used, for example, to assess how well the bidder would adapt the design to the site.

authorities consider this reference project as representative of the average project that will be granted aid under the notified scheme. The main features of the reference project are summarised in Table 1.

Investment costs (nominal) (EUR)	Operating costs (nominal) (EUR)	Projected revenues (EUR)	Funding gap (net present value, 'NPV') (EUR)
[100 000 – 200 000]	[200 000 – 300 000]	[100 000 – 200 000]	[(-100 000) – (-200 000)]

Table 1: Costs, revenues and funding gap of the reference project

- (61) The reference project has an expected lifetime of 8 years. The main costs of the reference project are (i) the costs for the construction and installation of the HPC infrastructure, and (ii) the costs of its operation, and notably the costs of electricity. For the purpose of the reference project, it is assumed that revenues stem from the sale of electricity to end users whereby the energy costs can be considered as a transit item⁶⁰. The daily capacity utilisation of the recharging infrastructure is expected to increase significantly between the first and the eighth year of operation⁶¹. Furthermore, revenues linked to the marketing of greenhouse gas (GHG) certificates were also considered⁶². A weighted average cost of capital (WACC) of [4% – 4.5%]⁶³ is used to discount future cash-flows (including both expenditure and revenues).

2.8. Cumulation

- (62) The German authorities indicate that aid under the notified measure cannot be cumulated with any aid received under another measure covering the same eligible costs, nor with EU funding not qualifying as State aid. The German authorities have committed to ensure that the same eligible costs will not be funded twice.

2.9. Transparency

- (63) The German authorities commit to ensure compliance with the transparency requirements laid down in points 58 to 61 of the Guidelines on State aid for climate, environmental protection and energy 2022⁶⁴ (hereinafter 'CEEAG').

⁶⁰ The German authorities assumed both constant energy price and constant retail electricity prices. They assumed that increasing energy prices will be passed on to the consumer and thus lead to higher retail electricity prices. This means that energy can be considered a transit item.

⁶¹ The German authorities took into account for projecting the utilisation rate of the HPC infrastructure, (i) the increasing number of electric vehicles; and (ii) the fact that in addition to infrastructure built as part of the notified measure, further recharging infrastructure is continuously being built. This is why the demand per recharging point increases, but the expected demand curve will be lower than the market ramp-up of electric vehicles.

⁶² These refer to GHG certificates that can be sold to distributors of fuels in order to fulfil their quota obligation. The quota obligation and crediting are regulated in the Federal Immission Control Act (BImSchG).

⁶³ The German authorities explain that the WACC is based on PWC evaluation data available at: <https://pwc-tools.de/kapitalkosten/kapitalmarktdaten-versorgungsbetriebe/>

⁶⁴ OJ C 80, 18.2.2022, p. 1.

2.10. Information from third parties

2.10.1. The information submitted by third parties

- (64) Third parties are charging stations operators, acting independently or through a consultancy. They raised the following issues:
- (a) The necessity of the measure cannot be established and the assessment of necessity as carried out by the German authorities is not reliable. This is because (i) the data used initially by the German authorities to select the locations for the tenders would have been outdated by autumn 2021, when the procurement procedure was launched; and (ii) a sufficient set-up of recharging infrastructure was to be expected as the market further developed without significant interference by the State⁶⁵;
 - (b) The measure would not be proportionate and would cause undue distortions to competition for the following reasons:
 - the German authorities would not have taken sufficiently into account existing HPC infrastructure when designing the search areas;
 - the tender requirements would exceed those of recharging infrastructure normally deployed by market players⁶⁶;
 - the *Deutschlandnetz ‘Regionallose’*, in its initial version as outlined in the contract notice, provided that CPOs would be subject to a price cap in the form of a maximum price that CPOs would be allowed to charge to users⁶⁷. This would have made it impossible for market players not receiving aid to compete with beneficiaries under the measure; and
 - The bidding process cannot be regarded as open, transparent and non-discriminatory, as certain conditions in the tender were subject to changes between the publication of the contract notice and the submission of the final bids, notably as regards (i) the number of recharging points in each search area, and (ii) the functioning of the price cap.

⁶⁵ For the purpose, the third parties considered a period of eight years, in line with the expected duration of contracts under the notified measure.

⁶⁶ Third parties indicated that the following tender requirements, which, according to them were not necessary in order to fulfill the recharging demand: roofs/canopies, gastronomic offering, seating areas, sanitary facilities, and barrier-free use, service level agreements and response times far exceeding established “Gold” standards, nominal charging power of 200 kW DC per recharging point which had to be guaranteed at any time, even when the location is fully utilised, solar panels, air pressure devices for tires.

⁶⁷ Third parties explained that based on the measure as initially announced, such maximum price would apply both for ad hoc recharging sessions and for contract-based recharging sessions.

