

EFTA SURVEILLANCE AUTHORITY DECISION
of 21 April 2015
on the State aid measures in favour of electric vehicles

(Norway)

The EFTA Surveillance Authority (“the Authority”),

HAVING REGARD to:

the Agreement on the European Economic Area (“the EEA Agreement”), in particular to Articles 61(1) and 61(3) of the EEA Agreement,

Protocol 26 to the EEA Agreement,

the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“the Surveillance and Court Agreement”), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular to Articles 4(2), 4(3) and 13(1) of Part II,

Whereas:

I. FACTS

1. Procedure

- (1) By letter of 4 November 2014,¹ the Norwegian authorities notified a zero rating VAT for electric vehicles, pursuant to Article 1(3) of Part I of Protocol 3.
- (2) The notification was discussed during the package meeting held in Oslo on 7 November 2014.
- (3) On 11 October 2014, the Authority received a letter regarding alleged State aid for electric cars.² By letter dated 17 October 2014,³ the Authority requested a number of clarifications on the content of the letter of 11 October and invited the complainant to use the formal State aid complaints form. A formal complaint regarding alleged State aid for electric cars⁴ was received on 30 October 2014 by the Authority and registered as case 76455.
- (4) On 13 November 2014, the complaint was sent to the Norwegian authorities for comments.⁵

¹ Document No 728305.

² Document No 725738.

³ Document No 726001.

⁴ Document No 729522.

⁵ Document No 729530.

- (5) By letter dated 26 November 2014,⁶ the Authority requested information from the Norwegian authorities.
- (6) The Authority met with the Norwegian authorities on 2 December 2014.⁷ During the meeting, the Norwegian authorities provided certain clarifications on the notification. Moreover, the request for information, referred to in paragraph (5) above, was commented upon.
- (7) After two extensions of the deadline to reply to the request for information, as demanded by the Norwegian authorities and granted by the Authority,⁸ on 23 February 2015,⁹ the Norwegian authorities replied, providing also their comments on the complaint.¹⁰

2. The State aid measures

1.1 Background: General overview of the Norwegian VAT system

- (8) Value Added Tax (“VAT”) was introduced in Norway with effect from 1 January 1970. The tax is levied on the final consumption of goods and services and is considered a fiscal tax to secure the State’s income.
- (9) The VAT provisions are laid down in the Act on Value Added Tax of 19 June 2009 No. 58 (hereafter referred to as the “VAT Act”¹¹) and the Regulation concerning Value Added Tax of 15 December 2009 No. 1540 (hereafter the “VAT Regulation”).¹²
- (10) The Norwegian authorities have explained that the VAT rates are adopted annually by the Parliament.¹³ Exemptions and zero rates are laid down in the VAT Act and are not adopted annually. However, since exemptions and zero rates have economic effects, their adoption and repeal form part of the annual budget process.
- (11) Norwegian VAT is collected on the supply of goods and services falling within the scope of the VAT Act. The importation and self-supply of goods and services are also considered taxable events.
- (12) Persons engaged in trade or business, whose taxable supplies exceed a threshold of NOK 50 000 over a period of 12 months, must be registered in the VAT register and are liable to pay the tax.

⁶ Document No 729352.

⁷ By letter dated 24 November 2014 (Document No 730483) the Norwegian authorities requested a meeting with the Authority. On 25 November 2014, the Authority accepted the proposal for a meeting to be held in Brussels on 2 December 2014.

⁸ Documents No 742633, 742634, 743520 and 743522.

⁹ Document No 746136.

¹⁰ Some minor clarifications on the reply were provided by the Norwegian authorities by e-mails dated 5, 9 13 and 23 March 2015 (Documents No 749529, 749517, 750450 and 751279).

¹¹ An English version of the Act relating to Value Added Tax (VAT) is available at: <http://www.skatteetaten.no/upload/taxnorway/MVAL.eng.oversettelse.juni2011.pdf>

¹² The Regulation is available at:

<https://lovdata.no/dokument/SF/forskrift/2009-12-15-1540?q=merverdiavgiftsforskriften>

¹³ Parliament’s decision concerning value added tax for 2014 is available at: <https://lovdata.no/dokument/ROF/forskrift/2013-12-05-1485>

- (13) The general VAT rate is 25% of the net price (taxable base). The VAT rate on foodstuff is 15%. Certain services are subject to a reduced rate of 8%, e.g. passenger transport, admission fees to cinemas and museums or hotel accommodation.
- (14) Certain supplies, including health care and social services, are exempted from VAT. Exemption means that on the supply of the exempted goods/services no output VAT shall be charged, and suppliers are not entitled to deduct input VAT.
- (15) Some goods and services, however, are levied output VAT, but the rate is zero. Suppliers of such goods and services are entitled to credit for input VAT.
- (16) There are only a few domestic supply situations which are subject to the zero VAT rating. Most of them have existed since the introduction of the VAT in Norway (1970), e.g. the zero rating on newspapers, books, periodicals, and electricity for domestic use in northern parts of Norway.
- (17) The only zero VAT rating that has been introduced into the Norwegian VAT legislation after the entry into force of the EEA Agreement is the zero rating for electric vehicles, which is the subject of the notification assessed in the present decision.

1.2 The notified measures: the zero VAT rating for electric vehicles

- (18) The notification refers to three particular tax measures in favour of electric vehicles: (i) the existing zero VAT rating for the supply and import of electric vehicles; as well as (ii) the establishment of a new zero VAT rating for the leasing of electric vehicles, and (iii) for the supply and import of batteries for electric vehicles.
- (19) Measure (i) has been in force since 2001 but was never notified to the Authority. Measures (ii) and (iii) are not yet in force and will only come into force pursuant to a positive decision of the Authority (i.e. no State aid or compatible aid).
- (20) The Norwegian authorities consider that the benefit should not be limited to the purchase of electric vehicles (in force since 2001), but should also apply to the leasing of those vehicles (measure not yet implemented), since there is no reason to differentiate depending on the means of the acquisition.

1.3 Objective

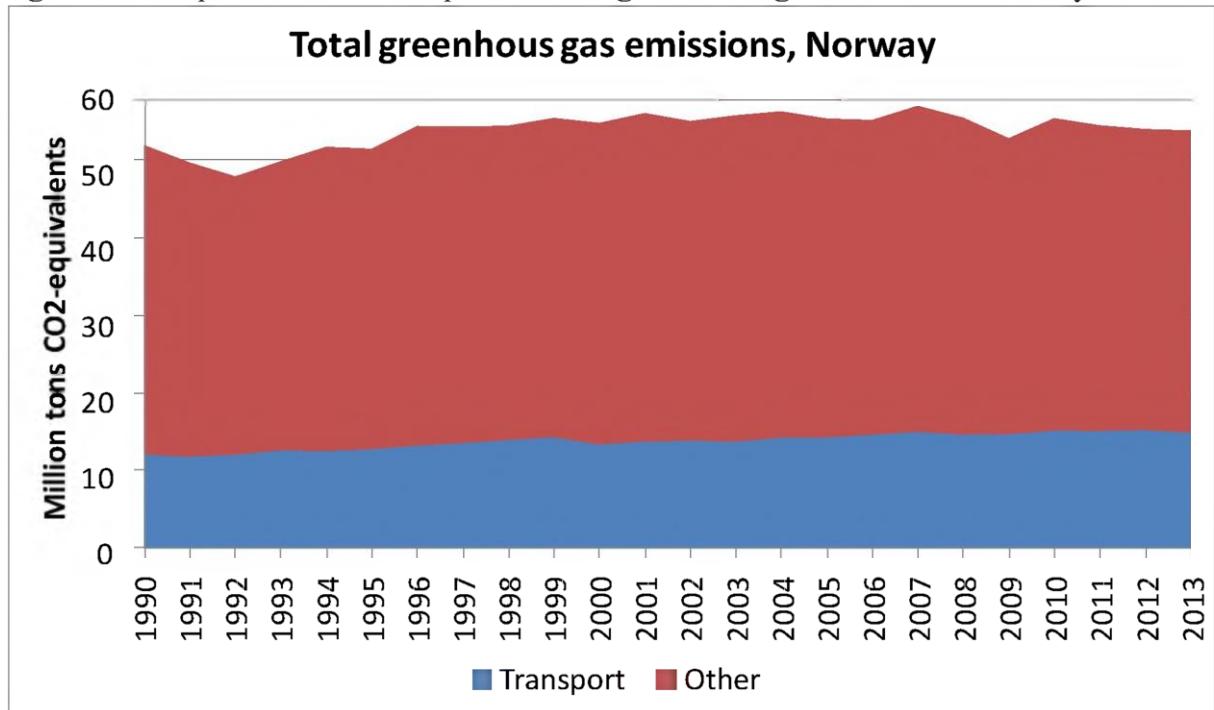
- (21) The measures have an environmental purpose. Their aim is to reduce the CO₂ emissions of the transport sector as a means to reduce global greenhouse gas emissions. The Norwegian government has an ambitious environmental policy, aiming to lower by 2030 the greenhouse gas emissions by at least 40 per cent compared to the 1990 level.¹⁴ All the more, Norway intends to cut its own greenhouse gases emissions, becoming a carbon neutral nation by 2050.¹⁵

¹⁴ See the press release issued by the Norwegian Government on 4.2.2015 “A new and more ambitious climate policy for Norway”, available at: <https://www.regjeringen.no/en/aktuelt/ny-og-mer-ambisios-klimapolitikk/id2393609/>

¹⁵ Further information on the climate change targets established by Norway is available at: <http://www.environment.no/Goals-and-indicators/Goals-and-indicators/Climate-change/> or <http://www.eu-norway.org/news1/A-new-and-more-ambitious-climate-policy-for-Norway/#.VPiCw-13uUk>

- (22) In order to achieve these targets, decarbonising the transport sector is important. As shown in Figure 1 below, the transport emissions represent an important percentage of the total greenhouse gas emissions in Norway.¹⁶

Figure 1: Transport emissions compared to total greenhouse gas emissions in Norway



Source: Statistics Norway

- (23) In order to achieve the environmental aim of the Norwegian authorities, the notified measures support the demand and use of electric vehicles, which have no CO₂ emissions. Because the electric vehicles prices are higher than the prices of conventional fuel vehicles, Norway considers that the measures are needed to encourage the use of electric cars.

1.4 National legal basis

- (24) The zero VAT rating for the supply of electric vehicles is laid down in the VAT Act section 6-6 subsection (1).¹⁷
- (25) The zero rating for leasing of electric vehicles and the zero rating for the supply and import of batteries for electric vehicles are not in force and are consequently not yet a part of the VAT Act. However, the Norwegian authorities have informed the Authority that with the adopted amendments concerning leasing and batteries, section 6-6 will read as follows (the zero rating being referred to as an “exemption” in the translation):

¹⁶ The Norwegian authorities also refer to the EU Commission Communication of 15 May 2001 entitled “A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development” where it identified greenhouse gas emissions and pollution caused by transport as one of the main obstacles to sustainable development. (The Communication is available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0264:FIN:EN:PDF>).

¹⁷ Regarding the zero rating, see the definition in section 1-3 (1)(h) of the VAT Act.

“Section 6-6 Vehicles, etc.

- (1) *The supply and leasing of vehicles that are powered exclusively by electricity shall be exempt from VAT. This exemption shall only apply to vehicles covered by the Storting's decision on motor vehicle registration tax section 5 subsection (1) letter (i) and that must be liable to register pursuant to the Act relating to Road Traffic.*
- (2) *The supply of batteries to vehicles mentioned in subsection (1) shall be exempt from VAT.*
- (3) *The supply of vehicles covered by the Storting's resolution on registration tax shall be exempt from VAT if a vehicle has been registered here in Norway. The Ministry may issue regulations prescribing that the exemption in this subsection shall include goods other than the vehicle itself and work that is performed on the vehicle.*
- (4) *The Ministry may issue regulations prescribing what shall be considered as leasing of vehicles according to subsection one and batteries to vehicles according to subsection two.”*

- (26) The Norwegian authorities have also informed the Authority that the Ministry is working on a proposal for a Regulation on detailed rules concerning the zero VAT rating for the leasing of electric vehicles and the supply and import of batteries for electric vehicles.
- (27) Amendments in the VAT Act and Regulation concerning leasing of electric vehicles and supply of batteries for electric vehicles will be published on www.lovdata.no when they come into force.

