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**Subject: State Aid SA.103346 (2022/N) – Germany
Guideline for the promotion of commercial vehicles with alternative and climate-friendly drives, the associated infrastructure and environmental studies (SA.59352/SA.63458)**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, on 14 June 2022, the German authorities notified to the Commission the “*Guideline for the promotion of commercial vehicles with alternative and climate-friendly drives and the associated infrastructure*” (hereinafter “the Guideline” or “the measure”). On 23 September 2022, the Commission requested additional information, which Germany submitted on 30 September 2022, 26 October 2022, on 4, 16, 17, 18 and 21 November 2022.

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- (2) The measure concerns adjustments to a measure approved by the Commission on 22 July 2021 in case SA.59352¹. On 10 September 2021, an amendment to that measure was approved by the Commission in case SA.63458² (hereinafter “the existing measure”).
- (3) The German authorities agreed to waive their rights under Article 342 TFEU and Article 3 of Regulation 1/1958³ and to have the present Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1 Background and objective of the measure

- (4) To achieve the Union’s legally binding climate neutrality objective by 2050, the Commission in its Communication “The European Green Deal”⁴ established the goal to reduce greenhouse gas emissions in transport by at least 90% compared to 1990 levels by 2050. Likewise, in its Communication on a “Sustainable and Smart Mobility Strategy – putting European transport on track for the future”⁵ the Commission set out a path towards achieving that objective through the decarbonisation of both the individual modes of transport and the whole transport chain⁶.
- (5) All transport sectors have to contribute to the target to reduce net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels⁷. Those targets have been enshrined in the European Climate Law⁸.

¹ Commission decision of 22 July 2021, SA.59352 (2020/N) – Germany – Federal aid scheme for the acquisition of light and heavy commercial vehicles with alternative, climate-friendly propulsion systems and ancillary EV charging facilities (OJ C 521, 27.12.2021, p. 5).

² Commission decision of 10 September 2021, 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) (OJ C 521, 27.12.2021, p. 11).

³ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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 ‘Sustainable and Smart Mobility Strategy: putting European transport on track for the future’, COM(2020) 789 final.

⁶ Among other things, the Communication includes the ambition to have at least 30 million zero-emission cars and 80 000 zero-emission lorries in operation by 2030 and that by 2050 nearly all cars, vans, buses and new heavy-duty vehicles will be zero-emission.

⁷ 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) The ‘Fit for 55’ package of legislative proposals supports the achievement of the targets referred to in recitals (4) and (5) 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 as regards strengthening the CO₂ emission performance standards for new passenger cars and new light commercial vehicles⁹. However, this proposal would only concern new light commercial vehicles and has not been adopted yet. Also part of the ‘Fit for 55’ package is a proposal for a Directive revising the European Emissions Trading System (‘EU ETS’)¹⁰. 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’¹¹ and to address growing emissions from those sectors. 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. Furthermore, the ‘Fit for 55’ package also contains a proposal for a Regulation on the deployment of alternative fuels infrastructure¹², which includes the setting of minimum targets for Member States for the deployment of publicly accessible recharging infrastructure and hydrogen refuelling infrastructure. However, that proposal does not include the setting of minimum targets for Member States for the deployment of private recharging and hydrogen refuelling infrastructure. Moreover, none of the European proposals set specific requirements or obligations on any individual undertakings, but only on the Member States themselves¹³. The German authorities also explain that the ‘Euro VI Regulation’¹⁴ defines the rules for type approval of vehicles with respect to

⁸ 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).

⁹ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/631 as regards strengthening the CO₂ emission performance standards for new passenger cars and new light commercial vehicles in line with the Union’s increased climate ambition (COM/2021/556 final).

¹⁰ 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).

¹¹ 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).

¹² 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).

¹³ That includes a proposal for a Regulation on the deployment of alternative fuels infrastructure; see 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).

¹⁴ Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI)

their emission performance only for conventionally powered heavy-duty vehicles and that no Union standards exist that require undertakings to acquire clean vehicles or undertake studies on matters related to environmental protection.

- (7) In its National Climate Action Programme 2030¹⁵, Germany has defined measures to support the purchase of commercial and special road vehicles with alternative, climate-friendly drives including hydrogen technologies and promote the expansion of a needs-based refuelling and recharging infrastructure. According to the German authorities, electricity-based fuels will account for one third of the mileage driven by 2030.
- (8) In May 2021, the German Federal Government amended the Federal Climate Action Act¹⁶. The national goal of climate neutrality is brought forward by five years to 2045. The interim target for 2030 will be increased from the current 55 to 65 percent greenhouse gas emission reduction compared to 1990. A new interim target of 88 percent reduction applies for 2040. Greenhouse gas neutrality across all sectors is planned by 2045.
- (9) Transport sector reduction obligations are also increased until 2030. As a result, annual greenhouse gas emissions are reduced more sharply by 2030 than they were in the original version of the Federal Climate Action Act. Compared to 1990, transport greenhouse gas emissions must be cut by 48 percent (approximately 79 million metric tons of CO₂ equivalent) by 2030. 94 percent of greenhouse gas emissions in the transport sector come from motorised road traffic, of which one third is from road freight.
- (10) According to economic studies commissioned by Germany¹⁷, commercial and special road vehicles with alternative and climate-friendly drives are currently significantly more expensive than comparable conventional vehicles in Germany. Furthermore, vehicles with alternative and climate-friendly drives require a costly refuelling and recharging infrastructure. In combination, those factors contribute to low demand for climate-friendly and alternative vehicles.
- (11) Despite the expected further efficiency improvements of commercial and special road vehicles powered by conventional internal combustion engines (mainly diesel fuel), climate-friendly drives will be necessary to achieve climate change goals. Though such climate-friendly vehicles have advanced technologically in recent years, their operational use in the commercial vehicle segment remains limited.

and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (Text with EEA relevance) (OJ L 188, 18.7.2009, p. 1).

¹⁵ Klimaschutzprogramm 2030 der Bundesregierung zur Umsetzung des Klimaschutzplans 2050 (Maßnahmen 3.4.3.10 und 3.4.3.11) [Klimaschutzprogramm 2030 der Bundesregierung](#)

¹⁶ Federal Climate Action Act of December 12, 2019 (BGBl. I p. 2513), which was amended by Article 1 of the Law of August 18, 2021 (BGBl. I p. 3905)..

¹⁷ Wirtschaftlichkeitsuntersuchung und zusätzliche Erläuterungen (2020). The German authorities indicated that this study is still valid because the requirements and prices for manufacturers of electric vehicles remain high.

- (12) Such vehicles will become increasingly attractive towards the mid-2020s due to more stringent or new EU CO₂ fleet targets, a projected variation in heavy goods vehicle tolls based on CO₂ emissions, and cost savings generated by economies of scale, which will lead to cost neutrality compared to conventionally powered vehicles only in the long run.
- (13) According to the German authorities, negative externalities¹⁸ lead to market failures and prevent the achievement of a sufficient level of environmental protection. Since pollution costs are not adequately priced, undertakings do not pay the full costs of their activity. In the absence of public support, they lack sufficient incentives to take into account the negative externalities arising from their economic activity when they choose a particular propulsion technology. As a consequence of this, the costs borne by the undertakings do not fully reflect those borne by consumers and society as a whole, and undertakings lack sufficient motivation to reduce their levels of pollution. Germany also explains that the limited availability of recharging or refuelling infrastructure supplying alternative fuels necessary to operate clean vehicles also creates obstacles to the market uptake of those technologies and thereby further discourages investments. The German authorities consider that existing policies such as Regulation (EU) 2012/1242 and Regulation (EU) 2019/631¹⁹ setting CO₂ emissions performance standards for new passenger cars and for new light commercial vehicles may provide incentives for the uptake of clean vehicles, but are not sufficient to address in full the market failures affecting the sector concerned.
- (14) The German authorities claim that the measure will significantly reduce the current additional investment expenditures for climate-friendly vehicles. By doing so, CO₂ emissions will be reduced, as stated in the National Climate Action Programme 2030. Additionally, through corresponding economies of scale, the measure will increase the competitiveness of climate-friendly drives.
- (15) According to the German authorities, support is necessary from a macroeconomic and social point of view since its multiple benefits far outweigh its costs. Without support for individual vehicles, high additional investment expenditures would prevent the decarbonisation of commercial and special road vehicle transport as a whole. The German authorities also claim that general measures aimed at promoting the acquisition of clean vehicles such as ecological bonus schemes or scrappage schemes do not influence consumer behaviour to an extent that would offset the still significant extra costs generated by the acquisition of clean vehicles²⁰.

¹⁸ Negative externalities arise when pollution is not adequately priced, that is to say, the undertaking concerned does not face the full cost of pollution.

¹⁹ Regulation (EU) 2019/1242 and Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO₂ emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011 (OJ L 111, 25.4.2019, p. 13).

²⁰ Germany explains that additional costs per technology are high and vary significantly. A “fixed-rate” ecological bonus (that means equal for all applicants) could potentially favour the less costly technologies and hence lead to a preferential treatment for individual technologies or vehicle types, which contradicts the idea of technology-neutral funding.

- (16) Since alternative technologies, including electricity-based fuels, face similar barriers to market entry as electric vehicles and are not yet available in a technology-series fashion, the German authorities will support a variety of propulsion technologies, including battery electric vehicles (BEV), fuel cell-powered vehicles (FCEV), and plug-in hybrid electric vehicles (PHEV) under this measure.
- (17) The measure provides support for the acquisition of certain commercial and special road vehicles with alternative and climate-friendly drives, investments in the recharging and refuelling infrastructure for the acquired commercial and special road vehicles, as well as the costs for environmental studies (for the Sub-measures, see recital (32)). Germany considers the measure crucial to achieving the transport sector's 2030 greenhouse gas emission reduction obligations. The measure will therefore make the necessary adjustments to the existing measure in order to achieve the increased greenhouse gas reduction ambitions described in recitals (8) and (9). While the existing measure will be prolonged and the budget increased, the measure continues to support the same Sub-measures as the existing measure approved by the Commission in SA.59352 and SA.63458.