2.10.2. Additional information provided by Germany in response to the issues raised by the third parties

- (65) The German authorities submitted the following additional information to address the concerns raised by the third parties:
- (a) With regard to the necessity of the aid, Germany explained that the German authorities analysed the need for aid to enable the development of the targeted activity by taking a number of additional steps, including market exploration interviews with market players, by seeking to obtain feedback from third parties on the measure's design by making information available to market players, and by choosing a procurement procedure that would have allowed the authorities to adjust the measure's design based on the comments received from participants during the negotiations. In addition, Germany reduced the number of recharging points to be funded under the notified measure so as to take into account recent developments in the market, resulting in additional recharging infrastructure being built without public support (see recital (35)). In addition, the German authorities sought to determine the estimated number of electrical vehicles up to the year 2030 by means of a market study as mentioned in recital (11) above.
 - (b) With regard to the alleged undue competition distortions caused by the aid, Germany maintains that:
 - The requirements set out in the procurement documents as regards the quality and level of services to be provided to users (e.g., roofs, canopies, essential amenities, etc.) were to be discussed in the context of the procedure itself. Additionally, the requirement for recharging infrastructure sites to ensure the availability of services for electric vehicles drivers is linked to the ultimate objective of the measure, which is to encourage the shift to electric mobility;
 - As regards the identification of the 'search areas' where the recharging infrastructure is to be located, the notified measure aims at filling the existing gaps. In determining those areas, the German authorities took into account the existing coverage in rural residential areas and identified locations that have little potential to become attractive for the deployment of HPC infrastructure (see further in recital (35)).
 - The requirement for a price cap in the form of a uniform maximum recharging price in ct/kWh would no longer feature in the notified measure. The German authorities explained that they will inform the participants of the tender about the terms of the revised contracts after the adoption of this decision. Furthermore, a formal notice of amendment announcing the changes to the price ceiling will be published throughout Europe in the Official Journal of the EU. Accordingly, every operator would be free to charge the prices it deems appropriate within each lot, provided that those prices remain in line with market prices and are non-discriminatory

- The abandonment of the price cap in ct/kWh, contrary to what the third parties claimed, did not amend the conditions of the bidding process, because this element was defined from the beginning in the procurement documents as negotiable in the procedure⁶⁸. This is also true for the reduction in the number of recharging points in the individual lots, which was also an element subject to potential changes during the procurement procedure. This means that market players were informed since the publication of the procurement documents that certain elements of the measure might have changed as a result of the procedure.

3. ASSESSMENT

3.1. Admissibility of third party submissions

- (66) As a preliminary point, it is necessary to note that the third party submissions are not treated as complaints within the meaning of Article 24(2) of the Regulation 2015/1589⁶⁹ (hereinafter “the Procedural Regulation”). Such a complaint may only concern alleged unlawful aid or alleged misuse of aid. However, in the present case no aid has not been put into effect in contravention of Article 108(3) TFEU,⁷⁰ and therefore it cannot constitute “unlawful aid” within the meaning of Article 1(f) of the Procedural Regulation. Moreover, as the aid at issue has not been approved by the Commission yet, the beneficiary cannot have used that aid in contravention of such approval decision at the time of submission of the complaint. Therefore, the complaint cannot concern “misuse of aid” within the meaning of Article 1(g) of the State aid Procedural Regulation.
- (67) In view of the abovementioned ground of inadmissibility of the third party submission as complaints within the meaning of Article 24(2) of the Procedural Regulation, the Commission does not need to conclude whether the third parties qualify as “interested parties” within the meaning of Article 1(h) of the Procedural Regulation.
- (68) In any event, according to Article 12(1) of the Procedural Regulation, the Commission may on its own initiative examine information regarding alleged unlawful aid from whatever source, without prejudice to Article 24 of the Procedural Regulation. Therefore, *a fortiori* in a case of notified aid as the present one, the preliminary examination of the notification does not have to be limited to the information provided by the notifying Member State, but the Commission may also investigate other information on its own initiative and is therefore not prevented from taking into account information from third parties’ submissions.

⁶⁸ More precisely, in the Information Memorandum for the bidding process (*Informationsmemorandum zum Teilnahmewettbewerb*) it is stated that ‘the negotiated procedure may lead to changes in the content and scope of the services by the operator, for example for technical, legal or economic reasons’. It was indeed specified that only the coordinates of the search areas would be non-negotiable (section 3.1).

⁶⁹ 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).

⁷⁰ See recital (75) of the present Decision.

In the present case, the Commission took into account the third party submissions in its assessment of the notified aid measure.

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

- (69) 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 common market’*. For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled.
- (70) The notified measure is imputable to the State, since it is granted by the German Federal Ministry of Transport and Digital Infrastructure (recital (16)) and is established in national law (recitals (13) and (14)). Moreover, it is financed through State resources, as it is financed by the general budget of the State (recital (21)).
- (71) The notified measure confers an advantage on the beneficiaries in the form of direct grants and recurring payments (recital (19)). The notified measure thus confers on those beneficiaries an advantage which they would not have had under normal market conditions.
- (72) The notified measure is selective, as it favours undertakings complying with the requirements set out in Section 2.4, which are successfully selected in the competitive bidding process.
- (73) The notified measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries vis-à-vis their competitors not receiving State aid. It is also liable to affect trade between Member States, as it is open to undertakings that are active in sectors for which intra-Union trade exists.
- (74) Therefore, the Commission concludes that the notified measure constitutes State aid in the meaning of Article 107(1) TFEU.

3.3. Lawfulness of the aid

- (75) The Commission notes that Germany has not granted aid under the notified measure, pending approval by the Commission. In particular, the German authorities notified the measure before awarding any contracts and committed not to grant any aid before the notification of the Commission decision approving the scheme (recital (14))⁷¹. Germany has thus fulfilled the obligation under Article 108(3) TFEU, by not granting the aid before the approval of the notified measure by the Commission.

⁷¹ See, to that effect, Judgment of 6 October 2021, *Tempus Energy Germany and Others v Commission*, T-167/19, EU:T:2021:645, paragraph 252 and the case law cited.

