

THE INVESTMENT AID SCHEME FOR FAST CHARGING STATIONS FOR HEAVY DUTY ELECTRIC VEHICLES – USE OF THE BLOCK EXEMPTION REGULATION

1. Overview of the scheme

Authority: Oslo Municipality.

Target group: Private companies.

Maximum support amount: NOK 90 000 000.

Maximum support share: 80 % of investment costs

The overall objective of the announcements is to expand the fast charging infrastructure for heavy duty vehicles in Oslo, and thereby contribute to increased use of electric heavy duty vehicles. The support scheme applies in Oslo.

The City government intends that the aid will lead to an increase in the purchase and use of electric heavy duty vehicles in the municipality. The overall aim of the program is thereby to promote the transition from heavy duty vehicles running on fossil fuels to vehicles running on electricity. This in turn should contribute to a reduction in climate emissions, a reduction in pollution and an improvement of air quality in the municipality.

The lack of fast charging infrastructure adapted to heavy duty vehicles makes companies refrain from purchasing electric heavy duty vehicles. Heavy duty vehicles are significantly longer than other electric vehicles. This can make it a challenge to get access to available charging stations. While the heavy duty vehicles are charging, they might take up several charging places simultaneously due to their size. Another challenge is that the companies that use heavy duty vehicles can't afford to have their drivers waiting in line for a charging spot while private cars are charging. This calls for charging stations especially designed for and dedicated to heavy duty vehicles. The City government considers there to be a need for state intervention in the form of aid for the construction of fast charging infrastructure for heavy duty electric vehicles, in order to make electric heavy duty vehicles a viable option for companies operating in Oslo. In the absence of state intervention, the City government considers it unlikely that heavy duty electric vehicles will be as widespread in the city as it hopes to achieve in the foreseeable future.

From the perspective of users of heavy duty vehicles, there are still important disadvantages related to buying electric vehicles. Consumers are worried about their driving autonomy, including battery range; charging electric vehicles can be challenging due to limited availability of charging stations, and particularly fast charging stations. Recharging the battery of heavy duty electric vehicles takes longer than refueling a tank with petrol or diesel. With the fast charging station, it takes at least one-two hours to fully recharge a heavy duty electrical vehicle. More common chargers use up to 12 hours, leaving the vehicle out of service for several hours a week. The long charging times compared to passenger cars are caused by the size of the batteries on heavy duty vehicles.

The City government is of the opinion that an increase in the use of electric vehicles has many advantages. Firstly, a transition from fossil fuels to electricity ensures that the level of local pollution from road traffic is minimized. Secondly, it has a value in itself to aid the shift to green

technology at an early stage. This will facilitate the emergence of a local service level with the requisite competence in the concerned technology. The rationale behind the Scheme, and the legitimization of the public intervention, is that the eligible infrastructure will contribute at a local level to improve the business and consumer environment, and modernize and develop the industrial base.

With respect to the beneficiaries of the aid paid out under the Scheme, these will be companies undertaking to establish commercially available infrastructure for the provision of fast charging stations dedicated to heavy duty vehicles to end-consumers in Oslo municipality. The City government foresees that the beneficiaries could in practice be a mix of established players within the market for fast charging stations, players already operating fast charging infrastructure financed by the public purse, and new players not yet active.

The eligible costs will be the relevant investment costs for the construction or upgrade of the concerned infrastructure, as prescribed by Article 56 of the GBER. The aid beneficiaries will be selected through competitive procedures open to all interested undertakings. The planned support for the infrastructures shall be made public in separate announcements, with specific deadlines for applicants who wish to compete/apply for aid. The procedures will be conducted in a manner which ensures that the conditions of Article 56 of the GBER are fulfilled with respect to all individual aid under the Scheme.

The legal basis for the scheme is administrative decision by Oslo City Government 20.06.2018, reference number 201100333-76 (case number 11/2018), which gives the Climate Agency delegated authority to establish new support schemes through the Climate and Energy fund.

