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**Subject: State Aid SA.49749 (2017/N) – Sweden  
Environmental compensation for rail freight transport**

Madam,

#### **1. PROCEDURE**

- (1) By electronic notification dated 4 December 2017, Sweden notified to the European Commission an aid scheme concerning environmental compensation for freight transport, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (the "TFEU" or the "Treaty")<sup>1</sup>. By letter of 31 January 2018, the Commission requested further information, which was provided by Sweden on 1 March 2018.
- (2) By letter dated 1 March 2018, Sweden waived its right under Article 342 TFEU in conjunction with Article 3 of Regulation (EEC) No 1/1958<sup>2</sup> to have this decision adopted in the Swedish language and agreed that this decision be exceptionally adopted in the English language.

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<sup>1</sup> OJ C326, 26.10.2012, p. 47.

<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 017, 6.10.1958, p.385.

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## **2. DETAILED DESCRIPTION OF THE MEASURE**

### **2.1. Objective**

- (3) In Sweden, nearly 40 % of freight is transported by road, 40 % by water and just over 20 % by rail.<sup>3</sup>
- (4) The objective of the scheme is to strengthen the competitive position of rail and thereby encourage the transfer of freight transport from road to rail by supporting rail as the more environmentally friendly mode of transport than road.

### **2.2. Legal basis**

- (5) The national legal basis for the aid will be the forthcoming ordinance on environmental compensation for rail freight transport to be adopted by the Government on the basis of Chapter 8, Section 7 of the Instrument of Government.<sup>4</sup>

### **2.3. Beneficiaries**

- (6) Under the scheme, the eligible beneficiaries are natural or legal persons who, under Chapter 5.2 of the Swedish Railways Act,<sup>5</sup> have the right to operate or organise transport services on the Swedish rail network.
- (7) Undertakings in difficulty, as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty,<sup>6</sup> and undertakings from which the Commission has ordered the recovery of aid, and from which such aid has not been fully recovered, are not eligible for the aid.
- (8) According to estimates provided by Sweden, the number of eligible beneficiaries ranges from 11 to 50 undertakings.

### **2.4. Duration and budget**

- (9) The scheme will cover the period from 1 January 2018 to 31 December 2019, but implementation of the proposed scheme will only start when the approval of the Commission has been obtained.
- (10) The overall allocated budget amounts to SEK 563 million (approximately EUR 56 million)<sup>7</sup>; SEK 389 million will be disbursed in 2018 and SEK 174 million in 2019.
- (11) The aid will be granted by the Swedish Transport Administration.

### **2.5. Eligible costs**

- (12) The eligible costs under the aid scheme correspond to the share of external costs<sup>8</sup> that rail transport makes it possible to avoid compared with competing modes of

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<sup>3</sup> Freight activity measured in tonne-kilometres.

<sup>4</sup> The Swedish Code of Statutes (*Svensk författningssamling*), SFS number: 1974:152, reprinted 2003:593.

<sup>5</sup> SFS number: 2004:519.

<sup>6</sup> OJ C 249, 31.7.2014, p. 1.

<sup>7</sup> EUR 1 = SEK 10.

transport such as road transport, in accordance with point 103 of the Communication from the Commission on Community guidelines on State aid for railway undertakings ("the Railway Guidelines")<sup>9</sup>.

- (13) Sweden has indicated that the Swedish Transport Analysis Agency calculated the eligible costs based on: (i) the methodology presented in the Updated Handbook on External Costs of Transport prepared by Ricardo-AEA's which was commissioned by the Commission;<sup>10</sup> (ii) national data updated on the basis of a study undertaken by the Swedish National Road and Transport Research Institute in 2015-2016<sup>11</sup> and (iii) annual reports prepared by the Swedish Transport Analysis Agency regarding vehicles, traffic situation, infrastructure and population density in Sweden.<sup>12</sup>
- (14) The internal study undertaken by Sweden on the average external costs for railway and for road transport in Sweden was carried out on the basis of the following cost elements: accidents, noise, pollutants, climate costs and infrastructure.
- (15) The cost estimates for road accidents and road noise taken by Sweden are lower than the costs reported by the Joint Research Centre in 2013. External costs for pollutants (excluding CO<sub>2</sub>) from lorries are also lower, partly due to higher European Emission Standards ("Euro-standards"), and partly due to updated knowledge of the dispersion of emissions. For rail, all components, except costs for accidents are lower than the costs reported by the Joint Research Centre in 2013.
- (16) The internal study made by Sweden shows that the eligible costs (i.e. the difference between external costs caused by rail and external costs by road) are EUR 9.36 per 1000 tonne kilometres.

