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**Subject: State Aid SA.57710 (2020/N) – Sweden
COVID-19: Compensation for damages suffered by passenger ferries
due to COVID-19**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 26 June 2020, following pre-notification contacts, Sweden notified the scheme in subject (“the measure” or “the scheme”). Sweden notified the measure on the basis of Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”).
- (2) Sweden exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) The Swedish authorities have explained that the COVID-19 outbreak has had a significant impact on the Swedish economy and Swedish companies. Reduced demand in affected areas, reduced travelling and disruptions in transport and supply chains have affected Swedish companies, resulting in an unprecedented amount of notices of lay-offs and short-term lay-offs.

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

Utrikesminister Ann LINDE
Utrikesdepartementet
Arvfurstens palats
Gustav Adolfs torg 1
SE - 103 23 STOCKHOLM

- (4) The Swedish Trade Union Confederation, the State-owned bank SBAB, and the Confederation of Swedish Enterprise (Svenskt Näringsliv) estimate that in 2020 Swedish GDP growth will fall by 5.8 %, 5.5% and 6.1% respectively. The Confederation of Swedish Enterprise further estimates that Sweden's unemployment rate will increase to 9.7 % in 2020 and 10.4 % in 2021 (up from 7.4% in 2019).
- (5) As of 14 March 2020, as an immediate consequence of the COVID-19 outbreak, the Swedish Ministry for Foreign Affairs advised against non-essential travel to all countries (until at least 15 July). On 16 March, the Commission invited Member States to take coordinated action to restrict non-essential travel from third countries into the EU².
- (6) Other Member States of the EU closed their borders: Denmark, Poland and Finland closed their borders on 14, 15, and 19 March 2020 respectively. Norway also closed its borders on 16 March 2020. The borders of Denmark, Finland and Norway remained closed as of 30 June 2020, without any indication, for Denmark and Finland, as of when they would re-open. Norway plans to start lifting entry restrictions as of 15 July, depending on the level of infection of the country concerned. Poland's border was re-opened as of 13 June 2020.
- (7) As a result of the above-mentioned restrictions the Swedish authorities registered a rapid and dramatic decline in passenger numbers, and several ferry companies were forced to reduce traffic, cancel lines and take vessels out of traffic. Between 16 and 24 March, 10 vessels were taken out of traffic and seafarers working on board these vessels have been placed on short-term lay-off.
- (8) All seafarers on these vessels have been placed on short-term lay-off (a few of them have been redeployed maintaining the vessel or doing other similar work). Short-term lay-off refers to employees put out of work who still receive wages but for whom the government covers a share of the costs. Affected companies still incur labour costs, as well as capital costs for the vessel, port fees, etc., while the vessels no longer generate any revenues.
- (9) The scheme therefore aims to compensate passenger ferry companies for the damage suffered as a result of the restrictions.

2.1. The nature and form of the measure

- (10) Under the scheme, passenger ferry companies would be eligible to receive compensation in the form of tax deductions on wage-related costs for seafarers employed on vessels that have been taken out of traffic and lie at quay due to measures imposed in response to the COVID-19 outbreak.
- (11) Shipping companies in Sweden (including passenger ferry companies) can already benefit from tax deductions on wage-related costs of seafarers that work on vessels engaged in maritime transport, under Ordinance (2001:770) on

² See: https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/travel-and-transportation-during-coronavirus-pandemic/travel-and-eu-during-pandemic_en.

shipping aid³. Aid pursuant to this Ordinance was approved by the Commission by decision of 16 December 2019⁴.

- (12) Ordinance (2001:770), however, restricts eligibility to “income earned at sea”. In contrast, under the notified scheme passenger ferry companies are entitled to compensation only for those vessels that are not operating at sea because they have been taken out of traffic, and who therefore cannot (and no longer) benefit from aid under Ordinance (2001:770).

2.2. National legal basis

- (13) The national legal basis for the measure is the Ordinance on temporarily amended shipping aid, which will be adopted following the Commission’s authorisation in the present Decision.

2.3. Administration of the measure

- (14) Applications for aid under the scheme will be handled by the Board for Shipping Aid at the Swedish Transport Administration. The Board works together with the Swedish Tax Agency to make sure that the tax account of the beneficiary is credited with the correct amount.

2.4. Budget and duration of the measure

- (15) The Swedish authorities estimate that the amount of aid disbursed under the scheme will be no more than SEK 100 000 000 (approximately EUR 9.5 million)⁵. There is no separate budget allocated to the scheme as it is financed from the same appropriation used for Ordinance (2001:770). The SEK 100 000 000 represents around 6.3% of the budget allocated to Ordinance (2001:770) and will be moved from the budget of Ordinance (2001:770) to the budget of the notified measure.
- (16) The scheme will enter into force immediately after the adoption of the present Decision. Compensation under the scheme may be granted for wage costs incurred between 13 March and 31 December 2020. Passenger ferry companies may apply for aid within six months from the month for which the wage costs were incurred (i.e. until 30 June 2021 at the latest, for wage costs incurred in December 2020).