3.4. Compatibility of the aid

- (76) Since the notified measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that notified measure is compatible with the internal market.
- (77) Pursuant to Article 107(3)(c) TFEU the Commission may declare 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*’.
- (78) The notified measure aims at supporting the deployment of HPC infrastructure in Germany, as part of Germany’s goal of developing an integrated network of HPC infrastructure for electric vehicles. In particular, aid will be granted under the notified measure to deploy 8 500 HPC points in approximately 900 locations in urban, suburban and rural areas in Germany (recital (12)).
- (79) The CEEAG, and notably Section 4.3.2 thereof, set out the criteria under which Member States may provide State aid for the deployment of recharging or refuelling infrastructure.
- (80) The Commission has therefore assessed the notified measure pursuant to the compatibility provisions in Section 3 of the CEEAG, where applicable, as well as the specific compatibility criteria for aid for the deployment of recharging or refuelling infrastructure set out in Section 4.3.2 of the CEEAG.
- (81) The HPC infrastructure supported under the notified measure falls within the definition of “recharging infrastructure” as set out in point 19(60) of the CEEAG since it is a fixed infrastructure that supplies electricity to vehicles falling within the definition of “clean vehicle” as set out in point 19(20)(b)(i) and (ii) of the CEEAG (recital(23)).
- (82) With regard to the scope of application of the CEEAG, the Commission notes that, in line with point 14 of the CEEAG, aid cannot be granted under the notified measure to undertakings qualifying as an undertaking in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (recital (18)). Moreover, aid may not be granted to undertakings that are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market (recital (18)).

3.4.1. *Positive condition: the aid must facilitate the development of an economic activity*

3.4.1.1. Contribution to the development of an economic activity

- (83) For State aid to be compatible under Article 107(3)(c) TFEU, it must contribute to the development of an economic activity.⁷² Accordingly, point 23 of the CEEAG requires that, when notifying aid, Member States must identify the economic

⁷² Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 20 and 24.

activities that will be facilitated as a result of the aid and how the development of those activities is supported.

- (84) The notified measure aims at promoting the development of an economic activity, and notably the deployment of recharging infrastructure for electric vehicles, as described in Section 2.7 above. In particular, the German authorities explain that the aid will allow the creation of the backbone of essential HPC infrastructure in Germany, through the deployment of HPC points for electric vehicles in 900 locations. By doing so, the notified measure is also expected to encourage the shift to electric mobility.
- (85) The Commission therefore considers that the notified measure facilitates the development of certain economic activities as required by Article 107(3)(c) TFEU and point 23 CEEAG.

3.4.1.2. Incentive effect

- (86) State aid can only be considered to facilitate an economic activity if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour towards the development of an additional or more environmentally-friendly economic activity, and if this change in behaviour would not occur without the aid.
- (87) In order to demonstrate the presence of an incentive effect, point 28 CEEAG requires Member States to identify the factual scenario and the likely counterfactual scenario in the absence of aid.
- (88) The German authorities explain that, without the aid, undertakings would not invest in the deployment of HPC infrastructure of the type supported under the notified measure in the areas identified.
- (89) The Commission considers that the counterfactual scenario is credible and realistic, in that, in the absence of the aid, the beneficiaries would have no incentives to engage in the projects supported under the notified measure. First, based on the information submitted by the German authorities, the market cannot, on its own, provide sufficient incentives to invest in HPC infrastructure in the identified locations. Currently, and for the foreseeable future recharging infrastructures cannot always operate at break-even, let alone at profit. In some areas, since electric vehicles still represent a very limited share of the total fleet of vehicles registered in Germany (recital (10)), the maintenance and operation of the recharging infrastructures for electric vehicles might entail higher operating costs than the related revenues. The nascent stage of this market and the high level of uncertainty surrounding demand levels for recharging services would make it difficult for undertakings to invest in the eligible projects without the aid. Second, as further explained in recital (95), there are no Union standards in place requiring undertakings to deploy publicly accessible recharging infrastructure (recital (27)). Third, the appropriateness of a counterfactual scenario consisting in the beneficiaries not carrying out the investment is further supported by the financial data that the German authorities submitted in relation to a reference project. In particular, the German authorities submitted a quantification of relevant costs and revenues linked to a project deemed representative of investments expected to be financed by the notified measure. The reference project displays a negative NPV (recital (60)), i.e. is expected to be unprofitable.

This supports the conclusion that it would not be carried out by a rational investor without support.

- (90) The German authorities submitted and explained to the Commission the calculation of the reference project's NPV and the main assumptions underlying that calculation (recitals (60) and (61)). The Commission considers that the respective parameters, including the investment costs, the fixed and variable operating costs and the discount rate (WACC) as well as the fact that the electricity prices are transit costs are plausible.
- (91) The evidence received from Germany, as referred to in recitals (87)-(90), shows that in the absence of the aid, the market would fail to provide on its own the same result targeted by the national Fast Charging Act, and by the notified scheme, i.e. the deployment of a sufficiently dense network of HPC points throughout the German territory which would provide an adequate level of accessibility for users as well as a level of services aligned with the type and quality of services offered to conventional vehicles' drivers (e.g., essential amenities, sufficient lighting). On the one hand, by identifying via the preliminary market analyses and consultations (Section 2.7.3) the search areas in which investments would be necessary, the notified measure ensures that electric vehicles can be driven seamlessly in the German territory, and that HPC infrastructure is not concentrated in locations that are most profitable and hence most attractive for market-based investments. In this regard, the German authorities have explained that, despite the existence of previous support measures for the deployment of recharging infrastructure⁷³ (targeting the coverage of part of the investment costs for the construction and installation of the recharging points), investments have so far been limited compared to the expected demand by 2025 and 2030, and certain areas still lack HPC infrastructure (recital (34)). On the other hand, in the absence of common minimum requirements ensuring a sufficient quality of the service provided, such as those established under the notified scheme (Section 2.7.2), the HPC recharging infrastructure would not be able to provide an adequate level of accessibility for users as well as a level of services aligned with the type and quality of services offered to conventional vehicles' drivers.
- (92) In light of the considerations in recitals (88), (89) and (90), the requirements in point 28 of the CEEAG are fulfilled.
- (93) Point 29 of the CEEAG stipulates that aid does not, in principle, have an incentive effect in cases where works on the project started prior to the aid application. The Commission notes in this respect that the works on the projects will only start after the submission of a written aid application, and the award of the contract in the context of the competitive bidding process (recital (20)). Therefore, the requirement in point 29 of the CEEAG is fulfilled.
- (94) Point 30 of the CEEAG further explains that the aid application may take various forms, including for example the submission of a bid in a competitive bidding process. The German authorities confirmed that any application must at least

⁷³ State Aid SA.46574 (2016/N) – Germany Förderrichtlinie Ladeinfrastruktur für Elektrofahrzeuge (Funding Guidelines for Electric Vehicle Charging Infrastructure in Germany)

include the applicant's name, a description of the project or activity, including its location, and the amount of aid needed to carry it out. The requirement in point 30 of the CEEAG is therefore fulfilled.

