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SENSITIVE* : *COMP Operations*

Subject: State aid SA.55695 (2020/N) – Sweden
Prolongation of the tax exemptions for pure and high-blended liquid biofuels

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification on 13 August 2020, registered by the Commission on the same date, Sweden, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (thereinafter "TFEU") notified its intention to prolong the tax exemption for pure and high-blended liquid biofuels for one additional year.
- (2) On the same day, 13 August 2020, the Swedish authorities also provided a language waiver and agreed that the decision will be adopted and notified in English as authentic language.
- (3) The notified measure is a prolongation of an existing scheme which was approved by the Commission as compatible aid and subsequently prolonged several times. The latest approval decision in case SA. 48069 (2017/N)¹ was based on the Guidelines on State aid for environmental protection and energy 2014-2020 ("EEAG")² and is valid until 31 December 2020.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/db43PX>

¹ State aid SA.48069 (2017/N) – Sweden – Tax reductions for pure and high-blended liquid biofuels (OJ C 380, 10.11.2017, p. 5).

² OJ C 200, 28.6.2014, p. 1-55.

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2. DETAILED DESCRIPTION OF THE AID

2.1. Objective, form of aid, legal basis, beneficiaries and eligibility requirements

- (4) Sweden does not intend to introduce any modification to the scheme approved in 2017 (“the 2017 scheme”), but wishes to prolong its duration for one additional year (*i.e.* until 31 December 2021). All the elements of the 2017 scheme, notably as regards the objective, form of aid, legal basis, beneficiaries and eligibility requirements, will remain the same.

Objective, form of aid and legal basis

- (5) The use of motor fuels produced from biomass is a vital part of the Swedish strategy on climate change. Increased shares of biofuels would help Sweden achieve its 2030 EU renewable target, as well as its national target to reduce greenhouse gas emissions from domestic transports with at least 70 percent by 2030 compared to 2010.
- (6) The transport sector in Sweden accounts for approximately one third of the total CO₂ emissions. Sweden aims to have zero net emissions of greenhouse gases into the atmosphere by 2045 and to have a fossil fuel free vehicle fleet. At present, the production costs for pure and high-blended liquid biofuels are higher than their fossil fuel equivalent. The national authorities argue that the tax exemptions will ensure a high demand for biofuels, which will also promote the required investments for adapting the vehicles and the infrastructure for the transition towards fossil free transport.
- (7) To support the above objective, the 2017 scheme allows sustainable high-blended and pure biofuels to benefit from a full exemption from the energy and CO₂ taxes applicable in Sweden. This exemption is not available for low-blended biofuels and unsustainable biofuels. The full tax exemption covers the following high-blended biofuels:
- high-blended FAME (B100);
 - high-blended ethanol (E85, ED95);
 - hydrogenated vegetable and animal oils and fats, known as HVO when the volume of these motor fuels consists of more than 98 % biomass;
 - synthetic petrol, produced from lignin, when the volume of these motor fuels consists of more than 98 % biomass³.
- (8) High blended FAME and high blended ethanol sold on the Swedish market today are mainly produced from raw materials from food and feed crops. However, there are examples of ethanol being produced from waste and residues. Many biofuels can be made from both food- and feed crops and from waste and residues. The HVO on the Swedish market is mainly produced from waste and residues, but small volumes are also produced from food- and feed crops.

³ Sweden explains that high-blended synthetic petrol (biomass content exceeding 98 %) is currently not available on the Swedish market and is not expected to become available before the expiration of the modified scheme on 31 December 2021.

- (9) The Swedish authorities have provided data showing a significant decline in the use of high-blended ethanol since 2012 with a moderate increase in 2018 (see Table 1). According to the projections, the use of E85 and ED95 is expected to further decline in the following three years to represent as little as 0.3% of the total energy use in the transport sector in 2021. Conversely, the use of high blended FAME and high blended HVO have increased over time to amount to respectively 1.1% and 4.4% of the total energy use in the transport sector in 2018 and are expected to remain stable until the end of 2021, according to the short term energy outlook by the Swedish Energy Agency (“SEA”).

Table 1 Use of high-blended biofuels in 1 000 m3 and within brackets as share of total energy used in the transport sector 2012-2021 (forecast from 2019)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Ethanol in E85 and ED95	215 (1.4%)	176 (1.1%)	156 (1%)	103 (0.6%)	58 (0.4%)	49 (0.3%)	70 (0.4%)	61 (0.4%)	52 (0.3%)	44 (0.3%)
High blended FAME	42 (0.4%)	53 (0.5%)	175 (1.7%)	177 (1.7%)	78 (0.8%)	71 (0.7%)	110 (1.1%)	108 (1%)	108 (1%)	109 (1%)
High blended HVO	0 (0%)	1 (0%)	2 (0%)	34 (0.3%)	260 (2.6%)	565 (5.6%)	446 (4.4%)	491 (4.9%)	491 (4.8%)	492 (4.8%)

Source: Swedish Energy Agency, Short term energy outlook 2019

- (10) According to the Swedish authorities the tax exemptions have been instrumental to meet the Swedish national 2020 renewables target, but are still necessary to continue progressing towards the 2030 EU renewable target and the Swedish national target to reduce greenhouse gas emissions from domestic transports.
- (11) The legal basis of the aid remains paragraphs 3a, 3 b and 3c of the 7th chapter of the Swedish Act (1994:1776) on Excise duties on Energy.

Beneficiaries and eligibility criteria

- (12) The 2017 scheme applies to sustainable biofuels produced in Sweden and to imported sustainable biofuels and indirectly benefits the producers of sustainable biofuels as it off-sets part of the biofuel production costs.
- (13) The SEA is responsible for a control system that ensures compliance with the sustainability criteria for all biofuels and that controls the depreciation of the production facilities for biofuels produced from food and feed crops (hereinafter referred to as ‘food-based biofuels’). From 30 June 2021, Sweden will align these criteria to the requirements of the revised Renewable Energy Directive (“RED II”)⁴, including the sustainability and greenhouse gases emissions criteria. According to Swedish tax legislation, a supplier of

⁴ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable (OJ L 328, 21.12.2018, p. 82–209). This Directive also obliges Member States to only count towards the RES targets the same share of high indirect land use change (ILUC) risk biofuels than it consumed in 2019, unless they are certified as low ILUC-risk.

biofuels needs to be able to produce evidence that the biofuels are sustainable in order to receive the tax exemption.

- (14) In order to benefit from the tax exemption for high-blended biofuels, the supplier has to provide to the tax authorities a decision from the SEA that any food-based biofuels that would benefit from the tax exemption is part of a controlling mechanism which ensures that those biofuels were supplied from plants that started operation before 31 December 2013 and that these are not fully depreciated. Such decision and monitoring is carried out by the SEA.

2.2. Aid level and monitoring of overcompensation

- (15) The scheme is subject to regular monitoring by the Swedish authorities.
- (16) When setting the level of the tax exemption, Swedish authorities have taken into account the initial forecasts by the SEA regarding the production costs of biofuels and how such costs compare to the market price of their equivalent fossil fuels. In this way, Swedish authorities have ensured that the aid level does not exceed the difference between the production costs of a biofuel and the reference market price of the biofuel it replaces, thus preventing overcompensation. The forecasts are provided by the SEA in the form of an annual monitoring report.
- (17) Sweden submitted the results of two reports conducted by the SEA in 2020 and 2019 on the basis of 2019 and 2018 data respectively. Tables 2 and 3 show that the difference between the reference price of fossil fuel and the price of biofuels is always positive (biofuels remain always more expensive than the corresponding fossil fuel, even after taken into account the effect of the aid, i.e. the exemption from the energy and CO₂ taxes)⁵.

⁵ In other words, the tax levied on fossil fuels and from which biofuels are exempted (I) is smaller than the difference between the biofuels production costs, once adjusted for energy content, (J), and the price of fossil fuels without the energy and CO₂ tax (J – I).

