

Message 115

Communication from the Commission - TRIS/(2015) 01773

Directive 98/34/EC

Notification: 2015/0120/D

Forwarding of a detailed opinion received by a Member State (United Kingdom) (article 9, paragraph 2, second indent of Directive 98/34/EC). This detailed opinion extends the standstill period until 14-09-2015.

Comunicado detallado - Podrobné vyjádření - Udførlig udtalelse - Ausführlichen Stellungnahme - Üksikasjalik arvamus - Εμπειριστατωμένη γνώμη - Detailed opinion - Avis circonstancié - Parere circostanziado - Detalizēts atzinums - Detali nuomonė - Részletes vélemény - Opinioni dettaljata - Uitvoerig gemotiveerde mening - Opinia szczegółowa - Parecer circunstanciado - Podrobný úsudok - Podrobno mnenje - Yksityiskohtainen lausunto - Detaljerat yttrande - Подробно становище - Aviz detaliat - Aviz detaliat.

Amplia el plazo del estatu quo hasta 14-09-2015. - Prodlužuje lhůtu pro stávající stav až do 14-09-2015. - Fristen for status quo forlänges til 14-09-2015. - Die Laufzeit des Status quo wird verlängert bis 14-09-2015. - Praeguse olukorra tähtaega pikendatakse kuni 14-09-2015. - Παρατείνει την προθεσμία του status quo μέχρι την 14-09-2015. - Extends the time limit of the status quo until 14-09-2015. - Prolonge le délai de statu quo jusqu'au 14-09-2015. - Proroga il termine dello status quo fino al 14-09-2015. - Pagarina "status quo" laika periodu līdz 14-09-2015. - Pratešia status quo laiko limitą iki 14-09-2015. - Meghosszabbítja a korábbi állapot határidejét 14-09-2015-ig. - Jestendi t-terminu ta' l-istatus quo sa 14-09-2015. - De status-quo-periode wordt verlengd tot 14-09-2015. - Przedłużenie status quo do 14-09-2015. - Prolonga o prazo do statu quo ate 14-09-2015. - Časový limit momentálneho stavu sa predĺži až do 14-09-2015. - Podaljša rok nespremenjenega stanja do 14-09-2015. - Jatkaa status quo määräaika 14-09-2015 asti - Förlänger tiden för status quo fram till: 14-09-2015 - Удължаване на крайния срок на статуквото до 14-09-2015 - Prelungește termenul status quo-ului până la 14-09-2015.

Die Kommission hat diese ausführliche Stellungnahme am 15-06-2015 empfangen.

The Commission received this detailed opinion on the 15-06-2015.

La Commission a reçu cet avis circonstancié le 15-06-2015.

(MSG: 201501773.EN)

1. MSG 115 IND 2015 0120 D EN 15-06-2015 15-06-2015 COM 9.2(2)
15-06-2015

2. United Kingdom

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4. 2015/0120/D - N20E

5. article 9, paragraph 2, second indent of Directive 98/34/EC

6. The United Kingdom (UK) submits a detailed opinion with respect to notification number 2015/120/D submitted under Directive 98/34/EC received by the Commission on 13 March 2015. The title of the notification is ‘Ordinance on minimum technical requirements in terms of the secure and interoperable deployment and operation of recharging points for electromobile vehicles which are accessible to the public (Charging Column Ordinance [German designation: LSV]). The Ordinance transposes certain requirements of Directive 2014/94/EU (“on the deployment of alternative fuels infrastructure” (“the Directive”)). In the Directive, the term “recharging or refuelling point accessible to the public” is tightly defined in Article 2(7) in that it is defined as a “recharging or refuelling point to supply alternative fuels which provides Union-wide non-discriminatory access to users. Non-discriminatory access may include different terms of authentication, use and payment.” The definition focuses on functional/technical access to the chargepoint.

Following the UK’s review of the draft as notified, it is the UK’s opinion that the Ordinance intentionally defines recharging points that are “accessible to the public” in a way that is inconsistent with the definition in the Directive. The definition contained in the Ordinance notified under Directive 98/34 defines a publicly accessible charge point as a chargepoint “...located either on a public street or on private ground, provided the parking place which is part of the recharging point can actually be used by an indeterminate category of person or a category of persons which can only be defined according to general characteristics.” It is to be noted that factors which may deny other drivers access (for example, a private recharging network, are to be discounted when considering whether a chargepoint is accessible to the public). Therefore, the access to the chargepoint is defined not by technical access but rather physical access by a general group of persons. If the chargepoint can be accessed physically then it is publicly accessible. It is the UK’s opinion that this interpretation exceeds that which is necessary to realise the key objective of this Directive, to achieve the broadest possible use of alternative fuels for transport, while ensuring technological neutrality, and to promote sustainable electric mobility throughout the Union (Recital 64).

Given the definition sets physical accessibility to the chargepoint as the key criteria to whether it is publicly accessible, and given that the vast majority of private chargepoints are on public roads, the implication of this measure is that currently private networks would be brought within the definition of publicly accessible and accordingly they would be required to comply with the obligations in the Directive which are applicable to publicly accessible chargepoints, such as set out in Articles 4 (7), (8), (9), (10), (11). This could fundamentally impact the nature and operation of such schemes. Such changes would materially interfere with the market for private car charging networks and impede operators in supplying the service as currently to the markets in the UK, Germany and other EU states. This potentially risks breaching the right to freedom of the provision of services as set out in Article 54 of the Treaty. This would have a significant chilling effect as described below on the current market for private car charge networks.

In addition, this definition would appear to contradict one of the key aims of the Directive which is to encourage private sector investment in alternative fuels infrastructure to mitigate the environmental impact of transport. Specifically, the definition restricts Member States' ability to comply with Art.4 (3) that requires Member States to encourage and facilitate the deployment of recharging points not accessible to the public. It is our opinion that this definition significantly reduces the attractiveness of investments in private networks of recharging points, and will result in less infrastructure provision and slow the transition to alternatively fuelled transport.

It is our opinion that this draft Ordinance will fundamentally restrict private companies from the provision of cross-border services in the areas of private electric vehicle recharging networks that they ought to have the freedom to provide. As stated, this risks violation of the Treaty.

Notably, in terms of public interest, this interpretation of "chargepoints accessible to the public" will have substantial negative impacts on EU consumers who have purchased membership of private networks that are now well-established throughout many EU Member States. This Ordinance would significantly impede the ability of EV owners who have contractually joined these well-established private networks, to continue to use them as intended throughout the Union.

If enacted, this approach will lead to an uncoordinated approach across Member States, going against the harmonised policy intentions referred to in Recital 10, which aims to ensure that Member States provide the long-term security required for public and private investment in vehicle and fuel technology, and infrastructure build-up.

The Directive clearly recognises (Recital 25) that electro-mobility is a fast moving area, and that legislation needs to ensure that technological innovation is facilitated. The electric vehicle market is at an early stage of development, and unnecessary barriers to private investment will have a stifling effect on innovation in terms of technological advances in the EU, contrary to the fundamental aims of the agreed Directive.

It is our opinion that this overly onerous approach will significantly limit further investment in such private networks and could have a detrimental impact on the confidence of the early electric vehicle market. It is likely to dis-incentivise the private sector and the very consumers who have adopted the early technology, therefore going against a fundamental aim to the Directive, to trigger investment in sustainable transport and support the deployment of a continued network of alternative fuels infrastructure in the Union (Recital 18).

Finally, we understand that a complaint has been made by Tesla Motors GmbH (an operator of a private charge point network across the EU) in relation to the same Ordinance that we understand refers to the same concerns expressed in this opinion.

European Commission

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