



EUROPEAN COMMISSION

Brussels, 14.12.2022
C(2022) 9593 final

PUBLIC VERSION

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**Subject: State Aid SA.102347 (2022/N) – Sweden
Tax reductions for pure and high-blended liquid biofuels**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, on 9 September 2022, Sweden notified its plan to prolong the tax reductions scheme for pure and high-blended biofuels (the “scheme” or the “notified measure”) for four years, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”).
- (2) Sweden submitted additional information on 31 October, on 3, 21 and 24 November and on 8 December 2022.
- (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 ⁽¹⁾. The latest approval decision in case SA.63198 (2021/N) ⁽²⁾ was based on the Guidelines on State aid for environmental protection and energy 2014-2020 ⁽³⁾ (“EEAG”) and is valid until 31 December 2022 (“the 2021 Decision”).

⁽¹⁾ See Commission decisions in N 480/2002; N 112/2004; N 592/2006; SA.35414 (2012/N); SA.36974 (2013/N); SA.38421 (2014/NN); SA.43301 (2015/N); SA.48069 (2017/N); SA.55695 (2020/N) and SA.63198 (2021/N).

⁽²⁾ Commission decision of 2 September 2021, State aid SA.63198 (2021/N) – Sweden - Prolongation of SA.55695 (2020/N) - Tax exemptions for pure and high-blended liquid biofuels.

⁽³⁾ OJ C 200, 28.6.2014, p. 1.

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- (4) By letter dated 9 September 2022, Sweden agreed to exceptionally waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958⁽⁴⁾ and to have the present decision notified and adopted in English.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Background and objectives of the scheme

- (5) The EU has set an ambitious climate protection target of reducing greenhouse gas emissions by at least 55 % by 2030, with a view to becoming climate neutral by 2050.⁽⁵⁾ In order to achieve this, far-reaching changes are required in all sectors of the economy.
- (6) The transport sector accounts for approximately one third of the total CO₂ emissions in Sweden. Sweden has a national target to reduce by 70 % its greenhouse gas emissions in the domestic transport sector by 2030, compared to 2010 levels. In addition, Sweden aims to have by 2045 zero net emissions of greenhouse gases into the atmosphere and to have a fossil free vehicle fleet.
- (7) To reach these objectives, Sweden introduced in 2018 a national reduction obligation system, which imposes on fuel suppliers the obligation to reduce accounted greenhouse gas emissions of petrol and diesel put onto the market through the blending of sustainable low-blended biofuels. The reduction obligation system covers petrol and diesel that include up to 98 % of biofuels.
- (8) Pure and high-blended biofuels are not covered by the reduction obligation system. Sweden explains that a quota or reduction obligation system is not possible for pure or high-blended biofuels in the current market situation. Indeed, without aid, the price at petrol stations that the consumers would need to pay for pure and high-blended biofuels would be too high due to higher production costs (see recitals (27) and (28)).
- (9) Nevertheless, to reach Sweden's long-term climate goals and its ambition of a fossil fuel free vehicle fleet, the Swedish authorities put forward that it is crucial to ensure an increasing use of pure and high-blended biofuels. A significant demand for high blends is necessary to maintain and enable the required investments in the relevant vehicles and infrastructure.
- (10) To support that objective, the scheme allows pure and high-blended sustainable biofuels used as motor fuel to benefit from a reduction from the CO₂ tax and from the energy tax for their biomass content. This reduction does not apply to low-blended sustainable biofuels nor to unsustainable biofuels.

⁽⁴⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

⁽⁵⁾ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ("European Climate Law") (OJ L 243, 9.7.2021, p. 1).

- (11) The tax reductions are granted to compensate for the difference between the (higher) costs of producing sustainable pure and high-blended biofuels and the costs of the equivalent fossil fuels (including low-blended biofuels). The aid aims to enable pure and high-blended sustainable biofuels to become a competitive alternative to their fossil fuel or low-blended equivalents for the consumer at the petrol station. Sweden considers that without the aid pure and high-blended biofuels would not be sold at sufficient volumes to achieve the environmental goals of Sweden.

2.2. National legal basis

- (12) The legal basis of the aid is the Swedish Act (1994:1776) on Excise duties on Energy.

2.3. Scope and beneficiaries

- (13) The tax reductions cover the following pure and high-blended sustainable biofuels:
- 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, when the volume of these motor fuels consists of more than 98 % biomass;
 - high-blended biofuels that are not petrol or diesel/HVO, for example FAME (Fatty Acid Methyl Esters) (B100) or ethanol (E85).
- (14) Sweden submitted that the scope of the notified measure includes all technologies for the production of pure or high-blended biofuels from sustainable biomass that are currently in competition.
- (15) In addition, Sweden has confirmed that it will regularly follow the market developments and, if needed, it will review the eligibility rules to ensure that any limitations on eligibility can still be justified when new technologies or approaches are developed or more data becomes available.
- (16) Sweden has confirmed that all biofuels supported by the scheme have to comply with the sustainability and greenhouse gases emissions saving criteria set out in the Renewable Energy Directive (EU) 2018/2001 ⁽⁶⁾ and its implemented or delegated acts. The Swedish Energy Agency (“SEA”) is responsible for a control system that ensures the fulfilment of these criteria.
- (17) The scheme applies to all biofuels consumed in Sweden, i.e. both to biofuels produced in Sweden and to imported biofuels. While the tax reductions have to be claimed by the fuel suppliers, who provide the eligible biofuels onto the market and make the tax declarations (the “taxpayers”), the tax reductions will indirectly benefit the producers of sustainable biofuels as they offset part of the costs biofuels would normally bear and thereby reduce the price of biofuels.