³ Förordning (2001:770) om Sjöfartsstöd, see: https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2001770-om-sjofartsstod_sfs-2001-770.

⁴ Commission decision of 16 December 2019 in case SA.46740 (2016/N), OJ, C 25, 24 January 2020, see: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46740.

⁵ Exchange rate: SEK 1 = EUR 0.0948, taken in June 2020 from: https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en.

- (17) It must be stressed that while aid may be granted for wage costs incurred between 13 March 2020 and 31 December 2020, the aid only compensates damage incurred between 24 March and 31 July 2020⁶.

2.5. Beneficiaries

- (18) There are currently 10 vessels out of traffic and lying at quay in Sweden. The Swedish authorities consider that only these 10 vessels will meet the requirements of the scheme. On that basis, the Swedish authorities estimate that eight passenger ferry companies, consisting of four large enterprises, three small enterprises and one micro enterprise, will be able to benefit from the measure.

2.6. Sectoral and regional scope of the measure

- (19) The scheme applies to passenger ferry companies in Sweden.

2.7. Basic elements of the measure

- (20) Under the Swedish tax regime, income tax due by employees is normally withheld by employers when wages are paid. Subsequently, the employer pays the withheld tax to the State. Employers also pay social security contributions for their employees (“arbetsgivaravgifter”) and are obliged to pay a general fee imposed on wages (“allmän löneavgift”).
- (21) Under the scheme, 99% of the costs arising from each of the above three obligations, i.e. the (i) tax levied on seafarers' income, (ii) social security contributions for seafarers, and (iii) general fee imposed on seafarers' wages, are reimbursed to the employer in case of eligible seafarers.
- (22) Only vessels that had already received approval in 2019 to receive aid under Ordinance (2001:770)⁷ in 2020 for costs incurred in 2020, but whose seafarers now no longer fulfil the requirement that their income is earned at sea, and who therefore cannot benefit from aid under Ordinance (2001:770) anymore, are eligible for aid under the scheme.⁸
- (23) The Swedish authorities have confirmed that:
- The Swedish Transport Administration will control ex-post the exact amount of damage incurred by each beneficiary of the scheme. Any payment exceeding the damage suffered as a direct consequence of travel restrictions and border closures implemented in response to the COVID-

⁶ Since the aid scheme is modelled on Ordinance (2001:770), the amount of aid granted under the scheme for any one month is not directly linked to the damages incurred in that same month. This is further discussed in Section 3.3.

⁷ Ordinance (2001:770) provides for exactly the same compensation, i.e. 99% of the costs arising from tax levied on seafarers' income, social security contributions for seafarers, and the general fee imposed on seafarers' wages.

⁸ A shipping company that wishes to apply for aid under Ordinance (2001:770) for wage costs incurred in 2020 must have applied for approval at the latest on 1 November 2019. The actual reimbursement of wage-related costs incurred in 2020 then happens on the basis of monthly applications submitted in 2020.

19 outbreak will be recovered. The damage is calculated as the lost revenues from ships lying at quay minus the savings in their variable costs for the period when they are prevented from operating (compared to the same period in 2019);

- Payments to beneficiaries under the scheme shall be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage;
- There are no beneficiaries who are responsible for the damage suffered, who did not conduct their activities with due diligence or in compliance with applicable legislation, or who did not take any measure to mitigate the damage.

2.8. Cumulation

- (24) The Swedish authorities have confirmed that aid provided under the scheme cannot be cumulated with other aid for the same eligible costs.

2.9. Monitoring and reporting

- (25) The Swedish authorities have committed to provide a report no later than one year after the date of the present Decision specifying the amount of compensation and recoverable advances granted and including a summary of all recoveries ordered under the measure.

3. ASSESSMENT

3.1. Legality of the measure

- (26) By notifying the scheme before putting it into effect, the Swedish authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (27) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (28) The measure is imputable to the State, since it is administered by the Board for Shipping Aid at the Swedish Transport Administration and based on an Ordinance to be adopted by the Swedish Government (see recital (14)). It is financed through State resources, since it is financed by the State general budget: the State will reimburse eligible passenger ferry companies for wage-related taxes paid.
- (29) The measure confers an advantage on its beneficiaries in the form of tax deductions (see recitals (10), (20)-(21)). The advantage corresponds to the amount of tax deducted. The measure thus relieves eligible beneficiaries of costs that they would have to bear under normal market conditions.

- (30) The advantage granted by the measure is selective, since it is awarded only to passenger ferry companies that meet the eligibility requirements of the scheme (see recital (22)).
- (31) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (32) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (33) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. Following the notification of the Swedish authorities, the Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU.
- (34) This assessment has led to the following observations.

The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU

- (35) Article 107(2)(b) TFEU stipulates that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU nor other Union legislation contains a precise definition of the notion of ‘exceptional occurrence’. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law⁹ has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (36) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field¹⁰. In this regard, the following indicators relating to the event concerned

⁹ Judgement of the Court of Justice of 11 November 2004, *Spain v. Commission*, C-73/03, ECLI:EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Giuseppe Atzeni and others*, in joined cases C-346/03 and C-529/03, ECLI:EU:C:2006:130 paragraph 79.