- (95) Finally, point 32 of the CEEAG stipulates that aid granted merely to cover the cost of adapting to Union standards has, in principle, no incentive effect. The Commission notes in this respect that no Union standards exist that require undertakings to deploy publicly accessible recharging infrastructure (recital (27)). While minimum targets applicable to Member States for the deployment of publicly accessible recharging infrastructure have been proposed as part of the Commission's proposal for a Regulation on the deployment of alternative fuels infrastructure (recital (7)), those targets would not be binding on undertakings, but only on the Member States.
- (96) The Commission therefore considers that the notified measure has an incentive effect.

3.4.1.3. Compliance with EU law

- (97) According to point 33 of the CEEAG, State aid cannot be declared compatible with the internal market if the supported activity, the aid measure, or the conditions attached to it entail a violation of relevant Union law.
- (98) Based on the information submitted by the German authorities, the Commission has no reason to consider that the notified measure would involve any breach of relevant Union law. Moreover, third parties have not claimed any violation of relevant Union law.
- (99) In any event, according to settled case law, *'when the Commission applies the State aid procedure, it is required, in accordance with the general scheme of the Treaty, to ensure that provisions governing State aid are applied consistently with specific provisions other than those relating to State aid and, therefore, to assess the compatibility of the aid in question with those specific provisions. However, such an obligation is imposed on the Commission only where the aspects of aid are so inextricably linked to the object of the aid that it is impossible to evaluate them separately. [...] If the Commission were required to adopt a definitive position, irrespective of the link between the aspect of the aid and the object of the aid at issue, in a procedure relating to State aid, on the existence or absence of an infringement of provisions of EU law distinct from those coming under Articles 107 TFEU and 108 TFEU, [...] that would run counter to, first, the procedural rules and guarantees — which in part differ significantly and imply distinct legal consequences — specific to the procedures specially established for control of the application of those provisions and, second, the principle of autonomy of administrative procedures and remedies. [...] Accordingly, although the aspect of aid at issue is inextricably linked to the object of that aid, the Commission must assess its compatibility with provisions other than those relating to State aid in the context of the procedure provided for in Article 108 TFEU and that assessment may result in a finding that the aid concerned is incompatible with the internal market. By contrast, if the aspect at issue can be separated from the object of the aid, the Commission is not required to assess its compatibility with*

*provisions other than those relating to State aid in the context of the procedure provided for in Article 108 TFEU*⁷⁴.

- (100) In the present case, there is nothing to suggest that a breach of Union law, including of public procurement rules, would relate to an aspect that is so inextricably linked to the object of the aid that it is impossible to evaluate them separately. In particular, there is no indication that a breach of Union law has altered the object, the beneficiary or the amount of the aid or that it has produced additional distortions of competition and trade on the relevant market. Therefore, in the absence of an ‘indissoluble link’ between a breach of Union law and the object of the aid in the present case, the assessment of the compatibility of the aid may not be affected by such a breach.
- (101) Therefore, the Commission considers that the notified measure do not infringe relevant Union law, and that the requirements of point 33 of the CEEAG are fulfilled.

3.4.1.4. Conclusion

- (102) The Commission therefore concludes that the notified measure fulfils the first (positive) condition of the compatibility assessment, i.e. that the aid facilitates the development of an economic.

3.4.2. *Negative condition: the aid cannot unduly affect trading conditions to an extent contrary to the common interest*

3.4.2.1. Necessity of the aid

- (103) According to point 194 of the CEEAG, the Member State must verify the necessity of aid to incentivise the deployment of recharging or refuelling infrastructure of the same category as the infrastructure that would be deployed with State aid by means of an *ex ante* open public consultation, an independent market study or based on any other appropriate evidence as set out in Section 3.2.1.1. In particular, the Member State must demonstrate that similar infrastructure is not likely to be developed on commercial terms in the short term and consider the impact of an ETS, where applicable.
- (104) Moreover, point 195 of the CEEAG indicates that when assessing the necessity of aid for the deployment of recharging and refuelling infrastructure that is open for access by users other than the aid beneficiary or beneficiaries, including publicly accessible recharging or refuelling infrastructure, the level of market penetration of the clean vehicles that such infrastructure would serve and the traffic volumes in the region or regions concerned may be considered.
- (105) It is therefore apparent from the wording of those points that an *ex ante* open public consultation and an independent market study are not mandatory, as such elements constitute only two of the appropriate instruments that the Member State may use in order to verify the necessity of aid to incentivise the deployment of

⁷⁴ *Ex multis*, Judgment of 3 December 2014, *Castelnou Energia v Commission*, T-57/11, EU:T:2014:1021, paragraphs 181 to 184 and the case law cited.

recharging or refuelling infrastructure of the same category as the infrastructure that would be deployed with State aid.