2. The scheme complies with the general requirements of chapter I of the GBER

Article 1 GBER - The measures applies to an exempted aid category

The Scheme will fall within the scope of the GBER. Aid awarded under the Scheme falls within the categories listed in Article 1 paragraph 1, interpreted in light of the definitions in Article 2. In particular, the aid granted under the Scheme falls within the aid category of Article 1 paragraph 1 (l): *aid for local infrastructures*. The measure takes the form of investment aid for costs pertaining to the construction of fast charging station infrastructure, including the construction necessary to provide electricity of sufficient capacity. This form of infrastructure does not fall within any of the specialized categories of infrastructure eligible for other forms of aid. As underlined in the introduction, fast charging station infrastructure contributes at a local level to improving the business and consumer environment and modernizing and developing the industrial base. On this basis, it can be concluded that the measure falls within the category of *aid for local infrastructures*. In support of our conclusion, we refer to the European Commission's FAQs concerning the GBER, in which it is clearly indicated that recharging points for electric vehicles could fall within this aid category.

The City government confirms that the limitations on the scope of the GBER set forth in Article 1, paragraphs 2 to 5, will be complied with. The City government will not link aid with exports or make aid conditional upon the use of domestic goods, cf. Article 1 paragraph 2. Furthermore, the Scheme has been designed with due regard to the limitations in Article 1 paragraph 3 and 4 of the GBER.

The Scheme will not entail a violation of EEA law as stipulated under Article 1 paragraph 5. The grant of aid will not be subject to an obligation on the part of the beneficiary to have its headquarter in Norway or to be predominantly established in Norway. Furthermore, the City government will not oblige beneficiaries to use nationally produced goods or national services, or restrict the possibility for beneficiaries to exploit research, development and innovation results in other EEA states.

Article 4 paragraph 1 (cc) GBER - Notification thresholds

The thresholds in Article 4 paragraph 1 (cc), applies to aid to local infrastructure. The aid will not exceed EUR 10 million or the total costs exceeding EUR 20 million for the same infrastructure. The thresholds will be applied with due regard to the limitation following from the cumulation provisions under Article 8.

The aid scheme will have a total budget of NOK 180.000.000,-. Each aid recipient will receive a maximum amount of NOK 90.000.000,-.

Article 5 GBER - Transparency of aid

Aid under the Scheme will exclusively be provided in the form of grants, meaning that the transparency requirement is fulfilled, cf. Article 5 paragraph 2 (a).

Article 6 GBER - Incentive effect

Individual aid will only be granted in circumstances where the aid is deemed to have an incentive effect as specified in Article 6. It is only projects that would not have been carried out in the absence of aid which will be eligible under the Scheme. Furthermore, aid will not be granted in instances where work on the concerned project or activity has started prior to the City government's receipt of a written application. The City government will require prospective applicants to submit the information prescribed by Article 6 paragraph 2 (a) to (e) *before* work on the project is initiated.

Article 7 GBER - Aid intensity and eligible costs

The City government will calculate the aid intensity and the eligible costs in accordance with the methodology set forth in Article 7. It will require eligible costs to be supported by clear, specific and contemporary documentary evidence, as prescribed by Article 7, paragraph 1.

Article 8 GBER - Cumulation

The total amount of aid granted for the aided activity, project or undertaking will be taken into account when determining whether the notification thresholds in Article 4 (cc) are respected. The aid may be cumulated with other aid within the limits set forth in Article 8 paragraph 3 (a) and (b).

In order to ensure that the relevant thresholds are respected, the City government may check the information received from the aid recipient against the information in the national aid registry. Moreover, applicants will be required to disclose information on all other forms of financing of the project and any state aid received during the last (three) years.

Article 9 GBER - Publication and information

The City government will contribute to the fulfilment of the obligations on publication, information and reporting as set forth in Article 9 and Article 11. The City government publishes

the full text of the Scheme on its website. The website of the City government will also publish a link providing the summary information referred to in Article 11 in the standardised format laid down in Annex 2 of the GBER, i.e. to the publication of Annex 2 on the website of the EFTA Surveillance Authority.