2.2 National legal basis

- (18) The legal basis of the measure is the Guideline (*“Richtlinie über die Förderung von leichten und schweren Nutzfahrzeugen mit alternativen, klimaschonenden Antrieben und dazugehöriger Tank- und Ladeinfrastruktur für elektrisch betriebene Nutzfahrzeuge (reine Batterieelektrofahrzeuge, von außen aufladbare Hybridelektrofahrzeuge und Brennstoffzellenfahrzeuge”*) in combination with the General Administrative Provisions of Articles 23 and 44 of the Federal Budget Code (*“Bundeshaushaltsordnung”*).
- (19) Germany commits to implementing the adjustments to the existing measure and thus granting aid on the basis of the amended measure only after the adoption of the Commission decision.

2.3 Administration of the measure

- (20) The German Federal Office for Goods Transport (*“Bundesamt für Güterverkehr”*) is responsible for administering the measure.

2.4 Beneficiaries

- (21) The measure is open to undertakings from all sectors, regardless of their size. Companies under private law, municipal companies, regional administration bodies, corporations and institutions under public law, as well as registered associations are eligible to receive aid. Where municipal companies have no own legal personality, the municipality is eligible to apply on their behalf.
- (22) Undertakings that rent or lease commercial and special road vehicles are also eligible to receive aid. In such a case, the funding must be passed on in full to the lessee. The relevant rental or lease agreement must explicitly indicate this pass-on. Upon request by the granting authority, proof must be provided that the funding has been fully passed on to the lessee by providing the leasing agreement or a confirmation by an auditor or tax advisor. Support for rental costs or leasing

rates of commercial and special road vehicles as well as of refuelling and recharging infrastructure are excluded under the measure.

- (23) The German authorities confirm that aid will not be granted under the measure to undertakings in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty²¹.
- (24) The German authorities commit to suspend the granting or payment of aid granted under the measure to undertakings that have benefitted from a State aid that has been declared incompatible by a Commission decision, until the beneficiary has repaid or paid to a blocked account the total amount of illegal and incompatible aid and the corresponding recovery interest.

2.5 Form of aid and level of support

- (25) Under the measure, aid will be granted to the undertakings selected pursuant to the process explained in Section 2.8.5 and 2.8.6, in the form of direct grants. Given that large-scale deployments of vehicles with climate-friendly drives are hampered by high investment costs and associated risks, Germany argues that grants are the most suitable aid instrument in order to achieve the objective of the measure with the greatest possible effect within the 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.
- (26) In order to receive support, beneficiaries shall submit a written application²² to the granting authority before the start of works. A project for which support is requested must not have been started before the submission of the application to the granting authority. Start of works means the first firm commitment 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.
- (27) The level of aid awarded to each applicant will be defined on the basis of a competitive bidding process (Section 2.8.4). As regards *Sub-measure 3*, no competitive bidding process is required.
- (28) Germany will regularly scrutinise the outcome of the funding calls and will ensure that the maximum grant amounts per applicant are adjusted in all subsequent funding calls.

2.6 Duration

- (29) Aid under the measure will be granted as from the notification of the Commission's decision approving the measure until 31 December 2026.

²¹ Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

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.

2.7 Budget and financing

- (30) The overall budget of the measure is EUR 4.5 billion²³ and covers the three Sub-measures described in recital (32) below²⁴. In order to distribute the overall budget appropriately and in a competitive manner, the German authorities foresee several funding calls per year. The maximum support per beneficiary will be defined in the respective funding calls.
- (31) The measure will be funded from the federal budget of the State.

2.8 Basic elements of the measure

2.8.1 Overview of the Sub-measures

- (32) The measure is comprised of three Sub-measures:
- *Sub-measure 1 (Purchase Premium)*: Funding for the acquisition of commercial road vehicles and special road vehicles of categories N1²⁵, N2²⁶ and N3²⁷ with a climate-friendly drive and for the retrofitting of existing conventional diesel vehicles of categories N2 and N3 into commercial vehicles and special vehicles of categories N1, N2 and N3 with a climate-friendly drive.
 - *Sub-measure 2 (Recharging and Refuelling infrastructure)*: Funding for the deployment of recharging and for refuelling infrastructure is only available if the infrastructure is used for recharging and refuelling of vehicles funded by *Sub-measure 1*.
 - *Sub-measure 3 (Environmental feasibility studies)*: Funding for the commissioning of environmental feasibility studies for *Sub-measures 1 and 2*. Those studies must be carried out by appropriate professional service providers identified in a competitive procedure.

²³ Measure SA.59352 had a total budget of EUR 507.5 million and a duration until 31 December 2024. Measure SA.63458 did not alter the budget of SA.59352. The EUR 4.5 billion total budget under this measure does not include the budget of EUR 507.5 million approved by the previous Commission decisions.

²⁴ The German authorities explain that there is no fixed annual budget amount per Sub-measure (Section 2.8.2).

²⁵ N1 vehicles are vehicles used for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes.

²⁶ N2 vehicles are vehicles used for the carriage of goods and having a maximum mass exceeding 3.5 tonnes but not exceeding 12 tonnes.

²⁷ N3 vehicles are vehicles used for the carriage of goods and having a maximum mass exceeding 12 tonnes.

2.8.2 Preliminary market analysis

- (33) The design of the measure is based upon an economic feasibility study that the German authorities submitted as part of the notification²⁸. This study explains the objective of the measure and the necessity of public support to achieve the objective. The study also presents the data and methods for the calculation of the support. A cost-effectiveness analysis at the level of the individual vehicle demonstrates the appropriateness of the level of support in order to avoid overfunding²⁹.
- (34) Germany explains that the market development for light and heavy commercial and special road vehicles N1, N2 and N3 with alternative, emission-free drives is still in its infancy. In the case of heavy commercial and special road vehicles in particular, the vehicle supply is still very small. The market dominance of conventional diesel drive is unbroken.
- (35) As part of the notification, the German authorities also provided studies to justify the need for and the level of support for recharging and refuelling infrastructure³⁰. Germany explains that these studies demonstrate the significant additional costs for private depot as well as for publicly accessible recharging and refuelling stations. Support for recharging and refuelling infrastructure is therefore needed in order to accelerate the market ramp-up of clean commercial and special road vehicles, as further evidenced by the currently very low level of market penetration of clean commercial and special road vehicles (battery electric vehicles, fuel-cell electric vehicles, plug-in hybrid electric vehicles, overhead catenary electric vehicles), which is below 2% of the total amount of commercial and special road vehicles in Germany.

²⁸ Wirtschaftlichkeitsuntersuchung und zusätzliche Erläuterungen (2020).

²⁹ The cost-effectiveness analysis takes into account the following variables: the annual mileage depending on the vehicle category; the fuel and energy consumption of vehicles according to propulsion technology and vehicle category; the vehicle procurement costs per propulsion technology and vehicle category; the fuel costs; the toll rates per propulsion technology. The analysis also examines the costs of providing refuelling and recharging infrastructure per vehicle in order to ensure that overcompensation is avoided.

³⁰ *“In the truck segment, battery electric vehicles (BEVs) will be essential for the transition to carbon neutrality. Already by 2025 several thousand battery electric trucks will have to be put on the European market. By 2030, approximately 200,000 BEVs (>3.5t GVW) are estimated to be in operation in the European truck fleet. All of these vehicles will require (mostly private) depot charging stations and in addition to that – depending on their mission profiles – also public and/or semi-public charging points.”* Figures show that in order to be able to achieve the CO₂ targets, approximately 20 000 not publicly accessible depot charging stations will be needed in Europe by 2025, and 200 000 stations by 2030. Figures also show that in Europe, approximately 50 H2 filling stations will be needed by 2025, and 500 H2 filling stations by 2030 (currently there are 16 H2 filling stations). [ACEA Position Paper „Charging and re-fuelling infrastructure required for heavy-duty vehicles”](#), p. 5 and 6. *“A subsidy or a financing model for the development of charging infrastructure in the depot will be necessary to enable logistics companies to replace the fleet across the board.”* [„Ladeinfrastruktur für batterieelektrische LKW“](#), Nationale Plattform Zukunft der Mobilität, April 2021, p.5. [„Szenarien und regulatorische Herausforderungen für den Aufbau der Ladeinfrastruktur für elektrische PKW und LKW“](#), Öko-Institut e.V., July 2022. [„Estimating the infrastructure needs and costs for the launch of zero-emission trucks”](#), The International Council on Clean Transportation, August 2019.

2.8.3 The object of funding

2.8.3.1 The object of funding under *Sub-measure 1*

- (36) Under *Sub-measure 1* (recital (32)), support is granted for the acquisition of new commercial road vehicles and special road vehicles of EC vehicle categories N1³¹, N2 and N3³²³³ with battery or fuel cell electric propulsion within the meaning of Article 2(2) and 2(4) *Elektromobilitätsgesetz* (EMoG)³⁴ allowing them to fall within the definition of “clean vehicle” as set out in point 19(20)(b) and (c) of the Climate, Environmental protection and Energy Aid Guidelines (“CEEAG”³⁵).
- (37) In addition, *Sub-measure 1* also grants support for the acquisition of new commercial road vehicles and special road vehicles of EC vehicle category N3 with externally rechargeable hybrid electric propulsion (plug-in hybrids) and overhead catenary hybrid propulsion within the meaning of Article 2(3) EMoG, allowing them to fall within the definition of “clean’ vehicle” as set out in point 19(20)(c) of the CEEAG³⁶; the German authorities have confirmed that the maximum ICE emission levels set out in Article 4(5) of Directive 2009/33/EC³⁷ will be complied with.
- (38) Support under *Sub-measure 1* will also be granted for the costs of retrofitting of existing EC vehicle categories N2 and N3 with conventional diesel drives meeting the latest EURO 6/VI emission standards³⁸ into electric drives within the

³¹ The German authorities state that N1 vehicles would correspond to point 19(20)(b)(i) of the CEEAG “a vehicle of category M1, M2 or N1 that has zero tailpipe CO₂ emissions, as determined in accordance with Commission Regulation (EU) 2017/1151”.

³² Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ L 151, 14.6.2018, p. 1).

³³ The German authorities state that N2 and N3 would correspond to point 19(20)(c)(i) of the CEEAG “a zero-emission heavy-duty vehicle as defined in Article 4(5) of Directive 2009/33/EC”.

³⁴ *Elektromobilitätsgesetz* vom 5. Juni 2015 (BGBl. I S. 898), das zuletzt durch Artikel 5 des Gesetzes vom 12. Juli 2021 (BGBl. I S. 3091) geändert worden ist.

³⁵ Communication from the Commission ‘Guidelines on State aid for Climate, Environmental protection and Energy’ (OJ C 80, 18.2.2022, p. 1).

³⁶ From 1st of January 2026 onwards, the funding scope will only cover externally rechargeable hybrid electric propulsion (plug-in hybrids) and overhead catenary hybrid propulsion within the meaning of Article 2(3) EMoG, which correspond to point 19(20)(c)(i) of the CEEAG.

³⁷ Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles.

³⁸ Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (Text with EEA relevance) (OJ L 188, 18.7.2009, p. 1).

meaning of Article 2(2) and 2(4) EMOG allowing them to fall within the definition of “clean vehicle” as set out in point 19(20)(c)(i) of the CEEAG.

2.8.3.2 The object of funding under *Sub-measure 2*

- (39) Support under *Sub-measure 2* will be granted for the deployment of refuelling and recharging infrastructure for commercial and special road vehicles with electric drives within the meaning of Article 2(2) to 2(4) EMOG which is principally dedicated to the use in the depot of a beneficiary of *Sub-measure 1* or in other areas used for operational purposes.
- (40) Support for refuelling infrastructure under *Sub-measure 2* is granted for container solutions, mobile filling stations (on trailers) and permanently installed hydrogen filling stations³⁹.
- (41) Support for recharging infrastructure under *Sub-measure 2* is granted for investments in mobile and stationary normal and fast charging infrastructure (charging point, transformer, transfer station, production and expansion of the grid connection, buffer storage and load and/or charging management).
- (42) The recharging infrastructure to be installed under the measure, which will allow for a transfer of electricity with a power output of up to 22 kW, will be capable of supporting smart recharging functionalities⁴⁰.
- (43) Support for recharging and refuelling infrastructure places particular requirements on the connection between support for infrastructure under *Sub-measure 2* and the acquisition of commercial and special road vehicles under *Sub-measure 1*. Support under *Sub-measure 2* will only be granted if the funding application for recharging and refuelling infrastructure refers to a funding application for the acquisition of commercial and special road vehicles in the same funding call or funding for such vehicles that has been approved in a previous funding call. In addition, only refuelling and recharging infrastructure that is necessary for recharging or refuelling the commercial and special road vehicles applied for is funded. Funding for refuelling and recharging infrastructure is not possible without funding under *Sub-measure 1*. The German authorities argue that *Sub-measure 1* and *Sub-measure 2* are so intrinsically linked that an additional competitive bidding process for *Sub-measure 2* is not necessary but *Sub-measure 2* will be awarded in addition to *Sub-measure 1* in order to allow the operation of the clean commercial and special road vehicles.
- (44) The recharging and refuelling infrastructure is intended primarily for use by the beneficiary but may be open on an ancillary basis for use by other users such as users of the same depot. In this case, the infrastructure will provide non-discriminatory access to users, including, in relation to tariffs, authentication and

³⁹ Depending on the configuration, this can include: storage (pressure tank or liquid hydrogen storage), compressor, cooling unit, fuel pump and trailer. Measures such as bollards and protective walls are also eligible to protect hydrogen-carrying parts such as storage tanks and compressors from mechanical damage (e.g. through traffic).

⁴⁰ ‘Smart recharging’ means a recharging operation in which the intensity of electricity delivered to the battery is adjusted in real-time, based on information received through electronic communication.

payment methods and other terms and conditions of use. In addition, the fees charged to users other than the aid beneficiaries for using the recharging or refuelling infrastructure will correspond to market prices.

- (45) Given that the infrastructure is intended primarily for use by the beneficiary, no concessions or other entrustments will normally be awarded to third parties to operate the recharging and refuelling infrastructure.
- (46) The German authorities explain that under the existing measure, support is only granted for hydrogen refuelling infrastructure that supplies at least 50% of hydrogen from renewable energy sources⁴¹ on average over a financial year. In order to avoid lock-in effects, the German authorities will gradually increase the proportion of renewable hydrogen by 5 percentage points per year in the respective funding calls⁴².

2.8.3.3 The object of funding under *Sub-measure 3*

- (47) Support is granted for the preparation of environmental feasibility studies for the possible uses of commercial and special road vehicles funded under *Sub-measure 1* as well as studies and analyses for the use of new and existing logistics locations for commercial and special road vehicles or for the deployment of the corresponding infrastructure funded under *Sub-measure 2*⁴³.
- (48) Such studies are to be prepared by a technically qualified service provider, selected through a competitive process.
- (49) The studies funded under *Sub-measure 3* must not constitute a continuous or a periodic activity and do not relate to the beneficiaries' usual operating costs.

⁴¹ According to the German authorities, 'renewable hydrogen' means hydrogen produced from renewable energy in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001. As regards the definition of renewable hydrogen, if part of the EU regulatory framework for renewable hydrogen under the Directive (EU) 2018/2001⁴¹ is incomplete at the time of the conduct of the competitive bidding, the German authorities will use the criteria defined in the draft framework for renewable hydrogen published by the Commission for public consultation on 23 May 2022. Once work to develop the EU regulatory framework for renewable hydrogen under the Directive (EU) 2018/2001 is complete, the measure will be amended, if necessary, to comply with the requirements for renewable hydrogen and other renewable fuels of non-biological origin set out in the EU framework for the next funding call. The funding call will be amended within 14 days prior to the start of the application period.

⁴² All funding applications in 2022 will need to demonstrate that the hydrogen refuelling infrastructure will supply at least 50% hydrogen coming from renewable sources. Applications in 2023 must demonstrate at least 55% of renewable hydrogen; in 2024 at least 60%; in 2025 at least 65%; in 2026 at least 70%.

⁴³ The studies consist in investigations into uses of commercial road vehicles and special road vehicles of EC vehicle category N1, N2 and N3 with battery or fuel cell electric propulsion and commercial road vehicles and special road vehicles of EC vehicle category N3 with externally rechargeable hybrid electric propulsion (plug-in hybrids) and overhead catenary hybrid propulsion, (ii) investigations into retrofitting existing EC vehicle categories N2 and N3 with conventional diesel drives meeting the latest EURO 6/VI standards into electric drives (iii) investigations into the design of infrastructure for the use of commercial and special road vehicles at existing and new commercial locations.

2.8.4 *Maximum aid amounts for the Sub-measures 1 and 2 and eligible costs for Sub-measure 3*

- (50) The maximum aid amounts for *Sub-measure 1* are the net extra costs for the acquisition of clean commercial and special road vehicles described in recitals (36) and (37) or for the retrofitting of the vehicles described in recital (38). The starting point for calculating those net extra costs is the difference between the net investment costs for the acquisition of a commercial or special road vehicle described in recitals (36) and (37) or for the retrofitting of a vehicle described in recital (38) and a counterfactual being a comparable less-environmentally-friendly vehicle⁴⁴ with the conventional diesel drive meeting the latest Euro 6/ VI emission standards that are equivalent in terms of freight load.
- (51) For the purpose of determining the net investment cost, applicants must enclose an offer for the acquisition of a comparable commercial or special road vehicle with the conventional diesel drive meeting the latest Euro 6/ VI emission standards with comparable vehicle characteristics together with their application. The plausibility of the selection of the comparison vehicle is subject to spot-checks by the granting authority.
- (52) In order to avoid overcompensation and to adjust the net investment costs to the net extra costs of the investment, the following adjustments are made. First, the maximum aid amounts of the additional investment costs are subject to a capping limit to avoid overcompensation that will depend upon the propulsion technology and the EC vehicle category of the commercial or special road vehicle, as demonstrated in Table 1 below. If the net investment costs are below the capping limit they will not be adjusted.

<i>Capping limits per propulsion technology (in EUR)</i>						
<i>New vehicles</i>					<i>Retrofitted diesel vehicles</i>	
<i>EC Vehicle Category</i>	<i>Battery electric propulsion (BEV)</i>	<i>Hydrogen fuel cell electric propulsion (FCEV)</i>	<i>Overhead catenary hybrid propulsion (OV)</i>	<i>Plug-in hybrid electric Propulsion (PHEV)</i>	<i>BEV-upgraded</i>	<i>FCEV-upgraded</i>
<i>N1 ≤ 3,5t</i>	25 000	90 000	—	—	—	—
<i>N2 > 3,5t-12t</i>						
<i>up to 7.5 t</i>	100 000	200 000	—	—	90 000	190 000
<i>up to 12 t</i>	200 000	300 000	—	—	190 000	290 000
<i>N3 > 12t</i>						
<i>< 20 t</i>	350 000	450 000	120 000	100 000	330 000	430 000
<i>20-30 t</i>	400 000	500 000	170 000	150 000	380 000	480 000
<i>> 30 t</i>	450 000	550 000	220 000	200 000	420 000	520 000

⁴⁴ In this case, the comparable vehicle is a vehicle of the same category, same capacity and same lifetime as the vehicles described in recitals (36) to (38).