- (106) In the present case, the German authorities demonstrate that infrastructure of the scale and coverage as the notified measure is not likely to be developed on market terms in the short term. This is primarily due to the high investment costs linked to the deployment of HPC infrastructure and the limited share of electric vehicles in circulation, leading to an expected limited utilisation rate of the supported infrastructure throughout the duration of the contracts, i.e. eight years (recital (10)).
- (107) To assess the necessity of aid for the deployment of recharging and refuelling infrastructure, the Commission considers the following elements. First, the German authorities submitted a quantification of costs and revenues of a reference project in the factual scenario showing a negative NPV (recitals (60) and (89)), demonstrating that investing in HPC infrastructure would not be profitable for the beneficiaries. The Commission considers that the respective parameters and the assumptions for costs and revenues are plausible and can therefore be retained (recital (90)). Second, in line with point 195 of the CEEAG, the German authorities submitted information on the level of market penetration of electric vehicles in Germany as well as the traffic volumes in the regions concerned (recital (37)). Based on that information, the electro-mobility sector in Germany appears to be still at its nascent stage, with a market penetration rate equal to 1.3% of the national circulating fleet (recital (10)). The infant stage of this market and the uncertainty surrounding demand levels for recharging infrastructure would not make it possible for undertakings to invest in the types of projects supported under the notified measure without the aid.
- (108) In addition, the German authorities determined the necessity of aid based on the preliminary market analysis and consultation processes they carried out prior to the notification of the notified measure (Section 2.7.3). In particular, the German authorities conducted the following activities during a period of approximately two years, through which they aimed to obtain input on key elements of the measure, such as the search areas (recital (39)):
- (a) A preliminary market analysis to estimate the number of electric vehicles expected to be in operation in the coming years, based on consultations with German and international car manufacturers (recital (33));
 - (b) An assessment of the existing HPC infrastructure, based on the official database of the Federal Network Agency in which all public recharging infrastructure in Germany must be reported⁷⁵(recital (34)), and a projection of the additional HPC infrastructure expected to be built without aid under the notified measure (recital (35)). On that basis, the German authorities established that the existing HPC infrastructure in Germany is not sufficient to provide an adequate network coverage, and were able to identify areas that completely lack HPC infrastructure and areas where HPC points already exist but are insufficient to address the anticipated demand;

⁷⁵ The only exceptions are individual locations where the recharging infrastructure operator has not consented to the publication of the geo-coordinates of its recharging infrastructure.

- (c) The commissioning of a market study to determine not only the status of existing recharging infrastructure, but also the forecasted demand for HPC infrastructure. The market study concluded that a considerable demand for HPC points is expected to develop and found the existing funding measures alone are not suitable to promote the deployment of recharging infrastructure to the necessary extent (recital (36));
 - (d) Individual market exploration interviews with market players and associations representing a large number of players (recital (37));
 - (e) The commissioning of a study to a third party independent consultancy firm to support the design of the notified measure in a manner that would allow to meet the policy goals in an economically efficient manner (recital (41)); and
 - (f) The organisation of an open event to present the upcoming measure and to inform the public that the tender would be published a few weeks later. More than 700 participants took place in the event. The contact details of the procurement office at the Ministry for Digital and Transport were published with the prior information notice (recital (43)).
- (109) Furthermore, the Commission notes that both the legislative process for the national Fast Charging Act and the publication of the prior information notice in the EU Official Journal (recitals (40) and (42)) were meant to give the opportunity to stakeholders to comment on the draft measure.
- (110) Finally, the Commission notes that the market failures affecting the road transport sector, as referred, are not addressed by existing policies, including the EU ETS which currently does not apply to emissions from road transport (recital (7)). Although certain changes may be introduced in the applicable framework, such changes are not expected, on their own, to overcome those market failures and incentivise the uptake of cleaner solutions for road transport.
- (111) On the basis of the considerations in recitals (103) to (109), the Commission considers that the notified measure is necessary to support the targeted economic activity in that it incentivises the deployment of a sufficiently dense network of HPC points throughout the German territory which would provide an adequate level of accessibility for users as well as a level of services aligned with the type and quality of services offered to conventional vehicles' drivers. The Commission also notes that the measure's design was the result of numerous preparatory activities which have given stakeholders the opportunity to make their views known to the German authorities. The public procurement procedure chosen by the German authorities for the implementation of the notified scheme, i.e. the competitive procedure with negotiation as set out in Article 29 of Directive 2014/24/EU, also shows that the German authorities sought to obtain from the market information a broad range of issues including both technical and legal aspects to be included in the draft contract (recital (52)). The Commission therefore considers that the notified measure complies with points 194 and 195 of the CEEAG.

3.4.2.2. Appropriateness of the aid

- (112) According to point 39 of the CEEAG, the proposed aid measure must be an appropriate policy instrument to achieve the intended objective of the aid, that is to say, there must not be a less distortive policy and aid instrument capable of achieving the same results.
- (113) The Commission normally considers that State aid 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 the economic activities concerned and where it can demonstrate that alternative, less distortive, aid instruments would not deliver equally efficient outcomes⁷⁶.
- (114) The German authorities have explained that, given the high investment costs linked to the deployment of HPC infrastructure and the limited share of electric vehicles in circulation, infrastructure of the scale and coverage as the notified measure is not likely to be developed on market terms in the short term (recital (106)). In light of this, the Commission notes that, new regulatory measures would likely not be sufficient to incentivise investors to commit to the investment targeted by the notified measure. While existing and proposed EU policies intend to stimulate the shift to zero-emission mobility (Section 2.1), in the absence of financial support, the necessary investments would likely not take place. Point 197 of the CEEAG is thus complied with.
- (115) As regards the form of the aid, the Commission notes that according to the German authorities, existing funding measures, which allow for the coverage of part of the investment costs, are not suitable to promote the deployment of recharging infrastructure to the necessary extent. This is demonstrated, first, by the fact that only approximately 45% of the projects that were granted support under existing funding measures have actually been implemented and are operational; and, second, by the fact that, as shown by the limited coverage of HPC infrastructure in Germany, those measures did not allow for the emergence of a nationwide network of recharging infrastructure (recital (34)).
- (116) Aid under the notified measure is granted in the form of a direct grant covering the investment costs (or part thereof, depending on the bid) for the construction and installation of the HPC infrastructure, the installation of HPC points, as well as recurring payments covering part of the costs of operation of the infrastructure (recital (19)). To the extent that the utilisation rate of the HPC infrastructure remains limited, the provision of a direct grant only would not be sufficient on its own to bring forward investments in new HPC points, as it only addresses the need to cover the upfront costs of the project, without addressing the uncertainty of the level of demand for recharging services and its evolution.