1.5 Overlap with other measures in favour of electric vehicles

- (28) The Norwegian authorities have only notified the zero VAT rating for the supply, import and leasing of electric vehicles, as well as for the supply and import of batteries for electric vehicles. However, these are not the only measures adopted by the Norwegian authorities to stimulate the use of electric vehicles.
- (29) The Norwegian authorities have confirmed to the Authority that the following measures, all of them designed to stimulate the demand for electric vehicles, are already in force:
 - Exemption from registration tax.¹⁸ All vehicles except large lorries and buses are levied a registration tax when they are registered in the Norwegian Central Motor Vehicle Register. According to the information provided by the Norwegian authorities, electric vehicles are exempted from this registration tax in order to stimulate the use of environmental friendly vehicles.¹⁹ This exemption is in force since 1991.
 - Reduced annual vehicle tax for electric vehicles.²⁰ An annual tax is levied on vehicles with a weight below 7500 Kg. The tax varies depending on the type of

¹⁸ The Norwegian Parliament's decision concerning excise duties for 2014 is available at:
<https://lovdata.no/dokument/ROF/forskrift/2013-12-05-1486>

Information of the excise duties for 2015 is available at:
https://www.regjeringen.no/contentassets/4b5801220aa442e5b592dc9cecd0cce2/no/pdfs/prp2014201500_01ls0ddpdfs.pdf

¹⁹ St.prp. nr. 1 (1989-90) Skatter og avgifter til statskassen point 5.2 (annex 1).

²⁰ Budsjett-innst. S. nr 13 Tillegg nr. 1 (1995-96) point 2.7.2 (annex 2). The annual tax is adopted annually by the Norwegian parliament. The decision for 2015 is available at: https://lovdata.no/dokument/STV/forskrift/2014-12-15-1724#KAPITTEL_3

vehicle. The difference is based on environmental protection criteria, i.e. vehicles with a higher rate of pollution pay a higher tax. Electric cars are levied a reduced tax. The reduction is in force since 1996.

- Free parking at all public parking places, as provided for in the Regulation on public parking and parking fine - Section 8a.²¹ This measure is in force since 1993.
 - Electric vehicles are allowed to freely drive on toll-roads, as established by the Road Traffic Act Section 27²² and Guidelines from the road traffic authorities, chapter 2.3 and 4.3.²³ This measure is in force since 1997.
 - Electric vehicles enjoy free boarding on classified national road ferries, as provided by the Regulation concerning duty on ferries point 1.3.²⁴ Ferries on roads governed by the municipalities can choose to charge duty on electric cars, but this is rarely done. This measure is in force since 2009.
 - Electric vehicles enjoy an authorisation to drive in bus lanes, according to the regulation relating to pedestrian and vehicle traffic²⁵ (traffic rules) - Section 5(2). This measure is in force since 2006.
 - Norway has around 1500 publicly available charging stations and 5000 publicly available charging points. Electric cars can use these charging stations for free. Fast charging points are usually not free of charge. The measure has been applicable since electric cars came into the Norwegian market, thus from before 1994.
 - Favourable income tax calculation. Employees benefitting from private use of company cars are subject to employment income tax calculated on the value of the benefit. The taxable benefit from the private use of the employee's electric vehicle is 50 per cent of that of a conventional car with the same list price as new, see the Norwegian Taxation Act²⁶ Section 5-13 and the Ministry's supplementing Regulation - Section 5-13²⁷. This measure is in force since 2009.
- (30) The Norwegian authorities state that the measures enumerated in the previous paragraph are not part of the notification. However, the Authority notes that all these measures share the same objective, i.e. stimulating the demand of electric vehicles. Taken together they form a comprehensive support programme to promote electric vehicles. The individual measures must be assessed in the context of other parts of the support programme, which should thus to the extent possible be assessed as a whole.

²¹ Available at: <https://lovdata.no/dokument/SF/forskrift/1993-10-01-921>

²² Available at: <https://lovdata.no/dokument/NL/lov/1963-06-21-23?q=vegloven>

²³ Available at:

http://www.vegvesen.no/_attachment/61475/binary/964038?fast_title=H%C3%A5ndbok+R702+Takstretningslinjer+for+bompengesprosjekter+p%C3%A5+offentlig+veg%287+MB%29.pdf

²⁴ Available at:

http://www.vegvesen.no/_attachment/743758/binary/1005062?fast_title=Riksregulativ+for+ferjetakster+2015.pdf

²⁵ Available at:

<https://lovdata.no/dokument/SF/forskrift/1986-03-21-747>

²⁶ Available at: <https://lovdata.no/dokument/NL/lov/1999-03-26-14?q=skatteloven>

²⁷ Available at:

<https://lovdata.no/dokument/SF/forskrift/1999-11-19-1158?q=forskrift+il+skatteloven>

- (31) Therefore, the Authority will assess in the present decision both the VAT measures and the measures referred to in paragraph (29) above, subject to the necessary restrictions on the material scope of the present decision set out in paragraphs (64) to (68) below. This approach will to the greatest extent ensure that the measures at issue are assessed in their proper context, as part of a large support program.

1.6 Granting Authority

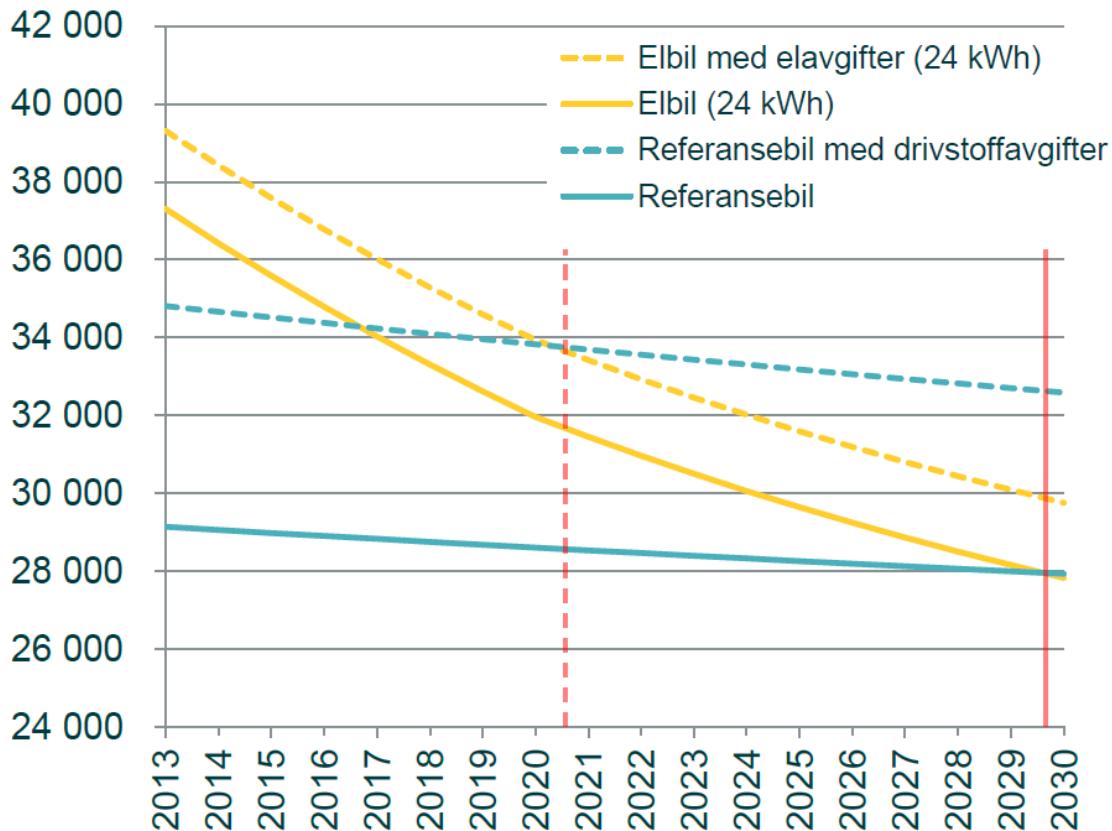
- (32) The granting Authority for the tax measures is the Norwegian Ministry of Finance. For the other measures, different public authorities are involved, i.e. municipalities, public companies, etc.

1.7 Form of aid, eligible costs and intensity

- (33) The notified aid measures to stimulate the use of electric vehicles are financed by means of a tax exemption (zero VAT rate). According to the Norwegian authorities, the measures do not discriminate between car manufacturers since all models or types of electric cars are eligible for the tax exemption. No electric cars are manufactured in Norway.
- (34) All final consumers – private or undertakings – are able to purchase, lease or import the electric vehicles for their own use. They are also able to purchase or import batteries. Consequently, all consumers are eligible for the tax exemption.
- (35) The aid measures will cover part of the expenditure incurred for the purchase, lease or import of an electric vehicle or purchasing or import of batteries for electric vehicles. In particular, they will compensate for the extra-cost of electric vehicles in comparison to conventional vehicles. The Norwegian authorities consider that the objective is to bring the purchasing price of electric vehicles to a price level that is comparable to that of conventional cars.
- (36) The Norwegian authorities have provided information regarding the difference in price between electric and conventional fuel cars both in 2001 and 2014. The price difference has been high in the past.²⁸ Recently, the price difference has come down. However, the Norwegian authorities consider that even if their price has decreased in recent years, electric vehicles are still not competitive with conventional vehicles (see figure 2 below).

²⁸ The Norwegian authorities have explained that from 1990 to 2001 there were basically two companies producing electric cars. The car models were the Buddy (also known as Kewet) and Think (also known as Pivco). These electric cars could not compete with petrol and diesel cars since they had a low security level, autonomy, etc. They were closer to motorcycles or veteran cars. Moreover, the oldest registered prices for all electric cars models are the highest. The price of all models have been reduced over time. For instance, in 1996 the price of a Buddy was 186 747 NOK, in 2000 it was 171 409 NOK and, in 2009, it was 148 118 NOK. The 1996 price of a Think/Pivco was 300 232 NOK, in 2001 it was 204 028 NOK and, in 2011, it was 235 166 NOK.

Figure 2: Electric vehicle prices will decline, but will not be competitive for a long time
(Figur 14: Elbiler vil synke i pris, men blir ikke konkurransedyktige på lenge²⁹)



(Note³⁰: Elbil med elavgifter (24 kWh): Electric vehicle including electric car tax, Elbil: electric vehicle, Rerefansebil med drivstoffavgifter: Reference vehicle including the fuel cars tax, referansebil: reference vehicle)

- (37) As regards the zero VAT rating for the supply and import of batteries for electric vehicles, the Norwegian authorities recall that the battery is a major cost factor of an electric vehicle. Furthermore, the battery still prevents electric cars from being fully competitive with diesel and petrol cars, both in terms of total cost of the cars and in terms of range. During recent years there has been a rapid technological development, which has resulted in both bringing down the cost of the batteries³¹ and increasing mass production of electric cars. In spite of this, batteries for electric vehicles are still expensive and there is still uncertainty about their durability.³² This may deter people from buying electric cars.
- (38) Concerning the measures not covered by the notification, enumerated in paragraph (29) above, the Authority notes that their objective is to reduce the operating costs of the electric

²⁹ Source: Thema report: Utvikling og nedtrapping av ladbare bilers virkemidler. November 2013. Figure 14 of the report. The report is available at: <http://www.zero.no/publikasjoner/utvikling-og-nedtrapping-av-ladbare-bilers-virkemidler.pdf>

³⁰ The Authority's own translation.

³¹ According to Bloomberg the cost of Li-Ion batteries for electric cars was reduced by 43% from 2010 to 2014. The information is available at: <https://workspace.imperial.ac.uk/business-school/Public/events/event-presentations/Michael%20Liebreich%20presentation%20slides.pdf>

³² The Norwegian authorities have estimated that the current average price of a battery pack is NOK 100 000 including VAT.

vehicles. Reducing the operating costs of electric vehicles is also a way to promote them in line with the Norwegian environmental objective.