Table 2 Cost comparison liquid biofuels and fossil counterpart, 2018
EUR per litre

	High-blended ethanol in E85	Fossil petrol	High-blended FAME (B100)	HVO	Fossil diesel
A) Raw materials	0,48	-	0,76	0,95	-
B) Labour costs	0,00	-	0,03	0,00	-
C) Capital costs	0,01	-	0,01	0,00	-
D) Processing costs and other costs	0,36	-	0,31	0,30	-
<i>D1) of which margin</i>	<i>0,14</i>	-	<i>0,10</i>	<i>0,10</i>	-
E) Transport costs	0,01	-	0,02	0,01	-
F) Sales of by-products	0,00	-	0,00	0,00	-
G) Total production costs (A+B+C+D+E-F)	0,86	0,39	1,13	1,26	0,42
H) Profit margin (gross margin for petrol and diesel)	-	0,14	-	-	0,10
I) Energy tax and CO2 tax for petrol and diesel	0,00	0,61	0,00	0,00	0,48
J) Price (G+H+I) adjusted for energy content	1,33	1,14	1,20	1,31	1,00
K) Reference price of fossil fuel	1,14	1,14	1,00	1,00	1,00
L) Difference between reference price of fossil fuel and price of biofuels (J-K)	0,19	0,00	0,20	0,31	0,00

Table 3 Cost comparison liquid biofuels and fossil counterpart, 2019
EUR per litre

	High-blended ethanol in E85	Fossil petrol	High-blended FAME (B100)	HVO	Fossil diesel
A) Raw materials	0,61	-	0,78	1,11	-
B) Labour costs	0,00	-	0,01	0,04	-
C) Capital costs	0,00	-	0,01	0,08	-
D) Processing costs and other costs	0,18	-	0,25	0,11	-
<i>D1) of which margin</i>	<i>0,14</i>	-	<i>0,10</i>	<i>0,10</i>	-
E) Transport costs	0,01	-	0,02	0,10	-
F) Sales of by-products	0,00	-	0,00	0,00	-
G) Total production costs (A+B+C+D+E-F)	0,80	0,45	1,07	1,44	0,39
H) Profit margin (gross margin for petrol and diesel)	-	0,14	-	-	0,10
I) Energy tax and CO2 tax for petrol and diesel	0,00	0,61	0,00	0,00	0,43
J) Price (G+H+I) adjusted for energy content	1,23	1,20	1,14	1,50	0,92
K) Reference price of fossil fuel	1,20	1,20	0,92	0,92	0,92
L) Difference between reference price of fossil fuel and price of biofuels (J-K)	0,03		0,22	0,58	

Source: SEA monitoring report for 2019 and own calculations.

Exchange rate: Official journal 1 October 2019: 10,8043 SEK/EUR (2019/C 331/05)

- (18) In their submission, the Swedish authorities explain that based on the results from the monitoring reports and the forecasted future oil prices by the SEA, the risk for future

overcompensation is considered low. To further minimise the risk of overcompensation, the national authorities will continue their monitoring commitments under the scheme as approved in 2017. They will submit to the Commission annual monitoring reports and adapt the aid level if necessary to avoid overcompensation.

- (19) Furthermore, Sweden explained that when compiling the monitoring reports, the gross margin for the relevant biofuel is assumed to be equal to the gross margin of its fossil fuel counterpart. Namely, for high blended ethanol it is fossil petrol (with a margin of 0,14 euro cents per litre) and for FAME and HVO it is fossil diesel (with a margin of 0,10 euro cents per litre). By using this technique, Sweden sets a maximum up to which profits realised by biofuels producers may not be counted as acceptable for overcompensation calculations. The maximum has therefore been set for the past two years as ranging from 7% for HVO to 17% for high blended bio ethanol. Since the margin limit is set to be equal in absolute terms to the margin of their fossil fuel equivalent and lower in terms of share of the total production costs incurred, the margin for biofuels is considered reasonable compared to the rest of the industry. Sweden also confirmed that the actual margin reported to the SEA has remained equal or below the margin for the fossil fuel equivalent and this despite the higher risks for biofuel, producers linked to the price volatility of the raw materials used in the production. Based on the above, the SEA concludes that there was no risk of overcompensation in the past years.

2.3. Share of food-based biofuels in the total transport energy consumption

- (20) According to the Swedish authorities, the share of food-based biofuels of the total energy consumption in the Swedish road and railway sectors reported to Eurostat according to Article 3(4)d first paragraph in the Renewable Energy Directive 2009/28/EC (RED I) was 5,6% in 2018. It has remained relatively stable for the past years and has not exceeded 7%. Furthermore, since it reached a peak of 6,8% in 2015, it has continuously decreased. Information on food-based biofuels is reported annually to Eurostat.
- (21) While the Swedish authorities acknowledge that in a free market for biofuels the share of food-based biofuels is difficult to forecast, they estimate that their share would remain stable and is unlikely to exceed 7% in the period up to the 31 December 2021, which is the end date of the notified scheme. To underpin their forecast, they refer to the historical data (Table 3), as well as the contribution of national policies privileging non food-based biofuels produced from waste and residues⁶, which would have the effect of keeping the food-based biofuel share always under 7%.

⁶ See the support scheme for biogas and biopropane for heating (SA.56125) and for use as motor fuel (SA.56908) which applies only to non-food based biogas and biopropane.

Table 4 Reported shares of food-based biofuels 2011-2018 and predictions for 2019-2022*

2011	2012	2013	2014	2015	2016	2017	2018	2019*	2020*	2021*
4,9%	5,2%	5,1%	6,4%	6,8%	5,3%	5,0%	5,6%	5,3%	5,3%	5,4%

* The years of 2019-2022 are calculated with average of three last years.

Source: the Swedish authorities

2.4. Budget, duration, cumulation and other elements

- (22) The notified measure will enter into force on 1 January 2021 and prolong the existing scheme SA. 48069 (2017/N) until 31 December 2021.
- (23) The overall budget for the scheme is estimated to be 3.23 billion SEK (0.30 billion EUR⁷) and it covers a period of one year.
- (24) Sweden does not apply a quota system, blending obligation or any other system with similar effects for high-blended biofuels, and has indicated that it does not intend to apply any such measure for the duration of the notified aid scheme.
- (25) As regards cumulation, Sweden puts forward that investment aid for the promotion of sustainable biofuels may currently be granted by Sweden under State aid schemes for research and innovation or environmental purposes. These aid schemes are set up according to the General Block Exemption Regulation⁸ and the de minimis regulation⁹. For these measures, the current and the notified tax measures are and will be part of the calculations of the counterfactual scenario that is used to calculate the market gap. The investment aid scheme is therefore adapted to the rules on cumulation preventing overcompensation. Any potential overcompensation is monitored by the SEA.
- (26) Sweden has committed to comply with the transparency provisions under Section 3.2.7 of the EEAG.
- (27) Sweden committed to ensure that no firm in difficulty¹⁰ can receive aid under the notified scheme, unless where such firms became undertakings in difficulty after 31 December 2019 due to the COVID-19 outbreak¹¹.

⁷ Calculated with official exchange rate of 1 October 2019: 10,8043 SEK/EUR (2019/C 331/05).

⁸ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1–78).

⁹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid Text with EEA relevance (OJ L 352, 24.12.2013, p. 1–8).

¹⁰ See point 20 of the Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1–28).

- (28) Sweden also confirmed that it would not grant aid to an undertaking that is subject to an outstanding recovery order.

2.5. Evaluation of the scheme

- (29) The Swedish authorities undertook in 2017 to carry out an evaluation of the scheme SA.48069 (2017/N) to assess the scheme's direct impact, its indirect effects, including on competition, as well as the proportionality of the aid and the appropriateness of the chosen aid instrument.¹² The requested prolongation by one year of the scheme shall provide extensive additional information and descriptive statistics to strengthen the evaluation. Therefore, the existing final evaluation report of SA.48069 shall be considered as an interim report before a final evaluation of the aid scheme to be completed in 2021. For the purposes of this evaluation, the evaluation plan approved with Decision C(2017) 6169 final remains valid, but it must be updated according to the action plan described below.
- (30) As part of the approval decision in 2017, the Swedish authorities committed to communicating the results of the evaluation to the Commission by 15 January 2020. The evaluation was carried out by the SEA and the final evaluation report was transmitted to the Commission on 8 January 2020.
- (31) In this report, the methodology adopted by the SEA to carry out the expected assessment has not been found to comply, by the Commission services, with the approved evaluation plan (SA.48069). An intensive collaboration with the Swedish authorities has led to an action plan that the Swedish authorities will implement to improve and complete the evaluation. The key points of the action plan are:
- (a) While acknowledging the limits to using a counterfactual approach for assessing the direct effects of an aid scheme in the area of tax policy, the Swedish authorities have agreed to engage with Commission services to identify a suitable methodology for assessing the effectiveness of the scheme. An interim report containing the proposed methodology and a literature review will be sent to the Commission in November 2020.
 - (b) The final evaluation report will be sent to the Commission by April 2021. The report must comply with the methodology outlined in the November 2020 interim report.
- (32) The Swedish authorities have agreed to submit the final evaluation report to the Commission in due time to allow for the assessment of a possible further prolongation of the aid scheme. The Swedish authorities have also acknowledged that any subsequent aid measure with a similar objective must take into account the results of the evaluation.

¹¹ See the modification to the EEAG brought by the Communication from the Commission concerning the prolongation and the amendments of [...]the Guidelines on State Aid for Environmental Protection and Energy 2014-2020 [...] (OJ C 224, 8.7.2020, p. 2–4), according to which ‘*These Guidelines shall, however, apply to undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty in the period from 1 January 2020 to 30 June 2021.*’

¹² Decision C(2017) 6169 final - State aid SA.48069 (2017/N) – Sweden Tax reductions for pure and high-blended liquid biofuels.

3. ASSESSMENT

3.1. Existence of aid

- (33) As the Commission held in its previous decisions, the scheme constitutes State aid within the meaning of Article 107(1) TFEU. Indeed, the tax reductions included in the Swedish Act (1994:1776) on Excise duties reduce the State's tax income. They are therefore imputable to the State and financed through State resources. They also selectively benefit biofuel producers against other transport fuel producers. Since biofuels serve as a substitute for fossil fuels, the tax reductions may distort competition among fuel producers and fuel suppliers. As fuels are traded internationally, the measure is also likely to affect trade between Member States.

3.2. Lawfulness of aid

- (34) Sweden has fulfilled its obligations according to Article 108(3) TFEU by notifying the scheme before putting it into effect.

3.3. Compatibility

- (35) The notified scheme prolongs the existing aid scheme and cannot be separated from the scheme the Commission has already approved. The modification of the aid scheme will therefore be assessed according to Article 107(3)(c) TFEU and in the light of the EEAG, in particular sections 3.2 and 3.3.
- (36) According to the Green Deal Communication¹³, "*evaluations are underway of the relevant State aid guidelines including the environmental and energy State aid guidelines. The guidelines will be revised by 2021 to reflect the policy objectives of the European Green Deal (...)*". In view of that planning, the Commission recently prolonged the application of the EEAG until 31 December 2021.¹⁴
- (37) Until the adoption of the revised guidelines, the EEAG continue to apply. In this context, if an existing approved aid scheme becomes no longer compatible with the internal market, the Commission may adopt a recommendation proposing appropriate measures in line with Article 22 of the Procedural Regulation¹⁵.

3.3.1. Objective of common interest

- (38) The measure's primary objective is environmental protection through increased use of sustainable biofuels. Promoting the use of sustainable biofuels should contribute to meeting the targets mentioned in recitals (5) and (10). Sweden has confirmed that the

¹³ Communication 'The European Green Deal' (Brussels, 11.12.2019, COM(2019) 640 final).

¹⁴ See the Communication from the Commission concerning the prolongation and the amendments of [...] the Guidelines on State Aid for Environmental Protection and Energy 2014-2020 [...] (OJ C 224, 8.7.2020, p. 2–4).

¹⁵ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 248, 24.9.2015, p. 9–29

scheme only supports high blended biofuels that meet the EU sustainability criteria (see recitals (12) and (13)).

- (39) The progress of the EU towards more sustainable biofuels is supported by the RED II, which limits the amount of food-based biofuels which can count towards the renewable energy targets in transport. As explained in recitals (20-21), the amount of food-based biofuels in Sweden has remained stable and below 7% in Sweden. While Sweden cannot guarantee the exact level of food based biofuels in the national transport mix, it is unlikely that these tendencies change for the one-year prolongation of the scheme sought.
- (40) The measure therefore supports an objective of common interest of increasing the level of environmental protection by promoting energy from renewable sources as identified by points 30 and 107 of the EEAG.

3.3.2. Need for State intervention

- (41) According to point 36 of the EEAG, aid is needed if the Member State demonstrates that the aid effectively targets a (residual) market failure which is not addressed by other policy measures. As far as the deployment of renewable energy is concerned, it is presumed in point 115 of the EEAG that a residual market failure remains, which can be addressed through the granting of aid for renewable energy.
- (42) Indeed, without State intervention, the high-blended biofuels would have the same tax rates as fossil fuels. Due to the higher costs of producing and using biofuels, they would not be sold (see recitals (6) and (16)). Hence, there would be insufficient incentive to produce these fuels in the quantities needed. Aid is therefore necessary.
- (43) More specifically, Swedish authorities have confirmed that the biofuels supported by the notified tax scheme would not be subject to a quota system, blending obligations or other systems with the similar effect during the aid period (until the end of 2021). Point 114 of the EEAG is therefore complied with.

3.3.3. Incentive effect

- (44) The incentive effect is present if the aid changes the beneficiary's behaviour towards reaching the objective of common interest. This is the case in particular where the costs for producing renewable energy exceed the market price and the aid can help reduce these environmental extra costs. As shown in Tables 2 – 4, the costs for producing high blended biofuels are higher than the market price of the equivalent fossil fuels.
- (45) Since the tax reductions will encourage the use of high-blended biofuels, they will also incentivise the production of these biofuels. The aid will therefore have an incentive effect according to point 49 of the EEAG.

3.3.4. Specific provisions on food-based biofuels

- (46) According to point 113 of the EEAG, operating aid to food-based biofuels can be granted until 2020, but only to plants that started operation before 31 December 2013 and only until the plant is fully depreciated.

- (47) The limitation of the support until 2020 is justified by the duration of the guidelines. However, as seen in recital (36) above, the guidelines would continue to apply until their revision planned by the end of 2021. Point 113 of the EEAG should therefore be interpreted as allowing operating aid to be granted until the revision of the guidelines, namely by the end of 2021.
- (48) Currently, in order for biofuels to benefit from the tax reductions, the beneficiaries are required to verify that the biofuels fulfil the EU sustainability criteria and that the biofuels are not food-based or, failing this, that they were produced in plants that started operation before 31 December 2013 and that are not fully depreciated (see recital (19)). This remains applicable for the prolongation of the scheme.
- (49) To demonstrate compliance, a verification system needs to be in place to ensure that the biofuels for which the tax reductions are claimed meet the conditions mentioned above. For that purpose, the supplier will continue to need to obtain an approval document from the SEA that the verification system set up by the supplier satisfies the legal requirements.
- (50) Accordingly, the requirement in point 113 of the EEAG is fulfilled.

3.3.5. Appropriateness

- (51) In accordance with point 116 of the EEAG, the Commission considers that the tax reductions are an appropriate instrument to fulfil the objective of common interest identified above provided that all other conditions are met, which is the case here. Indeed, the tax reductions encourage the use of sustainable biofuels for blending and thereby foster their production.

3.3.6. Proportionality

- (52) According to point 131 of the EEAG, operating aid for renewable energy production also needs to meet the following cumulative conditions:
- (a) the aid per unit of energy does not exceed the difference between the total levelised costs of producing energy (“LCOE”) of the particular technology in question and the market price of the form of energy concerned (no overcompensation);
 - (b) the LCOE may include a normal return on capital. Investment aid is deducted from the total investment amount in calculating the LCOE;
 - (c) the production costs are updated regularly, at least every year;
 - (d) aid is only granted until the plant has been fully depreciated according to normal accounting rules in order to avoid that operating aid based on LCOE exceeds the depreciation of the investment.
- (53) As regards the condition in point 131(a) of the EEAG, it follows from the Tables 2 – 4 submitted by Sweden (based on 2018 and 2019 data compiled by the SEA) that, even with the notified aid in place (i.e. full exemption of energy tax), aid per unit of energy does not exceed the difference between the total costs of the high-blended biofuel and the market

price of its respective counterfactual fuel's market price as the value in row (L) remains positive.

- (54) For the duration of the scheme prolongation (one year), Sweden has confirmed that it will continue to monitor the market for motor fuels and send a monitoring report to the Commission including cost calculations. In line with its previous commitments, Sweden confirmed that in case of overcompensation, the aid levels would be adapted to remedy the overcompensation.
- (55) In light of this information and of these commitments, the Commission considers that the aid will not exceed the difference between the production costs of biofuels and the market price of the form of energy concerned (the equivalent fossil fuels). The conditions in point 131(a) and (c) EEAG are therefore met.
- (56) As regards point 131(b) of the EEAG, the Swedish Energy Agency's annual monitoring reports show that despite the tax exemptions, the production costs for biofuels still exceed the market price of their fossil fuel equivalent. As far as the rate of return is concerned, it appears that the margin reported by the Swedish biofuel producers is not excessive. As explained in recital (19), it cannot exceed the margin reported for their fossil fuel replacement. In this way, the margin is ensured to remain within the limits of what is applied by the industry.
- (57) If the biofuel producers have received investment aid, this will be reflected in their production costs, for instance in reduced capital costs. Lower production costs in turn influence the extent to which aid may be granted, given that the overcompensation test is based on a comparison of biofuel production costs and the market price of the equivalent fossil fuel. Therefore, Sweden's method of checking for overcompensation ensures that any investment aid granted is taken into account. The conditions in point 131(b) EEAG are therefore met.
- (58) Aid can normally only be granted until full depreciation of the plant. In principle, as shown in the cost calculations in Tables 2 – 4, the tax reductions apply in such a way that the aid may also compensate for a biofuel producer's capital costs.
- (59) However, as was explained in recital (14), beneficiaries that source food-based biofuels will need to have a verification system in place that ensures that no aid is claimed for food-based biofuels coming from depreciated plants.
- (60) As far as non-food-based biofuels are concerned, Sweden has confirmed that no aid would be granted after the plants are fully depreciated according to normal accounting rules. This is because the non-food based biofuels still come from modern plants using relatively new technology. Given that the notified scheme will end on 31 December 2021, these plants will not yet be depreciated within the duration of the scheme. The conditions in point 131(d) EEAG is therefore met.

3.3.7. Avoidance of undue negative effects on competition and trade between Member States

- (61) According to point 116 of the EEAG, the Commission presumes the limited effects of the aid provided that all other conditions are met, which is the case here.

3.3.8. Firms in difficulty or subject to an outstanding recovery order

- (62) As set out in recital (27), Sweden has committed not to grant any aid to firms in difficulty or to those, which are subject to an outstanding recovery order following a previous Commission decision declaring an aid measure illegal and incompatible with the internal market, in compliance with points 16 and 17 of the EEAG.

3.3.9. Transparency

- (63) Member States are required under Section 3.2.7 of the EEAG to publish as of 1 July 2016 certain information related to the beneficiaries of aid.
- (64) Sweden has committed to complying with these provisions. The relevant information will be published on a website¹⁶ as of 1 January 2021, the day of the scheme's entry into force.