⁷⁶ Commission decision on State aid SA.62131 (2021/N) – Luxembourg – Aid scheme for the deployment of charging infrastructures (RRF) adopted on 7 March 2022 (JOCE C/220/2022), recital (148).

- (117) The Commission considers, based on the information provided by the German authorities, and the existing Commission case practice⁷⁷ that compared with other types of aid, a direct grant is the most appropriate instrument as it is likely to be the most effective means to contribute to the deployment of HPC infrastructure.
- (118) The Commission considers that, the type of aid chosen, i.e. direct grant as opposed to a loan or tax credit, is in comparison to the latter the most suitable aid instrument in order to achieve the objective of the measure with the greatest possible effect within the shortest possible time. It is also easily and directly accessible (without additional administrative procedures) and enables to support operators in a simple and straightforward manner without significant delays (recital (19)).
- (119) The Commission therefore considers that aid granted under the notified measure is appropriate.

3.4.2.3. Proportionality of the aid

- (120) Point 47 of the CEEAG explains that State aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided project or activity. Point 199 of the CEEAG specifies that the aid must be granted following a competitive bidding process conducted in accordance with the criteria set out in points 49 and 50 of the CEEAG.
- (121) Point 49 of the CEEAG states that when the aid amounts are determined through a competitive bidding process, the result of that process will provide a reliable estimate of the minimum aid required so that detailed assessments of the net extra costs necessary for carrying out the investment will not be required. It further provides the criteria that must be fulfilled so that the aid is deemed proportionate:
- a. The bidding process is open, clear, transparent and non-discriminatory, based on objective criteria, defined *ex ante* in accordance with the objective of the measure and minimising the risk of strategic bidding;
 - b. The criteria are published sufficiently far in advance of the deadline for submitting applications to enable effective competition;
 - c. The budget or volume related to the bidding process is a binding constraint in that it can be expected that not all bidders will receive aid, the expected number of bidders is sufficient to ensure effective competition, and the design of undersubscribed bidding processes during the implementation of a scheme is corrected to restore effective competition in the subsequent bidding processes or, failing that, as soon as appropriate; and

⁷⁷ SA.58035 (2020/N) – Denmark Charging stations for electric vehicles adopted on 27 November 2020, JOCE C/7/2021; SA.60775 (2020/N) Publicly accessible charging infrastructure for electric vehicles in Germany ("Förderrichtlinie Öffentlich zugängliche Ladeinfrastruktur für Elektrofahrzeuge in Deutschland") (RRF) adopted on 6 August 2021; JOCE C/317/2021; 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) adopted on 10 September 2021.

- d. *Ex post* adjustments to the bidding process outcome are avoided as they may undermine the efficiency of the process's outcome.

(122) The German authorities explained that the notified measure is a scheme in which aid will be granted to participants that will be selected via a competitive bidding process. The Commission considers that such process fulfils the conditions of points 199 and 49 of the CEEAG, in that:

- a. The process is open to all parties having the characteristics described in Section 2.4, willing to invest with aid in projects complying with the conditions in Section 2.7.2. The requirements set out in the procurement documents as regards the quality and level of services to be provided to users were to be discussed in the context of the procedure itself;
- b. The criteria for the participation in the bidding process are defined *ex ante*, in a transparent and non-discriminatory way. During the first phase of the competitive procedure, the German authorities published a call for competition providing the information for qualitative selection and all parties having the characteristics described in Section 2.4 could submit a request to participate in the procedure. After the submission of the initial bid, all participants will be asked to provide a final bid on the basis of the common, revised criteria. The changes could, according to the prior information notice, comprise all kind of changes in the content and scope of the services by the operator with the exception of the determination of the search areas. The criteria were published sufficiently far in advance, giving the participants almost 6 weeks to submit a simple request to participate and 8 weeks from the acceptance of the request up to the submission of the initial bid (see recital (50)). The criteria also appear justified and proportional in light of the objective of the notified measure. In particular, the Commission notes that any undertaking can request to participate to the procedure for all lots as long as it fulfils certain minimum criteria referring to its eligibility and financial capacity to implement the proposed projects (recital (49));
- c. The tender was designed in a way as to allow as many undertakings as possible to participate. Notably, the German authorities divided the German territory into lots with a view to allowing undertakings of all sizes, including SMEs, to participate (recital (29));
- d. The award criteria were set in an objective manner and served to achieve the main objectives of the notified measure, i.e. the deployment of HPC infrastructure, in a cost-effective manner (see recital(50) and footnote 55);
- e. The volume of HPC points related to the bidding process has been set at a level that is lower than the expected supply, and is, therefore, a binding constraint, which will ensure effective competition in the bidding process (see recital (58)). In this respect, the German authorities explained that (i) the measure aims to deploy a fixed number of HPC points, i.e. approximately 8 500; (ii) under the measure, the German territory is divided into 23 lots across six regions; (iii) each lot will be allocated to one bidder, and each bidder will be awarded aid for the deployment of an identified number of HPC points in maximum one lot per region and three lots in total (recital (29)); (iv) in the first phase of the procedure, the