1.8 Beneficiaries

- (39) The Norwegian authorities consider that the direct beneficiaries of the notified tax measures are the consumers, i.e. the final users, since VAT is a tax on consumption. However, the authorities acknowledge that (i) manufacturers and dealers³³ of electric vehicles and batteries, (ii) as well as undertakings buying, importing or leasing electric vehicles to use as, or acquiring or importing batteries to use in company cars may obtain an indirect advantage.
- (40) The Norwegian authorities have explained that because of the right to deduct input VAT for undertakings, VAT is in principle not an expense for undertakings registered in the Norwegian VAT system. However, the right to deduct VAT does not comprise VAT on passenger cars. This rule applies in order to prevent evasion of the tax in cases where vehicles are used for both business and private purpose. As a consequence, without the zero VAT rate, VAT would be a cost for undertakings acquiring electric cars, the same way that VAT is a cost for undertakings acquiring conventional fuel cars. Consequently, undertakings established in Norway benefit from the said measures.
- (41) The Norwegian authorities have confirmed that all undertakings established in Norway can acquire, import or lease electric vehicles or acquire or import batteries and obtain the benefits of the notified measures. There are no geographical, sectorial or other kind of limitations.
- (42) The Norwegian authorities have not identified the potential beneficiaries of the other measures referred to in paragraph (29) above, because they are not covered by the notification. The Authority considers that the potential beneficiaries of those measures are the same, i.e. (i) the final private consumers, (ii) undertakings established in Norway and purchasing, importing or leasing electric vehicles or acquiring or importing batteries for electric vehicles, and (iii) manufacturers and dealers of electric vehicles and batteries.

1.9 Duration and budget of the notified measures

- (43) The Norwegian authorities have informed the Authority that according to the Government's Political platform,³⁴ the tax advantages for zero emission vehicles are to be continued until the end of 2017. They have also indicated that a broad cross-party majority of the Parliament has proposed to maintain those advantages until the end of 2017 or until the number of electric vehicles in Norway reaches 50 000, whatever occurs first.³⁵ The Norwegian authorities have explained that the threshold of 50 000 electric vehicles will be achieved soon. Indeed, according to publicly available information, this number was achieved on 20th April 2015.³⁶

³³ For the purpose of this decision, the term "dealer" includes undertakings that sell cars, or buy or import cars for resale.

³⁴ Politisk plattform for en regjering utgått av Høyre og Fremskrittspartiet (Sundvolden 7 October 2013) point 13. Available at: <https://www.regjeringen.no/nb/dokumenter/politisk-plattform/id743014/>

³⁵ Innst. 390 S (2011-2012) page 22. Available at: <https://www.stortinget.no/Global/pdf/Innstillinger/Stortinget/2011-2012/inns-201112-390.pdf>

³⁶ Information available at: «Dette er elbil nummer 50 000». See: <http://www.nrk.no/buskerud/dette-er-elbil-nummer-50-000-1.12319137>

- (44) Considering the above, the Norwegian authorities state that the notification covers the VAT measures until 31 December 2017. Closer to that date, the Norwegian authorities will assess the need to notify to the Authority an extension of the notified measures.
- (45) There is no limit currently in place on the duration of the other measures adopted by the Norwegian authorities in order to stimulate the purchase of electric vehicles (see paragraph (29) above), as these measures were not covered by the notification.
- (46) The Norwegian authorities have provided to the Authority estimated yearly revenue loss due to the zero VAT rating for electric vehicles for the period 2001-2013. Accumulated revenue loss from 2001 to 2014 (including both years) is estimated to around NOK 2 000 million. As a consequence, the Norwegian authorities have explained that if the sale of electric vehicles is kept on the same level as 2014 in the coming years, the revenue loss is estimated at around NOK 1 000 million per year. Accordingly, this implies that the total estimated revenue loss until 31.12.2017 would be around NOK 5 000 million.
- (47) The value of the zero VAT rating for the supply and import of batteries to electric vehicles is estimated at NOK 35 million in 2014.³⁷
- (48) Regarding the cost of the other measures approved to stimulate the use of electric vehicles, the estimated cost is as follows:
- exemption from registration tax: around NOK 2 000 million per year,
 - reduced annual vehicle tax: around NOK 100 million per year,
 - free parking at all public parking places: around NOK 100 million per year,
 - exemption for road tolls: around NOK 200 million per year,
 - free boarding on classified national road ferries: around NOK 5 million per year,
 - authorisation to drive in bus lanes: there is no economic cost linked to this measure,
 - free use of public charging stations: approximately NOK 140 million, and
 - favourable income tax calculation for employees using corporate electric vehicles: around NOK 140 million.

2. Comments by the Norwegian authorities

- (49) The Norwegian authorities consider, first, that the notified measures do not qualify as State aid within the meaning of Article 61(1) of the EEA Agreement.
- (50) The Norwegian authorities claim that, even if it is true that the VAT is a general tax on consumption, which in principle should be levied on all the consumed products (including electric vehicles), it cannot be ignored that taxation falls outside the EEA Agreement and, consequently, Norway has more discretion than EU Member States to apply reduced VAT rates.
- (51) According to the EU VAT Directive,³⁸ EU Member States are allowed to maintain reduced rates on certain goods and services (those included in Annex III of the EU VAT Directive). Therefore, the Norwegian authorities argue that Norway should be allowed to maintain a zero VAT rate for certain goods, as long as the rates are not used in a discriminatory manner.

³⁷ The Norwegian authorities have explained that there is little literature on the sales price and lifetime of batteries for electric vehicles. However, on average the price of one battery is NOK 100 000 and therefore if 5% of the electric cars change the battery, taking into account the figures of 2014, this will result in a budget of around NOK 35 million.

³⁸ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. OJ L 347, 11.12.2006, p. 1–118.

- (52) On this basis, the Norwegian authorities believe that a zero VAT rate on the supply, import and lease of electric vehicles and on the supply and import of batteries for electric vehicles falls within the logic of the Norwegian VAT tax, and therefore, the measures should not be defined as selective measures. The measures fall, on the contrary, outside the scope of the State aid rules.
- (53) Second, in the alternative, the Norwegian authorities believe that if the Authority were to consider that the notified measures entail State aid, they would be compatible State aid pursuant to Article 61(3)(c) of the EEA Agreement, in line with the State aid Guidelines on Energy and Environmental aid (EEAG).³⁹
- (54) The Norwegian authorities provide a number of arguments to demonstrate that the balancing test of those measures is positive.
- (55) Firstly, they argue that the *measures respond to a common interest*: i.e. protection of the environment through the promotion of electric vehicles *versus* conventional fuel vehicles. The Norwegian authorities recall that the greenhouse gas emissions are a serious threat to the environment. The transport sector has been identified as a major source of greenhouse gas emission, nationally as well as globally. Electric vehicles do not give rise to CO₂ and NO_x emissions, and air pollution and noise are lower than from conventional vehicles. In this framework, Norway pursues the objective to ensure that the average CO₂ emissions of new passengers' cars in 2020 shall not exceed 85 grams CO₂ per kilometre.⁴⁰ The promotion of electric vehicles is important to achieve this objective.
- (56) Secondly, the Norwegian authorities explain that *there is a need for the State intervention* since electric vehicles are more expensive than conventional fuel vehicles and, therefore, there is a need to promote the acquisition of those vehicles in order to protect the environment.
- (57) Thirdly, the measures are considered *appropriate measures* since they are limited in amount and have as an objective to reduce the price difference with the conventional vehicles. Figures on the prices of electric vehicles and conventional vehicles are provided in the notification.
- (58) Fourthly, the measures have an *incentive effect*. The Norwegian authorities recall that, since 2001, when the first VAT measure was introduced, the number of electric vehicles in Norway has increased and the behaviour of car users has changed in the recent years. This would not have been the case, in the absence of the measures covered by the notification. In any event, in 2014, the market share of electric vehicles in Norway was 12.5 %. Even if prices for electric cars are expected to decrease in the future, it will take time for them to be competitive and the measures will serve to maintain or increase the market share of the electric vehicles.

³⁹ Not yet published in the OJ. The Authority Guidelines: State aid for environmental protection and energy are available at:

<http://www.eftasurv.int/media/state-aid-guidelines/Guidelines-on-State-aid-for-environmental-protection-and-energy-2014-2020.pdf>

⁴⁰ The Norwegian authorities recall that according to Regulation (EC) No 443/2009 (as amended by Regulation (EC) No 333/2014) Article 1 second paragraph a target of 95 grams CO₂/Km for the average emissions of the new car fleet is established. These Regulations have not been incorporated into the EEA Agreement. See: http://www.efta.int/media/documents/legal-texts/eea/other-legal-documents/list-eu-acquis-marked-or-considered-eea-relevant/weekly_list.pdf

- (59) The notified measures (i.e. the VAT exemptions) are also *proportionate* because they are temporary, i.e. the notification covers the VAT measures until 31 December 2017. An evaluation of the benefit of the measures will be undertaken when the number of electric vehicles in Norway reaches 50 000. They also defend that the aid intensity is limited to ensure that only the extra costs of the electric cars *versus* a conventional car is covered. The Norwegian authorities refer to Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles,⁴¹ where it is stated that “[c]lean and energy-efficient vehicles initially have a higher price than conventional ones. Creating sufficient demand for such vehicles could ensure that economies of scale lead to costs reductions” (paragraph 13). The Norwegian authorities share this statement considering that the aid intensity should reduce the price difference between the different types of vehicles in order to stimulate demand. The measures at hand in this case are fully in line with this principle.
- (60) The Norwegian authorities also point out that the operative costs of electric vehicles are lower in all segments. However, even in this scenario, the fact that the electric vehicles still have a relatively low market share indicates that the disadvantages of electric cars still are considerable. Therefore, the aid amount is proportionate in order to stimulate the demand.
- (61) Finally, even if the *distortion of competition and trade* is inherent to the very objective of the measures, the negative effects on competition and trade are limited to the minimum.

3. Comments by the complainant

- (62) The complainant states that electric vehicles are benefitting from State aid. The complainant argues that there are more than 30 000 electric cars in Norway, and none of these cars would have been bought if State aid would not have been granted. According to the complainant, it is unacceptable that inhabitants in Norway are treated economically differently depending on the type of cars that they use. The complaint states that electric cars are not more environmentally friendly than conventional cars since an important part of the electricity used in Norway is generated in German coal-fired plants.
- (63) In particular, the complaint refers to (i) the zero VAT rating applicable to electric cars, (ii) the free use of bus lanes, (iii) the free use of charging stations, (iv) the exemption from the payment of tolls on toll roads, (v) the free parking in public parking lots, and (vi) the boarding free of charge on ferries.

II. ASSESSMENT

1. Material scope of the Decision

- (64) The Norwegian authorities have notified the zero VAT rating for electric vehicles and batteries for electric vehicles. In the reply to the Authority's request for information,⁴² they have enumerated additional measures adopted to promote electric cars in Norway (see paragraph (29) above), but they underline that these other measures are not covered by the notification.
- (65) However, these measures were addressed in the complaint (see paragraph (63) above).

⁴¹ 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. OJ L 120, 15.5.2009, p 5-12. The Directive has been incorporated into the EEA Agreement by the Decision of the EEA Joint Committee No 173/2013 of 8 October 2013 amending Annex XX (Environment) to the EEA Agreement. OJ L 58, 27.2.2014, p. 27.

⁴² Document No 746136.