**Table 1: Average external costs of transporting goods by road and rail, average, Sweden 2016, EUR per 1000 tonne kilometres**

Cost	Road (lorry with trailer, average) in EUR	Rail (average) in EUR
Accidents	1.35	0.16
Noise emissions	2.29	0.73
Emissions (excl. CO <sub>2</sub> )	0.98	0.12

<sup>8</sup> "External cost" is an economic term, referring to the cost that certain activities, e.g. transport, impose upon society. It is expressed in monetary terms. The external costs of transport are generally not borne by transport users and hence not taken into account when they make a transport decision. The internalisation of these costs means including such effects in the decision-making process of the transport users. For instance, this can be done directly, by providing the right incentives to transport users.

<sup>9</sup> OJ C 184 of 22.7.2008, p. 13.

<sup>10</sup> The Update of the Handbook on External Costs of Transport, Final Report of 8 January 2014 prepared by Ricardo-AEA and commissioned by the Commission <https://ec.europa.eu/transport/sites/transport/files/themes/sustainable/studies/doc/2014-handbook-external-costs-transport.pdf>

<sup>11</sup> Transport Analysis Agency (Trafikanalys) 2017, Externa kostnader för gods på väg och järnväg 2016 (External costs of goods by road and rail, 2016).

<sup>12</sup> <https://www.trafa.se/en/rail-traffic/>

Climate cost (CO <sub>2</sub> )	5.92	0.17
<b>Total</b>	<b>10.54</b>	<b>1.18</b>
Difference rail compared with road (road minus rail)		9.36

- (17) The methodology used and the calculations performed resulting in the external costs in table 1 are publicly available and can be found on the Transport Analysis Agency's website.<sup>13</sup>
- (18) As regards the reduction of external costs, the eligible costs are calculated as the difference between the total external costs of road freight transport and the total external costs of rail freight transport, i.e. 10.54 minus 1.18 = EUR 9.36 per 1000 tonne kilometres.
- (19) The Swedish Transport Administration has estimated that the total cost of rail transport in Sweden is EUR 15 per 1000 tonne kilometres.
- (20) Sweden intends to grant State aid for reducing external costs with the following maximum aid intensities: 30% of the total cost of rail transport and up to 50% of the eligible costs.
- (21) Accordingly, 30 % of the total cost of rail transport is EUR 4.50 per 1000 tonne kilometres<sup>14</sup>. 50 % of eligible costs is EUR 4.68 per 1000 tonne kilometres.
- (22) The total freight transport by rail in Sweden was 21 406 million tonne kilometres in 2016. By multiplying the total freight transport by rail (21 406 million tonne kilometres) by EUR 4.50 per 1000 tonne kilometres (30 % of the total cost of rail transport), the envisaged support under the scheme could provide a total of EUR 96.3 million per year in compensation to rail transport.
- (23) According to Sweden, with total rail freight transport activity of 21 406 million tonne kilometres in 2016 the planned budget indicated in recital (10) allows scope for aid of up to EUR 1.82 per 1000 tonne kilometres, which is equivalent to 12 % of the total costs of rail freight transport per tonne kilometre and 19 % of eligible costs per tonne kilometre.

## 2.6. Aid amount

- (24) The aid will be granted on the basis of the number of transport operations actually carried out on the Swedish railway network.
- (25) Transport activity will be calculated by multiplying the quantity of goods transported, measured in tonnes, by the distance in kilometres the goods were transported in Sweden.
- (26) The aid will be granted to beneficiaries on the basis of their share of the total rail freight transport activity reported by all those eligible beneficiaries to the Swedish Transport Administration for a specified period (see recital (31)).

<sup>13</sup> <https://www.trafa.se/>

<sup>14</sup> Swedish Transport Administration report of November 2015: *Förutsättningar för att miljökompensera transporter på järnväg* (Conditions for providing environmental compensation for rail transport).

- (27) The Swedish authorities confirm that the amount of environmental compensation provided cannot exceed the limit laid down in point 107(b) of the Railway Guidelines.
- (28) The aid will be made public so that transport customers can take it into account in their choices and when they are negotiating the terms of transport with the rail companies.

### **2.7. Cumulation**

- (29) The aid cannot be cumulated with other aid or *de minimis* aid received from other local, regional or national sources to cover the same eligible costs.

### **2.8. Procedure for granting the aid**

- (30) Applications for environmental compensation are to be submitted to and examined by the Swedish Transport Administration for each calendar half-year.
- (31) Applications for environmental compensation for the calendar half-year of 1 January to 30 June, and for the calendar half-year of 1 July to 31 December are to be submitted to the Swedish Transport Administration by no later than 15 August or 15 February respectively.