⁽⁶⁾ 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 sources (OJ L 328, 21.12.2018, p. 82).

- (18) The Swedish authorities have confirmed that the aid is non-discriminatory and open to any undertaking that fulfils the eligibility criteria. However, in order to be eligible, the taxpayers may not be subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market and may not be an undertaking in difficulty. ⁽⁷⁾
- (19) The Swedish Tax Agency administers the payment of the tax from the taxpayers and ensures, by checking *ex post* the monthly tax declarations and by doing regular audits, that the taxpayers are following the legal provisions concerning the applicable tax rates, reductions and other conditions laid down in the national law. The Swedish authorities explain that there will be specific yearly *ex post* checks regarding compliance with the State aid requirements and that there is no room for any discretionary measures from the Swedish Tax Agency.
- (20) Support to food and feed crops-based biofuels is not excluded under the scheme. However, the Swedish authorities have explained that the use of high-blended biofuels is well below 7 % of the total energy consumed in the transport sector. According to data provided by Sweden, high-blended biofuels currently represent a low share of the total energy used in the transport sector: Ethanol in E85 and ED95 (0.1 %); High-blended FAME (1.1 %); High-blended HVO (2.3 %). ⁽⁸⁾ Sweden expects those shares to remain stable in the short-term. The total volumes of food and feed crops-based biofuels used in high-blended biofuels expressed as a share of total energy used in the transport sector were approximately between 1-2 % in 2020 and 2021. There are no indications that the use of pure and high-blended biofuels in total in Sweden will exceed 7 % of the energy used in the transport sector in the short-term. Since high-blends in total will not exceed the cap, food and feed crops-based biofuels receiving support will not exceed the cap either.

2.4. Aid level and monitoring of overcompensation

- (21) The tax reductions currently amount to a full exemption from the CO₂ tax and from the energy tax.
- (22) The scheme is subject to regular monitoring by the Swedish authorities. The Swedish authorities have renewed their commitment to submit to the Commission annual monitoring reports with updated cost calculations and to adapt the aid levels, if necessary, in order to avoid any overcompensation in the future.
- (23) To assess potential overcompensation of pure and high-blended sustainable biofuels, the SEA gathers data through a reporting obligation for taxpayers covered by the scheme. Required information includes data on volumes and costs for production, imports and direct purchase of biofuels. The reporting entities are also asked to provide an assessment of how costs are expected to develop over the coming year.

⁽⁷⁾ 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).

⁽⁸⁾ Source: Swedish Energy Agency, Short-term energy outlook spring 2022, forecast for the years 2021-2024.

- (24) The costs of biofuels are determined by calculating a volume-weighted average between declared production, import and purchase costs. The total costs of the biofuels are then compared to the costs of their fossil counterparts adjusted for the content of energy. The fossil counterpart of ethanol is considered to be petrol, and the fossil counterpart of FAME and HVO is considered to be diesel fuel. Historically, the comparison was made with pure fossil fuels. With the increasing share of biofuels over time in the reduction obligation system, the comparison will be made with fossil fuels including low-blended biofuels starting from 1 January 2023.
- (25) For the costs of the fossil fuel equivalent, the SEA bases itself on an annual average of the market prices. Those correspond to average pump petrol and diesel prices excluding value-added tax (“VAT”). The gross margin for the relevant biofuel is assumed to be equal to the gross margin of its fossil fuel counterpart. This ensures that the cost of biofuels is comparable to the market price of fossil fuels.
- (26) The Swedish authorities confirmed that sales of by-products, such as guarantees of origin, are included in the calculation and that other possible aid schemes that reduce the costs will be reflected in the calculation.
- (27) Sweden has submitted the results of the monitoring reports for 2020 and 2021 conducted by the SEA. ⁽⁹⁾ Table 1 and Table 2 confirm that the difference between the costs of fossil fuel and of biofuels has remained positive (biofuels remained 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). ⁽¹⁰⁾

⁽⁹⁾ For 2020 and 2021, 13 companies, which have benefited from the existing scheme, submitted data for the monitoring reports for pure and high-blended liquid biofuels. The same company may report for several biofuels.