- (66) The Authority considers that both the notified and the non-notified measures listed in paragraph (29) above are part of a broad support programme to promote electric vehicles in Norway, and therefore they should be assessed together in the present decision. Further explanation on this point is provided at paragraphs (28) to (31) above.
- (67) The Authority underlines, nevertheless, that some of those measures, in particular, (i) the exemption from registration tax, (ii) the free charging at public charging stations, and (iii) the authorisation for free parking in public parkings are already in force since before 1994, i.e. before the EEA Agreement entered into force in Norway on 1 January 1994 (see paragraph (29)). Consequently, those measures constitute existing aid.⁴³ The Authority has the obligation to keep under constant review all systems of existing aid in the EFTA States.⁴⁴ However, existing aid measures have their own procedural rules, different to the ones devoted to new aid.⁴⁵ As a result, they must be excluded from the scope of the present decision and be assessed in accordance with existing aid procedural rules.
- (68) Based on the above premises, the Authority concludes that the measures covered by the present decision are:
- (i) the existing zero VAT rate for the supply and import of electric vehicles;
 - (ii) the establishment of a new zero VAT rate for the leasing of electric vehicles;
 - (iii) the establishment of a new zero VAT rate for the supply and import of batteries for electric vehicles;
 - (iv) the reduced annual vehicle tax;
 - (v) authorisation to freely drive on toll roads;
 - (vi) authorisation to drive in bus lanes;
 - (vii) free boarding on classified national road ferries; and
 - (viii) favourable income tax calculation for employees using corporate electric vehicles.

2. The presence of State aid

- (69) Article 61(1) of the EEA Agreement reads as follows:

“Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States 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 Contracting Parties, be incompatible with the functioning of this Agreement.”

- (70) This implies that a measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: (i) the measure is

⁴³ According to Article 1(b)(i) of Part II of Protocol 3 of the Surveillance and Court Agreement “existing aid” shall mean: “*all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement*”.

⁴⁴ Article 1 of Part I of Protocol 3 of the Surveillance and Court Agreement.

⁴⁵ See Section V of Part II of Protocol 3 of the Surveillance and Court Agreement.

granted by the State or through State resources; (ii) confers a selective and (iii) economic advantage to the beneficiary; and (iv) is liable to affect trade between Contracting Parties and distort competition.

2.1. Measure granted by the State and presence of State resources

- (71) A State aid measure must be granted by the State or through State resources. The form in which the aid is provided is not relevant to its assessment under Article 61(1) of the EEA Agreement. This implies that tax/fee/tolls exemptions may constitute aid granted through State resources.⁴⁶ However, where there is no loss of State resources, the State aid rules do not apply.⁴⁷
- (72) The Authority considers that the zero VAT rates and the measures enumerated in paragraph (68) above entail a loss of State revenues, and therefore the first criterion of the State aid notion is met. The estimated cost of these measures for the State's budget is provided in paragraphs (46) to (48) above.
- (73) Those support measures are also clearly granted by the State since they are adopted by legislative acts.
- (74) The only exception to this conclusion concerns the authorisation granted to electric vehicles to drive in bus lanes (measure (vi) in paragraph (68)). The Authority considers that this permission does not involve any commitment of State resources.
- (75) The Court of Justice⁴⁸ has stated that allowing London taxis to use bus lanes does not involve State aid, even if it confers an advantage on certain undertakings (i.e. London taxis: “black cabs”) compared to private hire vehicles. This is so because such a permission “*does not appear, [...] to be such as to involve a commitment of State resources or to confer on Black Cabs a selective economic advantage for the purpose of Article 107(1) TFEU*”⁴⁹.
- (76) Similarly, the Authority considers that the Norwegian authorities do not grant any advantage, financed by public resources, when allowing electric cars to use the bus lanes. This measure therefore does not entail State aid within the meaning of Article 61(1) of the EEA Agreement.⁵⁰

2.2. Economic advantage to undertakings

- (77) It is established case law that a State intervention favours an undertaking if it provides the undertaking with an economic advantage, which it would not have obtained under normal market conditions.⁵¹
- (78) The definition of aid is more general than that of a subsidy, because it includes not only positive benefits, such as subsidies themselves, but also State measures which, in various forms, mitigate charges that are normally included in the budget of an undertaking and

⁴⁶ Judgment in *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 26.

⁴⁷ Judgment in *Van Tiggele*, C-82/77, EU:C:1978:10, paragraphs 23-25.

⁴⁸ Judgment in *Eventech*, C-518/13, EU:C:2015:9.

⁴⁹ See *Eventech*, C-518/13, EU:C:2015:9, paragraph 63.

⁵⁰ In line with the case law, the four criteria of the notion of State aid are cumulative, therefore, the Authority will not assess in this Decision whether this measure meets the other criteria. See judgment in *Tubemeuse*, C-142/87, EU:C:1990:125, paragraph 25.

⁵¹ See judgments in *France v Commission*, C-301/87, EU:C:1990:67, paragraph 41; *De Gezamenlijke Steenkolenmijnen v High Authority of the European Coal and Steel Community*, 30/59, EU:C:1961:2, paragraph 19; *France v Commission (Kimberly Clark)*, C-241/94, EU:C:1996:353, paragraph 34; and *Fleuren Compost*, T-109/01, EU:T:2004:4, paragraph 53.

which thus, without being subsidies in the strict sense of the word, are similar in character and have the same effect.⁵² A tax/fee exemption can confer an advantage, as well as a loss of State resource, although not involving a transfer of State resources.⁵³ The measure must be assessed in relation to its effects not to its form, aim or causes.⁵⁴ As a consequence, neither the fiscal nature of the measures, nor their environmental aim is sufficient to place them outside the scope of the State aid rules.

- (79) It follows that a measure, by which the public authorities grant to certain undertakings a tax or a fee exemption that places the entity to whom the exemption applies in a more favourable financial situation than other entities, constitutes an advantage within the meaning of Article 61(1) of the EEA Agreement.⁵⁵
- (80) In light of the case law referred to above, the Authority believes that the measures within the scope of this decision will confer on the purchasers or importers of electric vehicles or batteries an economic advantage, which they would not have obtained under normal market conditions. The Authority concurs with the Norwegian authorities in finding that the buyers/importers/lessors of the electric vehicles and the buyers/importers of batteries are the direct beneficiaries of the measures.
- (81) However, the Authority notes that the private buyers of electric vehicles are not subject to State aid rules, which are only applicable to undertakings and not to private persons.
- (82) On the other hand, undertakings purchasing, importing or leasing electric vehicles or acquiring or importing batteries for their cars might obtain an economic advantage, since the tax reductions/exemptions reduce the acquisition costs and the operating costs of their vehicles which they otherwise would have to bear (see on this issue paragraph (40) above).
- (83) Moreover, irrespectively of whether the direct beneficiaries of the aid qualify as undertakings,⁵⁶ the measures can also stimulate the demand for electric vehicles and batteries for electric vehicles compared to a reference situation in which no such aid would be granted. It follows that the measures may also indirectly⁵⁷ favour manufacturers and dealers of electric cars or batteries for electric vehicles⁵⁸ (those indirect beneficiaries are also referred hereinafter as "*the manufacturing sector*"). The Authority includes in this

⁵² See, in particular, judgment of the EFTA Court in *Liechtenstein v ESA*, E-17/10 and E-6/11, EFTA Ct. Rep [2012] p. 114, paragraph 50; judgments in *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke*, C-143/99, EU:C:2001:598, paragraph 38; *Spain v Commission*, C-501/00, EU:C:2004:438, paragraph 90 and *Italy v Commission*, C-66/02, EU:C:2005:768, paragraph 77.

⁵³ Judgment in *Liechtenstein v ESA*, E-17/10 and E-6/11, cited above, paragraph 51.

⁵⁴ Judgment in *Italy v Commission*, 173/73, EU:C:1974:71, paragraph 27.

⁵⁵ See judgment in *Banco Exterior de España*, C-387/92, EU:C:1994:100, paragraph 14, and *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, paragraph 132.

⁵⁶ According to settled case law, undertakings are entities engaged in an economic activity. See judgment in *Höfner and Elser v Macroton*, C-41/90, EU:C:1991:161, paragraphs 21-23; *Pavlov and Others*, C-180/98 to C-184/98, EU:C:2000:428, paragraph 74 and *E-5/07 Private Barnehagers Landsforbund v EFTA Surveillance Authority* [2008] EFTA Ct. Rep. p. 61, paragraph 78.

⁵⁷ The case law has already clarified that the State aid rules prohibit aid granted in any form whatsoever, without drawing a distinction as to whether the aid-related advantages are granted directly or indirectly. The case law has thus acknowledged that an advantage granted directly to certain natural or legal persons who are not necessarily undertakings may constitute an *indirect advantage*, hence State aid, for other natural or legal persons who are undertakings. See judgments in *Mediaset*, T-177/07, EU:T:2010:233, paragraph 75 and *Italy v Commission*, T-424/05, EU:T:2009:49, paragraph 108.

⁵⁸ The same line of reasoning can be found in the Commission decision of 8.3.2011. State aid No 386/2010. Denmark. Pilot scheme for purchase of electric vehicles. Points 29-30.

concept: the manufacturers and dealers of electric vehicles and batteries for electric cars since they are a component of the car manufacturing process⁵⁹).

- (84) In conclusion, the Authority identifies an advantage in favour of the direct and indirect beneficiaries of the measures (as defined above). The next step in the legal reasoning is to assess the selective nature of those advantages.

2.3. Selectivity

- (85) To constitute State aid, the aid measures must be selective in that they favour “*certain undertakings or the production of certain goods*”. The selectivity criterion allows one to distinguish between State aid measures and general measures of tax or economic policy.⁶⁰ Advantages resulting from a general measure applicable without distinction to all economic operators do not constitute State aid within the meaning of Article 61(1) of the EEA Agreement.⁶¹
- (86) According to the case law,⁶² “[a]s regards the assessment of the condition of selectivity, which is a constituent factor in the concept of State aid, it is clear from settled case-law that Article 87(1) EC [equivalent to Article 61(1) EEA] requires assessment of whether, under a particular statutory scheme, a State measure is such as to ‘favour certain undertakings or the production of certain goods’ in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the system in question.”⁶³
- (87) However, the concept of State aid does not refer to tax measures, which differentiate between undertakings and are *prima facie* selective, where that differentiation arises from the nature and general scheme of the system of which they form part.⁶⁴
- (88) In the following paragraphs, the Authority will assess whether the measures covered by this decision⁶⁵ constitute *prima facie* selective measures and, the case being, for the tax measures will also be assessed whether they are justified by the logic and general nature of the Norwegian tax system.

⁵⁹ The Authority notes that in similar precedents the Commission has referred to the car manufacturing sector as including not only manufacturers but also suppliers/dealers. The Commission uses in a broad manner the notion of “manufacturing sector”. See Commission decision of 26.4.2006. State aid N 142/2005. UK. Low Carbon Car grant Programme. See title 3.1 Existence of State aid and legality. “*Potential aid at the level of the car manufacturing sector*” and the decision 20.11.2013. State aid SA.34719. The Netherlands. Electric transportation scheme in Amsterdam. The Authority follows this approach, the concept of “car manufacturing sector” includes manufacturers and dealers of electric vehicles and batteries for electric vehicles.

⁶⁰ Judgment in *Air Liquide Industries and others*, C-393/04 and C-41/05, EU:C:2006:403, para. 32. See also the Authority’s Guidelines “*Application of State aid rules to measures relating to direct business taxation*”. The Guidelines are available at: <http://www.eftasurv.int/?1=1&showLinkID=15141&1=1>

⁶¹ Judgment in *Liechtenstein v ESA*, joined cases E-17/10 and E-6/11, cited above, paragraph 53 and the case law cited.

⁶² See, to that effect, the judgments in *GIL Insurance*, C-308/01, EU:C:2004:252, paragraph 68; *Heiser*, C-172/03, EU:C:2005:130, paragraph 40, *Portugal v. Commission*, C-88/03, EU:C:2006:511, paragraph 54.

⁶³ See, to that effect, judgment in *Portugal v. Commission*, EU:C:2006:51, paragraph 54.

⁶⁴ Judgments in *Liechtenstein v ESA*, E-17/10 and E-6/11, paragraph 74; and in *Commission and Spain v Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 75.

⁶⁵ Excluding the allowance for electric cars to drive in the bus lanes. See footnote 50.