¹⁰ Exceptional occurrences which have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see *Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020*, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

must be cumulatively met: (i) unforeseeable or difficult to foresee¹¹; (ii) significant scale/economic impact¹²; and (iii) extraordinary¹³.

COVID-19 as an exceptional occurrence

- (37) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but spreading to the majority of countries worldwide. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (38) The WHO declaration of a pandemic¹⁴, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature of the circumstances. The rapidness of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption¹⁵. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. Such measures can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market.

¹¹ Commission Decision of 1 August 2008 in case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31.

¹² Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 in case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France), or because of the number of dead or injured people (Commission Decision of 11 April 2012 in case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 in case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 in case SA.33487, recital 36), the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 in case N 241/2002, recital 19).

¹³ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 32, 6.2.2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. It was yet an unforeseeable event, but formed part of the normal commercial risks to which an undertaking is exposed.

¹⁴ WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

¹⁵ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

- (39) In view of the above, this event qualifies as an exceptional occurrence as it was not foreseeable, as it clearly distinguishes itself from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market.¹⁶
- (40) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

Causal link between COVID-19 outbreak and damage compensated by the measure

- (41) As mentioned in recital (5), on 14 March 2020 the Swedish Ministry for Foreign Affairs advised against non-essential travel to all countries until at least 15 July. On 16 March, the Commission invited Member States to take action to restrict non-essential travel from third countries into the EU.
- (42) As mentioned in recital (6), Denmark, Poland, Norway and Finland closed their borders on 14, 15, 16 and 19 March 2020 respectively. These borders remained closed as of 30 June 2020 and only Poland's border was re-opened as of 13 June 2020. For Denmark and Finland, there is no indication of when the borders would re-open. Norway plans to lift entry restrictions at the earliest as of 15 July 2020.
- (43) All these measures severely affected passenger ferry companies with traffic to and from Sweden. Very quickly after the travel restrictions and closed borders were enforced, Sweden experienced a rapid and dramatic decline in passenger numbers and several ferry companies were forced to reduce traffic, cancel lines and take vessels out of traffic. Between 16 and 24 March 2020, 10 vessels were taken out of traffic. These 10 vessels still lie at quay and will remain so, according to the Swedish authorities, at least until the end of 31 July 2020 due to travel restrictions and border closures imposed by Sweden and other Member States.
- (44) The period for the calculation of the damage is limited to 24 March - 31 July 2020, the minimum period during which the Swedish authorities consider that all 10 vessels currently able to benefit from the scheme will have been at quay. In any case, each individual vessel is only eligible for aid under the scheme if it is at quay because of measures implemented by Sweden and other Member States (e.g. border closures) in response to the COVID-19 outbreak. This will be verified by the Swedish Transport Administration.
- (45) The direct causal link between the damage caused by the exceptional occurrence and the aid is therefore ensured.

Proportionality of the aid

- (46) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.

¹⁶ See also Commission Decision of 12 March 2020, SA.56685 - Denmark - Compensation scheme for cancellation of events related to COVID-19, OJ C 125, 17.4.2020, p. 8.

- (47) Passenger ferry companies whose vessels are taken out of traffic and who are eligible under the scheme still incur costs for those vessels such as labour costs, capital costs for the vessel and port fees, while the vessels no longer generate any revenue at all (see recital (8)). Aid granted under the scheme consists of tax deductions that only serve to lower the companies' wage-related costs (see recitals (20)-(21)). According to the Swedish authorities, several of the vessels at quay have lost revenues per month of around SEK 100 000 000 (approximately EUR 9.5 million), the total amount of aid to be granted under the scheme in 2020 (to all eligible vessels), with variable cost typically in the range of 10-20 % of these revenues. It is therefore unlikely that a beneficiary could be overcompensated even ex-ante, before any checks on overcompensation are carried out.
- (48) The Swedish authorities have put in place the following additional safeguards, so that the compensation under the scheme does not exceed what is necessary to make good the actual damage suffered and thus meets the above-mentioned criteria.
- (49) First, as described in recital (23) of this Decision, payments to beneficiaries under the scheme shall be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage.
- (50) Second, as described in recital (23), there are no beneficiaries that will benefit from the scheme who are responsible for the damage suffered, who did not conduct their activities with due diligence or in compliance with applicable legislation, or who did not take appropriate measures to mitigate the damage.
- (51) Third, as also mentioned in recital (23), the Swedish authorities will control ex-post the exact amount of damage incurred by each beneficiary of the scheme. Any payments under the scheme exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered. The damage is calculated as the lost revenues from ships lying at quay minus the savings in their variable costs for the period when they are prevented from operating.
- (52) Sweden has therefore ensured that the compensation under the scheme will not exceed the damage directly suffered by each beneficiary from the loss of revenue caused by the COVID-19 outbreak.
- (53) In view of the above, the Commission considers that the measure is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

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 107(2)(b) TFEU.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION