



Fastned contribution to EU Commission consultation

on

Guidelines on State aid for climate, environmental protection and energy 2022 from 7 June 2021

Fastned operates a network of more than 150 fast charging stations that are open to all electric vehicles and is active in six European countries. Fastned is striving to give freedom to electric drivers and accelerate the transition to sustainable mobility.

Fastned welcomes the EU Commission's draft Guidelines on State aid for climate, environmental protection and energy 2022, and is grateful for the opportunity to provide feedback. Due to the nature of our business, our comments refer to section 4.3.2. Aid for the deployment of recharging or refuelling infrastructure.

Fastned's General Comments on the Draft Guidelines

Fastned sees the importance of supporting the rollout of charging infrastructure projects and welcomes the Commission's work to develop clear guidelines for state aid in the emerging clean mobility and electric vehicle sector. Fastned believes the following principles are of utmost importance when state aid is used to support the development of an EU wide charging network:

EU legislation and documentation should explicitly state that state aid can only be awarded to charging infrastructure projects which were developed through **open and transparent public tender procedures** and are in line with EU competition law. This will encourage an open market, access for new players, fair competition and improved service to charging customers. Fastned welcomes the inclusion of this requirement in the revised state aid guidelines (para 179, 188). As part of the transparent and competitive bidding processes, qualitative criteria should be taken into account in order to ensure the best possible service is developed and contracts should not only be awarded based on price. The boundaries allowing for derogation from para. 179 outlined in para. 180 should be interpreted very narrowly so as to avoid their misuse.

Fastned welcomes limits on the proportion of the project that can be funded by state aid, as outlined in para 176. More specifically, state aid should only be awarded up to the **value of 50% of total CAPEX** in order to ensure that projects are only undertaken where there is a viable business case (cf. para 182, 187).

The charging market varies considerably per Member State and in some regions market dynamics are already established. We hence ask for a more nuanced view on the "market failures" mentioned in para. 168 – in countries such as the Netherlands or Germany, companies like Fastned have already invested significant amounts of private capital. Instead of declaring a whole market failed, the state aid guidelines should account for different paces and dynamics in every Member State.

Hence Fastned **welcomes the requirement for member states to carry out ex-ante consultations** (para 171) to establish the necessity of aid and whether similar infrastructure is not likely to be developed commercially otherwise. This will ensure that state aid does not suffocate private investments in a nascent, dynamic market but only targets the areas in need of support.

State aid should be **prioritized for supporting the development of clean mobility infrastructure where there are currently barriers**, such as for truck charging which faces ambitious targets (in the updated AFIR) and in white spot areas where there may not be a business case for private investment.



The EU should put mechanisms in place to ensure that state aid **does not affect the level playing field by discriminating between technologies**. Private actors have already invested considerable amounts in the development of fast charging infrastructure, and the market could be destabilized by introducing state aid where it is not needed. Fastned hence welcomes the clarification of eligible costs outlined in para. 177.

State aid should only be awarded where public access and transparency for the customer is ensured. The bidding processes should ensure that recharging infrastructure that is granted state aid is not discriminating customers based on their authentication or payment method and should avoid the creation of closed ecosystems to that effect. This includes that all publicly available charging stations allow users to charge and pay on an ad hoc basis with clearly visible price indications (para. 189).

Comments in detail on working document

4.3 Aid for Clean Mobility

4.3.2 Aid for the deployment of recharging or refuelling infrastructure

4.3.2.1 Rationale for the aid

167. A comprehensive network of recharging and refuelling infrastructure is necessary to enable a widespread uptake of clean transport vehicles, and to enable the shift towards zero emission mobility. In fact, a particularly critical barrier to the market uptake of clean transport vehicles is the limited availability of the infrastructure to recharge or refuel them. Furthermore, the recharging and refuelling infrastructure is not spread evenly across Member States. At the same time, as long as the share of clean transport vehicles in operation remains limited, the market alone may fail to deliver the recharging and refuelling infrastructure needed.

168. Directive 2014/94/EU of the European Parliament and of the Council⁷² creates a common framework of measures for the deployment of alternative fuels infrastructure for transport in the Union and sets provisions for the Member States for the deployment of such infrastructure. Moreover, other policies promoting the uptake of clean transport vehicles may already provide for investment signals for the deployment of recharging and refuelling infrastructure. However, those policies alone may not be sufficient to address in full the identified market failures. Member States may therefore grant aid to address those residual market failures and support the deployment of recharging and refuelling infrastructure.