German authorities received approximately 400 requests for participation from [40 – 50] different undertakings and bidding consortia; (v) subsequently [0 – 10] bidders per lot were invited to submit an initial offer (recital (48)); (vi) this resulted in the participating parties submitting [100 – 200] initial bids over all 23 lots (recital (50)); and

- f. Ex-post adjustments to the outcome of the tendering process will not be possible under the scheme (recital (57)).
- (123) Point 50 of the CEEAG explains that the selection criteria used for ranking bids should put the contribution to the main objectives of the notified measure in relation with the aid amount requested by the applicant.
- (124) The Commission notes that the German authorities will use the following award criteria under the scheme (recital (56)):
- a. Price (65%); and
 - b. Quality (35%), comprising:
 - Site availability (15%);
 - User friendliness (15%); and
 - Design concept (5%).
- (125) Criterion (a) (price) is appropriate to select projects that make a cost-effective contribution to the objective of the scheme, as requested by point 50 of the CEEAG. As regards criterion (b) (quality), the sub-criterion on site availability contributes to the main objective of the notified measure, as it enables the selection of projects for which sites are already identified and available, and for which a more limited lead time until entry into operation of the HPC infrastructure can be expected. Therefore, this will accelerate the transition from fossil-based mobility to electric mobility. As concerns the sub-criterion on the user-friendliness of the infrastructure, it can also be regarded as contributing to the main objective of the notified scheme, as it aims to select infrastructure that contributes the most to the objective of incentivising the shift to electric mobility. The bid will thus be evaluated on the combination of the costs for the deployment of the HPC points and the site availability and user friendliness of the infrastructure in view to best ensure a quick shift to electric mobility and therefore, contribute to the decarbonisation of road transport, which is the ultimate objective of the measure. Finally, the sub-criterion on design concept is not related to the main objective of the notified measure. However, given that it accounts for 5% of the total weighing, the Commission concludes that the award criteria are in line with point 50 of the CEEAG.
- (126) The Commission further notes that the cumulation rules are respected given that aid under the notified measure may not be cumulated with aid granted under other measures for the same eligible costs, or with Union funding (recital (62)).
- (127) Consequently, the Commission considers that the aid granted under the notified measure is proportionate.

3.4.2.4. Transparency of the aid

- (128) The German authorities committed to ensure compliance with the transparency requirements laid down in points 58 to 61 of the CEEAG. The Commission therefore finds that the aid to be granted under the notified measure is transparent.

3.4.2.5. Avoidance of undue negative effects of the aid on competition and trade

- (129) By its very nature, the notified measure may strengthen the competitive position of the beneficiaries vis à vis their competitors that do not receive State aid. Nevertheless, the notified measure addresses market failures that prevent the investment from being delivered by the market alone, and that make the aid necessary. Furthermore, the notified measure contributes to enabling the shift to electric mobility, which in turn enables a reduction in CO₂ emissions, air pollutants and noise from transport, in line with the objectives of in line with the objectives of the European Green Deal, Directive 2014/94/EU as well as the ‘Fit for ‘55’ package (Section 2.1).
- (130) The Commission notes that the way in which the notified measure is designed does not displace activities nor investments from one region to another within the internal market without any net environmental impact. On the contrary, it favours the development across the German territory of investments supporting the economic activity of deployment of recharging infrastructure for electric vehicles, and therefore also having the potential to improve environmental protection and contribute to climate change mitigation that would otherwise not materialise. Moreover, based on information submitted by the German authorities, the choice of the locations appears to be driven by the policy choice to deploy HPC infrastructure in areas where no sufficient infrastructure of that type is available (Section 2.7.3). Therefore, the Commission considers that the notified measure does not result in any manifestly negative effects on competition and trade, in line with point 69 of the CEEAG.
- (131) Point 66 of the CEEAG indicates that schemes open to a broader range of potential beneficiaries have or are likely to have a more limited distortive effect on competition than support targeted at a limited number of specific beneficiaries only. In this respect, the Commission notes first, that the notified measure is a scheme open to any potential beneficiaries, and that the minimum eligibility requirements are merely meant to ensure that beneficiaries would have the professional and financial capacity to carry out the aided activity (recital (49)). Second, the Commission notes that both the eligibility conditions (Section 2.7.2) and the award criteria (recital (56)) are relevant to contribute to the objective of (i) deploying a backbone of essential HPC infrastructure covering the entire German territory; (ii) ensuring that the HPC infrastructure network would be easily accessible and usable by drivers so as to address some of the main challenges of electric vehicles uptake; and (iii) providing for a level of services to end users which is aligned with the level of services offered to drivers of conventional vehicles, so as to not discourage the drivers’ switch to electric mobility. Third, the design of the measure and the processes leading to its adoption and implementation include features aimed at giving the opportunity to a large number of operators to participate and benefit from aid under the notified scheme (recital (29)).