3. The scheme complies with the special requirements of chapter III of the GBER – article 56 of the GBER

Introduction

As stipulated above, the individual aid granted under the Scheme will fall under the following category of Article 1 paragraph 1: *aid for local infrastructure*. As established above, the Scheme as such and the individual aid granted under the Scheme, falls within the scope of the GBER. The specific requirements under the relevant provision of Article 56 GBER will therefore be assessed in the following sections.

Article 56 paragraph 1 GBER – The effects of the eligible infrastructure

This Scheme will contribute to an increase in the construction of fast charging infrastructure for electric heavy duty vehicles, which in turn should lead to an increase in the purchase and use of such vehicles, and thereby also reductions in emissions. By increasing fast charging infrastructure for heavy duty vehicles, the Scheme will contribute to making these vehicles a viable alternative in the city of Oslo.

As set out in the introduction, an increase in the use of electric heavy duty vehicles (with a subsequent decrease in the use of fossil fuels) represents many advantages. Increased use of electricity as opposed to fossil fuels firstly ensures that the level of local pollution from road traffic is minimized. Hence, it will contribute to the promotion of sustainable transport and improving air quality in the local area. Secondly, the City government considers it desirable to contribute to inducing a shift to green technology at an early stage. This will facilitate the emergence of a local service level with the requisite competence of the applicable technology.

For these reasons, the City government considers that the eligible infrastructure will contribute to improving the business and consumer environment at a local level, and modernizing and developing the industrial base. The condition in Article 56 paragraph 1 is consequently fulfilled.

Article 56 paragraph 2 GBER – The eligible infrastructure is not covered by other special exemptions

Upon receiving an application for aid, the City government will firstly ensure that the infrastructure in question does not amount to port or airport infrastructure, and not covered by other sections of Chapter III of the block exemption regulation, with the exception of Section 1 (Regional aid), cf. paragraph 2.

The applicability of Article 56 GBER is supported by the EU Commission's recent FAQ document, which states that charging posts for electric vehicles may be covered by Article 56.¹

¹ The European Commission's General Block Exemption Regulation (GBER) Frequently Asked Questions, question 252.

Article 56 paragraph 3 GBER – Availability to users

The infrastructure will be provided on an open, transparent and non-discriminatory basis. This entails establishing that the infrastructure is not designed for one specific undertaking, but focuses on attracting newcomers in general. Furthermore, the price charged for the use or the sale of the infrastructure will correspond to market price pursuant to Article 53 paragraph 3.

Article 56 paragraph 4 GBER – Concession or other entrustment to a third party

As underlined above, the City government will ensure that any entrustment to a third party to construct, upgrade and/or operate the infrastructure is assigned through open, transparent and non-discriminatory procedures based on competition and with due regard to the applicable procurement rules. The aid beneficiary, as well as the entity having the right to operate the infrastructure, will consequently be appointed through a procedure consistent with Article 56 paragraph 4.

The City government notes that the European Commission has, in its recent document on FAQs concerning the GBER, indicated that Article 56 paragraph 4 only applies when the owner of an infrastructure entrusts its operation to a third party.²

Article 56 paragraph 5 GBER – Eligible costs

Eligible costs shall be investment costs in tangible and intangible assets, cf. Article 56 paragraph 5. The only eligible costs will be the investment costs relating to the construction of eligible infrastructures. This condition is consequently fulfilled.

Article 56 paragraph 6 GBER – Clawback mechanism

It follows from this provision that the aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment and that the operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a clawback mechanism.

The City government has established a clawback mechanism in order to ensure that the City government has a legal right to reclaim any excess aid (i.e. aid that exceeds the difference between the eligible costs and the operating profit) from the aid recipient. The clawback mechanism will be included in the contract between the City government and the aid recipient.

The clawback mechanism shall apply for the tax-based depreciation period of the asset.

The clawback clause shall ensure the following:

- The City government has the right to claim back any aid which exceeds the difference between the eligible costs and the operating profit of the investment, as set out in Article 56(6) of the GBER.
- The aid recipient is legally obliged to pay back any aid which exceeds the difference between the eligible costs and the operating profit of the investment, as set out in Article 56(6) of the GBER, upon request from the City government. The aid recipient also has a duty to inform the City government if it becomes aware that the aid exceeds such difference, or to carry out necessary investigations if it suspects that the aid exceeds such difference. The aid recipient shall keep accounts which set out the eligible costs

² The European Commission's General Block Exemption Regulation (GBER) Frequently Asked Questions, question 245.

and the operating profit, and which thereby are suitable to demonstrate whether the aid exceeds the agreed amount.

- The City government will have the right to monitor the aid recipient in order to ensure that the aid does not exceed the agreed amount:
 - **Every 3 years and at the end of the tax-depreciation period of the asset,** after registration of the aid recipient's annual accounts, the aid recipient shall send the City government a statement, which sets out whether the aid exceeds the difference between the eligible costs and the operating profit of the investment. If the difference is exceeded, the aid recipient shall state the **exact amount of aid** which will be paid back to the City government. The aid recipient shall send the City government its annual accounts as validation of its statement; these accounts shall clearly set out (i) the eligible costs of the investment and (ii) the operating profit of the investment.
 - If the aid recipient has received state aid for the infrastructure from someone other than the City government, this shall be made clear in the aid recipient's statement.
 - For the purpose of the abovementioned statement, the **eligible costs** and the **operating profit** shall be established as follows:
 - The eligible costs shall be calculated in accordance with the following methodology: Total investment costs less operating profit (as defined in Article 2(39) of the GBER).
 - Operating profit is defined in Article 2(39) as the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by the investment aid. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made.
 - If the information from the aid recipient and/or the accounts show that the aid exceeds the difference between the eligible costs and the operating profit, the aid recipient shall have the duty to pay back such excess aid within 1 month, or at a later date decided by the City government.
 - Although the aid recipient's accounts show that there is no excess aid, if the City government can demonstrate that the aid exceeds the difference between the eligible costs and the operating profit, the aid recipient shall have the duty to pay back such excess aid within 1 month, or at a later date decided by the City government. The City government is able to demonstrate this through a report from the City government's certified accountant ("Kommunerevisjonen"), by benchmarking or otherwise.

- If the aid recipient does not pay back the amount within the agreed date, the City government shall have the right to impose day fines (*Norwegian: dagbøter*) until the payment is made.

The City government will establish a benchmarking mechanism to avoid any beneficiaries inflating their investment costs and thereby avoiding possible overcompensation:

- Before granting the aid, the City government will ask the aid recipient to provide a budget of its costs and a financing plan and the City government shall make a forecast of the eligible costs and the operating costs of the project.
- When the City government receives the statement and accounts from the aid recipient, the City government shall compare these numbers to its forecast. In case of discrepancies, the City government shall make further investigations. If the City government is of the opinion that the discrepancy cannot be explained by other means than by inflation of costs, the City government shall treat the discrepancy as excess subsidy, and claim this amount back from the recipient.

The audit office of the City government shall have the right to, at any given time, be given access to the aid recipient's accounts. The City government does not need to provide justification for such inspection.

In addition to the requirements set out above, the City government will require the aid recipient to comply with certain reporting obligations. These reporting requirements include: report on the actual deployment of the project, actual expenditure and project accounts. If the project has been carried out in deviation with the original application, such deviation must be justified. If the project has not been carried out in accordance with the conditions of the aid scheme, the City government may claim the aid back. The aid will only be paid out to the aid recipient once the infrastructure has been built and the report has been received and approved by the City government.

This clawback clause and the reporting obligations will ensure that the recipient of the aid will not benefit from overcompensation and will minimize *ex post* and retroactively the amount of aid deemed initially to have been necessary.

Article 56 paragraph 7 GBER - Dedicated infrastructure

The infrastructure shall be open to all users. The beneficiaries shall further be selected through open and transparent procedures. This entails that aided infrastructures will not amount to dedicated infrastructures, as prescribed by Article 56 paragraph 7.

Final remarks

Based on the design and overall structure of the Scheme, the City government considers that the Scheme satisfies the requirements of the GBER, and that the Scheme may be exempted from the notification requirement as compatible with the internal market, cf. Article 3 of the GBER.

Please do not hesitate to contact us if any additional information or clarifications is required.