- The AFI and Ten-T Regulation – both currently in the process of being updated – should be aligned to ensure the deployment of charging infrastructure fit for different use cases.
- Targets for charging infrastructure, such as in the revision of the AFIR, should be based on projections for development of the market and distinct use cases. Setting minimum fleet-based targets for publicly accessible charging points will provide long term predictability, thereby encouraging private investment.

4.3.2.2 Scope and activities supported

169. Aid may be granted for the construction and installation or the upgrade of recharging or refuelling infrastructure.

170. Projects may also include installations for smart charging operations and for the on-site production of electricity or hydrogen from renewable sources, connected to the



recharging or refuelling infrastructure by means of a direct link, as well as on-site storage facilities for electricity and hydrogen to be supplied as transport fuels.

4.3.2.3 Minimisation of distortions of competition and trade

4.3.2.3.1 *Necessity of the aid*

171. The Member State must verify the necessity of aid to incentivise the deployment of recharging or refuelling infrastructure of the same category⁷³ by means of an *ex ante* open public consultation or an independent market study. In particular, the Member State must verify that similar infrastructure is not likely to be developed on commercial terms in the short term⁷⁴.

- Public consultations, in which market agents can input their views on the rollout of charging infrastructure, as well as potential impact to their business and the level playing field, will be of critical importance in these assessments.

172. When assessing the necessity of aid for the deployment of recharging and refuelling infrastructure for zero-emission and clean transport vehicles that is open for access by third parties, including publicly accessible recharging or refuelling infrastructure, the market penetration of the clean transport vehicles that such infrastructure would serve may be considered.

- As well as market penetration, the following could also be considered:
 - Expected growth of EV market;
 - Absolute numbers of EV ownership (to avoid the market penetration numbers thwarting the roll out of charging infrastructure in remote areas);
 - Grid reinforcements as well as integration of storage solutions, thus promoting renewable energy sources and easing the use of RES generation for transport;
 - Commute patterns, particularly in urban areas.

4.3.2.3.2 *Appropriateness*

173. The requirements set out in points 174 and 175 apply in addition to those set out in Section 3.2.1.2.

174. The verification of appropriateness among alternative policy instruments should take into consideration the potential for new regulatory interventions to stimulate the shift towards clean mobility and their expected impact compared to that of the proposed measure. In particular, the Member State should consider the impact of an ETS, where applicable, and obligations such as those established by Directive 2014/94/EU.

175. As regards the verification of appropriateness among different aid instruments, aid for the deployment of recharging or refuelling infrastructure may be granted in any form, including grants, loans or guarantees. The Member State must justify its choice of aid instrument and explain why less distortive aid instruments would not deliver equally efficient outcomes.

4.3.2.3.3 *Proportionality*

176. The aid must not exceed the cost necessary to facilitate the development of the economic activity at issue in a manner that increases the level of environmental protection. The aid may be considered proportionate where the conditions in points 177 to 182 are met.



- State aid given to charging infrastructure projects should not exceed 50% of total CAPEX. Such a cap reduces the risk of undertaking projects which are not based on viable business cases and limits the risk of affecting the level playing field.
- State aid for clean mobility/charging infrastructure should be paired with strict requirements for the quality and maintenance to ensure the proper functioning and long lifespan of the infrastructure.
- State aid should be prioritized for the development of the sector which face barriers such as economically less attractive sites or segments of the industry which need to accelerate considerably to meet EU targets, such as truck charging.

177. The eligible costs are the costs of the investment for the construction and installation, or the upgrade of the recharging or refuelling infrastructure. These may include the costs of:

1. (a) the recharging or refuelling infrastructure itself;
2. (b) the installation of or upgrades to electrical or other components, such as for the smart readiness of recharging infrastructure, including power transformers required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit;
3. (c) the related technical equipment;
4. (d) the related civil engineering works;
5. (e) the related land or road adaptations;
6. (f) obtaining related permits.

178. Where a project includes the on-site production of renewable electricity or renewable hydrogen or the on-site storage of renewable electricity or renewable hydrogen, the eligible costs may include the investment costs of on-site renewable electricity or renewable hydrogen production units or of on-site renewable electricity or renewable hydrogen storage facilities.