- (132) Point 206 of the CEEAG requires that new recharging infrastructure that allows for a transfer of electricity with a power output of up to 22 kW must be capable of supporting smart recharging functionalities, as this would ensure that recharging operations are optimised and managed in a way that does not cause congestion and takes full advantage of the availability of renewable electricity and low electricity prices in the system. The Commission notes that this requirement is not relevant for the notified scheme, as only HPC infrastructure allowing for a transfer of electricity with a power output of at least 300 kW is eligible (recital (31)(b)).
- (133) Point 68 of the CEEAG indicates that aid may distort competition by strengthening or maintaining substantial market power of the beneficiary. Point 213 of the CEEAG requires that the design of the aid measure contains appropriate safeguards to address the risk of creation or strengthening of market power positions. In this respect, the Commission notes, first, that the way in which the lots and regions have been designed for the purpose of the procedure ensures that competition between lots within a region (between three and six) can take place, and the creation of regional monopolies be avoided. Second, under the notified measure a beneficiary may be granted aid only for one lot in each region and to a maximum of three lots in total, which ensures that at least eight different beneficiaries will be selected under the notified measure and that market power positions are avoided (recital (29)). Furthermore, the Commission notes that compared to the expected size of the electro-mobility market following its ramp-up in the coming years, the notified scheme would allow for the deployment of only a limited share of the HPC infrastructure that is expected to be developed by 2030 (i.e., approximately 8 500 HPC points over a total of 80 000 HPC points that are expected to be necessary by 2030 (recital (11))). Therefore, the notified measure will not jeopardise the ample opportunities of existing market players to expand their position, or of new market players to enter the market.
- (134) Point 214 of the CEEAG provides that, where appropriate, the Commission will assess whether sufficient safeguards are in place to ensure that operators of recharging or refuelling infrastructure that offer or allow contract-based payments on their infrastructure do not unduly discriminate between mobility service providers, for example by applying unjustified preferential access conditions, or through unjustified price differentiation. Under the notified scheme, beneficiaries have to ensure that the HPC infrastructure be accessible on non-discriminatory terms to EMSPs (recital (31)(f)). Point 214 of the CEEAG is therefore complied with.
- (135) As required by point 215 of the CEEAG, the German authorities confirmed that any concession or other entrustment to a third party to operate the recharging infrastructure must be awarded on a competitive, transparent and non-discriminatory basis, having due regard to the Union public procurement rules, where applicable (recital (31)(j)). Hence, the notified measure complies with point 215 of the CEEAG.

- (136) According to point 216 of the CEEAG, where aid is granted for the construction, installation, upgrade or extension of recharging or refuelling infrastructure that is open for access by users other than the aid beneficiary or beneficiaries, including publicly accessible recharging or refuelling infrastructure, the infrastructure must be accessible to the public and provide non-discriminatory access to users, including in relation to tariffs, authentication and payment methods and other terms and conditions of use. In addition, the Member State must ensure that the fees charged to users other than the aid beneficiary or beneficiaries for using the recharging or refuelling infrastructure correspond to market prices.
- (137) Under the notified measure, the supported HPC infrastructure will be accessible to the public on non-discriminatory terms, including with respect to the applicable tariffs, authentication, means of payment for the service, and other terms and conditions of use (recital (31)(f)).
- (138) Moreover, the notified measure contains safeguards to ensure that the prices charged to users for using the HPC infrastructure are reasonable and correspond to market prices. First, the beneficiaries will be required to set their prices in line with market prices. While, as explained in recital (64)(b), the measure as initially announced provided for the application of a price cap in the form of a maximum price that CPOs would be allowed to charge, such fixed price cap is no longer applicable in the notified measure (recital (65)(b)). The German authorities explained that they will monitor the prices charged based on the information submitted by the beneficiaries on their planned tariffs and any increases thereof. Should prices be significantly higher than those charged by comparable recharging infrastructure taking into account long-term marginal costs, the German authorities might report the matter to the national competition authority for further scrutiny (recital (31)(e)). Second, the notified measure requires beneficiaries to pay back to the State a balancing component, i.e. an amount of EUR [0.00 – 0.50] per kWh delivered. The German authorities submitted explanations as to how such amount was calculated (see recital (31)(i)). Such a requirement will further contribute to the avoidance of negative effects of the aid in terms of crowding out effects, as it will ensure that the beneficiaries do not have incentives to set prices for using the supported HPC infrastructure merely based on their short-term variable costs (recital (31)(i), including footnote 20). The Commission, therefore, concludes that the measure complies with point 216 of the CEEAG.
- (139) Point 70 of the CEEAG explains that the Commission will approve measures under the CEEAG for a maximum period of 10 years. As stated in recital (22), aid will be granted under the notified measure within one year (2023). The notified measure, therefore, meets the requirement of point 70 of the CEEAG.
- (140) Based on the above, the Commission considers that aid granted under the notified measure limits the risk of undue negative effects on competition and trade.

3.4.3. *Weighing up the positive and negative effects of the aid*

- (141) A carefully designed aid measure should ensure that the overall balance of the effects of the measure is positive in terms of avoiding adversely affecting trading conditions to an extent contrary to the common interest.

- (142) Based on the assessment conducted in Sections 3.3.1 and 3.3.2, the Commission carries out a balancing test to assess whether the expected positive effects outweigh the possible negative effects of the notified measure.
- (143) The positive effects of the aid considered in the balancing test include the contribution of the notified scheme to the objective of deploying recharging infrastructure that support the shift to zero-emission mobility, in line with the objectives of Directive 2014/94/EU, the European Green Deal Communication and the ‘Fit for 55’ package of Commission proposals (recitals (4), (5) and (6)), and the fact that the aid allows to develop an economic activity that would otherwise not be undertaken (Sections 3.3.1.2 and 3.3.2.1).
- (144) Based on the information submitted by the German authorities, the Commission has no reason to consider that the measures would not comply with the ‘do no significant harm’ principle. The notified measure contributes to enabling the shift to electric mobility, which in turn enables a reduction in CO₂ emissions, air pollutants and noise from transport.
- (145) Furthermore, the German authorities have designed the notified measure in such a way as to minimise the potential distortion of competition arising from it. After having assessed potential undue competition distortions (Section 3.3.2.5), the Commission concludes that the positive effects of the notified measure outweigh the potential negative effects on the internal market.

3.4.4. Conclusion on the compatibility of the aid

- (146) The Commission concludes that the aid facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers the aid compatible with the internal market based on Article 107(3)(c) TFEU, as interpreted in the relevant provisions of CEEAG.

4. AUTHENTIC LANGUAGE

- (147) As mentioned in recital (3), the Federal Republic of Germany has accepted to have the decision adopted and notified in English. The authentic language will therefore be English.

5. 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) of the Treaty on the Functioning of the European Union.

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

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President