⁽¹⁰⁾ 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 1. Cost comparison liquid biofuels and fossil counterpart, 2020, EUR per litre

	EUR per litre				
	High-blended ethanol in E85	Fossil petrol	High-blended FAME (B100)	HVO	Fossil diesel
A) Raw materials	0,66	-	0,83	0,95	-
B) Labour costs	0,00	-	0,01	0,00	-
C) Capital costs	0,01	-	0,01	0,00	-
D) Processing costs and other costs	0,17	-	0,11	0,11	-
E) Transport costs	0,01	-	0,02	0,00	-
F) Sales of by-products	0,00	-	0,00	0,00	-
G) Total production costs (A+B+C+D+E-F)	0,85	0,42	0,98	1,06	0,50
H) Profit margin (gross margin for petrol and diesel)	0,00	0,14	0,00	0,00	0,10
I) Energy tax and CO2 tax for petrol and diesel	0,00	0,62	0,00	0,00	0,43
J) Price (G+H+I) adjusted for energy content	1,31	1,18	1,04	1,11	1,03
K) Reference price of fossil fuel	1,18	1,18	1,03	1,03	1,03
L) Difference between reference price of fossil fuel and price of biofuels (J-K)	0,13	0,00	0,01	0,08	0,00

Source: the Swedish authorities (SEA monitoring report for 2020 and own calculations)
Exchange rate: 10.8743 SEK/EUR (OJ C 381, 4.10.2022, p.4)

Table 2. Cost comparison liquid biofuels and fossil counterpart, 2021, EUR per litre

	EUR per litre				
	High-blended ethanol in E85	Fossil petrol	High-blended FAME (B100)	HVO	Fossil diesel
A) Raw materials	0,79	-	1,07	1,03	-
B) Labour costs	0,01	-	0,02	0,01	-
C) Capital costs	0,00	-	0,01	0,00	-
D) Processing costs and other costs	0,16	-	0,13	0,14	-
E) Transport costs	0,00	-	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)	0,96	0,52	1,25	1,19	0,62
H) Profit margin (gross margin for petrol and diesel)	0,00	0,14	0,00	0,00	0,10
I) Energy tax and CO2 tax for petrol and diesel	0,00	0,62	0,00	0,00	0,44
J) Price (G+H+I) adjusted for energy content	1,48	1,28	1,33	1,24	1,16
K) Reference price of fossil fuel	1,28	1,28	1,16	1,16	1,16
L) Difference between reference price of fossil fuel and price of biofuels (J-K)	0,20	0,00	0,17	0,08	0,00

Source: the Swedish authorities (SEA monitoring report for 2021 and own calculations)
Exchange rate: 10.8743 SEK/EUR (OJ C 381, 4.10.2022, p.4)

- (28) For 2023, the Swedish authorities have provided a forecasted cost comparison between the costs of pure and high-blended sustainable biofuels and the costs of their equivalent fossil fuels including low-blended biofuels. For this comparison, the Swedish authorities have assumed unchanged prices compared to the

monitoring report for 2021 and used the tax rates on diesel and petrol that are proposed to apply from 1 January 2023. ⁽¹¹⁾ The comparison shows that the aid level is not expected to exceed the difference between the costs of a biofuel and the costs of the fossil fuel (including low-blended biofuels) it replaces. The SEA will monitor the forecasts in the annual monitoring reports and adjust the level of aid, if necessary, to avoid overcompensation in the future (see recital (22)).

Table 3: Forecasted cost comparison between high-blended biofuels and fossil counterpart (including low-blended biofuels), EUR per litre

	EUR per litre				
	High-blended ethanol in E85	Fossil petrol	High-blended FAME (B100)	HVO	Fossil diesel
A) Raw materials	0,79	-	1,07	1,03	-
B) Labour costs	0,01	-	0,02	0,01	-
C) Capital costs	0,00	-	0,01	0,00	-
D) Processing costs and other costs	0,16	-	0,13	0,14	-
E) Transport costs	0,00	-	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)	0,96	0,52	1,25	1,19	0,72
H) Profit margin (gross margin for petrol and diesel)	0,00	0,14	0,00	0,00	0,10
I) Energy tax and CO2 tax for petrol and diesel	0,00	0,58	0,00	0,00	0,37
J) Price (G+H+I) adjusted for energy content	1,48	1,24	1,33	1,24	1,19
K) Reference price of fossil fuel	1,24	1,24	1,19	1,19	1,19
L) Difference between reference price of fossil fuel and price of biofuels (J-K)	0,24	0,00	0,14	0,05	0,00

Source: the Swedish authorities (SEA monitoring report for 2021 and own calculations)
Exchange rate: 10.8743 SEK/EUR (OJ C 381, 4.10.2022, p.4)

2.5. Duration, budget and cumulation

- (29) The scheme will enter into force on 1 January 2023 and will prolong the existing scheme SA.63198 (2021/N) until 31 December 2026.
- (30) The overall budget for the scheme is estimated to be SEK 7 200 000 000 (approx. EUR 662 million ⁽¹²⁾).
- (31) The reduction obligation system (see recitals (7) and (8)) does not apply to pure and high-blended biofuels.
- (32) As regards cumulation, Sweden confirms that it will comply with points 56 and 57 of the Guidelines on State aid for climate, environmental protection and energy 2022 (“CEEAG”). ⁽¹³⁾ Aid under the notified measure may be cumulated with ad hoc or de minimis aid or with Union funding in relation to the same eligible costs. Sweden explains that investment aid for the promotion of

⁽¹¹⁾ The tax rates for 2023 are still to be approved by the Swedish Parliament.

⁽¹²⁾ Exchange rate of 10.8743 SEK/EUR (OJ C 381, 04.10.2022, p.4).

⁽¹³⁾ Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

sustainable biofuels may currently be granted by Sweden under State aid schemes for research and innovation or environmental purposes. Those aid schemes, which are set up according to the General Block Exemption Regulation ⁽¹⁴⁾ and the de minimis regulation ⁽¹⁵⁾, include measures to prevent overcompensation, in line with the cumulation rules set out in those regulations. Specifically for the notified measure, Sweden also explains that the compliance with the cumulation rules is ensured through the annual overcompensation monitoring by the SEA, which takes into account other possible aid or Union funding granted that reduces the production costs for biofuels.

2.6. Transparency

- (33) Sweden will ensure compliance with the transparency requirements laid down in points 58 to 61 CEEAG. The relevant data of the scheme will be published on the national website for State aid transparency. ⁽¹⁶⁾

2.7. Evaluation

- (34) In 2017, the Swedish authorities undertook to carry out an evaluation of the measure approved in case SA.48069 ⁽¹⁷⁾ to assess its direct and indirect effects, including on competition, as well as the proportionality of the aid and the appropriateness of the chosen aid instrument. Sweden submitted this evaluation report on 8 January 2020. However, the Commission found in its decision in case SA.55695 ⁽¹⁸⁾ that the methodology adopted by the SEA to carry out the expected assessment did not comply fully with the evaluation plan that had been approved in case SA.48069. Therefore, Sweden and the Commission agreed to an action plan to address this issue through the submission of a revised report by April 2021, without prejudice to the measure's prolongation beyond 2021. In line with its commitments, Sweden submitted to the Commission on 1 April 2021 a revised evaluation report.
- (35) As described in the 2021 Decision (see recitals (17)-(18)), the revised evaluation report was in line with the amended evaluation plan as per Commission decision in case SA.55695. However, due to the lack of robust statistical data, the Commission found it premature to draw a firm conclusion on the effectiveness of the measure. For this reason, the Commission decided in the 2021 Decision that the Swedish authorities would continue the monitoring and evaluation of the measure during its prolongation, based on the existing evaluation plan (described in recitals (31)-(32) of Commission decision in case SA.55695). Sweden

⁽¹⁴⁾ 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).

⁽¹⁵⁾ 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 (OJ L 352, 24.12.2013, p. 1).

⁽¹⁶⁾ Available here: <https://www.tillvaxtanalys.se/om-oss/statsstod.html>.

⁽¹⁷⁾ Commission decision of 14 September 2017, State aid SA.48069 (2017/N) - Sweden - Tax reductions for pure and high-blended liquid biofuels (OJ C 380, 10.11.2017), Section 2.4.

⁽¹⁸⁾ Commission decision of 8 October 2020, State aid SA.55695 (2020/N) - Tax exemptions for pure and high-blended liquid biofuels in Sweden (OJ C 7, 8.1.2021), Section 2.5.

committed to submit to the Commission: i) by 31 December 2021 a report to provide an update on the data collection process and to discuss the additional evidence available; and ii) by 31 December 2025 an additional evaluation report containing the results of the completed counterfactual evaluation.

- (36) In line with the commitment described above, Sweden submitted to the Commission on 21 December 2021 a report providing an update on the data collection process. In the context of the present notification, Sweden committed to submit by 30 April 2023 a revised version of the report submitted on 21 December 2021 in order to agree with the Commission on the evaluation strategy to be used for the report due by 31 December 2025.

3. ASSESSMENT OF THE MEASURE

3.1. Presence of State aid

- (37) Article 107(1) TFEU states that *'any aid granted by a Member State 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 Member States, be incompatible with the common market'*.
- (38) As the Commission held in its previous decisions,⁽¹⁹⁾ the scheme constitutes State aid within the meaning of Article 107(1) TFEU. Indeed, the tax reductions are included in the Swedish Act (1994:1776) on Excise duties and they 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 pure and high-blended biofuels serve as a substitute for fossil fuels (including low-blended biofuels), 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 the aid

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

3.3. Compatibility of the aid

- (40) The existing scheme was assessed in the 2021 Decision (see Section 3.3) according to Article 107(3)(c) TFEU and in light of the CEEAG, in particular sections 3.2 and 3.3.
- (41) Following the adoption of the CEEAG, the Commission has assessed the compatibility of the notified measure on the basis of the CEEAG. The supported activities fall under the category of aid for the reduction and removal of greenhouse gas emissions, including through support for renewable energy and energy efficiency (see point 16(a) CEEAG).

⁽¹⁹⁾ See e.g. recital (19) of the 2021 Decision.

(42) The Commission has therefore assessed the notified measure under the general compatibility provisions in Section 3 CEEAG, as well as the specific compatibility criteria for aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy and energy efficiency in Section 4.1 CEEAG.

3.3.1. *Positive condition: the aid must facilitate the development of an economic activity*

3.3.1.1. Identification of the economic activity which is being facilitated by the measure, its positive effects for society at large and, where applicable, its relevance for specific policies of the Union

(43) In line with points 23 to 25 CEEAG, Member States must identify the economic activities that will be facilitated as a result of the aid and describe if and how the aid will contribute to the achievement of Union policies and targets.

(44) The Commission notes that the scheme supports, via tax reductions, the consumption and thereby indirectly also the production of pure and high-blended biofuels, therefore contributing to the development of this economic activity (see recitals (11) and (17)).

(45) By supporting the consumption and production of pure and high-blended biofuels, Sweden aims at achieving the 2030 Union renewable target, as well as its national target to reduce greenhouse gas emissions from domestic transports by at least 70 % by 2030 compared to 2010 (see recital (6)).

(46) Point 80 CEEAG requires that support for biofuels, bioliquids, biogas (including biomethane) and biomass are compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts.

(47) Sweden has confirmed that the supported biofuels will be compliant with the sustainability and greenhouse gases emissions saving criteria in the Renewable Energy Directive (EU) 2018/2001 (see recital (16)).

(48) The Commission therefore considers that the scheme complies with the requirements of Section 3.1 and of point 80 CEEAG.

3.3.1.2. Incentive effect

(49) State aid can only be considered to facilitate an economic activity if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour towards the development of an economic activity pursued by the aid, and if this change in behaviour would not otherwise occur without the aid. ⁽²⁰⁾

⁽²⁰⁾ See in that sense Section 3.1.2 CEEAG and Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 20 and 24.

- (50) In order to demonstrate the presence of an incentive effect, point 28 CEEAG requires the factual scenario and the likely counterfactual scenario in the absence of aid to be identified. Furthermore, point 28 CEEAG requires the incentive effect to be demonstrated through a quantification referred to in Section 3.2.1.3 CEEAG. Section 3.2.1.3 CEEAG refers to the net extra cost (“funding gap”) necessary to meet the objective of the aid measure, compared to the counterfactual scenario in the absence of aid. In the absence of a competitive bidding process, point 51 CEEAG explains that to determine the funding gap in such cases, the Member State must submit a quantification, for the factual scenario and a credible counterfactual scenario, of all main costs and revenues, the estimated weighted average cost of capital (“WACC”) of the beneficiaries to discount future cash flows, as well as the net present value (“NPV”) for the factual and counterfactual scenarios, over the lifetime of the project. However, point 54 CEEAG explains that in certain circumstances, it may be difficult to fully identify the benefits and costs to the beneficiary and hence to quantify the NPV in the factual and counterfactual scenarios. Alternative approaches for those cases may be applied, as detailed in Chapter 4 for specific types of aid. In this respect, point 110 CEEAG states that where a tax or a parafiscal levy reduction reduces recurrent operating costs, the aid amount must not exceed the difference between the costs of the environmentally-friendly project or activity and of the less environmentally-friendly counterfactual scenario.
- (51) In the scheme, the Commission notes that the factual scenario is the consumption of pure and high-blended biofuels and the counterfactual scenario is the consumption of the equivalent fossil fuel, including low-blended biofuels.
- (52) In this context, the Commission considers that, in line with point 110 CEEAG, the relevant applicable quantification for the scheme consists in the difference between the costs of the environmentally-friendly activity and of the less environmentally-friendly counterfactual scenario, i.e. the costs of the pure and high-blended biofuels and the costs of the equivalent fossil fuels (including low-blended biofuels).
- (53) As demonstrated in recital (28), the costs of pure and high-blended biofuels are higher than the costs of the equivalent fossil fuels (including low-blended biofuels). The tax reductions contribute to reducing those extra costs. Without the aid, pure and high-blended biofuels would have the same tax rates as fossil fuels and low-blended biofuels. Due to the higher costs of producing and using those biofuels, they would not be sold (see recital (11)). The Commission therefore considers that the tax reductions will encourage the use of pure and high-blended biofuels and as a consequence, will also indirectly incentivise the production of those biofuels.
- (54) On this basis, the Commission concludes that the requirements in points 26 to 28 CEEAG are fulfilled.
- (55) Point 29 CEEAG stipulates that aid does not normally present an incentive effect in cases where works on the project started prior to the aid application. However, point 31 CEEAG explains that in certain exceptional cases, aid can have an incentive effect even for projects which started before the aid application. In particular, aid is considered to have an incentive effect if the aid is granted automatically in accordance with objective and non-discriminatory criteria and

without further exercise of discretion by the Member State, and if the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of fiscal successor schemes, where the activity was already covered by the previous schemes in the form of tax advantages.

- (56) As shown in recitals (18) and (19), the aid is granted automatically in accordance with objective and non-discriminatory criteria and without further exercise of discretion by the Member State. In addition, the scheme is the successor of an existing fiscal scheme so that the activity was already covered by the previous scheme. Therefore, the requirements in point 31 CEEAG are fulfilled.
- (57) In light of the above, the Commission considers that the aid under the notified measure has an incentive effect.

3.3.1.3. No breach of any relevant provision of Union law

- (58) State aid cannot be declared compatible with the internal market if the supported activity, the aid measure, or the conditions attached to it entail a violation of relevant Union law. ⁽²¹⁾
- (59) In the present case, the Commission has assessed in particular whether the notified measure contravenes any relevant Union legislation in the energy sector. The Commission notes that aid under the notified measure will be granted in compliance with the Renewable Energy Directive (EU) 2018/2001, as the supported biofuels will have to comply with the sustainability and greenhouse gas emissions reductions criteria laid down therein (see recital (16)).
- (60) As the measure concerns excise duty reductions and exemptions for energy products, the Commission has also assessed its compliance with the Energy Taxation Directive 2003/96/EC. ⁽²²⁾
- (61) Article 16(1) of the Energy Taxation Directive 2003/96/EC allows Member States to apply an exemption or a reduced rate of taxation on 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 scheme (see recital (10)).
- (62) Furthermore, the measure also complies with Article 16(3) of the Energy Taxation Directive 2003/96/EC. Indeed, Sweden has committed that, in case of any overcompensation in the future, the aid levels would be adapted so as to remedy the overcompensation (see recital (22)).
- (63) Considering the duration of the notified measure and the current work of the Commission on the possible revision of the Energy Taxation Directive 2003/96/EC 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

⁽²¹⁾ Point 33 CEEAG, and Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

⁽²²⁾ 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).

consequential changes to the State aid rules applied to the present scheme, the scheme may need to be reviewed accordingly.

- (64) In light of the above, the Commission considers that the notified measure does not infringe relevant Union law, and that the requirements of point 33 CEEAG are fulfilled.

3.3.1.4. Conclusion

- (65) The Commission therefore concludes that the notified measure fulfils the first (positive) condition of the compatibility assessment i.e. that the aid facilitates the development of an economic activity pursuant to the requirements set out in Section 3.1 CEEAG.

3.3.2. *Negative condition: the aid cannot unduly affect trading conditions to an extent contrary to the common interest*

3.3.2.1. Necessity of the aid

- (66) Point 89 CEEAG states that the Member State must identify the policy measures already in place to reduce greenhouse gas emissions. In order to demonstrate the necessity of aid, points 38 and 90 CEEAG explain that the Member State must show that the project would not be carried out without the aid, taking into account the counterfactual situation, as well as relevant costs and revenues including those linked to measures identified in point 89 CEEAG. To ensure that aid remains necessary for each eligible category of beneficiary, Member States must update their analysis of relevant costs and revenues at least every three years for schemes that run longer than that, as set out in point 92 CEEAG.
- (67) Sweden has put in place a reduction obligation system that applies to sustainable low-blended biofuels. This system does not apply to pure and high-blended biofuels. However, as explained in recital (9), to reach Sweden's long term climate goals and ambition of a fossil fuel free vehicle fleet, an increased use of pure and high-blended biofuels is necessary.
- (68) Without State intervention, pure and high-blended biofuels would have the same tax rates as fossil fuels (and low-blended biofuels). Due to the higher costs of producing and using pure and high-blended biofuels, they would not be sold (see recitals (11) and (28)). Hence, there would be insufficient incentive to produce those fuels in the quantities needed for Sweden to reach its climate goals.
- (69) For the duration of the scheme's prolongation, Sweden has confirmed that it will yearly update its analysis of costs and send an annual monitoring report to the Commission with updated cost calculations. In line with its previous commitments, Sweden has confirmed that in case of overcompensation, the aid levels would be adapted to avoid any overcompensation in the future (see recital (22)).
- (70) In light of the above, the Commission considers that the aid is necessary to support the consumption and indirectly the production of pure and high-blended biofuels.

3.3.2.2. Appropriateness

- (71) Point 93 CEEAG states that the Commission presumes the appropriateness of aid for achieving decarbonisation goals provided all other compatibility conditions are met. It further sets out that, given the scale and urgency of the decarbonisation challenge, a variety of instruments may be used.
- (72) The Commission considers that, in light of the overall assessment of the compatibility of the notified measure, the aid for pure and high-blended biofuels in the form of tax reductions is an appropriate instrument to support the targeted economic activity in a manner that increases environmental protection.

3.3.2.3. Eligibility

- (73) Point 95 CEEAG explains that decarbonisation measures targeting specific activities that compete with other unsubsidised activities can be expected to lead to greater distortions of competition, compared to measures open to all competing activities. As such, Member States should give reasons for measures which do not include all technologies and projects that are in competition. Furthermore, Member States must regularly review eligibility rules and any rules related thereto to ensure that reasons provided to justify a more limited eligibility continue to apply for the lifetime of each scheme, as set out in point 97 CEEAG.
- (74) The Commission notes that all biofuels that comply with the sustainability and greenhouse gases emission reduction criteria of the Renewable Energy Directive (EU) 2018/2001 and that are outside the scope of the reduction obligation system (i.e. pure and high-blended sustainable biofuels) are eligible for the notified measure (see recital (16)).
- (75) The Commission also notes that the notified measure includes all technologies that are currently in competition (see recital (14)).
- (76) As mentioned in recital (15), the Swedish authorities have confirmed that they will regularly follow the market development and if needed review eligibility rules and any rules related thereto to ensure that any limitations on eligibility can still be justified when new technologies or approaches are developed or more data becomes available.
- (77) The Commission therefore considers that the CEEAG requirements on eligibility are complied with.