3.3.10. Duration

- (65) The notified measure will apply until 31 December 2021.
- (66) According to points 113 and 121 of the EEAG, operating aid schemes for food-based biofuels shall be limited to 2020. As explained in recital (36), the limit to 2020 is linked to the previous duration of the guidelines. Since the application of the guidelines has been prolonged by one additional year, it remains possible for food-based biofuels to receive support, as long as the production plants are not fully depreciated.
- (67) This interpretation is consistent with Article 26 of RED II. According to this provision, it is possible for Member States to count food-based biofuels towards the renewable energy in transport targets, provided that certain conditions are met. More specifically, the share of biofuels and bioliquids, as well as of biomass fuels consumed in transport, where produced from food and feed crops, should not be more than one percentage point higher than the share of such fuels in the final consumption of energy in the road and rail transport sectors in 2020 in a given Member State. Furthermore, this share cannot exceed 7 % of the final consumption of energy in the road and rail transport sectors in that Member State.
- (68) The Swedish authorities explain in their submissions that the biofuels market is an open market in which there is a certain degree of unpredictability. However, based on historical figures and conservative projections, it is not expected that any of these two thresholds will be exceeded for the year 2021.

¹⁶ See <http://www.tillvaxtanalys.se/statistik/statligt-stod.html>.

- (69) On this basis, it can be concluded that the one-year prolongation of the measure is complaint with points 113 and 121 of the EEAG.

3.3.11. Compliance with Union tax law

- (70) As the notified measure concerns excise duty reductions and exemptions for energy products, the Commission also assessed its compliance with Council Directive 2003/96/EC (“the Energy Taxation Directive”).¹⁷
- (71) Article 16(1) of the Energy Taxation Directive allows Member States to apply an exemption or a reduced rate of taxation to biofuels. Article 16(2) limits the exemption or reduction in taxation to the part of the product that actually derives from biomass, which is the case under the notified measure as the tax exemption will only be granted for the part of the blended fuel that derives from biomass.
- (72) Furthermore, the notified measure also complies with Article 16(3) of the Energy Taxation Directive. Indeed, as it was concluded in recitals (18), (19) and (25), the risk for the aid to entail overcompensation of biofuel production is low, taken the latest figures into account. Moreover, Sweden has committed that, in case of any overcompensation in the future, the aid levels would be adapted to remedy the overcompensation (see recitals (18) and (25)).
- (73) Considering the duration of the notified scheme and the current work of the Commission on the possible revision of the Energy Taxation Directive under the European Green Deal, it is possible that the Council, acting on the basis of Article 113 or other relevant provisions of the TFEU, modifies the general system for the taxation of energy products. If these modifications entail consequential changes to the State aid rules applied to the present scheme, the scheme may need to be reviewed accordingly.

3.3.12. Evaluation plan

- (74) The EEAG (point 28 and Chapter 4) state that the Commission may require that certain aid schemes are subject to an evaluation, where the potential distortion of competition is particularly high, that is to say when the measure may risk significantly restricting or distorting competition, if their implementation is not reviewed in due time. Given its objectives, evaluation only applies for aid schemes with large aid budgets, containing novel characteristics or when significant market, technology or regulatory changes are foreseen.
- (75) The 2017 scheme fulfilled the criteria of being a scheme with a large aid budget and containing novel characteristics; therefore, it was subject to an evaluation.
- (76) The scope and modalities of the evaluation had been defined, taking into account the Commission Staff Working Document on Common methodology for State aid evaluation, in an evaluation plan that Sweden notified together with the aid scheme and whose main elements were described in Section 2.1 of the Commission decision on the 2017 scheme SA.48069 (2017/N).

¹⁷ Council Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

- (77) As explained in recitals (29) to (32), Sweden submitted an evaluation report on 8 January 2020, which did not fully comply with the requirements of the Commission decision in case SA.48069 (2017/N). Thus, this evaluation report is considered as an interim report.
- (78) The Commission notes the commitment made by Sweden to submit the final evaluation report by 30 April 2021. Therefore, the commitments by Sweden regarding the evaluation of the prolonged scheme are in line with the compatibility requirements of the EEAG.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully
For the Commission

Margrethe VESTAGER
Executive Vice-President