Table 1: Capping limits per propulsion technology and EC vehicle category

- (53) The German authorities explain that the capping limits have been derived from the economic feasibility study described in recital (33). They will be reviewed with regard to their level and assessment basis and actual market and price developments, adjusted in the future on an annual basis. The adjustment will take into account the market development of the individual propulsion technologies and EC vehicle classes, and will be checked regularly by evaluating the funding applications received as part of the monitoring of the measure.
- (54) Second, the net investment costs, will be reduced to 80% of the additional investment costs per commercial or special road vehicle, having been capped or not, in order to approximately align these maximum amounts with the discounted net present value (NPV) of the net extra costs of the reference projects described in Table 3.
- (55) The aid amounts for *Sub-measure 2* will be equally reduced to 80% of the investment costs for the recharging and refuelling infrastructure. The German authorities confirmed that this will ensure that the aid amounts will be lower than the net extra costs which is the net present value of the factual scenario (see reference projects as described in Table 4).
- (56) Eligible costs for *Sub-measure 3* are set at 50% of the costs of the commissioned environmental studies.

2.8.5 The application process

- (57) The measure is open to undertakings from all sectors. The Guideline sets non-discriminatory criteria for a broad participation. Germany explains that the criteria for the participation in the bidding process (see recital (64)) are defined *ex-ante*, in a clear, transparent and non-discriminatory way via regularly published funding calls in the Federal Gazette⁴⁵ published at least 6 weeks in advance of the deadline for submitting applications to enable effective competition. The German authorities confirmed that 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.
- (58) The budget for the measure is limited. Germany submitted information from previous funding calls demonstrating that the number of applications exceeds the budget related to the bidding process⁴⁶. Support will only be granted under the condition that there is sufficient budget left. Applicants are, therefore, not automatically entitled to obtain support.
- (59) There will be no *ex-post* adjustments to the outcome of the bidding process.

⁴⁵ www.bundesanzeiger.de

⁴⁶ For the first funding call in 2021, the total amount of funding requested for the acquisition of clean commercial vehicles under *Sub-measure 1* was EUR 240 million, whereas the total amount of aid granted was EUR 153 million. Similarly, for *Sub-measure 2*, requested funding in 2021 was EUR 46 million and the amount of aid granted EUR 31 million.

- (60) Applications are in competition with each other. Criteria are defined in the respective funding calls.

2.8.6 *The selection process for Sub-measure 1*

- (61) Applications are prioritised according to the criteria specified in the funding calls.
- (62) The granting authority will prioritise applications based on environmental and economic criteria.
- (63) The prioritisation of applications is based on an abstract calculation of the expected annual CO₂ savings (measured in kilograms of CO₂) per Euro of eligible funding for the application under consideration.
- (64) A formula combining the calculation factors (electrical mileage, fuel consumption of a conventional reference vehicle, technological maturity of the driving technology, CO₂ emissions per litre of diesel, additional investment expenditure) influencing the estimation of the expected annual CO₂ savings is used to obtain, according to Germany, a transparent, comparable result for each funding call. No other criteria are included in the calculation formula.
- (65) The prioritisation of applications received is thus based on the CO₂ emissions saved per Euro of support. Germany explains that by applying the selection criteria described in recital (64) to rank the applications, the contribution of the measure to its main objective (reduction of CO₂ emissions) is put in direct relation with the support requested by the applicants.
- (66) The prioritisation of applications according to the expected annual CO₂ savings (measured in kilograms of CO₂) per Euro of support invested is further tightened by the introduction of a minimum level of ambition (*Mindestambitionsniveau*, hereinafter “MAN”) in the selection procedure. As a result, only those applications can be approved that meet a CO₂ savings rate per funding Euro of at least 50% of the average value of all applications. To this end, the granting authority will establish a rolling average of the CO₂ emission savings per Euro of support (baseline of the prioritisation of applications) for all applications received since the entry into force of the Guideline.
- (67) In the beginning, the minimum level of ambition MAN will be set at 50% of the average of all applications. The MAN can be adjusted upwards depending on the market maturity of the zero-emission vehicles. Improvements in CO₂ emissions saved per Euro of support due to the expected learning curve and economies of scale will then lead to an increase in the minimum level of ambition due to the higher average.

<i>1st call for funding</i>		<i>2nd call for funding</i>		<i>3rd call for funding</i>		...
<i>CO₂ reduction per Euro of support</i>		<i>CO₂ reduction per Euro of support</i>		<i>CO₂ reduction per Euro of support</i>		
<i>Application 1</i>	[0 – 0,5] (*) ⁴⁷	<i>Application 1</i>	[1 – 1,5]	<i>Application 1</i>	[1 – 1,5]	...
<i>Application 2</i>	[0,5 – 1]	<i>Application 2</i>	[0,5 – 1]	<i>Application 2</i>	[1 – 1,5]	...
<i>Application 3</i>	[0,5 – 1]	<i>Application 3</i>	[0,5 – 1]	<i>Application 3</i>	[0,5 – 1]	...
<i>Application 4</i>	[0,5 – 1]	<i>Application 4</i>	[1 – 1,5]	<i>Application 4</i>	[0,5 – 1]	...
<i>Application 5</i>	[0,5 – 1]	<i>Application 5</i>	[0 – 0,5]	<i>Application 5</i>	[0 – 0,5]	...
<i>Application 6</i>	[1 – 1,5]	<i>Application 6</i>	[0,5 – 1]	<i>Application 6</i>	[0,5 – 1]	...
<i>Application 7</i>	[0,5 – 1]	<i>Application 7</i>	[0 – 0,5]	<i>Application 7</i>	[1 – 1,5]	...
<i>Application 8</i>	[0,5 – 1]	<i>Application 8</i>	[1 – 1,5]	<i>Application 8</i>	[1 – 1,5]	...
<i>Application 9</i>	[0 – 0,5]	<i>Application 9</i>	[0,5 – 1]	<i>Application 9</i>	[0,5-1]	...
<i>Application 10</i>	[1 – 1,5]	<i>Application 10</i>	[0,5 – 1]	<i>Application 10</i>	[0 – 0,5]	...
<i>On average</i>	[0,5 – 1]	<i>On average</i>	[0,5 – 1]	<i>On average</i>	[0,5 – 1]	
<i>Moving average</i>	[0,5 – 1]	<i>Moving average</i>	[0,5 – 1]	<i>Moving average</i>	[0,5 – 1]	
<i>MAN %</i>	50 %	<i>MAN %</i>	55 %	<i>MAN %</i>	60 %	
<i>MAN (Absolute)</i>	[0 – 0,5]	<i>MAN (Absolute)</i>	[0 – 0,5]	<i>MAN (Absolute)</i>	[0 – 0,5]	

Table 2: Illustration of selection of applications after introduction of minimum level of ambition (MAN)

- (68) The German authorities explain that the introduction of the MAN will ensure that applications with CO₂ emissions saved per Euro of support that are lower than the average of all applications are excluded from funding. The rolling process makes sure that the CO₂ emissions saving requirements for individual applications are increased in line with market maturity.

2.8.7 Counterfactual scenarios

- (69) The German authorities explain that the counterfactual scenario of *Sub-measure 1* is the acquisition of a comparable less environmentally-friendly vehicle⁴⁸, with the conventional diesel drive meeting the latest EURO 6/VI emission standards that are equivalent in terms of freight load.

⁴⁷ *Confidential information.

⁴⁸ In this case, the comparable vehicle is a vehicle of the same category, same capacity and same lifetime as the vehicles described in recitals (36) to (38).

- (70) For the identification of conventional commercial and special road vehicles of the same category and the same capacity, the beneficiary has to submit a comparative offer illustrating the costs for the acquisition of the conventional vehicle together with the funding application. Since the comparative offer refers to a conventional commercial or special road vehicle currently available on the market, it is compliant with current Union standards. In case of retrofitting of an existing conventional commercial or special road vehicle into a clean commercial or special road vehicle, the German authorities consider the continuous use of the non-retrofitted conventional diesel vehicle as the most probable counterfactual scenario.
- (71) In the case of *Sub-measure 2*, the German authorities consider that the counterfactual scenario is that the beneficiaries would not invest in the deployment of recharging and refuelling infrastructure for clean commercial or special road vehicles⁴⁹.
- (72) In the case of *Sub-measure 3*, the German authorities consider that the counterfactual scenario is that the beneficiaries would not carry out the environmental feasibility studies.

2.8.8 *Quantification of the counterfactual scenario*

- (73) In order to quantify the counterfactual, Germany has provided the net extra costs for reference projects identified in Table 1 based on their net present value (NPV). The following quantification is based on the consideration of investment costs (CAPEX) and operating costs (OPEX) of the vehicle for an expected lifetime of 4 years and the discounting is based on a weighted average cost of capital (WACC) of [5-10] % (average for the transport and logistics sector) for all reference projects.

⁴⁹ The German authorities explained that the most likely counterfactual scenario assumed is that the beneficiary refrains from investing in the purchase of clean vehicles and associated infrastructure and continues to operate with its conventional vehicles. In contrast to clean commercial vehicles, the conventional vehicles can be supplied with conventional fuels from the public filling station network, which regularly meets their demand. In the absence of a public infrastructure for alternative fuels for heavy commercial vehicles, there is currently no alternative to the infrastructure promoted by the notified measure.

	<i>NPV of climate-friendly vehicle (in EUR)</i>	<i>NPV of conventional diesel vehicle (in EUR)</i>	<i>Difference (in EUR)</i>
<i>N1 Battery electric</i>	<i>[50 000 – 60 000]</i>	<i>[30 000 – 40 000]</i>	<i>[10 000 – 20 000]</i>
<i>N2 Battery electric</i>	<i>[100 000 – 200 000]</i>	<i>[100 000 – 200 000]</i>	<i>[80 000 – 90 000]</i>
<i>N3 Battery electric</i>	<i>[500 000 – 600 000]</i>	<i>[200 000 – 300 000]</i>	<i>[300 000 – 400 000]</i>
<i>N1 Fuel cell</i>	<i>[100 000 – 200 000]</i>	<i>[30 000 – 40 000]</i>	<i>[70 000 – 80 000]</i>
<i>N2 Fuel cell</i>	<i>[200 000 – 300 000]</i>	<i>[100 000 – 200 000]</i>	<i>[100 000 – 200 000]</i>
<i>N3 Fuel cell</i>	<i>[600 000 – 700 000]</i>	<i>[200 000 – 300 000]</i>	<i>[400 000 – 500 000]</i>
<i>N3 Plug-in hybrid electric vehicle and Overhead catenary hybrid propulsion</i>	<i>[300 000 – 400 000]</i>	<i>[200 000 – 300 000]</i>	<i>[100 000 – 200 000]</i>

Table 3: Quantification of reference projects for Sub-measure 1 based on NPV

(74) The table below summarises the quantification submitted by Germany with regard to the net present value (NPV) of the recharging and refuelling infrastructure.

	<i>Performance</i>	<i>CAPEX in Euro</i>	<i>OPEX per year</i>	<i>Net Present Value NPV</i>
<i>Recharging Infrastructure</i>	<i>22 kW</i>	<i>[1 000 – 10 000]</i>	<i>[2 –2,5%] of CAPEX</i>	<i>[(-1 000) – (-10 000)]</i>
	<i>50 kW</i>	<i>[30 000 – 40 000]</i>	<i>[2 –2,5%] of CAPEX</i>	<i>[(-40 000) – (-50 000)]</i>
	<i>50 kW</i>	<i>[80 000 – 90 000]</i>	<i>[2 –2,5%] of CAPEX</i>	<i>[(-90 000) – (-100 000)]</i>
<i>Hydrogen Refuelling</i>		<i>[1 000 000 – 10 000 000]</i>	<i>[5–10%] of CAPEX</i>	<i>[(-1 000 000) – (-10 000 000)]</i>

Table 4: Overview CAPEX and NPV of reference projects for Sub-measure 2

(75) According to the German authorities, the calculations they submitted show that in the absence of aid, the undertakings would have no incentive to invest in clean commercial or special road vehicles or in the related recharging and refuelling infrastructure.

2.9 Cumulation

- (76) The German authorities confirm that aid granted under the measure cannot be cumulated with any other aid in respect of the same eligible costs or with Union funding not constituting aid.

2.10 Transparency

- (77) The German authorities commit to ensure compliance with the transparency requirements laid down in points 58 to 61 of the CEEAG⁵⁰. The Guideline will be published on the central website of the Federal Gazette⁵¹. It will also be published in the Federal Funding Database⁵² and publicised as part of the public relations work of the Federal Ministry for Digital and Transport and the federally owned program company NOW GmbH. The federal funding advisory service will also provide advice on funding opportunities under this funding guideline. Information on each individual aid exceeding EUR 100 000 will be published in the Commission's State Aid Transparency Module.

2.11 Ex post evaluation

- (78) The German authorities notified, together with the measure, a draft evaluation plan taking into account the best practices recalled in the Commission Staff Working Document on a Common methodology for State aid evaluation⁵³. The main elements of the evaluation plan are described below.
- (79) The evaluation plan describes the objectives of the measure subject to evaluation, as outlined in Section 2.1, and comprises evaluation questions that address the direct effects of the measure, the proportionality and appropriateness of the aid, and a number of indirect effects.
- (80) As regards direct effects, the plan investigates the capability of the measure to achieve its objective of reducing greenhouse gas emissions. As regards indirect effects, the plan assesses the positive effects of the scheme as well as the scheme's potential distortive effects on competition.
- (81) The proportionality and appropriateness of the aid are assessed by checking whether the competitive bidding procedure was sufficiently competitive.
- (82) The evaluation plan identifies and describes the result indicators that will be used to assess the degree of achievement of the scheme's objectives and which are matched with the evaluation questions.

⁵⁰ OJ C 80, 18.2.2022, p.1.

⁵¹ www.bundesanzeiger.de

⁵² www.foerderdatenbank.de

⁵³ Commission Staff Working Document on Common methodology for State aid evaluation, 28.5.2014, SWD(2014) 179 final.

- (83) The evaluation plan also describes the methodology that will be applied to evaluate the scheme. The German authorities intend to primarily employ quantitative methods (i.e. counterfactual analysis) to assess the impact of the measure. The direct effects of the measure on the beneficiaries will be identified by employing econometric methods, in particular a regression analysis of the type ‘Difference-in-Differences’ (DID), as described in the abovementioned Commission Staff Working Document.
- (84) The German authorities committed to submit an interim evaluation report to the Commission by 31 December 2023. The interim report should contain information on the implementation of the scheme and an analysis of whether the envisaged counterfactual methodology (DiD) can be successfully implemented given the information available (on the beneficiaries of the scheme, on the universe of potential beneficiaries, on the characteristics of the data, etc.). One chapter of the interim report should be dedicated to a preliminary assessment of the scheme based on the proposed methodology and the data available. In case the methodology was not adequate to complete the evaluation, an additional chapter should contain the proposals for a modified methodology to be discussed with the European Commission at the earliest convenience. The consolidated evaluation plan will be added to the report as an annex.
- (85) The final evaluation report will be submitted to the Commission by 31 March 2026, i.e. 9 months before the expiry of the measure should the German authorities intend to prolong it. If no prolongation is envisaged, the final evaluation report will be submitted to the Commission by 31 March 2027.
- (86) The German authorities confirmed that the evaluation plan and the final evaluation reports will be published on the internet⁵⁴.
- (87) For purposes of transparency and replicability and where this is possible under data protection law, the evaluation files, calculation steps and the data sets on which the analyses are based should also be made available to the European Commission upon request.
- (88) The German authorities confirmed that the evaluation will be conducted by an independent evaluation body in accordance with the criteria laid down in the evaluation plan and further developed in the interim evaluation report.
- (89) The German authorities committed to inform the Commission of any difficulty identified during the evaluation process that could significantly affect the implementation of the agreed evaluation plan, in order to identify and agree on possible solutions.

⁵⁴ <http://www.klimafreundliche-nutzfahrzeuge.de/>

3. ASSESSMENT OF THE MEASURE

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

- (90) Article 107(1) TFEU provides that ‘*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*’
- (91) According to settled case-law, the characterisation of a measure as ‘State aid’, within the meaning of Article 107(1) TFEU, requires that all the following cumulative conditions be fulfilled. Firstly, the measure must be financed through State resources and be imputable to the State. Secondly, it must confer a selective advantage liable to favour certain undertakings or the production of certain goods. Thirdly, it must distort or threaten to distort competition. Fourthly, it must be liable to affect trade between Member States.

3.1.1. Imputability and involvement of State resources

- (92) In order for a measure to be found as being granted by a Member State or through State resources, it must be granted directly or indirectly through State resources and be imputable to the State.
- (93) In this case, as the aid takes the form of a direct grant (recital (25)) that will be paid to the beneficiaries from the budget of the German State, the aid is granted through State resources.
- (94) As the measure will be administered by the German Federal Office for Goods Transport and will be implemented through the conditions set out in the legal basis referred to in recital (18), the decision to grant the aid is imputable to the German State.
- (95) The measure is therefore financed from State resources and is imputable to the German State.

3.1.2. Existence of a selective advantage

- (96) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, that is to say in the absence of State intervention⁵⁵. Article 107(1) TFEU also requires that a measure, in order to constitute State aid, is selective in the sense that it favours ‘*certain undertakings or the production of certain goods*’.
- (97) By reducing the investment costs for the acquisition or for the retrofitting of the vehicles referred in recital (32) (*Sub-measure 1*) and for respective recharging infrastructure and refuelling infrastructure (*Sub-measure 2*) as well as costs for environmental studies (*Sub-measure 3*), an economic advantage is conferred to

⁵⁵ Judgments of 11 July 1996, SFEI and Others, C-39/94, EU:C:1996:285, paragraph 60, and of 29 April 1999, Spain v Commission, C-342/96, EU:C:1999:210, paragraph 41.

the aid beneficiaries that could not have been obtained under market conditions, thus conferring an advantage to them.

- (98) Furthermore, only the undertakings that will be selected following the procedure described in 2.8.6 will receive aid. The measure is therefore selective.

3.1.3. *Distortion of competition and effect on trade between Member States*

- (99) In accordance with settled case-law⁵⁶, for a measure to have an impact on competition and to affect trade between Member States, it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (100) The measure strengthens the position of selected undertakings, especially those active on the commercial road transport sector, in which trade between Member States exists.
- (101) Therefore, the measure has potentially distortive effects on competition and is likely to affect trade between Member States.

3.1.4. *Conclusion on the existence of State aid*

- (102) In light of the above, the Commission maintains the position taken in its decisions on the existing aid measures SA.59352 and SA.63458, namely that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2 **Compatibility of the aid**

- (103) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (104) 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*”.
- (105) *Sub-measure 1* aims at supporting investments into the acquisition of clean vehicles and the retrofitting of existing conventional diesel vehicles, defined in line with point 19(20)(b) and (c) of the CEEAG. *Sub-measure 2*, aims at facilitating the deployment of the related recharging and refuelling infrastructure. *Sub-measure 3*, concerns aid for the commissioning of environmental feasibility studies relating to *Sub-measure 1* and *2* (recital (32)).
- (106) The CEEAG, and notably Section 4.3 thereof, set out the criteria under which State aid for clean mobility may be found to facilitate the development of an economic activity in an environmentally-friendly manner, without adversely affecting trading conditions to an extent contrary to the common interest of the Union.

⁵⁶ Judgment of 30 April 1998, *Vlaamse Gewest v Commission*, T-214/95, EU:T:1998:77.

- (107) Section 4.13 of the CEEAG sets out the criteria under which aid for studies directly linked to projects or activities covered by the CEEAG on matters related to climate, environmental protection and energy may be found compatible with the internal market.
- (108) The measure must comply with the compatibility provisions in Section 3 of the CEEAG, where applicable, as well as the specific compatibility criteria for aid for the acquisition of clean vehicles and for the retrofitting of vehicles set out in Section 4.3.1 of the CEEAG, aid for the deployment of recharging and refuelling infrastructure set out in Section 4.3.2 of the CEEAG and aid for studies on matters related to climate, environmental protection and energy set out in Section of the 4.13 CEEAG.
- (109) The measure complies with point 14 CEEAG. Germany stated that aid shall not be awarded to undertakings in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (recital (23)). The German authorities also committed to suspend the granting or payment of aid granted under the scheme to undertakings that have benefitted from a State aid that has been declared incompatible by a Commission decision, until the beneficiary has repaid or paid to a blocked account the total amount of illegal and incompatible aid and the corresponding recovery interest (recital (24)).

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

3.2.1.1 Contribution to the development of an economic activity

- (110) For State aid to be compatible under Article 107(3)(c) TFEU, it must contribute to the development of an economic activity.⁵⁷ In accordance with this, point 23 of the CEEAG requires that, when notifying aid, Member States must identify the economic activities that will be facilitated as a result of the aid and how the development of those activities is supported.
- (111) The German authorities have explained that the measure aims at promoting the development of economic activities.
- (112) In particular, *Sub-measure 1* aims at supporting the acquisition of clean vehicles and the retrofitting of existing conventional diesel vehicles (recital (32)) as undertakings receive support for their efforts to make the switch to climate-friendly commercial and special road vehicles in order to “green” their fleet; *Sub-measure 2* aims at supporting the deployment of the related recharging and refuelling infrastructure (recital (32)) and *Sub-measure 3* aims at the commissioning of environmental feasibility studies relating to *Sub-measures 1* and *2* (recital (32)). The measure thus aims at reducing the environmental impact of road transport, therefore contributing to the development of economic activities in this sector by meeting the ambitious EU climate protection target of reducing transport-related emissions (recital (4)).

⁵⁷ Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 20 and 24.

- (113) The German authorities have confirmed that studies eligible for aid under *Sub-measure 3* do not constitute a continuous or periodic activity and do not relate to the beneficiaries' usual operating costs (recital (49)). The condition of point 449 of the CEEAG is thus fulfilled.
- (114) The Commission therefore considers that the measure will contribute to the development of certain economic activities as required by Article 107(3)(c) TFEU and point 23 of the CEEAG.

3.2.1.2 Incentive effect

- (115) 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 otherwise occur without the aid⁵⁸.
- (116) In order to demonstrate the presence of an incentive effect, point 28 of the CEEAG requires the factual scenario and the likely counterfactual scenario in the absence of aid to be identified.
- (117) As regards *Sub-measure 1*, the German authorities explain that, in the factual scenario with aid, the beneficiaries will acquire or retrofit the vehicles mentioned in recital (32).
- (118) The German authorities also explain that, in the absence of the aid, the beneficiaries would acquire comparable less environmentally-friendly vehicles with conventional diesel drives, meeting the latest EURO 6/VI emission standards that are equivalent in terms of freight load, as provided by point 165 of the CEEAG (recital (69)). In the case of retrofitting of existing commercial and special road vehicles, the counterfactual would consist in the continuous use of the non-retrofitted conventional diesel vehicle (recital (118)).
- (119) The German authorities have provided economic studies to show that commercial and special road vehicles with alternative and climate-friendly drives are currently significantly more expensive than comparable conventional vehicles and require a costly refuelling and recharging infrastructure (recital (10)). Moreover, the German authorities have quantified the difference between clean and comparable conventional vehicles, which is significant (Table 3). Therefore, the Commission considers that in the absence of the aid, the undertakings would not have any incentives to invest in the acquisition of clean vehicles or in the retrofitting of existing vehicles.
- (120) Based on those considerations, in the absence of aid, beneficiaries would not have an incentive to undertake the supported investment. Accordingly, the requirement in point 28 of the CEEAG is fulfilled.

⁵⁸ See in that sense Judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 60.

- (121) As regards *Sub-measure 2*, the German authorities explain that, in the factual scenario with aid, the beneficiaries will invest in the deployment of recharging and refuelling infrastructure for clean vehicles mentioned in recital (32).
- (122) The German authorities also explain that, in the absence of the aid, the beneficiaries would not invest in the deployment of recharging and refuelling infrastructure (recital (71)).
- (123) The German authorities have provided economic studies to show that vehicles with alternative and climate-friendly drives require a costly refuelling and recharging infrastructure; this goes together with the high price of clean vehicles (recital (10)). Moreover, the German authorities have quantified the cost of the acquisition of refuelling and recharging infrastructure, which is significant (Table 4). Therefore, the Commission considers that in the absence of the aid, the undertakings would not have any incentives to invest in the refuelling and recharging infrastructure. Accordingly, the requirement in point 28 of the CEEAG is fulfilled.
- (124) As regards *Sub-measure 3*, the German authorities explain that, in the factual scenario with aid, the beneficiaries will incur to study and prepare the transition of their fleet of commercial and special road vehicles to alternative forms of propulsion as well as the deployment of recharging and refuelling infrastructure (recital (47)).
- (125) The German authorities explain that, in the absence of the aid, the beneficiaries would commission neither environmental feasibility studies to prepare the acquisition of clean vehicles to be supported under *Sub-measure 1* in order to convert their commercial fleet, nor studies on related recharging and refuelling infrastructure supported under *Sub-measure 2* (recital (62)). Therefore, the Commission considers that in the absence of the aid, the undertakings would not have any incentives to commission the environmental feasibility studies. Accordingly, the requirement in point 28 of the CEEAG is fulfilled.
- (126) Point 29 of the CEEAG stipulates that aid does not 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 German authorities have confirmed that the aid can be granted only if works on the projects have not started prior to the aid application (recital (26)). Therefore, the requirement in point 29 of the CEEAG is fulfilled.
- (127) Point 30 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 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 (recital (57)). The requirement in point 30 of the CEEAG is therefore fulfilled.
- (128) Moreover, point 32 of the CEEAG stipulates that aid granted merely to cover the costs of adapting to Union standards has, in principle, no incentive effect. The Commission notes that with the exception of requirements linked to EURO6/VI standards, no Union standards exist that require undertakings to acquire clean vehicles, deploy private recharging and refuelling infrastructure and undertake studies on matters related to environmental protection. While minimum targets

applicable to Member States for the deployment of publicly accessible recharging and hydrogen refuelling infrastructure have been proposed as part of the Commission's proposal for a Regulation on the deployment of alternative fuels infrastructure (recital (6)), this proposal does not include the setting of minimum targets for Member States for the deployment of private recharging and hydrogen refuelling infrastructure. Furthermore, those targets would not be binding on undertakings, but only on the Member States. Therefore, the requirement of point 32 of the CEEAG is fulfilled.

- (129) On this basis, the Commission concludes that the aid under the measure, comprised of the three sub-measures as described in recital (32), has an incentive effect.

3.2.1.3 No breach of any relevant provision of Union law

- (130) 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 law⁵⁹.
- (131) Based on the information submitted by the German authorities, the Commission has no reason to consider that the measure would involve any breach of relevant Union law.
- (132) Therefore, the condition of point 33 of the CEEAG is fulfilled.

3.2.1.4 Conclusion regarding the positive condition

- (133) The measure therefore fulfils the first (positive) condition of the compatibility assessment i.e. that the aid facilitates the development of an economic activity.

3.2.2 *Negative condition: the aid does not unduly affect trading conditions to an extent contrary to the common interest*

3.2.2.1 Necessity of the aid

- (134) According to point 34 of the CEEAG, aid must be targeted towards a situation where it can bring about a material development that the market alone cannot deliver, for example by remedying market failures in relation to the projects or activities for which the aid is awarded.
- (135) As regards *Sub-measure 1*, the measure aims at addressing important market failures preventing the achievement of a sufficient level of environmental protection in the sector concerned. In that regard, the measure intends to address negative externalities, linked to the fact that undertakings do not face the full cost of pollution they cause and coordination failures stemming from the need to deploy recharging and refuelling infrastructure, before it is commercially attractive to invest in clean commercial and special road vehicles (recital (13)).

⁵⁹ CEEAG point 33, and Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraph 44.

- (136) The market failures affecting the road transport sector, as referred to in recital (13), are not addressed by existing policies, including the EU ETS which currently does not apply to emissions from road transport (recital (6)). The Commission agrees with the German authorities that, while 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. Therefore, *Sub-measure 1* complies with points 35 and 36 of the CEEAG.
- (137) As indicated by point 161 of the CEEAG, while existing policies may provide incentives for the uptake of clean vehicles, by setting binding CO₂ emission targets for the new road vehicle fleet of manufacturers, they are not sufficient to address in full the market failures affecting the sector concerned (recital (13)).
- (138) In order to demonstrate the necessity of aid, point 38 of the CEEAG requires that the Member State shows that the beneficiary would not undertake the activity without the aid. As explained in recital (117), Germany submitted a description of the counterfactual scenario, which the Commission finds credible for the reasons indicated in recital (119).
- (139) As regards *Sub-measure 2*, the German authorities demonstrated that a similar dedicated infrastructure as the measure is not likely to be developed on commercial terms in the short term.
- (140) 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 reference projects in the factual scenario showing a negative NPV (recital (74)), demonstrating that investing in the recharging and refuelling infrastructures would not be profitable for the beneficiaries. Second, in line with point 195 CEEAG, the German authorities submitted information on the level of market penetration of clean commercial and special road vehicles in Germany (recital (35)). Based on that information, the clean mobility sector in Germany appears to be still at its nascent stage, with a market penetration rate of less than 2% of the national circulating fleet. The infant stage of this market and the uncertainty surrounding demand levels for recharging and refuelling infrastructure would not make it possible for undertakings to invest in the types of projects supported under the measure without the aid.
- (141) In addition, the German authorities determined the necessity of aid based on independent market studies showing that the market ramp-up of electric and hydrogen mobility is slow as there is not enough recharging and refuelling infrastructure available (see recitals (13), (35) and footnote 30). Hence, there is a market failure in that no functioning market is yet forming and the recharging and refuelling infrastructures are not expected to be deployed at a sufficient rate on commercial terms during the existence of the measure. Furthermore, as the German authorities indicate, undertakings are not likely to be available to offer the operation of those dedicated recharging and refuelling infrastructure in the short term (recitals (74) and (75)). Therefore, since a similar dedicated infrastructure is not likely to be developed on commercial terms in the short term, point 194 and 195 of the CEEAG is fulfilled.

- (142) The German authorities have further explained and demonstrated that vehicles with alternative and climate-friendly drives require a costly refuelling and recharging infrastructure and that this is equally causal for the low demand of climate-friendly and alternative vehicles (recital (35)). As shown by the German authorities, recharging infrastructure for commercial and special road vehicles is very expensive, undertakings would be even less likely to invest in clean vehicles if they had to finance the supporting infrastructure on their own, as this would constitute an additional cost to them (recitals (74) and (75)). The necessity of *Sub-measure 2* is thus intrinsically linked to *Sub-measure 1*.⁶⁰
- (143) Therefore several risk factors, in particular the high cost of installing recharging and refuelling facilities, discourage undertakings from buying clean commercial and special road vehicles or from retrofitting of existing conventional diesel vehicles. The possibility to receive aid for installing dedicated recharging and refuelling facilities will increase the interest in the acquisition of both clean commercial and special road vehicles, in the retrofitting of existing conventional diesel vehicles and a dedicated recharging and refuelling infrastructure, thus contributing to the development of the supported economic activities in the road transport sector by meeting the ambitious EU climate protection target of reducing transport-related emissions.
- (144) The Commission therefore concludes that the German authorities have demonstrated that there is a need for State intervention to support the acquisition of clean commercial and special road vehicles, the retrofitting of existing conventional diesel vehicles, as well as the deployment of recharging and refuelling infrastructure. The same is true for *Sub-measure 3*, which aims at supporting environmental feasibility studies for *Sub-measures 1 and 2* (recital (32)) and therefore intends to address the same negative externalities as *Sub-measures 1 and 2* (recital (13)).

3.2.2.2 Appropriateness of the aid measure

- (145) 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.
- (146) 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 outcomes⁶¹.
- (147) The German authorities have explained the substantial investments linked to the acquisition of clean vehicles (recital (73)), the additional costs needed for the deployment of the related recharging and refuelling infrastructure (recital (74))

⁶⁰ In this regard, see case SA.54830 (2020/N) - Scottish Ultra Low Emission Bus Scheme – recital 103.

⁶¹ Commission decision C(2022) 1490 final on State aid SA.62131 (2021/N) – Luxembourg – Aid scheme for the deployment of charging infrastructures (RRF) adopted on 7 March 2022 (OJ C 220, 3.6.2022, p. 1), recital (148).

and the substantial costs needed for carrying out environmental studies (recital (74)).

- (148) In light of the above, policy instruments other than State aid, such as new regulatory measures, would not be sufficient to incentivise the beneficiaries to invest in clean commercial and special road vehicles, recharging and refuelling infrastructure and carry out environmental studies.
- (149) The Commission also notes the German arguments that general measures aimed at promoting the acquisition of clean vehicles such as ecological bonus schemes or scrappage schemes do not influence consumer behaviour to an extent that would offset the still significant extra costs generated by the acquisition of the vehicles mentioned in recital (32) (recital (15)). Point 171 of the CEEAG is thus complied with.
- (150) The Commission notes that in view of the costs linked to the deployment of recharging and refuelling infrastructure and the limited market penetration rate clean commercial road vehicles and special road vehicles (recital (35)), new regulatory measures would 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 to achieve the targets of the measure would not take place. Point 197 of the CEEAG is thus complied with.
- (151) As regards the form of the aid, the Commission considers, based on the information provided by the German authorities, and the existing Commission case practice⁶², 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 development of the acquisition of clean vehicles, the deployment of the related infrastructure and the carrying out of the related environmental studies.
- (152) The Commission considers that given that a large-scale deployment of vehicles with climate-friendly drives is hampered by high investment costs and associated risks, 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 (25)).
- (153) The Commission therefore concludes that aid granted under the measure is appropriate.

⁶² 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.

3.2.2.3 Proportionality of the aid and cumulation

- (154) According to point 47 of the CEEAG, 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.
- (155) Points 173 and 199 of the CEEAG specify that aid for the acquisition of clean vehicles, for the retrofitting of vehicles and for the deployment of recharging and refuelling infrastructure should in general be granted following a competitive bidding process conducted in accordance with the criteria set out in points 49 and 50 of the CEEAG.
- (156) The German authorities have justified that an isolated competitive bidding process for the recharging and refuelling infrastructure for commercial and special road vehicles is not possible. First, they argue that, given that the infrastructure is very expensive, undertakings would be even less likely to invest in clean vehicles if they had to finance the supporting infrastructure on their own, as this would constitute an additional cost to them (recitals (74) and (75)). *Sub-measure 2* is thus intrinsically linked to *Sub-measure 1*. Moreover, the German authorities have shown that the currently very low level of market penetration of clean commercial and special road vehicles is below 2% of the total amount of commercial and special road vehicles in Germany, thus a derogation from the competitive bidding process is also justified under point 200(e) of the CEEAG.
- (157) Point 49 of the CEEAG provides the criteria that must be fulfilled for the aid to be 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
 - (d) *Ex post* adjustments to the bidding process outcome are avoided as they may undermine the efficiency of the process's outcome.
- (158) The German authorities explained that the aid under the measure will be allocated through a competitive bidding process that has been specifically designed to be open to a particularly wide range of projects that may contribute to facilitating the development of the economic activities in question (recital (57)).
- (159) The criteria for the participation in the bidding process are defined *ex-ante*, in a transparent and non-discriminatory way. All the criteria to submit bids are defined in advance in a clear and transparent way (see recital (57)). In addition, the budget or volume related to the bidding process is a binding constraint in that the German

authorities have confirmed that based on the experiences from previous funding calls, it can be expected that not all bidders will receive aid (recital (58)). Finally, *ex-post* adjustments to the outcome of the tendering process will not be possible under the schemes (recital (59)). Therefore, point 49 of the CEEAG is complied with.

- (160) Point 50 of the CEEAG explains that the selection criteria used for ranking bids should put the contribution to the main objectives of the measure in direct or indirect relation with the aid amount requested by the applicant.
- (161) The Commission notes that the German authorities will use expected annual CO₂ savings (measured in kilograms of CO₂) per Euro of eligible funding as the main criterion (recital (63)). Also the MAN will ensure that applications with CO₂ emissions saved per Euro of support that are lower than the average of all applications are excluded from funding (recital (66) to (68)). The MAN also ensure that incentives remain for applicants to bid for the acquisition of zero-emission clean vehicles as only vehicles with high emission savings will be supported, in line with point 175 of the CEEAG. Finally, there are no other criteria that weigh for more than 30% of the weighing of all the selection criteria as per point 50 of the CEEAG.
- (162) The aid amount is awarded after it has been adjusted to the net extra costs of a reference project comparing the targeted clean vehicle with a comparable diesel vehicle. Therefore, the net aid amount requested is first capped on the basis of the net investment costs of a reference project of a clean commercial and special road vehicle established by the German authorities (Table 1). This corresponds to an extra safeguard to avoid overcompensation but does not directly set the level of support as bidders are free to compete by undercutting the cap.
- (163) The annual CO₂ savings are estimated based on a formula determined by the German authorities, which takes into account the various factors influencing emissions of the counterfactual conventional vehicles and hence corresponding emission savings of clean vehicles used to replace conventional vehicles (recital(64)). Those are put in relation to the support requested by applicants. The support requested by applicants is itself composed of different elements of the bid. It is determined by the German authorities as 80% of the difference between the investment costs of the clean vehicle and the investment costs of the reference conventional vehicle referred to in the bid by the applicant. The application of the 80% aims at approximating the net extra costs from the use of the clean vehicle with the costs of a conventional vehicle, while the difference in investment costs between clean and conventional vehicles remains the most decisive extra cost factor (recital (54)).
- (164) Based on these elements, the Commission observes that the selection criteria used for ranking bids properly reflect the CO₂ emission savings of the clean vehicles in relation to the aid amount requested by the applicant. The Commission therefore considers that point 50 of the CEEAG is complied with as regards *Sub-measures 1 and 2*.
- (165) As regards *Sub-measure 2*, the aid amount will be determined in line with recital (55) as 80% of investment costs for recharging and refuelling infrastructure and shall ensure that the aid amounts will be lower than the funding gap, i.e. the net present value of the factual scenario as indicated in Table 4 (recital (55)), taking

into account that there is no counterfactual scenario in line with point 52 of the CEEAG. This is in line with points 201 which refers to points 48, 51 and 52 of the CEEAG. A claw-back mechanism on the basis of point 201 and 55 of the CEEAG is not required because the infrastructure funded under *Sub-measure 2* does not generate any revenues and there will not be uncertainties and asymmetries of information as regards the costs.

- (166) Furthermore, as regards *Sub-measure 3*, the eligible costs are the costs of environmental studies relating to *Sub-measures 1* and *2* and the aid intensity is set at a maximum of 50% of the eligible costs (recital (56)). Points 452, 453 and 454 of the CEEAG are thus fulfilled.
- (167) Moreover, point 56 of the CEEAG explains that when aid under one measure is cumulated with aid under other measures, Member States must specify the method used to ensure that the total amount of aid for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under the CEEAG. Point 57 of the CEEAG indicates that when Union funding that does not constitute State aid is combined with aid, the total amount of public funding granted in relation to the same eligible costs must not lead to overcompensation. In this regard, the Commission notes that aid under the scheme may not be cumulated with other State aid, or with Union funding not constituting aid (recital (76)).
- (168) Therefore, the Commission concludes that aid granted under the measure is proportionate.

3.2.2.4 Transparency and other obligations

- (169) The German authorities have committed to submit to the Commission the reports provided for by Article 26 of Council Regulation (EU) 2015/1589⁶³ and to maintain for at least 10 years from the date of award of the aid, detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are fulfilled, and provide them, on written request, to the Commission within a period of 20 working days or such longer period as may be fixed in the request. Furthermore, any individual aid exceeding EUR 100 000 will be published in accordance with point 58 of the CEEAG (see recital (77)).
- (170) The Commission considers that, with the commitment referred to in recital (166), the German authorities comply with their transparency obligations.

3.2.2.5 Avoidance of undue negative effects on competition and trade and balancing test

- (171) By its very nature, the measure may strengthen the competitive position of the beneficiaries by granting them an advantage vis à vis potential competitors that are not in receipt of aid. Nevertheless, the measure addresses market failures that prevent the investment from being delivered by the market alone, and that make

⁶³ 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).

the aid necessary (recital (13))). Furthermore, the measure contributes to enabling the shift to cleaner technologies for the road transport sector and contributes to environmental protection by allowing a reduction in CO₂ emissions, air pollutants and noise from road transport, in line with the objectives of the European Green Deal, as well as the ‘Fit for 55’ package (recital (6))).

- (172) The way in which the measure is designed does not displace activities or investments from one region into another within the internal market without any net environmental impact. On the contrary, it favours the development across the German territory of investments benefitting the supported economic activities and, moreover, having the potential to improve environmental protection and contribute to climate change mitigation that would otherwise not materialise. Therefore, the measure does not result in any manifestly negative effects on competition and trade, in line with point 69 of the CEEAG.
- (173) 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. Point 68 of the CEEAG indicates that aid may distort competition by strengthening or maintaining substantial market power of the beneficiaries. Point 213 CEEAG requires that the design of the aid measure contains appropriate safeguards to address the risk of the creation or strengthening of market power positions. In this respect, the measure is open to all undertakings from all sectors, regardless of their size (Section 2.6). Furthermore, Germany will regularly scrutinise the outcome of the funding calls and will ensure that the maximum grant amounts per applicant are adjusted in all subsequent funding calls (recital (28)). The Commission therefore considers that the measure’s design provides sufficient safeguards against the risk of undue distortions of competition, including in the form of increased market power.
- (174) 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 (29), aid under the measure will be granted until 31 December 2026. Therefore, the measure is in line with point 70 of the CEEAG.
- (175) According to point 188 of the CEEAG, when assessing the distortion of competition of aid for the acquisition or leasing of vehicles or mobile service equipment, the Commission considers whether bringing into service new vehicles would result in or aggravate existing market failures, such as overcapacity in the sector concerned. The Commission notes that the measure aims at addressing important market failures preventing the achievement of a sufficient level of environmental protection in the sector concerned (recital (135)). Point 188 of the CEEAG is thus complied with.
- (176) 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. In this regard, the Commission notes that the recharging infrastructure to be installed under the measure, which will allow for a transfer of electricity with a power output of up to 22 kW, will be capable of

supporting smart recharging functionalities (recital (42)). Point 206 of the CEEAG is thus complied with.

- (177) Point 215 of the CEEAG requires that any concession or other entrustment to a third party to operate the recharging or refuelling infrastructure must be awarded on a competitive, transparent and non-discriminatory basis, having due regard to the Union public procurement rules, where applicable. In this regard, the Commission notes that, as also recalled in recital (45), given that the infrastructure is intended primarily for use by the beneficiary, no concessions or other entrustments will normally be awarded to third parties to operate the recharging and refuelling infrastructure.
- (178) Point 211 of the CEEAG states that the Commission considers that the negative effects on competition of aid for refuelling infrastructure supplying fossil-based fuels, including fossil-based hydrogen, where greenhouse gases emitted as part of the hydrogen production are not effectively captured, are unlikely to be offset, in the absence of a credible pathway towards the supply and use of renewable or low-carbon fuels in the medium term. Point 212 of the CEEAG ensures that aid for hydrogen refuelling infrastructure that does not exclusively supply renewable hydrogen or low-carbon hydrogen may only be regarded as not having long-term lock-in effects or not displacing investments into cleaner technologies if the Member State demonstrates a credible pathway towards the phasing out of hydrogen that is not renewable or low-carbon to supply the refuelling infrastructure by 2035. In this regard, the Commission notes that at least 50% hydrogen supply for the refuelling infrastructure must come from renewable energy sources. Furthermore, the German authorities will require a gradual increase in the share of renewable hydrogen of 5 % per year for new applicants (recital (46)). The Commission therefore concludes that the support for hydrogen refuelling facilities will not lead to any lock-in effects with respect to the use of carbon-intensive forms of hydrogen supply. Point 211 and 212 of the CEEAG is thus complied with.
- (179) Finally, where the recharging and refuelling infrastructure will be open for access by users other than the aid beneficiaries, the infrastructure will provide non-discriminatory access to users, including, as appropriate, in relation to tariffs, authentication and payment methods and other terms and conditions of use. In addition, the German authorities will ensure that the fees charged to users other than the aid beneficiaries for using the recharging or refuelling infrastructure correspond to market prices (recital (44)). Point 216 of the CEEAG is thus complied with.
- (180) On the basis of the considerations in recitals (171) to (181), the risk of undue negative effects on competition and trade from the measure is limited.

3.2.2.6 The ex-post evaluation plan as part of the compatibility assessment

- (181) Point 455 of the CEEAG enables the Commission to require that notifiable aid schemes be subject to ex-post evaluation, and they stipulate that ex-post evaluation should be required where the potential distortions of competition and trade stemming from the scheme at hand are particularly high. In particular, ex-post evaluation is required for (1) schemes with State aid budgets or accounted expenditures exceeding EUR 150 million in any given year or EUR 750 million

over the total duration of the scheme, (2) schemes with novel characteristics, and (3) schemes in areas where significant market, technology or regulatory changes are foreseen. The ex-post evaluation requirement only applies for aid schemes with a total duration exceeding three years, starting from 1 January 2022.

- (182) The Commission considers that the measure must be subject to ex-post evaluation, as it fulfils the CEEAG criteria of having a State aid budget of more than EUR 750 million over the total duration of the measure. Furthermore, the measure has a duration exceeding three years.
- (183) As indicated in recital (78), the German authorities submitted an evaluation plan for the measure as an integral part of the notification.
- (184) The objective of the evaluation plan is to demonstrate, by means of both quantitative and qualitative analyses, the direct effects of the measure, the proportionality and appropriateness of the aid, as well as a number of indirect effects including potential distortive effects on competition.
- (185) The Commission considers that the notified evaluation plan contains all the necessary elements: the objectives of the scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation, the proposed timing of the evaluation including the date of submission of the evaluation reports and the modalities for ensuring the publicity of the evaluation (Section 2.11). The Commission notes that:
- (a) The scope of the evaluation is defined in an appropriate way. It comprises a list of relevant evaluation questions with matched result indicators (recitals (79) to (82)). Moreover, the evaluation plan identifies and explains the main methods that will be used in order to identify the effects of the schemes (recital (83));
 - (b) The German authorities committed, in accordance with the Commission's requirements, that the evaluation will be conducted by an independent evaluation body in accordance with the criteria laid down in the evaluation plan and further developed in the interim evaluation report (recital (88));
 - (c) The commitment made by Germany to submit to the Commission an interim evaluation report by 31 December 2023 (recital (84)) and a final evaluation report by 31 March 2026 or by 31 March 2027 is appropriate (recital (84)) and
 - (d) The proposed modalities for the publication of the evaluation results are adequate to ensure transparency (recitals (86) and (87)).
- (186) Moreover, the Commission notes Germany's commitment to communicate to the Commission any difficulty that could significantly affect the agreed evaluation in order to work out possible solutions (recital (89)).
- (187) The Commission reminds the German authorities that the application of the measure must be suspended with immediate effect if the final evaluation report is not submitted in good time and sufficient quality or is otherwise not in

compliance with the approved evaluation plan⁶⁴, and that any subsequent aid measure with a similar objective must take into account the results of the evaluation⁶⁵.

3.2.3 *Weighing up the positive and negative effects of the aid*

- (188) 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.
- (189) Based on the assessment conducted in Sections 3.2.1 and 3.2.2 of this Decision, the Commission carries out a balancing test to assess whether the expected positive effects outweigh the possible negative effects of the measure.
- (190) The positive effects of the aid considered in the balancing test include the contribution of the measure to the aim of incentivising the shift to clean and zero-emission mobility, in line with the objectives of the European Green Deal Communication and the ‘Fit for 55’ package of Commission proposals (recitals (4) to (6)), the fact that the measure addresses well-defined market failures affecting the road transport sector (recital (135)), and the fact that the aid allows to develop economic activities that would otherwise not be undertaken (Section 3.2.1.1).
- (191) 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 design of the competitive bidding process and the MAN criteria ensure that there are significant CO₂ emission savings.
- (192) As described in Section 3.2.2.6, the German authorities submitted an adequate ex-post evaluation plan. The plan will allow the Commission to verify:
- (a) whether the assumptions and conditions underlying this decision have been realised;
 - (b) the necessity and effectiveness of the measures in light of its predefined objectives;
 - (c) the impact of the measures on competition and trade; and
 - (d) that no undue distortive effects arise throughout the duration of the measures that are contrary to the interests of the Union.
- (193) Furthermore, the German authorities have designed the measure in such a way as to limit the potential distortion of competition arising from the measure. After having assessed potential undue competition distortions (Section 3.2.2.5), the Commission concludes that the positive effects of the measure outweigh the potential negative effects on the internal market.

⁶⁴ See point 457 CEEAG.

⁶⁵ See point 463 CEEAG.

3.2.4 Conclusion on the compatibility of the aid

(194) 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. 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:

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President