179. The aid must be granted following a competitive bidding process conducted in accordance with the criteria in points 48 and 49. The design of the competitive bidding process must ensure that sufficient incentives remain for applicants to bid for projects concerning recharging or refuelling infrastructure supplying only renewable electricity or renewable hydrogen. The application of the award criteria must not result in projects concerning recharging or refuelling infrastructure supplying only renewable electricity or renewable hydrogen being put at a disadvantage compared to projects concerning recharging or refuelling infrastructure that also supplies carbon-intensive electricity or hydrogen.

180. By way of derogation from point 179, the aid may be granted on the basis of methods other than a competitive bidding process in the following cases:

(a) where the expected number of participants is not sufficient to ensure effective competition or avoid strategic bidding; or

(b) where a competitive bidding process, as described in points 48 and 49, cannot be organised.

181. In the cases listed in point 180, the aid amount may be determined on the basis of a funding gap analysis as set out in points 47, 50 and 51. The Member State must conduct an *ex post* monitoring to verify the assumptions made about the level of aid required and put in place a claw-back mechanism as set out in point 53.

182. Alternatively to point 181, the basic aid intensity must not exceed 30 % of the eligible costs or 40 % of the eligible costs where the recharging or refuelling infrastructure supplies only renewable electricity or renewable hydrogen respectively. This aid intensity may be increased by 10 percentage points for medium-sized enterprises or by 20 percentage points for small enterprises. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (c), of the Treaty.



4.3.2.4 Avoidance of undue negative effects on competition and trade and balancing

183. The requirements set out in points 184 to 189 apply in addition to those set out in Section 3.2.2.
184. Aid for the deployment or upgrade of refuelling infrastructure may unduly distort competition when it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner technologies. Therefore, in those cases, the Commission considers that the negative effects on competition of aid for the deployment or upgrade of refuelling infrastructure supplying natural gas-based fuels such as CNG and LNG are unlikely to be offset.
185. Aid for the deployment or upgrade of CNG and LNG refuelling infrastructure may be regarded as not creating long-term lock-in effects and not displacing investments into cleaner technologies if, at the moment when the Member State notifies the Commission of its plans to implement the aid measure or when the aid measure is implemented, the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term⁷⁵. Aid for the deployment or upgrade of CNG and LNG refuelling infrastructure may also be regarded as not creating long-term lock-in effects where the Member State commits to ensure that the CNG and LNG is blended with biogas or renewable gaseous transport fuels of non- biological origin (minimum 20%).
186. Alternatives to fossil-based fuels are already available on the market for use in the road transport, inland and sea and coastal water transport, and railway transport sectors. Therefore, aid for the deployment or upgrade of refuelling infrastructure supplying fossil-based fuels such as carbon-intensive hydrogen is not considered to yield the same positive effects as aid for the deployment of refuelling infrastructure supplying non-fossil-based fuels. Firstly, the improvement in terms of CO₂ emission reductions achieved in the transport sector is likely counterbalanced by the continuation of carbon emissions linked to the production and use of fossil-based fuels. Secondly, in the absence of a commitment from the Member State that the refuelling infrastructure will supply renewable or at least low-carbon hydrogen, the granting of aid for deploying hydrogen refuelling infrastructure may entail a risk of locking in the production of carbon-intensive hydrogen, thereby displacing investments into cleaner alternatives by shifting demand away from non-fossil-based production processes. This would also discourage the further development of the market for clean, future-proof non-fossil-based technologies for zero emission mobility, and for the production of non-fossil fuels and energy. The Commission therefore considers it generally unlikely that the negative effects on competition of aid for the deployment or upgrade of refuelling infrastructure supplying fossil-based fuels such as carbon-intensive hydrogen will be offset.
187. In the absence of appropriate safeguards, the aid may result in the creation or the strengthening of market power positions, which may prevent or impair effective competition in nascent or developing markets. The Member State must therefore ensure that the design of the aid measure contains appropriate safeguards to address that risk. These can include, for instance, the establishment of a maximum percentage of the budget for the measure that can be allocated to one single undertaking.
188. 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.
189. If aid is granted for the deployment or upgrade of recharging or refuelling infrastructure that is open for access by third parties, including publicly accessible recharging or refuelling infrastructure, the latter must be accessible to the public and 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 Member State



should ensure that the fees charged to third party users for using the recharging or refuelling infrastructure correspond to market price.