Prima facie selectivity

- (89) A measure is *prima facie* selective if it is an exemption from its system of reference, i.e. the system applicable to other undertakings in the same legal or factual situation. Therefore, the first step in the selectivity analysis requires the identification of the system of reference.⁶⁶
- (90) However, the fact that a tax measure constitutes an exception from the reference framework is not sufficient to consider the measure selective, when such measure is potentially accessible to all undertakings.⁶⁷ Similarly, even if benefiting from a tax measure requires the fulfilment of certain conditions, this is not sufficient to make the tax measure selective *a priori*. In order for a tax measure to constitute aid, it is necessary to identify a particular category of undertakings which can be differentiated from the rest of undertakings based on their specific characteristics.⁶⁸ Tax measures which are open to all economic agents do not constitute State aid.⁶⁹
- (91) As already stated, the Authority believes that, in the present case, there are two groups of potential beneficiaries obtaining an advantage: (i) the undertakings purchasing, leasing or importing electric cars or acquiring or importing batteries (*direct beneficiaries*) and (ii) manufacturers and dealers of electric cars and batteries for electric vehicles (also referred to as the manufacturing sector – see paragraph (83) above – or *indirect beneficiaries*).
- (92) Starting with the first group, the Authority considers that the measures will not be selective for the *direct beneficiaries*, as even if such measures could represent an exemption from the system of reference, they do not select among the undertakings established in Norway; i.e. everyone can benefit from the measures. The advantages are open to all sectors of the economy, all kinds of companies and all kinds of production. The Authority understands that it is common ground that the advantages concerned apply to all economic operators, and thus the measures are not selective regarding the direct beneficiaries.
- (93) The Authority also notes that in order to benefit from the measures, the undertakings established in Norway have to purchase, import or lease electric vehicles or acquire or import batteries for those cars. However, as already stated, this condition can be met by all companies established in Norway, and is not sufficient to identify *prima facie* selectivity of the measures. This is an objective condition not subject to any discretion by the tax administration. All undertakings acquiring, importing or leasing electric vehicles or acquiring or importing batteries for electric vehicles are eligible for the aid and all companies can purchase these products. Therefore, the measures are not selective for the Norwegian undertakings and do not entail State aid in the meaning of Article 61(1) of the EEA Agreement.
- (94) On the contrary, regarding the second group of beneficiaries (*indirect beneficiaries*), the Authority considers that the measures are selective, since only a certain group of companies

⁶⁶ Judgment in *Adria-Wien Pipeline*, C-143/99, EU:C:2001:598, paragraph 41.

⁶⁷ Judgments in *Germany v Commission*, -C-156/98, EU:C:2000:467, paragraph 22; *Banco Santander, SA and Santusa Holding, SL v Commission*, T-399/11, EU:T:2014:938, paragraph 70 and *Autogrill v Commission*, T-219/10, EU:T:2014:939, paragraph 70, and the case law cited.

⁶⁸ Judgment in *Banco Santander, SA and Santusa Holding, SL v Commission*, T-399/11, EU:T:2014:938, paragraph 71, and case law quoted therein. See also judgment in *Autogrill v Commission*, T-219/10, EU:T:2014:939, paragraph 67.

⁶⁹ Judgment in *Commission and Spain v Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 130.

will benefit from an advantage, which represents an exemption from the measures' system of reference. The measures favour a sector of the economy.

- (95) In the case at hand, the VAT measures for electric cars are clearly more favourable than the rules applicable for conventional fuel cars, where 25% VAT applies – and where undertakings are prevented from deducting input VAT when acquiring such cars (for any other use than as a mere commodity). This makes electric cars more attractive, which is also the intended effect, and translates into a selective advantage for the indirect beneficiaries, as it effectively makes their products cheaper for the customers (whether private or corporate). The same logic applies for the other measures under the scope of this decision. Furthermore, no other sector enjoys, for its products, comparable reductions on taxes/tolls/fees or similar free access to public services.
- (96) As a consequence, the Authority concludes that the measures are *prima facie* selective for the indirect beneficiaries of the measures.
- (97) The Authority notes nevertheless that most of the measures covered by this decision are tax measures: (i) the zero VAT ratings, (ii) the reduced annual vehicle tax for electric vehicles, and (iii) the favourable income tax calculations for employees benefiting from private use of electric company cars.⁷⁰ As already indicated, while assessing tax measures the Authority must further assess whether those State aid tax measures are justified because of the logic and nature of the Norwegian fiscal system.

No justification based on the logic and nature of the Norwegian fiscal system

- (98) As indicated, specific or selective tax measures can nevertheless be justified by the logic of the tax system.⁷¹ The Authority considers that, under the settled case law,⁷² measures introducing a differentiation between undertakings when that differentiation arises from the nature and overall structure of the system of charges of which they form part do not constitute State aid. This justification, based on the nature or overall structure of the tax system, reflects the consistency of a specific tax measure with the internal logic of the tax system in general.
- (99) It is for the EEA State which has introduced the differentiation to show that it is actually justified by the nature and overall structure of the system in question.⁷³
- (100) In this regard, the Norwegian authorities have argued regarding the zero VAT rating that even if the measures could be restricted to a close group of undertakings, they are nevertheless justified by the logic and nature of the Norwegian VAT system.

⁷⁰ On the contrary, the authorization to freely drive on toll-roads and the free boarding on classified national road ferries are not tax measures, but services provided for free.

⁷¹ Judgments in E-6/98 *Norway v EFTA Surveillance Authority*, [1999] EFTA Court Report, p. 76, paragraph 38; E-5/04, E-6/04 and E-7/04 *Fesil and Finnford, PIL and others and Norway v EFTA Surveillance Authority*, [2005] EFTA Court Report, p. 117, paragraphs 84-85; judgment in *Territorio Histórico de Alava and others v Commission*, T-127/99, T-129/99 and T-148/99, EU:T:2002:59, paragraph 163; *Adria-Wien Pipeline*, C-143/99, EU:C:2001:598, paragraph 42; *Salzgitter v Commission*, T-308/00, EU:T:2013:30, paragraph 42. See also Decision of the Authority No 193/14/COL of 8 May 2014, concerning certain amendments to Act 50/1988 on Value Added Tax applicable to customers of Icelandic data centers, paragraph 58.

⁷² See judgment in *Portugal v. Commission*, C-88/03, EU:C:2006:51, paragraph 81, and T-227/01, *Territorio foral de Alava and others*, EU:T:2002:59, paragraph 179, see above.

⁷³ Judgment in *Liechtenstein v ESA*, E-17/10 and E-6/11, paragraph 75.

- (101) The Norwegian authorities argue that the EU VAT Directive is not applicable in Norway. However, they underline that the Directive allows Member States to have two reduced VAT rates and to maintain VAT zero rates that were in force in 1991 (VAT Directive, Article 110). EU Member States are also allowed to introduce lower rates (not less than 5%) on goods and services mentioned in the VAT Directive, Annex III. As a consequence, the Norwegian authorities consider that reduced rates are also part of the logic of the VAT system. If the EU Member States can have reduced VAT rates, Norway has discretion to establish a zero VAT rate for certain products, precisely because the VAT Directive is not applicable and fiscal matters are not covered by the EEA Agreement. The Norwegian Parliament should be allowed to use zero VAT rates to pursue an objective of general interest such as the protection of the environment.
- (102) The Authority does not fully share this view. State aid rules are different from fiscal rules and the fact that Norway could be allowed to establish a zero rate VAT for electric cars without breaching internal market rules (as the VAT Directive is not applicable in Norway) does not imply that the VAT system can be used in contravention of the State aid rules. VAT exemptions or zero rates can still entail State aid and therefore their compatibility with the State aid rules still has to be assessed.
- (103) On this basis, the Authority notes that one of the principles of the Norwegian tax system is that the consumption of goods or services should be charged with a tax on consumption. Exceptions to this principle may be justified by an objective of common interest, but do not form part of the logic and general nature of a consumption tax system.⁷⁴
- (104) The Norwegian authorities have not provided arguments regarding the justification of the other tax or fee exemptions covered by this decision since they consider that they fall outside the scope of the notification. The Authority has nevertheless decided to assess all the measures together as part of a broad programme to support electric vehicles (see paragraphs (64) to (68) above).
- (105) The Authority considers that (i) the reduced annual vehicle tax for electric vehicles and (ii) the favourable income tax calculations for employees benefitting from private use of electric company cars are not justified by the nature or logic of those taxes. Under the logic of the vehicle tax all vehicles should be levied the tax and there is no internal reason, linked to the nature of the measures themselves, for the exclusion of electric vehicles. The same is true regarding the favourable calculations of the income tax for employees. Taxpayers are supposed to pay the income tax according to their revenues and benefits; there is no reason within the logic of this tax to reduce the taxes for citizens driving an electric car.
- (106) The only justification for these tax exemptions is to protect the environment, by reducing CO₂ emissions by means of promoting the use of electric cars. The Authority notes that this justification, which can be of common interest, is external to the Norwegian fiscal system.
- (107) The Authority acknowledges that the annual tax exemption for cars is based on environmental criteria, but environmental purposes are not the only basis of the tax, it also aims at providing revenues to the State.⁷⁵ This is the reason why in the absence of the exemption, electric vehicles would have been subject to the taxes, fees or tolls, despite their zero CO₂ emission.

⁷⁴ The Authority Decision No 193/14/COL of 8 May 2014, concerning certain amendments to Act 50/1988 on Value Added Tax applicable to customers of Icelandic data centers, para. 71, and the Commission practice cited.

⁷⁵ Clarifications provided by the Norwegian authorities in Document No. 749517.

(108) In light of the above, the Authority does not consider that the exemption is fully justified by the nature and logic of the tax system. The Authority also recalls that according to well-established case law⁷⁶ “[t]he fact that a tax measure pursues objectives of general policy does not prevent that measure from qualifying as State aid. Consequently, distinctions made by an environmental levy cannot avoid being qualified as State aid unless they are justified by the environmental logic inherent in the levy.[...]. However, the need to take account of requirements relating to environmental protection, however legitimate, cannot justify the exclusion of selective measures, even specific ones such as environmental levies, from the scope of Article 87(1) EC (see, to that effect, *inter alia* Case C-409/00 *Spain v Commission*, paragraph 54), as account may in any event usefully be taken of the environmental objectives when the compatibility of the State aid measure with the common market is being assessed pursuant to Article 87(3) EC”.

(109) As a consequence, the Authority considers that the tax measures covered by this decision (see paragraph (97)) are not justified by the logic and nature of the Norwegian fiscal system, and therefore, constitute selective measures.

2.4. Distortion of competition and effect on trade between Contracting Parties

(110) The aid measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

(111) According to settled case law, the mere fact that a measure strengthens the position of an undertaking compared to other undertakings competing in intra-EEA trade is considered to be sufficient in order to conclude that the measure is liable to distort competition between undertakings established in other EEA States.⁷⁷ For the purpose of categorising a national measure as State aid, it is not necessary that the aid has a real effect on trade between the Contracting Parties and that competition is actually being distorted, but only to examine whether the aid is liable to affect such trade and distort competition.⁷⁸

(112) On this issue, the Authority recalls that undertakings in the manufacturing sector (as defined at paragraph (83) above) based in Norway are or can be active in markets that are open to competition within the EEA. The selective economic advantage conferred by the measures at hand is thus liable to distort or threaten to distort competition on the markets on which the indirect beneficiaries of the measures are active.

(113) The competitive position of electric vehicles manufacturers can be reinforced in comparison to conventional fuel car producers. The same is true regarding the producers of batteries for electric vehicles.

(114) The case law has also indicated that “[t]he conditions under which trade between member States is affected and competition is distorted are as a general rule inextricably linked.”⁷⁹ Effect on trade can be presumed when the aid strengthens the position of an undertaking compared to other companies competing in EEA-trade.⁸⁰ When an aid granted by one of the EEA States strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, the latter must be regarded as affected by the aid.⁸¹

⁷⁶ Judgment in *British Aggregates*, C-487/06 P, EU:C:2008:757 paragraphs 85-87.

⁷⁷ Judgments in *The Government of Norway v EFTA Surveillance Authority*, E-6/98, [1999] EFTA Court Report, p. 76, paragraph 59; and in *Philip Morris v Commission*, T-288/97, EU:T:2001:115, paragraph 41.

⁷⁸ Judgment in *Eventech*, C-518/13, EU:C:2015:9, paragraph 65 and the case law cited.

⁷⁹ Judgment in *Alzetta*, T-298/97, EU:T:2000:151, paragraph 81.

⁸⁰ Judgment in *Regione Friuli Venezia Giulia v Commission*, T-288/97, EU:T:2001:115, paragraph 41.

⁸¹ Judgment in *Eventech*, C-518/13, EU:C:2015:9, paragraph 66 and the case law cited.

- (115) The Authority notes that there is significant trade in vehicles and electric vehicles in the EEA. According to the case law, it is not necessary that the beneficiary undertakings are themselves involved in intra-EEA trade, for this condition to be met.⁸² It is sufficient to find that electric vehicles are traded within the EEA. In fact, there are no electric car producers in Norway. However, this does not entail that EEA trade is not liable to be affected. The measures may have the consequence that the opportunities for undertakings established in other EEA States to offer their services in the EEA are reduced. Manufacturers of conventional cars may find themselves able to trade less vehicles in Norway, with the entry into force of some of the measures. Consequently, the measures are liable to affect trade within the EEA.
- (116) The above also goes for the manufacturers and dealers of batteries for electric vehicles. This, too, is a dynamic market open to competition within the EEA.
- (117) On this basis, the Authority concludes that the measures are liable to distort competition and affect trade between the EEA States.

2.5. Conclusion on the qualification of the measures

- (118) The Authority concludes that the following measures constitute State aid in favour of the manufacturing sector of electric vehicles: (i) zero VAT rating for the supply and import of electric vehicles, (ii) zero VAT rating for the leasing of electric vehicles, (iii) zero VAT rating for the supply and import of batteries for electric vehicles, (iv) the reduced annual vehicle tax, (v) the exemption from tolls on toll roads, (vi) the free boarding on classified national ferries, and (vii) the more favourable income tax calculations.
- (119) The free use of bus lanes by electric vehicles does not entail State aid within the meaning of Article 61(1) of the EEA Agreement.

3. Procedural requirements

- (120) Pursuant to Article 1(3) of Part I of Protocol 3: “*the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*”.
- (121) At the time the Norwegian authorities notified the zero VAT rating for the supply and import of electric vehicles, the measure was already in force. The measures (iv) to (vii) listed in paragraph (118) above were also already in force. The Authority consequently concludes that the Norwegian authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. Those measures constitute unlawful aid.⁸³
- (122) In contrast, by submitting a notification of the zero VAT rating for leasing of electric vehicles and zero VAT rating for the supply and import of batteries for electric vehicles, the Norwegian authorities have complied with their obligations pursuant to Article 1(3) of Part I of Protocol 3.

4. Compatibility of the aid

- (123) The Norwegian authorities consider that if the notified measures were to be defined as State aid, they are compatible with the functioning of the EEA Agreement in line with the current

⁸² Judgment in *Eventech*, C-518/13, EU:C:2015:9, paragraph 67 and the case law cited.

⁸³ Article 1 of Part II of Protocol 3 reads as follows: “*f) “unlawful aid” shall mean new aid put into effect in contravention of Article 1(3) in Part I*”.

Guidelines on State aid for environmental protection and energy 2014-2020 (“the EEAG”).⁸⁴

- (124) The Authority underlines that according to point 239 of the EEAG, “*unlawful environmental aid or energy aid will be assessed in accordance with the rules in force on the date on which the aid was granted in accordance with the Authority’s notice on the determination of the applicable rules for the assessment of unlawful State aid*”.
- (125) Therefore, the EEAG⁸⁵ are only applicable to the zero VAT rate for the leasing of electric cars and the supply and import of batteries for electric cars (notified before implementation). The EEAG are not applicable for the zero VAT rating for the supply and import of electric vehicles, which entered into force in 2001. Instead, the applicable guidelines would be the Guidelines on aid for environmental protection in force in 2001 (“EAG”⁸⁶). For the other measures listed in paragraph (118), the applicable environmental guidelines are those in force at the moment of the adoption of the measure. For some of them,⁸⁷ the applicable guidelines would in principle be the EAG, for others⁸⁸ the 1994 Environmental guidelines.⁸⁹
- (126) However, according to point 7 second paragraph of the EAG and point 10 (a) of the EEAG, those Guidelines do not apply to “*the design and manufacture of environmentally friendly products, machines or means of transport with a view to operating with fewer natural resources [...]*”. The 1994 Environmental guidelines do not contain concrete rules for the assessment of State aid measures to the manufacturing sector. Nevertheless, the 1994 guidelines refer to aid for the purchase of environmentally friendly products, stating that where such measures entail State aid,⁹⁰ they shall be assessed on their merits under the exemption provided for in Article 61(3)(c) of the EEA Agreement.⁹¹
- (127) Consequently, the measures qualified as State aid (see paragraph (118) above) should be assessed directly pursuant to Article 61(3)(c) of the EEA Agreement,⁹² since the manufacturing sector is the only beneficiary of the State aid measures at stake.
- (128) In assessing whether an aid measure can be deemed compatible with the EEA Agreement, the Authority balances the positive impact of the aid measure in reaching an objective of

⁸⁴ These Guidelines are not yet published in the OJ. However they are available at: <http://www.eftasurv.int/media/state-aid-guidelines/Guidelines-on-State-aid-for-environmental-protection-and-energy-2014-2020.pdf>

⁸⁵ The EEAG was adopted on 16.7.2014 by Authority Decision No 301/14/COL. According to point 237 “*these Guidelines will be applied from the date of adoption [...]*”, and according to point 238 “*the Authority will apply these Guidelines to all notified aid measures in respect to which it is called upon to take a decision after their application*”.

⁸⁶ State aid for environmental aid. OJ L 21, 24.1.2002, p. 32. EEA Supplement No 48.

⁸⁷ In particular, the free boarding on classified national road ferries and the favorable income tax calculations.

⁸⁸ In particular, the reduced annual vehicles tax for electric vehicles and the permission to freely drive on toll roads.

⁸⁹ Decision of the Authority No 4/94/COL of 19 January 1994 on the adoption and issuing of the Procedural and Substantive Rules in the Field of State Aid (Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement). OJ L 231, 3.9.1994, p. 1.

⁹⁰ Point 15.4.4. of the Guidelines reads as follows “[*m*]*easures to encourage final consumers (firms and individuals) to purchase environmental friendly products may not fall within Article 61(1) of the EEA Agreement because they do not confer a tangible financial benefit on particulars firms*”.

⁹¹ See paragraph 15.5.(1) of the 1994 environmental guidelines.

⁹² The Commission has applied Article 107(3) (c) TFEU directly to manufacturers of electric cars in a case similar to the one covered by this Decision. See paragraph 62 *et seq.* of the Commission decision in case SA.34719 (2013/N) – The Netherlands. Electric transportation scheme in Amsterdam.

common interest against its potentially negative side effects by distortion of trade and competition. The assessment is based on the following steps:

- Is the aid measure aimed at a well-defined objective of common interest (e.g. growth, employment, cohesion, environment, etc.)?
- Is the aid well designed to deliver the objectives of common interest, i.e. does the proposed aid address the market failure or other objective?
 - Is State aid an appropriate instrument?
 - Is there an incentive effect, i.e. does the aid change the behaviour of the firms?
 - Is the aid measure proportionate, i.e. could the same change in behaviour be obtained with less aid?
- Are the distortions of competition and effect on trade limited, so that the overall balance is positive?

(129) The above questions will be addressed in the following paragraphs.

4.1. Is there a well-defined objective of common interest?

(130) The Authority acknowledges that the protection of the environment is an objective of common interest.

(131) The determination to protect the environment is already established in the EEA Agreement, when the Contracting Parties defined themselves as “*determined to preserve, protect and improve the quality of the environment*”. This determination is reflected in Chapter 3 of Part V the EEA Agreement dedicated to the Environment policy (Articles 73 to 75). In particular, Article 73 paragraph 1 of the EEA Agreement states that “*action by the Contracting Parties relating to the environment shall have the following objectives: (a) to preserve, protect and improve the quality of the environment*”. Consequently, the Authority has already declared that environmental policy objectives should be taken into account when assessing the compatibility of State aid.⁹³

(132) The Authority considers that reducing CO₂ emissions from vehicles remains one of the objectives of the EEA environmental policy.⁹⁴

(133) Already in 2001, the greenhouse gas emissions and pollution caused by transport was considered one of the main obstacles to sustainable development.⁹⁵

(134) The measures under the scope of this decision are also in line with the Europe 2020 strategy⁹⁶ which sets targets and objectives for sustainable growth to support the shift towards a resource-efficient, competitive low-carbon economy. With this objective in mind,

⁹³ See EEAG, paragraph 2.

⁹⁴ See also the Commission decision of 8.3.2001. State aid No 386/2010. Denmark. Pilot scheme for purchase of electric vehicles, paragraph 57.

⁹⁵ See the EU Commission Communication of 15 May 2001 “A sustainable Europe for a better world: A European Union Strategy for Sustainable Development”. The link is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0264:FIN:EN:PDF>

⁹⁶ See http://ec.europa.eu/europe2020/index_en.htm. Norway participates in several of the 2020 strategy initiatives and the Kyoto emissions targets.

the European Commission is designing a European strategy on clean and energy efficient vehicles, pursuant to which several measures are taken.⁹⁷ Similarly, the Conclusions of the 42nd meeting of the EEA Council, dated 19 November 2014,⁹⁸ note in point 18 the importance on continued close cooperation between the EU and the EEA EFTA States in environment, energy and climate change policies, particularly in light of the 2030 Framework for Climate and Energy.

- (135) The Norwegian authorities decided already in 1989 to reduce the CO₂ emissions. The measures falling within the scope of the present decision aim at decreasing the emission of greenhouse gases from the Norwegian vehicle fleet and at increasing the number of electric vehicles. This is part of the strategy laid down in the White Paper on Norwegian climate policy of 2001 (St. Meld nr. 54 (2000-20014)⁹⁹) advocating to streamline the use of measures in order to curb the strong growth in greenhouse gas emissions. According to the White Paper, the transition from fossil fuels to alternative fuels, including electricity, should contribute to reducing the greenhouse gas emissions from the transport sector.
- (136) According to the Report No 21 (2011-2012)¹⁰⁰ to the Parliament, there is a political aim that average CO₂ emissions from new passenger cars should not exceed 85 grams CO₂ per kilometre in 2020. Increased sales of electric and hydrogen vehicles will contribute to reduced emissions from new passenger cars.

4.2. Does the measure respond to a market failure?

- (137) A market failure may be caused by negative externalities arising from the production or consumption of goods and services. Externalities are defined as third party effects arising from production or consumption of goods and services for which no appropriate compensation is paid.¹⁰¹
- (138) Environmentally harmful emissions represent a negative externality that economic agents may well disregard in their actions. Economic agents may not be ready to pay for the extra costs linked to environmental protection if those costs are not compulsory or subsidised. Consumers will have little direct incentive to acquire goods (in this case electric vehicles) to limit environmental pollution since consumers will typically consider only their own private costs and benefits, without taking into account the environmental effect of their

⁹⁷ Several measures are been taken at EU level to stimulate the use of electric vehicles. For instance, the TEN-T programme co-funds several projects. For example, the charging stations in Denmark and France (information available at: http://ec.europa.eu/transport/newsletters/2015/03-02/articles/denmark-fast-charge-electric-vehicles_en.htm and http://inea.ec.europa.eu/en/news__events/newsroom/200-charging-points-for-electric-vehicles-to-open-in-france-with-eu-support.htm) or support studies on electric vehicles traffic development in Northern Europe (information available at: http://ec.europa.eu/transport/newsletters/2015/01-26/articles/ten-t_electric_vehicles_en.htm).

The Horizon 2020 programme will provide funding for resource efficient transport that respects environmental concerns (information available at <http://ec.europa.eu/programmes/horizon2020/en/h2020-section/smart-green-and-integrated-transport>).

⁹⁸ Conclusions adopted by the EEA Council at its 42nd meeting of 19 November 2014. Brussels. EEE 1607/2/14. Press document EEE 1610/14.

⁹⁹ Available at: <https://www.regjeringen.no/nb/dokumenter/stmeld-nr-54-2000-2001-/id195302/>

¹⁰⁰ Report No. 21 (2011-2012). Norwegian climate policy. Recommendation from the Ministry of Environment, 25 April 2012. Available at: <https://www.regjeringen.no/en/dokumenter/report-no.-21-2011-2012/id679374/>

¹⁰¹ The definition can be found at: “Market failure- Externalities”. Available at: <http://www.tutor2u.net/economics/revision-notes/a2-micro-externalities-overview.html> or “Negative externalities”. Available at http://www.economicsonline.co.uk/Market_failures/Externalities.html.

options. This implies that environmental negative externalities represent a market failure¹⁰² (i.e. the market will not resolve them by its own) that justifies public intervention.

- (139) The price of electric cars, despite its steady reduction, remains higher than the price of conventional fuel cars, and electric cars are not yet competitive (see figure 2 above). Consumers are not ready to pay the higher price of electric cars just because of environmental considerations. However, there is a public incentive to promote environmental protection. To compensate the negative externalities and the market failure, public intervention may be appropriate.
- (140) The Authority recalls that the EEAG¹⁰³ have already accepted that market failures can be due to environmental negative externalities, and therefore public intervention could be an appropriate measure to increase the level of environmental protection.
- (141) As a consequence, the Authority agrees that measures may be adopted to reduce the price difference between electric and conventional vehicles in order to respond to the market failure.

4.3. Design of the measures and the need to limit distortions of competition

4.3.1. Aid is the appropriate measure and provides the right incentives

- (142) The Norwegian authorities have already implemented several measures to promote the purchase of electric vehicles. As described above, since the 1990s, electric vehicles are exempted from the registration tax, benefit from free parking, are exempted from tolls on toll roads, etc. Moreover, the zero VAT rate for the supply and import of electric vehicles was adopted in 2001.
- (143) Norway has the highest penetration rate of electric vehicles in the world. However, despite these measures and their promising results, the 2014 market share of electric vehicles in Norway only amounts to 12.5%. Most of the consumers still chose a new fossil fuel car instead of a new electric car.
- (144) In fact, despite the fast development of the sector, electric vehicles have several limitations and disadvantages. They are not yet a full alternative for conventional cars.¹⁰⁴
 - The first disadvantage is the price. The price difference is illustrated in table 1 below. Electric vehicles are still more expensive than conventional fuel cars.
 - Consumers are also worried about their driving autonomy, i.e. how far they can travel in electric cars before their batteries are run out and whether they will arrive at their

¹⁰² On this subject see: “Economic principles of state aid control”. Available at: <http://ec.europa.eu/dgs/competition/economist/ibc.pdf>

¹⁰³ See paragraphs 29 and 30 of the EEAG.

¹⁰⁴ Public information on this issue can be found at: “Advantages and disadvantages of electric cars”. Available at: <http://www.conserve-energy-future.com/advantages-and-disadvantages-of-electric-cars.php>; “Electric cars: benefits and disadvantages”. Available at: <http://www.autotrader.com/research/article/car-tips/208155/electric-cars-benefits-and-disadvantages.jsp>; “Electric cars pros and cons”. Available at: <http://www.plugincars.com/electric-cars-pros-and-cons-128637.html>, “Are electric cars safe in accidents?”. Available at: <http://auto.howstuffworks.com/are-electric-cars-safe-in-accidents.htm> or “Electric vehicle safety”. Road safety observatory. Available at: <http://www.roadsafetyobservatory.com/Summary/vehicles/electric-vehicles> and http://www.roadsafetyobservatory.com/Review/10098*/

destination. Charging an electric vehicle can sometimes be problematic due to limited availability of charging stations.

- Electric vehicles still seem more suitable for urban areas, than for long distances. This implies that consumers may opt for an electric vehicle as second car, but not as the main or unique vehicle.
- There is also a limited range of models and options available to customers willing to purchase a vehicle. Even if the sector is developing very fast, most of the electric cars are small ones. This implies, subject to exceptions, most of electric vehicles are still not meant for families.
- Furthermore, recharging the battery takes longer than refuelling a tank with petrol. While it takes a few minutes to fuel a conventional car, an electric car takes about 4-6 hours to fully charge. This implies that an electric vehicle will be out of service for a few hours before it is fully recharged.
- There are also safety concerns, including issues of crashworthiness (i.e. how the structural and weight differences of electric vehicles compared with conventional vehicles affect the vehicles collision behaviour) and post-impact vehicle safety (i.e. the challenges associated with high-voltage circuits following a collision, since the lithium contained within lithium ion batteries is highly reactive and flammable, even if few serious incidents have been reported so far).

(145) As a consequence, the Authority accepts that the State aid measures covered by this decision are appropriate measures that need to be maintained or implemented in order to encourage the purchase of electric vehicles.¹⁰⁵ They are appropriate measures to achieve the general emission targets and the particular target on passengers cars emissions, i.e. CO₂ emissions from new passenger cars in Norway of 85 grams by 2020, as a means to achieve a carbon neutral transport sector and render Norway a carbon neutral nation by 2050 (see paragraph (21) above).

(146) Furthermore, the aid measures have incentive effects since without them, the percentage of purchases of electric cars by consumers would not increase substantially under normal conditions.

4.3.2. Proportionality

(147) The aid measures have an overall objective of reducing the price difference between conventional and electric vehicles.

(148) Regarding the difference in the purchasing price between electric and conventional cars, the Norwegian authorities have provided evidence of the price differences, and how the tax exemptions affect the final price.

¹⁰⁵ The report “Driving electrification. A global comparison of fiscal incentive policy for electric vehicles”, edited by ICCT (The International Council on Clean Transportation), adopted in May 2014, provides for a worldwide overview of the public incentives in favour of electric cars. One of its main conclusions is that “national fiscal policy is a powerful mechanism to reduce the effective total cost of ownership and entice vehicle consumers to purchase electric vehicles. In particular it states that “[C]lear examples are Norway and the Netherlands, where high EV [electric vehicles] fiscal incentives result in a beneficial total cost of ownership for consumers, and this results in high EV market growth rate and market share”, page 22.

- (149) According to the available information, the Mitsubishi i-MiEV was the most sold electric vehicle in Norway in 2011. According to *Opplysningsrådet for veitrafikken* (OFV) the guiding price of a Mitsubishi i-MiEV was NOK 240 000 in November 2010. The price of the car was reduced to NOK 160 000 in May 2014. If ordinary VAT of 25 % was levied on electric vehicles the price of the car would have been NOK 300 000 in November 2010 and NOK 200 000 in May 2014.
- (150) Nissan Leaf was the most sold electric vehicle in Norway in 2012 and 2013. The guiding price of a Nissan Leaf was NOK 255 000 in November 2011. This price was reduced to NOK 243 000 in May 2014. If ordinary VAT of 25 % had been levied on the Nissan Leaf, prices would have been NOK 319 000 in November 2010 and NOK 304 000 in May 2014.¹⁰⁶
- (151) Table 1 below compares the guiding prices of some of the most popular electric passenger cars and comparable petrol and diesel passenger cars. Nissan Leaf and Tesla Model S were the most sold electric vehicles in Norway in the first nine months of 2014. In 2013 and 2014 Volkswagen also introduced two electric vehicles into the Norwegian market with relatively high sales figures. The table shows that the sales prices of electric cars are almost the same as the prices of similar petrol and diesel cars. Still, the sales of electric cars are significantly lower than the sales of petrol and diesel cars.
- (152) The table shows that for the smallest cars, like i-MiEV and e-up!, the prices of electric cars tend to be higher than those of similar petrol cars. For larger electric cars, like Leaf and e-Golf, prices tend to be at the same level as those of similar petrol cars.
- (153) The largest electric car, Tesla Model S, seems to have a price that is equal to or even slightly lower than those of similar diesel and petrol cars. There is a wide range of petrol and diesel cars and the table below only shows some examples. Hence, this is not necessarily representative for all the existing cars.

Table 1. Prices and purchase taxes (VAT and registration tax) of some electric passenger cars and similar cars with combustion engine. Guiding prices May 2014.

Car brand	Car model	Fuel type	CO2 emission, g/km	NOx emission, Mg/km	Engine power, kW	Guiding price, NOK	Hereof taxes, kroner
Mitsu.	i-MiEV	El.	0	0	49	160 000	2 400
VW	e-up!	El.	0	0	60	187 000	2 400
VW	Up!	Petrol	95	9	44	132 000	49 000
VW	Up!	Petrol	113	13	55	170 000	69 000
Nissan	Leaf	El.	0	0	80	243 000	2 400
VW	e-Golf	El.	0	0	85	244 000	2 400
VW	Golf	Petrol	114	60	63	252 000	102 000
VW	Golf	Petrol	116	60	81	305 000	118 000
Tesla	Model S	El.	0	0	270	520 000	2 400
Audi	A6	Diesel	132	143	130	510 000	227 000
Audi	S6	Petrol	225	27	309	1 240 000	768 000

Source: Opplysningsrådet for veitrafikken and the Ministry of Finance.

¹⁰⁶ These calculations assume that the VAT is fully passed on to the consumers. Often a tax benefit would be shared between the seller/producer and the buyer/consumer.

- (154) Table 1 shows that petrol and diesel cars are levied the ordinary VAT rate of 25%, the registration tax and the scrapping tax, which is the tax to finance the vehicle scrapping scheme. Electric vehicles are only levied the scrapping tax of NOK 2 400.
- (155) The registration tax has a progressive structure, which is based on weight, engine power, CO₂ and NOx emissions. Therefore, the registration tax is low for small cars with low emissions, weight and engine power, whereas it tends to be high for cars with high emissions, weight and/or engine power. Electric cars, however, are only levied the scrapping tax. As can be seen in table 1, even a zero VAT rate only just brings prices for electric vehicles to a price level that is comparable to that of conventional cars.
- (156) In the mid-late 1990s or pre-2001 (when several measures were already adopted to stimulate the demand of electric vehicle), the price of electric cars was higher than today, even if the oldest models of electric cars could not compete with fuel conventional vehicles in terms of quality, comfort, autonomy and security (see paragraph (36) and footnote 28 above). As a consequence, the measures adopted in the 1990s and in 2001 were proportionate, since they contributed to reduce the high price of a vehicle type that was not yet competitive.
- (157) In addition to the aid to reduce the purchasing price, the operative costs of electric cars are also lower in all segments, thanks to the nature and characteristics of those vehicles, but also because of the State measures. Benefits for electric cars like free parking or no toll on roads etc. should be included in the calculations. With this operating aid included, it could be the case that owning an electric vehicles is overall cheaper than owning a conventional car in Norway.
- (158) The State aid rules will in principle not allow to grant aid exceeding 100% of the extra environmental costs.¹⁰⁷ Therefore, it could be argued that the total costs for electric vehicles (purchasing and operational costs) should not be reduced below the cost of conventional fuel cars.
- (159) However, the Authority notes that there are several reasons to find that overcompensation is excluded. First, the measures at hand only entail State aid for the indirect beneficiaries of such measures, i.e. the manufacturing sector. As a consequence, the State aid intensity received by those beneficiaries is significantly reduced; it is merely an indirect aid through a higher demand for their products. Second, it must also be recalled that despite the fast technological developments there are still important differences between conventional and electric vehicles in terms of comfort, reliability and protection against accidents that have to be taken into account (see paragraph (144)). Third, the price of new batteries also has to be taken into account since it is estimated that around 50% of the electric cars will have to change the battery during the lifetime of the vehicle (see further detail in paragraph (162) below). Therefore, at the current stage of technological development, the Authority concludes that all the measures together are proportionate to the aim to be achieved, i.e. to stimulate the demand of electric vehicles without resulting in overcompensation.
- (160) This reasoning also applies for electric vehicles such as certain Tesla models (see paragraph (153) above), where the tax measures have as a result that their purchasing price is lower

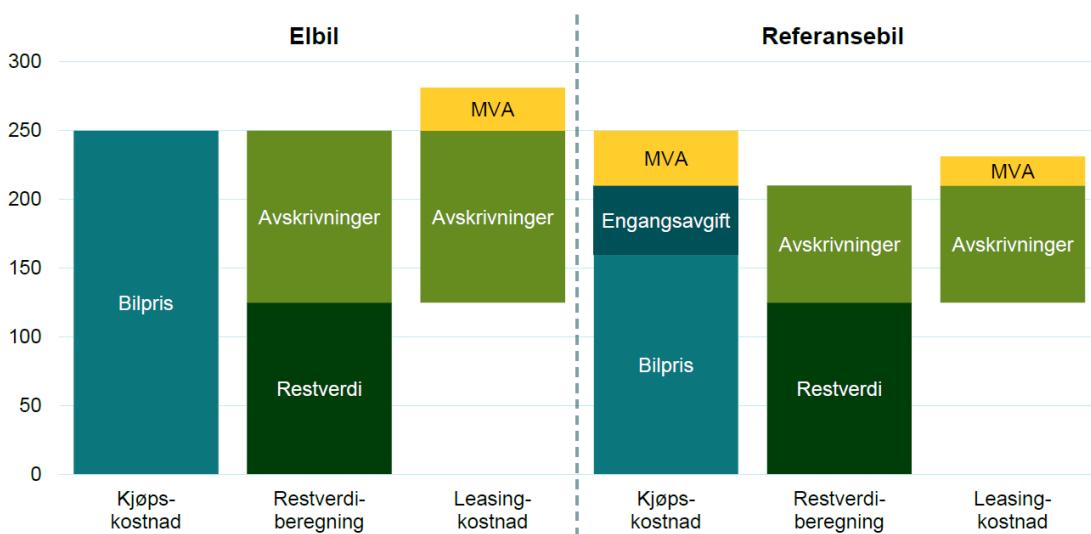
¹⁰⁷ The Authority refers *mutatis mutandi* to the different environmental guidelines. The 1994 Environmental Guidelines state that “*aid for purchase of environmentally friendly products will be assessed on their merits and may be authorized provided that they are granted without discrimination as to the origin of the products, do not exceed 100 % of the extra environmental costs and do not conflict with other provisions of the EEA Agreement or legislation made under it with particular reference to the free movement of goods*”, see point 15.4.4 (underline added). Based on the same line of reasoning, the EAG and the EEAG foresee maximum aid intensities of 100%.

than the price of certain conventional cars in what is otherwise the same category. Overcompensation is excluded also here, in the same manner.

- (161) Regarding the lease of cars, the Norwegian authorities also argue that it is not economically profitable to lease an electric vehicle (Figure 3):

Figure 3: Leasing of electric vehicles does not pay off

(Figur 11: Leasing av elbiler lønner seg ikke (illustrativt eksempel) (Kilde: leasePlan; vår framstilling¹⁰⁸)



(Note:¹⁰⁹ Elbil: Electric vehicles, Bilpris: car price, Kjøps-kostand: Purchasing price, Avskrivninger: depreciation, Restverdi: residual value, Restverdiberegning: residual value calculation, MVA: VAT, Leasing-kostnad: leasing price, Referansebil: reference car, Engangsavgift: one-time tax (registration tax)).

- (162) Concerning the zero VAT rate for the supply and import of batteries, the Authority accepts that they represent a significant cost for electric vehicles and are a key element of the electric vehicles because they determine the autonomy of the car.¹¹⁰ Important efforts on R&D on batteries for electric vehicles are currently being undertaken in order to improve the batteries, which should boost the sector.¹¹¹ However, at the current stage of technological development, it is commonly accepted that more than 50% of the electric cars' batteries will have to be replaced during the lifetime of the electric vehicles. It must also be underlined that the performance of batteries vary during their lifetime, since they lose capacity and reliability over time as they are charged and discharged. It is considered that a battery is in

¹⁰⁸ The source of the following graphic is the Thema report: Utvikling og nedtrapping av ladbare bilers virkemidler (November 2013). Figure 11.

¹⁰⁹ The Authority's own translation.

¹¹⁰ See: "The electric car's biggest threat may be its battery". Available at: <http://www.bbc.com/future/story/20140331-electric-cars-biggest-threat>

¹¹¹ See the comments on "Why We Don't Have Battery Breakthroughs". Information available at: <http://www.technologyreview.com/review/534866/why-we-dont-have-battery-breakthroughs/>. See also "A prototype battery could double the range of electric cars". Information available at: <http://www.technologyreview.com/news/533541/a-prototype-battery-could-double-the-range-of-electric-cars/>. See also "German researchers make progress on a long-lasting battery for electric cars". Available at: <https://gigaom.com/2013/06/20/german-researchers-make-progress-on-a-long-lasting-battery-for-electric-cars/>

good condition when it maintains 80% of its original capacity, but in fact this implies reducing the electric cars autonomy by 20%.¹¹²

- (163) In light of the above, supporting the supply and import of batteries for electric vehicles will be in line with the objective of the Norwegian authorities to stimulate the demand for electric vehicles, and it is a proportionate measure in respect of the final objective of the scheme. It has also to be recalled that, at the time being, there is no common agreement as to how long an electric car's battery lasts.¹¹³
- (164) The Authority also notes that lack of discrimination between manufacturers or dealers ensures the proportionality of the measure.¹¹⁴
- (165) Finally, the Authority notes that the VAT schemes as notified is limited in time (until the end of 31 December 2017).
- (166) The limited approval in time will allow the Norwegian authorities and the Authority to review the electric vehicles sector over a period of time, limiting therefore the risk of undue distortion of competition. This will also allow an assessment of the evolution of electric vehicles prices in the coming years in order to verify whether the measures are still proportionate and have an incentive effect, i.e. whether the consumers will stop acquiring electric vehicles without the measures.

4.4. Avoidance of undue negative effects on competition and trade

- (167) The Authority underlines that the measures only grant State aid to the indirect beneficiaries of the measures, not to their direct beneficiaries. This implies in itself that the potential distortion of competition and trade is limited.
- (168) It is also relevant to recall that there is no discrimination between manufacturers or dealers of electric vehicles and batteries for electric vehicles (see paragraph (165) above).
- (169) Furthermore, the Authority believes that the benefits obtained by those indirect beneficiaries, i.e. the increase of the demand for electric cars is necessary for achieving the

¹¹² See “*How long will electric vehicles batteries last? Tesla's roadster could be a guide*”. Available at: <http://www.torquenews.com/2250/how-long-will-electric-vehicle-batteries-last-tesla-s-roadster-could-be-guide>

¹¹³ According to the publication: “*How long will an electric car's battery last?*”. (Available at: <http://www.hybridcars.com/how-long-will-an-evs-battery-last/>), “*Research has been conducted but in most cases, electric cars looked at were only a year or two old, with well under 100,000 miles, if not less than 50,000 miles*”. Other publications on the lifecycle of an electric car battery states that “*The lithium-ion battery pack in the Tesla Roadster is projected to have a lifespan of about 5 years or 100,000 miles*” (Information available at: <http://auto.howstuffworks.com/fuel-efficiency/vehicles/electric-car-battery4.htm>). Certain experts indicate that the lifetime of a battery for electric cars highly depend on external elements such as the temperature, fast recharges etc. Consequently the lifetime of a battery can vary from 5 to 20 years.

¹¹⁴ The lack of discrimination between manufacturers has been identified by the Commission's practice as an element of its proportionality assessment in similar cases. See Commission decision of 8.3.2011. State aid No 386/2010. Denmark. Pilot scheme for purchase of electric vehicles, paragraph 55, Commission decision of 26.4.2006, State aid N 142/2005. UK. Low Carbon Car Grant Programme, title 3.2. and Commission decision of 19.11.2009, State aid. N 457/2009. Germany. Promote the purchase of hybrid buses in public transport. In the same line, the 1994 Environmental Guidelines refer to the lack of discrimination as to the origin of the products as a compatibility criteria while stating that “*aid for purchase of environmentally friendly products will be assessed on their merits and may be authorized provided that they are granted without discrimination as to the origin of the products, do not exceed 100 % of the extra environmental costs and do not conflict with other provisions of the EEA Agreement or legislation made under it with particular reference to the free movement of goods*”, see point 15.4.4, underline added.

objective pursued by the scheme.¹¹⁵ Therefore, the Authority considers that the measures do not entail undue distortion of competition and considers that the overall balancing exercise has a positive outcome.

4.5. Evaluation of the measures

- (170) The Authority notes that the Norwegian authorities have stated that an evaluation of the benefits of the VAT measures will be carried out. The Norwegian authorities have informed the Authority that they are currently evaluating the whole taxation system for vehicles and will aim at presenting the results in the revised budget for 2015 in May 2015.
- (171) The Authority underlines the importance of such an evaluation in the context of any possible extension of the State aid measures. Moreover, the Authority adds that not only the effectiveness of the VAT measures, but also of the other measures enumerated in paragraph (118) above must be taken into account in the assessment of any renewal or extension of the notified measures.

4.6. Conclusion

- (172) On the basis of the foregoing assessment, the Authority considers that (i) the zero VAT rating for the supply and import of electric vehicles, (ii) the zero VAT rating for the leasing of electric vehicles, (iii) the zero VAT rating for the supply and import of batteries for electric vehicles, (iv) the reduced annual vehicle tax, (v) the exemption from road tolls for electric vehicles, (vi) the free boarding on classified national road ferries, and (vii) the favourable income tax calculation for employees benefitting from private use of corporate electric cars, constitute compatible State aid pursuant to Article 61(3)(c) of the EEA Agreement.
- (173) The notified measures (i.e. the VAT measures, referred to as measures (i), (ii) and (iii) in the paragraph above) remain compatible with the functioning of the EEA Agreement until 31 December 2017.
- (174) The Norwegian authorities are reminded that all plans to modify the measures covered by this decision must be notified to the Authority pursuant to Article 1(3) of Part I of Protocol 3, and would be subject to the evaluation process foreseen in paragraph (170) above.

HAS ADOPTED THIS DECISION:

Article 1

The following measures, (i) the zero VAT rating for the supply and import of electric vehicles, (ii) the zero VAT rating for the leasing of electric vehicles, (iii) the zero VAT rating for the supply and import of batteries for electric vehicles, (iv) the reduced annual vehicle tax, (v) the exemption from road tolls for electric vehicles, (vi) the free boarding on classified national road ferries, and (vii) the favourable income tax calculation for employees benefitting from private use of corporate electric cars, constitute compatible State aid within the meaning of Article 61(3)(c) of the EEA Agreement, in favour of the indirect beneficiaries of those measures, i.e. manufacturers and dealers of electric vehicles and batteries.

Article 2

¹¹⁵ Along the same lines, see Commission Decision 20.11.2013. State aid SA. 34719 (2013/N). The Netherlands. Electric transportation scheme in Amsterdam, paragraph 65.

The measures referred to in Article 1 do not entail State aid within the meaning of Article 61(1) of the EEA Agreement in favour of their direct beneficiaries, i.e. the buyers, importers or lessors of electric vehicles or buyers or importer of batteries for electric vehicles.

Article 3

The free use of bus lanes by electric vehicles does not entail State aid within the meaning of Article 61(1) of the EEA Agreement, neither for the direct nor for the indirect beneficiaries.

Article 4

The implementation of the measures referred to in Article 1 not yet in force is authorised accordingly.

Article 5

The notified measures referred to in Article 1 (i.e. (i) the zero VAT rating for the supply and import of electric vehicles, (ii) the zero VAT rating for the leasing of electric vehicles, and (iii) the zero VAT rating for the supply and import of batteries for electric vehicles) can remain in force until 31 December 2017.

Article 6

This Decision is addressed to the Kingdom of Norway.

Article 7

Only the English language version of this decision is authentic.

Done in Brussels, on 21 April 2015.

For the EFTA Surveillance Authority

Oda Helen Sletnes

President

Frank J. Büchel

College Member