3.3.2.4. Proportionality including cumulation

- (78) Point 47 CEEAG explains that State aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided project or activity. Point 103 CEEAG states that aid for reducing greenhouse gas emissions should, in general, be granted through a competitive bidding process. However, point 109 CEEAG explains that for support schemes targeting decarbonisation in the form of reductions in taxes or parafiscal levies, the application of a competitive bidding process is not obligatory. Such aid must be granted, in principle, in the same way for all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the aims or objectives of the aid measure. The notifying

Member State must put in place an annual monitoring mechanism to verify that the aid is still necessary. Point 109 CEEAG specifies that reductions of taxes or levies which reflect the essential costs of providing energy or related services are excluded from the scope of section 4.1 CEEAG.

- (79) Point 110 CEEAG further explains that where a tax or a parafiscal levy reduction reduces recurrent operating costs, the aid amount must not exceed the difference between the costs of the environmentally-friendly project or activity and of the less environmentally-friendly counterfactual scenario. Where the more environmentally friendly project or activity may result in potential cost savings or additional revenues, these must be taken into account when determining the proportionality of aid.
- (80) Sweden has confirmed that the aid, framed as a general tax reduction, is open to any undertaking which fulfils the eligibility criteria (see recital (18)).
- (81) The Commission notes that the scheme does not cover reductions of taxes reflecting essential costs of providing energy or related services, but of taxes that come on top of the costs of producing or purchasing biofuels.
- (82) Sweden has confirmed that proportionality of the aid will be ensured by regular comparisons of the costs of pure and high-blended biofuels to the fossil fuels they replace, conducted by the SEA. The results will be compiled in monitoring reports, submitted annually to the Commission. Necessary measures will be taken to avoid overcompensation in the future (see recital (22)).
- (83) As explained in recital (23), to assess potential overcompensation, the SEA will gather data through a reporting obligation on the taxpayers covered by the scheme. Required information includes data on volumes and costs for production, imports and direct purchase of biofuels. Reporting entities are also asked to provide an assessment of how costs are expected to develop over the coming year.
- (84) As shown in recital (28), the tax reductions do not exceed the difference between the costs of pure and high-blended biofuels and of their fossil-fuel (including low-blended biofuels) equivalents.
- (85) The Commission notes that all main costs of pure and high-blended biofuels are taken into account in the calculation. Moreover, Sweden has confirmed that sales of by-products, such as guarantees of origin, are included in the calculation and that other possible aid schemes that reduce the costs will be reflected through lower capital costs in the calculation (see recital (26)).
- (86) In light of the above, the Commission considers that the requirements of points 109 and 110 CEEAG are complied with.
- (87) Finally, point 111 CEEAG states that when designing aid schemes, Member States must take into account the information on support already received from the mass balance system documentation under Article 30 of the Renewable Energy Directive (EU) 2018/2001.
- (88) The Commission notes that this information is not yet available, so that when designing the aid scheme, Sweden was not in a position to take into account information from the mass balance system documentation. Therefore, the

Commission considers that the requirements of point 111 CEEAG are without impact on its assessment of the notified measure.

- (89) In any event, the Commission notes that when conducting its annual monitoring, the SEA takes into account other possible aid schemes that reduce the biofuels production costs (see recital (26)).
- (90) Finally, the Commission notes that Sweden will ensure compliance with the cumulation rules in order to exclude overcompensation, in line with points 56 and 57 CEEAG (see recital (32)).
- (91) On the basis of the above, the Commission considers that aid granted under the notified measure is proportionate.

3.3.2.5. Transparency

- (92) The Commission notes that Sweden will ensure compliance with the transparency requirements laid down in points 58 to 61 CEEAG. The relevant data of the notified measure will be published on the Swedish State aid transparency website (see recital (33)).

3.3.2.6. Avoidance of undue negative effects on competition and trade

- (93) Point 70 CEEAG explains that the Commission will approve measures under these guidelines for a maximum period of 10 years. As stated in recital (29), the scheme will run for four years, i.e. from 2023 to 2026.
- (94) Point 116 CEEAG explains that the aid must not merely displace the emissions from one sector to another and must deliver overall greenhouse gas emissions reductions. Furthermore, points 127 to 129 CEEAG require Member States to explain how they intend to avoid the risk of aid eventually stimulating or prolonging the consumption of fossil-based fuels and energy.
- (95) The Commission notes that the overall objective of the scheme is to replace fossil fuels with sustainable biofuels. The use of pure and high-blended biofuels instead of fossil fuels will deliver overall greenhouse gases emissions reductions.
- (96) Point 121 CEEAG explains that aid which covers costs mostly linked to operation rather than investment should only be used where the Member State demonstrates that this results in more environmentally-friendly operating decisions. Point 122 CEEAG states where aid is primarily required to cover short-term costs that may be variable, Member States should confirm that the production costs on which the aid amount is based will be monitored and the aid amount updated at least once per year. The aid must be designed to prevent any undue distortion to the efficient functioning of markets, and preserve efficient operating incentives and price signals, as set out in point 123 CEEAG.
- (97) In the present case, the aid aims at reducing the level of tax applicable to pure and high-blended biofuels, so that they become a competitive alternative to their fossil fuel or low-blended biofuels equivalents for the consumer at the petrol station (see recital (11)). Therefore, the aim of the aid is to trigger a more environmentally-friendly decision on the part of consumers. The Swedish

authorities have confirmed that the costs on which the aid amount is based will be monitored annually and the level of aid updated if necessary (see recital (22)).

- (98) Point 130 CEEAG explains that the Commission will, in principle, consider that State aid for biofuels, bioliquids, biogas and biomass fuels exceeding the caps determining their eligibility for the calculation of the gross final consumption of energy from renewable sources in the Member State concerned in accordance with Article 26 of the Renewable Energy Directive (EU) 2018/2001, is unlikely to produce positive effects which could outweigh the negative effects of the measure.
- (99) As detailed in recital (20), although support may be granted to food and feed crops-based biofuels, Sweden has confirmed that it will be in limited quantities and that the caps set in the Renewable Energy Directive (EU) 2018/2001 will not be exceeded ⁽²³⁾.
- (100) Point 131 CEEAG explains that, where risks of additional competition distortions are identified or measures are particularly novel or complex, the Commission may impose conditions, including the obligation to perform an *ex post* evaluation, as set out in point 76 CEEAG.
- (101) The Commission notes that the measure as approved by the Commission in its decision in case SA.48069 is subject to an *ex post* evaluation, as described in section 2.7 of the present decision.
- (102) Point 132 CEEAG states that for scheme benefiting a particularly limited number of beneficiaries or an incumbent beneficiary, Member States should demonstrate how the proposed measure will not lead to distortions of competition, for example, through increased market power.
- (103) The Commission notes, as the aid is granted in the form of a general tax reduction on pure and high-blended biofuels, it is unlikely that it will benefit a particularly limited number of beneficiaries or increase market power. The Commission notes that in 2020 and 2021, 13 companies, which have benefitted from the existing scheme, submitted data for the monitoring reports for pure and high-blended liquid biofuels (see recital (27)).
- (104) On the basis of the above, the Commission considers that aid granted under the notified measure avoids undue negative effects on competition and trade.

3.3.3. *Weighing up the positive and negative effects of the aid*

- (105) Point 134 CEEAG states that, provided that all other compatibility conditions are met, the Commission will typically find that the balance for decarbonisation measures is positive (that is to say, distortions to the internal market are outweighed by positive effects) in light of their contribution to meeting Union energy and climate objectives, as long as there are no obvious indications of non-compliance with the ‘do no significant harm’ principle.

⁽²³⁾ The cap that applies to Sweden under article 26(1) of the Renewable Energy Directive (EU) 2018/2001 is 7 % of final consumption of energy in the road and rail transport sectors.

- (106) The Commission notes that the measure will contribute to the achievement of Sweden's energy and climate objectives and that all other compatibility conditions are met. The Commission notes in particular that the supported biofuels will comply with the sustainability and greenhouse gases emissions saving criteria set out in the Renewable Energy Directive (EU) 2018/2001.
- (107) Finally, in the assessment of the notified measure, the Commission did not identify indications of non-compliance with the "do no significant harm principle".
- (108) Based on the above, the Commission concludes that the positive effects of the notified measure outweigh the negative effects on the internal market.

3.3.1. Companies in difficulty and under recovery order

- (109) As set out in recital (18), Sweden has confirmed that in order to be eligible for the aid, taxpayers may not be subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market and may not be an undertaking in difficulty.
- (110) Based on the above, the Commission concludes that the measure complies with points 14 and 15 CEEAG.

3.3.2. Evaluation

- (111) The Commission notes that Sweden has committed to submit an additional evaluation report by 31 December 2025 to allow for a thorough assessment of the effectiveness of the scheme (see recital (35)).
- (112) The Commission positively notes that Sweden has committed to submit by 30 April 2023 a revised and updated version of the report submitted on 21 December 2021, in order to agree with the Commission on the evaluation strategy to be used for the additional report due by 31 December 2025 (see recital (36)).
- (113) The Commission notes that the report submitted on 21 December 2021 does not put into question the Commission's conclusion on the compatibility of the prolongation of the scheme with Article 107(3)(c) TFEU.
- (114) The Commission notes that the scheme has to be suspended if the additional evaluation report due by the end of 2025 is not submitted in good time and sufficient quality, that no subsequent scheme with a similar objective can be approved as long as the evaluation is not carried out, in sufficient quality, and that the design of any such subsequent scheme with a similar objective must fully take into account the results of the evaluation, in line with point 463 CEEAG.

3.3.3. Conclusion on the compatibility of the measure

- (115) The Commission concludes that the aid facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers the aid compatible with the internal market based on Article 107(3)(c) TFEU and on the relevant points of CEEAG.

4. AUTHENTIC LANGUAGE

(116) As mentioned in recital (4), Sweden has accepted to have the decision adopted and notified in English. The authentic language will therefore be English.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the 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.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President