### **2.9. Repayment mechanism and monitoring**

- (32) Beneficiaries are liable to repay the aid concerned if any of the following conditions are fulfilled:
- the beneficiary has received environmental compensation by submitting incorrect or incomplete information, which resulted in the compensation being determined incorrectly or at too high an amount;
  - the environmental compensation was granted incorrectly or at too high an amount, for some other reason and the beneficiary should have realised this.
- (33) In such cases, the Swedish Transport Administration may recover all or part of the environmental compensation, together with interest in accordance with the Interest Act.<sup>15</sup>

### **2.10. Expected impact of the measure on modal shift**

- (34) Sweden has estimated that the measure will lead to a 4% increase in freight transport by rail in 2018 and a 2 % increase in 2019. In addition, the aid will not significantly shift traffic flows from short sea shipping to rail. Sweden estimated that maritime freight transport will fall by 1 % in 2018 and 0.5 % in 2019.
- (35) The Swedish Transport Administration is to monitor whether the objective of the environmental compensation set out in recital (4) is being fulfilled for future decisions on continued funding.

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<sup>15</sup> SFS number 1975:635.

## 2.11. Other conditions for granting of the aid

- (36) Under section 7 of the administrative ordinance governing the environmental compensation (see recital (5)), the compensation shall be reflected in the price paid by the shippers. It is the shippers who choose the mode of transport, and the aim is therefore for the environmental compensation to be passed on to them.
- (37) Sweden submits that freight transport is a liberalised market in Sweden, and there is also price-sensitive competition between modes of transport. Given that there is competition on the market in which the transport operators operate, according to Sweden, the environmental compensation will create the conditions for operators to adjust their prices when their income increases.
- (38) In 2015, 12 companies provided rail freight services in Sweden and the number of actors is increasing over time<sup>16</sup>. The market share of the largest company, Green Cargo, has dropped by 10 percent over the last four years. Sweden submits that smaller rail undertakings that will receive aid under the present aid scheme may improve their competitiveness and thus force also the larger rail undertakings to reduce prices.

## 3. ASSESSMENT OF THE MEASURE

### 3.1. Existence of aid

- (39) Pursuant to Article 107(1) TFEU "*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 is, in so far as it affects trade between Member States, incompatible with the internal market*".
- (40) As the examined measure:
- involves State resources given that the aid is financed from the Swedish central budget;
  - confers an economic advantage as it relieves the beneficiaries of a part of the operating costs which they would normally have to bear;
  - is selective in nature because it is confined to certain segments of the transportation services market (rail freight transport); and
  - can potentially distort competition and affect trade between Member States since it concerns rail freight markets which have been liberalised and are a European-wide business,

it is to be qualified as State aid within the meaning of Article 107(1) TFEU.

### 3.2. Lawfulness of the aid

- (41) Article 108(3) TFEU provides that Member State shall not put proposed measures into effect until they have been approved by the Commission.

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<sup>16</sup> Transportstyrelsen (2017). Transportmarknaden i siffror 2016. Rapport TSG 2016-3493.

- (42) Since the measure in question has not been put into effect before formal approval by the Commission, the Commission records that Sweden has fulfilled its standstill obligation in accordance with Article 108(3) TFEU.

### 3.3. Compatibility of the aid

#### 3.3.1. Legal basis

- (43) The notified aid falls within the scope of Article 93 TFEU and has therefore to be assessed on that basis.
- (44) Article 93 TFEU states that State aid shall be compatible with the Treaty if it meets the needs of coordination of transport. Coordination of transport refers to the need for public intervention arising notably in the presence of market failure. In this regard, the Commission notes that transport coordination measures may be needed when certain modes of transport do not bear all the costs of the negative externalities which they impose on society.
- (45) As expressed in the Commission's White Paper on Transport Policy<sup>17</sup>, the fundamental charging principle for using infrastructure should cover not only infrastructure costs, but also external ones, that is, costs connected with accidents, air pollution, noise and congestion. This approach has been applied in a number of Commission's State aid decisions over the years<sup>18</sup>. It also reflects the fact that, in view of Article 3 TEU and Articles 6 and 191 TFEU,<sup>19</sup> the environmental objectives of the Treaty have to be pursued *inter alia* through the Common Transport Policy.
- (46) As regards rail transport, and in particular railway undertakings, guidance on the application of Article 93 TFEU is provided in Section 6 of the Railway Guidelines. Since the notified aid measure concerns a modal shift from road to rail, the compatibility assessment will be conducted in light of the criteria laid down in chapters 6.2 and 6.3 of the Railway Guidelines.
- (47) According to Article 93 TFEU, aid which meets the needs of transport coordination has to be considered compatible with the Treaty. Point 96 of the Railway Guidelines provides that for a given aid measure to be considered to "meet the needs" of transport coordination, it has to be necessary and proportionate to the intended objective. Furthermore, the distortion of competition which is inherent in aid must not jeopardise the general interests of the Union.
- (48) According to point 98 of the Railway Guidelines, as regards the railway industry more specifically, aid for the needs of transport coordination can take several forms. One of those forms is aid to reduce external costs which is designed to encourage a modal shift of freight transport to rail, because rail transport

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<sup>17</sup> Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, COM(2011)144 of 28.03.2011.

<sup>18</sup> For the most recent case practice see e.g. Commission decision of 18 July 2016, SA.45606, Italy - *Prolongation of measures for the development of intermodality in the Friuli-Venezia Giulia region*, OJ C 68, 3.03.2017, p. 12; Commission decision of 29 April 2016, SA. 41033 (2016/N), Italy - *Integrated transport scheme in the Province of Trento*, OJ C 220, 17.06.2016, p.2; Commission decision of 12 October 2017, SA. 48634 (2017/N), Denmark - *Prolongation of environmental aid scheme for the transport of goods by rail for the period 2018-2020*, OJ C 20, 19.01.2018, p. 6.

<sup>19</sup> Until 30 November 2009 – Articles 2, 6 and 174 EC Treaty.

generates lower external costs than other modes of transport, such as road transport.

### 3.3.2. *Existence of external cost savings*

- (49) According to point 103 of the Railway Guidelines, the eligible costs as regards aid for reducing external costs are the part of the external costs which rail transport makes it possible to avoid compared with competing transport modes.
- (50) Point 104 of the Railway Guidelines states that Member States may put in place a time-limited compensation scheme for the use of railway infrastructure “*for the demonstrably unpaid environmental, accident and infrastructure costs of competing transport modes in so far as these costs exceed the equivalent costs of rail*”.
- (51) The notified scheme concerns the reduction of external costs. Point 105 of the Railway Guidelines requires a transparent, reasoned and quantified cost analysis between rail transport and the alternative options based on other modes of transport. Furthermore, the methodology used and the calculations performed must be made publicly available.
- (52) The Commission acknowledges that the calculation of external costs in the transport sector implies complex calculations and long term data investigations. The Commission notes that the methodology used by Sweden is based on the methodology used in the Updated Handbook on External Costs of Transport, which is endorsed by the Commission.
- (53) Moreover, Sweden used the most recent data, namely annual reports prepared by the Swedish Transport Analysis Agency regarding vehicles, traffic situation, infrastructure and population density. This resulted in values lower than the ones presented in the Updated Handbook on External Costs of Transport figures or in the Joint Research Centre's research (see recital (15)).
- (54) As the external costs as applied by Sweden are lower, which leads to lower eligible costs and consequently to a lower aid amount than what the Commission usually accepts, the Commission considers that the calculation presented by Sweden is valid. Therefore, the resulting amounts constitute the basis for the compatibility assessment.
- (55) In addition, the Commission notes that the methodology and calculations used in the study are publicly available on the website of the Swedish Transport Analysis Agency (see recital (17)). The Commission therefore considers that the requirements of point 105 of the Railway Guidelines are met.

### 3.3.3. *Necessity and proportionality of the aid measure*

- (56) According to points 107(b) and 109 of the Railway Guidelines, there is a presumption of necessity, proportionality and absence of overcompensation for aid for reducing external costs provided the intensity of the aid remains below 50% of the eligible costs and 30% of the total cost of rail transport.
- (57) Based on the table contained in recital (16), the eligible costs amount to EUR 9.36 per 1000 tonne kilometres. The Commission notes that Sweden will allow for an aid amount of EUR 1.82 per 1000 tonne kilometres which corresponds to an aid



intensity of 19% of eligible costs and 12% of total costs of rail transport. Therefore, the maximum aid intensities of the notified aid scheme do not exceed the maximum aid intensities pursuant to point 107 of the Railway Guidelines. The Commission therefore concludes that the aid measure satisfies the requirement of necessity, proportionality and absence of overcompensation under point 107 of the Railway Guidelines.

- (58) With reference to point 109 of the Railway Guidelines, the Commission observes that for the notified aid scheme, the aid for reducing external costs is strictly limited to compensation for the opportunity costs connected with the use of rail transport rather than a more polluting mode of transport.
- (59) In that regard, Sweden ensures by a requirement laid down in the ordinance on environmental compensation for rail freight transport that the applicable maximum aid intensity will be respected for each beneficiary (see recital (27)). In addition, the aid cannot be cumulated with other aid or *de minimis* aid received from other local, regional or national sources to cover the same eligible costs (see recital (29)).
- (60) Point 110 of the Railway Guidelines requires that the aid does have the effect of encouraging the modal shift to rail and, therefore, that the aid is reflected in the price demanded from the shipper since it is the shipper who makes the choice between different transport modes.
- (61) The Commission observes that the above principle will be transposed in section 7 of the administrative ordinance on environmental compensation for rail freight transport (see recital (36)).
- (62) The Commission further notes that the aid amount will be publicly accessible (see recital (28)). It is thus expected that potential customers of the beneficiaries, i.e. shippers, will ask to participate in the advantage granted to the beneficiaries when they negotiate their shipping contracts, which in turn will encourage shippers to choose rail rather than more polluting modes of transport such as road.
- (63) In addition, given the fact that the Swedish rail freight market is open to new entrants, who could benefit from the notified aid scheme if they fulfil all the necessary requirements, the biggest rail freight operators might be forced to reduce their prices in order to remain competitive (see recital (38)).
- (64) The Commission therefore concludes that point 110 of the Railway Guidelines is met.
- (65) According to point 111 of the Railway Guidelines, in the case of aid for reducing external costs, there must be a realistic prospect of keeping the traffic transferred on rail, so that the aid leads to a sustainable transfer of traffic.
- (66) In this regard, Sweden has estimated that the measure will lead to a 4% increase in freight transport by rail in 2018 and a 2% increase in 2019 (see recital (34)).
- (67) In addition, the Commission observes that the award criteria of the notified scheme are based on carried volumes and distances run. Thus, the more the beneficiaries carry the higher amount of aid (see recitals (25) and (26)).

- (68) Furthermore, the Commission notes that environmental subsidies for rail freight have helped to keep the share of railway transport in inland transportation services in other Member States where similar measures were in place, e.g. Denmark.<sup>20</sup>
- (69) In addition, the Swedish Transport Administration is to monitor whether the objective of the environmental compensation is being fulfilled (see recital (35)) for future decisions on continued funding.
- (70) For the above reasons the Commission concludes that with the notified aid scheme there are realistic prospects of keeping the traffic transferred to rail. Hence, the notified scheme complies with point 111 of the Railway Guidelines.
- (71) In the light of the criteria examined above, the Commission considers that the conditions related to the necessity and proportionality of the aid are met and that the aid measure encourages the modal shift to rail and that there are realistic prospects that a sustainable transfer of traffic is achieved.

#### *3.3.4. Non-discrimination, transparency and time-limit*

- (72) The Commission notes that the scheme is transparent – the conditions for benefiting from the aid will be clearly stipulated in the underlying legal basis (see recital (5)).
- (73) The Commission further notes that access to the aid will be granted in a non-discriminatory manner. As explained in recital (6), the scheme will be open to all natural or legal persons who, under Chapter 5.2 of the Swedish Railways Act, have the right to operate or organise transport services on the Swedish rail network.
- (74) As explained in recital (9), the aid scheme is limited in time – it will apply for a period of two years. This is in line with the time limitation imposed by point 97 of the Railway Guidelines.

#### *3.3.5. Effect on competition not contrary to the general interest of the Union*

- (75) Point 96 of the Railway Guidelines stipulates that "*distortion of competition which is inherent in aid must not jeopardise the general interests of the [Union]. By way of illustration, aid likely to shift traffic flows from short sea shipping to rail would fail to meet these criteria*".
- (76) In this respect, the Commission observes that a significant share of freight is transported by water in Sweden. Estimates made by Sweden show that the notified measure will only have a limited impact: maritime freight transport will decrease by 1 % in 2018 and 0.5 % in 2019 (see recitals (3) and (34)).
- (77) Given the limited impact of the measure on maritime transport, the Commission concludes that the notified aid scheme does not give rise to a distortion of

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<sup>20</sup> See e.g., [http://ec.europa.eu/eurostat/statistics-explained/index.php/Freight\\_transport\\_statistics\\_-\\_modal\\_split](http://ec.europa.eu/eurostat/statistics-explained/index.php/Freight_transport_statistics_-_modal_split)

competition to an extent contrary to the general interest of the Union with the meaning of point 96 of the Railway Guidelines.

#### **4. 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 93 of the Treaty on the Functioning of the European Union.

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission

