COMMISSION DECISION (EU) 2025/62

of 23 October 2024

on the aid schemes SA.56908 (2023/C) (ex 2020/N) – Prolongation and modification of biogas scheme for motor fuel in Sweden and SA.56125 (2023/C) (ex 2020/N) – Prolongation and modification of scheme SA.49893 (2018/N) – Tax exemption for non-food-based biogas and bio-propane in heat generation implemented by Sweden

(notified under document C(2024) 7313)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) ([1]) and having regard to their comments,

Whereas:

1. PROCEDURE

(1) Following pre-notification contacts, Sweden notified to the Commission on 1 April 2020, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union ("TFEU"), the prolongation and modification of a tax exemption scheme for biogas used as motor fuel (the "motor fuel scheme"), as well as the prolongation and modification of a tax exemption scheme on renewable fuels for heat generation (the "heating fuel scheme") (together, the "schemes").

(2) The motor fuel scheme was first approved by the Commission in 2003 ([2]). It was then repeatedly prolonged and approved by the Commission as compatible aid. The latest prolongation approval decision in case SA.43302 (2015/N) ([3]) was based on the Guidelines on State aid for environmental protection and energy 2014-2020 ("EEAG") ([4]) and was valid until 31 December 2020. ([5])

(3) The heating fuel scheme was first approved by the Commission in 2007 ([6]). It was then repeatedly prolonged and approved by the Commission as compatible aid. The latest prolongation approval decision in case SA.49893 (2018/N) ([7]) was based on the EEAG and was valid until 31 December 2020. ([8])

([1]) OJ C 1921, 5.3.2024, p. 1.
([2]) Commission decision of 11 November 2003 in case N 480/02 – Sweden – Excise duty reduction in favour of carbon dioxide neutral fuel (OJ C 33, 6.2.2004, p. 8).
([3]) Commission decision of 14 December 2015 in case SA.43302 (2015/N) – Sweden – Tax exemptions for biogas used as motor fuel (OJ C 241, 1.7.2016, p. 6).
([4]) OJ C 200, 28.6.2014, p. 1-55.
([5]) The Commission approved an increase in the budget of the motor fuel scheme in its decision of 14 December 2020 in case SA.59125 (2020/N) – Sweden – Budget extension for scheme SA.43302 (2015/N) – Tax exemptions for biogas used as motor fuel (OJ C 41, 5.2.2021, p. 12).
([6]) Commission decision of 22 June 2007 in case N 866/06 – Sweden – Tax exemption; Certain renewables in heat generation (OJ C 220, 20.9.2007, p. 2).
([7]) Commission decision of 19 July 2018 in case SA.49893 (2018/N) – Sweden – Prolongation of the scheme SA.35586 (2012/N) – Tax exemptions; Certain renewables in heat generation (OJ C 127, 5.4.2019, p. 1).
([8]) The Commission approved an increase in the budget of the heating fuel scheme for 2019 and 2020 in its decision of 14 December 2020 in case SA.59126 (2020/N) – Sweden – Budget increase for scheme SA.49893 (2018/N) – Tax exemptions for certain renewables in heat generation (OJ C 41, 5.2.2021, p. 12).

(4) On 18 October 2019 and 19 June 2020, the Commission received submissions from Landwärme GmbH ("Landwärme"), a German biomethane producer, concerning potential overcompensation of Danish biogas producers resulting from the cumulation of the Danish support to biogas producers ([9]) and of the Swedish tax exemption for biogas.

(5) On 29 June 2020, the Commission adopted Decision C(2020) 4487 final and Decision C(2020) 4489 final approving the modification and prolongation until 31 December 2030 of the motor fuel scheme (SA.56908 (2020/N)) and the heating fuel scheme (SA.56125 (2020/N)) ("the 2020 Decisions"). ([10]) ([11])

(6) On 13 October 2020, Landwärme lodged a complaint with the Commission against the Kingdom of Sweden, alleging that the cumulation of the aid granted in Sweden under the schemes with other aid, granted by other Member States to biogas producers, led to overcompensation.

(7) On 21 December 2022, following Landwärme's action for annulment, the General Court annulled the 2020 Decisions on procedural grounds without ruling on the substance of the cases. ([12])

(8) The General Court took note that Landwärme had submitted information to the Commission on 18 October 2019 and 19 June 2020, which mainly concerned the aid schemes supporting biogas production in Denmark. Landwärme had notably provided a study showing different forms of biogas support, production support as well as incentives to raise demand such as tax reductions. It argued that these different support schemes could coexist simultaneously in different Member States, and that such cumulation of aid granted by different Member States could result in overcompensation of biogas producers in other Member States if they were to sell biogas in Sweden. Landwärme explicitly referred to the aid granted by Denmark and Sweden. ([13])

(9) The General Court recognised that the beneficiaries of the Swedish scheme are the purchasers of biogas in Sweden. Whereas the tax reductions would not impact the production cost of biogas, they would indirectly benefit also biogas producers exporting to Sweden, as, due to the tax exemptions, they could sell biogas at a final price that can compete with that of natural gas. ([14])

(10) The General Court considered that in its assessment and based on the information from Landwärme, the Commission should have taken into account the contested cumulation against the background of rising biogas imports into Sweden from certain Member States. ([15]) The General Court held that in the annulled decisions, the Commission had however assessed the cumulation from different schemes at national level only. The General Court considered it an indication for the presence of serious difficulties, if the Commission's assessment as regards the contested cumulation, and hence on the question of the absence of overcompensation, is incomplete. This was deemed to be tied to the assessment of the proportionality of the aid. ([16])

([9]) Commission decision of 14 November 2013 in case SA.35485 (2012/N) – Denmark – Aid for all forms of biogas use – A (OJ C 292, 4.9.2015, p. 3); Commission decision of 16 December 2015 in case SA.36659 (2013/N) – Denmark – Aid for all forms of biogas use – B (OJ C 241, 1.7.2016, p. 2).

([10]) Commission decision of 29 June 2020 in case SA.56908 (2020/N) Prolongation and modification of biogas scheme for motor fuel in Sweden (OJ C 260, 7.8.2020, p. 4) and Commission decision of 29 June 2020 in case SA.56125 (2020/N) Tax exemption for non-food-based biogas and bio-propane in heat generation (OJ C 260, 24.7.2020, p. 2).

([11]) The Commission approved the extension of the scope of beneficiaries to undertakings that were not in difficulty on 31 December 2019 but became in difficulty between 1 January 2020 and 30 June 2021 in its decision of 29 June 2021 in case SA.62941 (2021/N) – Sweden – Modification of the tax exemptions for biofuels and biogas in Sweden - SA.55695, SA.56125 and SA.56908 (OJ C 46, 28.1.2022, p. 2).

([12]) Judgment of the General Court of 21 December 2022, Landwärme GmbH v European Commission, T-626/20, EU:T:2022:853.

([13]) EU:T:2022:853, para. 31 and 71-75.

([14]) EU:T:2022:853, para. 25.

([15]) EU:T:2022:853, para. 97-98.

([16]) EU:T:2022:853, para. 99.

(11) The General Court considered that biogas, of which the additional production cost compared to natural gas would have been covered, would not be comparable to biogas for which this was not yet the case. ([17]) Also, if there was overcompensation, this could be an objective ground for tax differentiation between biogas that has received production aid and biogas that has not. ([18]) The General Court concluded that neither the principle of non-discrimination nor Article 110 TFEU would preclude the consideration of the contested cumulation in the assessment of overcompensation, implying that its omission from the analysis indicated the existence of serious difficulties. ([19])

(12) The General Court concluded that the assessment of the compatibility of the scheme with the internal market under Article 107(3)(c) TFEU, with regard to the principle of non-discrimination and Article 110 TFEU, presented serious difficulties in connection with potential overcompensation that might result from the contested cumulation. The General Court concluded that the Commission should have examined those difficulties in the context of the formal investigation procedure, in its assessment of the overcompensation, instead of adopting the contested decisions at the end of the preliminary examination procedure. ([20])

(13) By letter dated 30 January 2024, the Commission informed Sweden that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the schemes.

(14) The Commission decision to initiate the procedure (the "Opening Decision") was published in the Official Journal of the European Union. ([21]) The Commission called on interested parties to submit their comments.

(15) Sweden sent its comments on the Opening Decision on 5 March 2024. The Commission received comments from six interested parties. It forwarded them to Sweden, which was given the opportunity to react; its comments were received by letter dated 6 May 2024.

(16) Further information was submitted by Sweden on 31 May 2024, 2 and 11 October 2024.

(17) Sweden exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 ([22]) and to have this Decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE SCHEMES

2.1. Legal basis, form of aid and objective

2.1.1. *Legal basis and form of aid*

(18) The legal basis of the schemes is the Swedish Act (1994:1776) on Excise Duties on Energy. The Swedish excise duty consists of two parts: an energy tax and a carbon dioxide (CO_2) tax.

(19) The aid, as approved by the Commission in the decisions SA.43302 and SA.49893, was granted in the form of a total exemption from the energy and CO_2 taxes in favour of

(a) food and non-food-based biogas used as motor fuel, and

(b) food and non-food-based biogas and other biofuels used for heating (collectively defined as the "tax exemptions").

([17]) EU:T:2022:853, para. 105.
([18]) EU:T:2022:853, para. 122.
([19]) EU:T:2022:853, para. 110, 112 and 126.
([20]) EU:T:2022:853, para. 127.
([21]) Cf. footnote 1.
([22]) Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17,6.10.1958, p. 385).

2.1.2. *Notified modifications to the schemes as approved in the decisions SA.43302 and SA.49893*

(20) Sweden notified i) the prolongation of the schemes until 31 December 2030 (only with respect to biogas for the heating fuel scheme), ii) the exclusion of food-based biogas; and iii) the inclusion of non-food-based bio-propane, in addition to non-food-based biogas. Sweden amended the existing legislation to introduce these changes. The new provisions entered into force on 1 January 2021.

(21) Biogas means gaseous fuels produced from biomass. In most cases, biogas is methane produced from biomass and bio-propane is propane or butane produced from biomass. This means that if not tax exempted, biogas would be taxed at the rate of fossil methane, that is natural gas, while bio-propane would be taxed at the rate of fossil propane, which is normally referred to as LPG (liquified petroleum gas).

(22) The heating fuel scheme as modified only includes non-food-based biogas and bio-propane and is no longer open to other biofuels. The former tax exemption for taxable bioliquids, such as non-synthetic methanol, animal and vegetable fats and oils was abolished in the Swedish legislation as from 1 January 2021.

(23) Sweden submitted that the scope of the amended schemes includes all technologies for the production of gas from sustainable biomass that are currently in competition.

(24) 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.

(25) To be eligible for the tax exemptions, the biogas and bio-propane must comply with the sustainability and greenhouse gas saving criteria as set out in the Swedish Act (2010:598) on sustainability criteria for biofuels, bioliquids and biomass fuels. This act implements the Renewable Energy Directive ("RED I") ([23]), as amended by the Indirect Land Use Change Directive ([24]) and was updated on 1 July 2021 to include the changes in the revised Renewable Energy Directive ("RED II") ([25]). Only non-food-based biogas and bio-propane complying with the applicable criteria are eligible for the tax exemptions. Unsustainable biogas and bio-propane (as well as food-based ([26]) biogas and bio-propane) are taxed at the rate of natural gas and LPG respectively.

(26) Sweden does not apply a quota system, blending obligation or any other system with similar effects for biogas and bio-propane used as motor fuel or used for heating, and has indicated that it does not intend to apply any such measure for the duration of the schemes.

(27) The Swedish authorities also confirmed that, in case of blending of biogas and bio-propane with other types of gas/fuel, the tax exemptions are applicable only to the renewable part of such mixtures.

([23]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140 5.6.2009, p. 16).

([24]) Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources (OJ L 239, 15.9.2015, p. 1).

([25]) 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. 82-209). The Commission notes that RED II was revised in 2023 and that the revised Directive EU/2023/2413 ("RED III") entered into force on 20 November 2023 (Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 (OJ L, 2023/2413, 31.10.2023, p.1)).

([26]) Based on Article 2(40) of RED II, "*'food and feed crops' means starch-rich crops, sugar crops or oil crops produced on agricultural land as a main crop excluding residues, waste or ligno-cellulosic material and intermediate crops, such as catch crops and cover crops, provided that the use of such intermediate crops does not trigger demand for additional land*".

2.1.3. *Objective*

(28) The primary objective of the schemes is environmental protection through the increased use of sustainable non-food-based biogas and bio-propane as motor and heating fuel. Sweden explains that, as the use of fossil fuels generates higher levels of greenhouse gas emissions, replacing natural gas with biogas and LPG with bio-propane will have the effect of reducing these emissions. Although Sweden exceeded its national renewables target for 2020, the Swedish authorities explained that a further reduction of such emissions would be instrumental to achieve the 2030 EU renewables target as well as the national target to reduce by 2030 the greenhouse gas emissions from domestic transport by at least 70% compared to 2010. In addition, the schemes should contribute to the efforts of Sweden and the EU as a whole to deliver on the Paris agreement.

(29) As regards the motor fuel scheme, the Swedish authorities added that the transport sector accounts for approximately one third of the total CO_2 emissions in Sweden. The Swedish authorities explained that an increased use of biogas and the introduction of bio-propane as motor fuel would be instrumental to reach Sweden's long term climate goals (e.g. Sweden aims to have zero net emissions of greenhouse gases into the atmosphere by 2045 and to achieve negative emissions thereafter) and the ambition of a fossil fuel free vehicle fleet. One way of decreasing the use of fossil fuels in Sweden is through increased substitution of fossil fuels by renewable gases such as biogas and bio-propane, which is the objective of the scheme.

(30) Based on energy statistics and forecasts of the Swedish Energy Agency ("SEA"), the Swedish authorities showed at the time of notification that the use of biogas has slightly increased since 2013 but that it still remains low, i.e. below 2% out of the total energy used in the transport sector, and is not expected to increase in a great extent in the next couple of years. The Swedish authorities explained that the cost of producing biogas is too high for these fuels to be able to compete with their equivalent fossil fuels. Certain investments in the production of biogas have already been made, but a significant demand for biogas is necessary to maintain and enable investments in the vehicles and the infrastructure required.

2.2. **Beneficiaries and taxpayers**

(31) The direct beneficiaries under the two schemes are as follows.

(32) Under the motor fuel scheme, the direct beneficiaries of the tax exemptions are the undertakings that are liable to pay energy and CO_2 taxes on gas and file a tax return (the "taxpayers"). They are fuel suppliers and importers of biogas (and bio-propane). Among them may also be biogas (and bio-propane) producers, to the extent they are fuel suppliers or final consumers. In short, the tax is due where the motor fuel leaves the last fuel warehouse before it is sold to final consumers. The taxpayers are exempted from the energy and CO_2 taxes on gas and then are expected to pass on the tax exemption benefit when selling the biogas (or bio-propane) to final consumers (e.g., a transport company or private person fuelling a vehicle at a gas station).

(33) Under the heating fuel scheme, the direct beneficiaries of the tax exemptions are the end users (e.g., companies active in the heating, district heating or manufacturing sectors). In this case, the end user may deduct the tax in its own tax declaration (if it is a taxpayer of the energy and CO_2 taxes), but it is also common that the end user acquires the gas inclusive of tax and applies for a refund.

(34) Both schemes aim at reducing the final price of biogas and bio-propane for end-consumers. The schemes also lower the costs of consumption for producers that produce biogas (and bio-propane) for their own use.

(35) While the direct beneficiaries of the schemes are the undertakings that claim the tax exemptions to the tax agency (either directly for the taxpayers or as a refund for the end users in the heating fuel scheme), the schemes indirectly benefit producers of sustainable biogas and bio-propane. They indirectly benefit from the schemes through an increased demand for their products (sustainable biogas or bio-propane) from final consumers.

(36) The schemes are open both to biogas and bio-propane produced in Sweden and imported biogas and bio-propane.

(37) The Swedish authorities have explained that the Swedish market is not a homogeneous market with the same characteristics. On the Swedish west coast, there is a gas grid which is connected to Denmark and hence to some other European countries. However, this European network covers only a very small part of the total land mass in Sweden. In other parts of Sweden, for instance in Stockholm, there are local networks. However, in most regions there are no gas networks at all. In those areas gas is distributed by trucks to supply stations. The Swedish authorities have further explained that a majority of the producers in Sweden are small producers who produce biogas for their own consumption (e.g. farmers using manure from their farm) or for just one or two customers (e.g. a local waste company using municipal waste and producing biogas for the district heating or a local bus company). These 'local markets' are to a negligible extent affected by the import of biogas, natural gas, or biogas production elsewhere in Sweden.

(38) To benefit from the tax exemptions, the direct beneficiary (taxpayer in the motor fuel scheme or end user in the heating fuel scheme) must provide a decision from the SEA demonstrating that the biogas and bio-propane that would benefit from the tax exemption are sustainable and non-food-based. Sweden has put in place a system of control whereby the direct beneficiaries receive a decision from the SEA confirming that the criteria of sustainability are met and that the biogas or bio-propane stems from non-food-based sources.

(39) The Swedish Tax Agency administrates the payment of the tax from the taxpayers and ensures, by checking *ex post* the monthly tax declaration and by doing regular audits, that the taxpayers are following the legal provisions concerning the applicable tax rates, the exemptions and other conditions laid down in the Swedish Act on Excise Duties on Energy. In case of a request for a refund, the Swedish Tax Agency conducts similar control and audit measures.

(40) The Swedish authorities have confirmed that the aid is granted automatically in accordance with objective and non-discriminatory criteria, is open to any undertaking that fulfils the eligibility criteria and that there is no room for any discretionary measures from the Swedish Tax Agency.

(41) With regards to the condition in point 131(d) of the EEAG, Sweden has confirmed that no aid would be granted after the plants are fully depreciated according to normal accounting rules.

2.3. **Aid level and monitoring of overcompensation**

(42) The tax exemptions are granted to compensate for the difference between the higher costs of sustainable non-food-based biogas and bio-propane and the costs of natural gas and LPG respectively.

(43) The schemes are subject to regular monitoring by the Swedish authorities. Sweden has committed to submit to the Commission annual monitoring reports and to adapt the aid levels, if necessary, to avoid any overcompensation in the future.

2.3.1. *Motor fuel scheme*

(44) The monitoring reports are based on detailed information collected by the SEA from the taxpayers, both in respect of domestically produced and of imported biogas. The SEA gathers data through a reporting obligation for taxpayers benefiting from the scheme, i.e. fuel suppliers, importers and producers (to the extent that the latter are taxpayers). Required information includes data on volumes and costs for production, imports or direct purchase of biogas. Producers provide data on their production costs and other reporting entities provide data on the purchase price of the biogas. For importers, this price corresponds to the actual purchase price including customs and shipping.

(45) The cost of biogas is determined by calculating a volume-weighted average between declared production, import and purchase costs. The cost of biogas is then compared to the cost of its fossil equivalent ([27]) (including taxes), adjusted for the content of energy ([28]).

([27]) For the cost of natural gas, the SEA bases itself on an annual average of the industrial customer prices (Source: Statistics Sweden).

([28]) In order to compare the price of the renewable fuel with its fossil counterpart an adjustment for the different energy content needs to be made. Natural gas has a higher energy content than biogas (11.05 kWh/L and 9.7 kWh/L respectively, based on SEA estimates).

(46) The Swedish authorities explained that other possible aid schemes that reduce the production costs or import and purchase prices would be reflected in the calculation. If the taxpayer is a producer, the aid granted at production level will be included in the costs reported (for instance in capital costs). If the taxpayer is a fuel supplier or importer, the aid granted at production level is likely to be reflected in the purchase or import prices reported.

(47) Sweden has submitted the results of the monitoring reports for biogas used as motor fuel for the years 2018 and 2019 ([29]), based on the methodology described in recitals (44) to (46). Table 1 shows that the cost of biogas without taxes is significantly higher than the cost of natural gas with taxes.

Table 1

Cost of sustainable biogas in Sweden for the years 2018 and 2019

	Biogas 2019		**Biogas 2018**	
	SEK/m ³	EUR ([1]) /m ³	SEK/m ³	EUR ([2]) /m ³
(A) Raw materials ([3])	7,10	0,66	4,96	0,46
(B) Labour costs	1,02	0,09	0,61	0,06
(C) Capital costs	1,35	0,12	0,77	0,07
(D) Processing costs and other costs ([4])	2,69	0,25	2,95	0,27
(E) Transport costs	1,25	0,12	0,73	0,07
(F) Sales of by-products ([5])	-	-	-	-
G) Total cost (without taxes) (A + B + C + D + E - F)	**13,42**	**1,24**	**10,02**	**0,93**
(H) Price adjusted for energy content ([6])	15,28	1,41	11,42	1,06
(I) Reference price of natural gas (including taxes) ([7])	6,73	0,62	7,30	0,68
(J) difference between the reference price of natural gas and price for biogas (H - I)	**+ 8,55**	**+ 0,79**	**+ 4,12**	**+ 0,38**

([1]) Calculated with official exchange rate of 1 October 2019: 10.8043 SEK/EUR (OJ C 331, 2.10.2019, p.5).
([2]) Calculated with official exchange rate of 1 October 2019: 10.8043 SEK/EUR (OJ C 331, 2.10.2019, p.5).
([3]) Row (A) shows the costs of raw materials for reporting entities that are producers, and the import or purchase prices at which they bought the biogas for reporting entities that are fuel suppliers or importers.
([4]) For business secret, the profit margin is included in row (D) Processing costs.
([5]) Sweden currently do not have a system for issuing Guarantees of Origin for biogas.
([6]) The total net costs for biogas for 2019 amounted to 13.42 SEK/m³. Adjusted for energy content (in K) that is (11.05/9.7) = 15.28 SEK/m³.
([7]) The reference price of natural gas includes the natural gas price, based on an average of the industrial customer prices for the year monitored produced by Statistics Sweden, the network charges and the CO_2 tax. The applicable tax rate for natural gas as motor fuel was 2.516 SEK/m³ in 2019 and 2.465 SEK/m³ in 2018 (source: Swedish Ministry of Finance). Natural gas used as motor fuel is not subject to the energy tax.

Source: The Swedish authorities. Based on the monitoring reports for 2019 and 2018 compiled by the SEA.

([29]) For 2018, 16 companies have provided data on biogas. For 2019, 13 companies have provided data on biogas.

(48) The Swedish authorities expect that the cost of sustainable biogas without taxes will remain higher than the cost of natural gas with taxes in the future.

(49) Sweden has explained that the rate of return for biogas in 2019 was around 10%. This rate is expected to remain stable for the duration of the scheme.

(50) The Swedish authorities have provided estimated costs only for biogas, given that bio-propane used as motor fuel did not yet exist in Sweden at the time of the initial notification on 1 April 2020.

(51) For bio-propane, Sweden estimates that the costs of bio-propane to be used as motor fuel are significantly higher than those of LPG. The Swedish authorities have committed that, as the market for bio-propane grows, a calculation will be made in the yearly monitoring report following a similar method as for biogas. The SEA will monitor the costs of bio-propane, compare such costs with the costs of LPG and adjust the level of aid, if necessary, to avoid overcompensation. If Sweden finds that the tax exemption goes beyond what is necessary for covering the difference between the costs of bio-propane and LPG, it will adjust the level of aid instead of granting a full tax exemption.

2.3.2. *Heating fuel scheme*

(52) The cost of biogas used in the monitoring reports on the heating fuel scheme is taken from the SEA's monitoring report on biogas used as motor fuel. Since biogas being consumed in heating or CHP (Combined heat and power) plants does not need to be as pure, the cost of upgrades is however deducted. The costs of emission allowances are also added to the calculation.

(53) Sweden has submitted the results of the monitoring reports for biogas used as heating fuel for the years 2018 and 2019.

Table 2

Cost calculation for biogas used for heating purposes in heat plants *according to monitoring reports for 2019 and 2018*

	Biogas 2019		**Biogas 2018**	
	SEK/MWh	EUR [1]/ MWh	SEK/MWh	EUR [1]/ MWh
A) Product price	1 106	102,4	729	67,5
B) Energy tax	-	-	-	-
C) Carbon tax	-	-	-	-
D) Cost for emission allowances (EU ETS [2])	67 [2]	6,2	59 [2]	5,5
E) Net total (A+B+C+D)	**1 173**	108,6	**788**	**72,9**
F) Reference price of natural gas [3]	703	65,1	761	70,4
G) Difference between the reference price of natural gas and production costs for biogas (E-F)	**+ 470**	**+ 43,5**	**+ 17**	**+ 1,6**

[1] Source: Based on the monitoring report for 2019 and 2018 compiled by the Swedish Energy Agency. Calculated with the exchange rate 10.8043 SEK/EUR according to the Official Journal 2019/C 331/05.

[2] Since at the time it was not possible for a plant connected to the natural gas grid to avoid the cost of emission allowances for biogas, this cost was included.

[3] Includes the price of natural gas (which corresponds to the average annual price of natural gas for industrial customers in Sweden without taxes - Eurostat), taxes (Energy tax and CO2 tax) and costs for emission allowances (EU ETS).

(Source – The Swedish authorities)

Table 3

Cost calculation for biogas used for heating purposes in CHP plants according to monitoring reports for 2019 and 2018

	Biogas 2019		Biogas 2018	
	SEK/MWh	EUR ([1])/ MWh	SEK/MWh	EUR ([1])/ MWh
A) Product price	1 106	102.4	729	67.5
B) Energy tax	-	-	-	-
C) Carbon tax	-	-	-	-
D) Cost for emission allowances (EU ETS[2])	67 ([2])	6.2	59 ([2])	5.5
E) Net total (A+B+C+D)	**1 173**	108.6	**788**	**72.9**
F) Reference price of natural gas ([3])	560	51.8	521	48.2
G) Difference between the reference price of natural gas and production costs for biogas [(F-E)	**+613**	**+56,.7**	**+267**	**+24.7**

([1]) Source: Based on the monitoring report for 2019 and 2018 compiled by the Swedish Energy Agency. Calculated with the exchange rate 10.8043 SEK/EUR according to the Official Journal 2019/C 331/05.
([2]) Since at the time it was not possible for a plant connected to the natural gas grid to avoid the cost of emission allowances for biogas, this cost was included.
([3]) Includes the price of natural gas (which corresponds to the annual average price of natural gas for industrial customers in Sweden without taxes - Eurostat), taxes (Energy tax and CO2 tax) and costs for emission allowances (EU ETS).
(Source – The Swedish authorities)

(54) Table 2 and Table 3 show that the difference between the total levelised costs of energy ('LCOE') for biogas and the market price of natural gas is positive, after taking into account the tax exemption, both for biogas used for heating purposes in heat plants and biogas used in CHP plants. Biogas used for heating purposes is more expensive than natural gas despite the tax exemptions.

(55) As far as the CO_2 tax is concerned, the Swedish authorities explained that on 1 August 2019, the carbon tax on natural gas was raised from 11 percent of general level to 91 percent in CHP plants falling under EU ETS. As from 1 January 2023 CO_2 tax is not levied in any heat plants falling under EU ETS. The lower energy tax has been raised from 30 percent to 100 percent. The tax levels and thus the price for natural gas used for heating in CHP are thereby the same as in heating plants. The tax change has not led to overcompensation (as shown in table 3 above).

(56) The Swedish authorities expect that the cost of sustainable biogas used for heating purposes without taxes will remain higher than the cost of natural gas with taxes in the future.

(57) Similarly to the motor fuel scheme (see recital (50)), because of the scarce presence of bio-propane on the Swedish market ([30]), the national authorities have no sufficient data on its costs. Based on information provided by two Swedish bio-propane producers, the Swedish authorities, however, estimate that the cost of bio-propane is nearly the double of that of fossil propane. The Swedish authorities have committed to include bio-propane in the annual monitoring reports as of the entry into force of the scheme, compare its production costs with the ones of fossil propane and adjust the aid, if necessary, to avoid overcompensation.

([30]) The Swedish authorities estimate that approximately 10 000 tonnes of bio-propane is currently being sold yearly on the Swedish market (less than 10% of all propane on the market).

2.4. **Budget and duration**

(58) Sweden requested a 10-year extension of the schemes, from 1 January 2021 until 31 December 2030.

(59) Following the annulment of the 2020 Decisions, the Swedish Tax Agency published a statement on 7 March 2023 stating that the agency can no longer grant exemption from tax for biogas or bio-propane. ([31])

(60) The tax exemptions are financed from the State budget in the form of foregone tax revenues.

(61) The Swedish authorities estimated the budget for the whole duration of the motor fuel scheme at approximately SEK 5.15 billion (EUR 477 million ([32])), with an annual budget of approximately SEK 0.47 billion (EUR 43 million). For the heating fuel scheme, the Swedish authorities estimated the total budget of the scheme between 1 January 2021 and 31 December 2030 at approximately SEK 5.94 billion (EUR 550 million).

2.5. **Cumulation**

(62) In general, the tax exemptions can be cumulated with aid, and notably aid to the production of sustainable biogas and bio-propane.

(63) In Sweden, investment aid that promotes sustainable biogas and bio-propane may be granted by several Swedish authorities under State aid schemes for research and innovation or environmental purposes under the General Block Exemption Regulation ("GBER"). ([33])

(64) In addition, operating aid may be granted for the promotion of sustainable biogas and bio-propane under the GBER.

(65) The Swedish authorities explained that aid amounts granted to producers of biogas and bio-propane are included in the monitoring, and thereby taken into account for the assessment of overcompensation.

(66) More precisely, the Swedish authorities explained that any aid granted to a producer, in Sweden or in another Member State, is taken into account in the monitoring of overcompensation either directly, when the reporting entity is a producer, or indirectly, when the reporting entity is a fuel supplier or importer (see recital (46)).

(67) Sweden confirmed that it complies with the requirements of Article 30 RED II and that it is currently working on the introduction in Sweden of the Union Database referred to in RED II and further developed in RED III. Sweden explained that, as this system was neither available when Sweden designed and notified the schemes, nor when the Commission has undertaken the present assessment, it was not possible so far to take into account information on support already received from the mass balance system documentation. Nevertheless, Sweden explained that when the Union Database is fully operational and the information therein comprehensive, this will not require any changes to the design of the schemes. This is because support granted to producers of biogas and bio-propane abroad is already considered indirectly through the support's effect on import prices in the monitoring, and thereby taken into account for the assessment of overcompensation (see recitals (65) and (66)).

([31]) https://www.skatteverket.se/foretag/skatterochavdrag/punktskatter/nyheterinompunktskatter/2023/nyheterinompunktskatter/beslutomskattebefriadbiogasochbiogasologiltigforklarat.5.48cfd212185efbb440b47b0.html.

([32]) Calculated with official exchange rate of 1 October 2019: 10.8043 SEK/EUR (OJ C 331, 2.10.2019).

([33]) 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).

2.6. **Transparency and other provisions**

(68) The Swedish authorities committed to comply with the transparency provisions under Section 3.2.7 of the EEAG and Section 3.2.1.4 of the 2022 Guidelines on State aid for climate, environmental protection and energy ("CEEAG") ([34]) and publish all required information on a website. ([35])

(69) The Swedish authorities explained that to be eligible for the tax exemptions under the schemes, the aid recipient may not be subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, or be a company in difficulty, as defined by the Rescue and Restructuring Guidelines. ([36])

2.7. **Grounds for initiating the procedure**

(70) The Commission adopted the Opening Decision on 30 January 2024.

(71) As explained in Section 3.3.1 of the Opening Decision, the Commission assessed the compatibility of the schemes with the internal market, from 1 January 2021 until 26 January 2022, on the basis of the conditions established in Sections 3.2 and 3.3 EEAG and from 27 January 2022, on the basis of the conditions established in Sections 3 and 4.1 CEEAG.

(72) In the light of the General Court's conclusions (see recitals (7) to (12)) that the Commission should have had doubts as to the compatibility with the internal market of certain aspects of the scheme and in light of the information provided by the Landwärme to the Commission (see section 2.7 of the Opening Decision), the Commission decided to initiate the formal investigation procedure.

(73) As highlighted by the General Court and based on information brought to its attention at the time of adoption of the annulled decisions, the Commission noted that imports from other countries, and notably from Denmark, appeared to have increased in the years preceding the notification of the prolongation of the schemes. In this light, the Commission questioned what the determinants of the growth of the biogas imports in Sweden were and whether this could be explained by the Swedish measures and the measures by certain other Member States, notably by Denmark. The Commission sought clarification on the impact of the combination of aid granted in Sweden under the schemes and aid granted by other Member States to biogas producers on the growth of imports in Sweden of biogas produced in other Member States, notably Denmark.

(74) Furthermore, the Commission raised doubts about the proportionality of the schemes in view of the potential cumulation of the aid granted under the schemes in question with the aid granted by Denmark to biogas producers. The Commission sought to clarify whether the alleged cumulation was for the same eligible costs and if so, whether this provided overcompensation in favour of producers that receive production aid in Denmark when they sell biogas in Sweden. The Commission also sought information from interested parties in case they might have concrete evidence that in their view would suggest overcompensation by the Swedish schemes to producers in cases where production aid is granted by another Member State.

([34]) OJ C 80, 18.2.2022, p.1.
([35]) https://www.tillvaxtanalys.se/statsstod.html and https://www.riksdagen.se/sv/Dokument-Lagar/.
([36]) Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

3. COMMENTS FROM INTERESTED PARTIES

(75) In total, six third parties submitted comments on the Opening Decision: Landwärme, the Danish Energy Agency (DEA), the Swedish Gas Association, the European Renewable Energies Federation (EREF), Eurogas (a gas association) and Green Gas Advisors (a German consulting firm).

(76) In its submission, Landwärme confirmed that the Opening Decision accurately reflects its submissions in the Court case and complaint of 13 October 2020, ([37]) and therefore referred in full to its previous arguments and confined itself to providing additional information.

(77) The comments submitted by the third parties are summarised below in the following categories: (i) comments on the determinants of the growth of biogas imports (see section 3.1), (ii) comments on alleged overcompensation (see section 3.2) and (iii) comments on other topics (see section 3.3).

3.1. Determinants of the growth of biogas imports

(78) As regards the determinants of the growth of biogas imports, the Swedish Gas Association submitted that as biogas is taxed equally in Sweden, irrespective of its origin, the tax exemption itself has no impact on the origin of the biogas consumed, but that aid granted in Denmark may have had an impact on the increase of biogas imports from Denmark. The Swedish Gas Association argued that there are also other factors that could have had an impact on the growth of biogas imports, E.g., the increases in the level of the CO2 and energy tax on fossil fuels for certain industries not included in the EU ETS that took place in 2015, 2016, 2018, 2021 and 2022 and that created a general increase in biogas demand in Sweden.

(79) In its comments to the Opening Decision, Landwärme provided updated data on the development of Swedish biomethane imports to evidence the distortive effect of the Swedish schemes. Landwärme explained that while the total biomethane used in Sweden increased by 145% since 2015, the production increased only by 17% in the same period (2015-2021), which in their view shows that the growth of biomethane use is therefore almost exclusively due to imports. Landwärme also submitted that between 2016 and 2020, exports of Danish biomethane to Sweden increased from 200 GWh to 1 400 GWh and that in 2020, these imports corresponded to almost 75% of Sweden's total imports. Lastly, Landwärme submitted that in 2021 2,291 GWh and in 2022 1,938 GWh were imported from Denmark, which corresponds to 95% in 2021 and 99% in 2022 of all biomethane imports in Sweden ([38]).

(80) Landwärme put forward that biomethane producers that cumulated two subsidies were able to use this overcompensation to offer their guarantees of Origin (GOs) in Sweden at more favourable prices than producers who do not receive production aid or have to repay the aid in the event of export, and as a result, forced Swedish biomethane producers and producers from other Member States out of the market. Landwärme further argued that while imports of double-subsidised biomethane rose consistently, the production of Swedish biomethane stagnated and could only be secured by further subsidies and that producers from other Member States that did not receive subsidies have been completely squeezed out of the Swedish market.

(81) EREF made a general statement that producers which received no subsidy have been forced out of the markets due to the competitive disadvantage created by the uncontrolled cross-border trade with subsidised biomethane.

([37]) See Section 2.7 of the Opening Decision.

([38]) Based on a report prepared by the Swedish Gas Association for the SEA. The report explains that there are no complete statistics on imports and exports of biogas, but the total biogas use in Sweden has so far been estimated in this report to be the biogas production and the net import of biogas via the West Swedish gas network (import minus export). The report does not explain how the Danish share is estimated (possibly based on GOs).

3.2. Alleged overcompensation

(82) The DEA confirmed that the relevant Danish biogas scheme is the one mentioned in recital (89) (b) of the Opening Decision, i.e. the scheme supporting the upgrading of biogas so that it can be injected into the gas grid. The DEA indicated that this scheme was approved by the Commission in 2013 ([39]) and that it closed for new applications in 2019 ([40]). The DEA confirmed that the description of the Danish biogas scheme and of Denmark's overcompensation test in Section 2.9 of the Opening Decision is correct. They explained that under the Danish biogas scheme, beneficiaries: (i) receive a uniform premium on top of the market price for natural gas; (ii) are entitled to receive and sell GOs and that all these revenues (from the sale of gas (i.e. the price of natural gas), the sale of GOs and the premium) are included in the annual financial statements of Danish biogas producers. The annual overcompensation assessment is based on information in the beneficiaries' financial statements on the scheme as a whole ([41]). The DEA submitted that this method considers the effects of the Swedish schemes, as the increased demand for biogas will be reflected in an increased income reported in the beneficiaries' annual financial statements. The DEA submitted that the annual overcompensation assessment it applies is rigorous as it is based on publicly available information vetted by accountants. The DEA further explained that Denmark performs the assessment ex post on a rolling three-year period. If the previous three-year period shows that the beneficiaries have been overcompensated, the premium will be adjusted downwards. The DEA indicated that the assessment carried out on the years 2018-2020 and 2019-2021 showed no overcompensation. The DEA added that for the first time the 2023 assessment indicated overcompensation in the period 2020-2022. This indicated overcompensation was primarily due to the surge in gas prices that occurred in this period. Consequently, Denmark reduced the premium in the following three years to correct for this.

(83) The Swedish Gas Association explained that for many years, Sweden has had a yearly control mechanism in place to detect possible overcompensation in Sweden and that so far, there has been no overcompensation for biogas. The Swedish Gas Association indicated that the monitoring reports reflect the costs for producing biogas in Sweden, including any aid granted to producers. The Swedish Gas Association further explained that for imported biogas the reports are based on import prices, as Sweden cannot monitor production costs or aid granted in other countries and that aid granted in other countries is in any case considered, since it will affect the price of biogas exported to Sweden.

(84) In addition, the Swedish Gas Association noted that if the combination of the schemes with the Danish production aid would lead to overcompensation for Danish producers, this would appear in the Danish control mechanism as the latter considers all costs and revenues, including the income related to sales of gas and GOs, as well as the Danish aid.

(85) In its comments, Landwärme submitted criticism on the calculation method applied by the Commission to determine the maximum permissible level of aid when assessing support schemes for biomethane, including the Swedish schemes, on two aspects. In Landwärme's view, it allows for overcompensation by not considering (1) revenues generated through the sale of GOs and (2) aid granted in other Member States. As regards the first point, Landwärme explained that the revenues generated from the sale of GOs provide profits for biomethane producers. As these profits allow the biomethane producers to (partially) compensate their costs for producing biomethane, they have to be taken into account when determining the maximum permissible level of aid, otherwise, the tax schemes can lead to an overcompensation. As regards the second point, Landwärme submitted that the calculation method applied by the Commission only considers national circumstances and overlooks cross-border trade. However, biomethane which is exported to other Member States may have already received aid in the country of origin. In these circumstances, the additional costs associated with the production of biomethane have already been partially or fully offset. The grant of an additional aid in the importing Member States can therefore lead to an overcompensation.

([39]) Commission decision of 14 November 2013 in case SA.35485 (2012/N) – Denmark, Aid for all forms of biogas use – A (OJ C 292, 4.9.2015, p.3).

([40]) See Sections 1 and 2 of act no. 1566 of 27 December 2019 (available in Danish here: https://www.retsinformation.dk/eli/lta/2019/1566.) and section 5 Executive Order no. 547 of 28 April 2020 (available in Danish here: https://www.retsinformation.dk/eli/lta/2020/547).

([41]) The Danish authorities explained that this assessment is based on the annual financial statements of representative beneficiaries, i.e. beneficiaries whose sole or primary activity is biogas related. In 2022 for instance, there were a total of 57 companies on the scheme, of which 49 representative companies have been identified, accounting for 96 % of the volume supported under the scheme.

(86) Landwärme provided a calculation to demonstrate that the cumulation of the Danish aid, the Swedish tax exemption and GOs leads to overcompensation of the Danish producers. Landwärme compared biomethane production costs of 67.5 EUR per MWh, according to Landwärme's market knowledge, with revenues composed of the physical gas value (13.27 EUR/MWh) and suggested that the difference already exceeds the Danish production aid (54.23 EUR/MWh vs 55.27 EUR/MWh). Landwärme then added the Swedish aid (29.56 EUR/MWh) and the revenue from GOs (not quantified). On this basis Landwärme claimed that the overcompensation amounts to the Swedish aid plus the GO price (as well as a small part of the Danish aid) ([42]).

(87) Finally, to ensure the absence of overcompensation, Landwärme recommended that Sweden excludes imported biomethane which has been subsidised in its country of origin from the scheme.

(88) According to GreenGasAdvisors, Denmark calculated the support for domestic producers to be sufficient with the combination of the injection support and the sale of GOs, therefore any additional support beyond the sale of GOs outside Denmark would overcompensate the production costs by compensating twice the physical methane.

(89) EREF and Eurogas made general comments on the fact that the cumulation of multiple aid schemes from different countries may lead to overcompensation and distortion on the EU market and that the Commission should, in its decisional practise, monitor the compatibility of aid with specific regard to cross-border aspects and the interplay between aid schemes. EREF expressed regrets that the CEEAG do not exclude the export of subsided green gas in the EU market.

3.3. **Other comments made by third parties**

3.3.1. *Accounting of RES targets*

(90) Some stakeholders alleged a potential infringement of RED II as regards the methods for accounting of RES targets that different Member States may apply and the potential double counting of the same unit of energy in RES targets linked with cross-border trade of subsidised biomethane.

3.3.2. *Feasibility of applying different tax rates*

(91) The Swedish Gas Association reacted on the General Court's possible indication that Sweden should or could apply different tax levels depending on the aid received in the different countries of origin ([43]).

(92) The Swedish Gas Association claimed that the Energy Taxation Directive ([44]) allows for different tax levels based on the biomass content but not on origin nor on production aid levels. Moreover, according to Article 110 TFEU Member States are not allowed to impose on imported products any kind of internal taxation in addition to that imposed on similar domestic products. Hence, to make the Energy Taxation Directive possibility to differentiate tax levels based on biomass content workable in practice, Member States must be able to apply the same level of tax reduction on imported and domestically produced products even though production costs and production aid levels differ from country to country, which is normally the case. The Swedish Gas Association concluded that it is reasonable that a viable method is used to detect and rectify any possible overcompensation in such situation, taking into account domestic production aid as well as aid granted to producers in other countries. The Swedish Gas Association argued that such method is used in Sweden, as described above.

([42]) Landwärme did not provide evidence to support the data used. The amount for the Swedish aid represents the total amount of the tax break, which assumes that the tax break is fully passed on to the producer.

([43]) EU:T:2022:853, para. 122.

([44]) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

3.3.3. *Additional remarks from Landwärme on cumulation of Swedish measures*

(93) In its comments to the Opening Decision, Landwärme also questioned the risk of overcompensation that may result from the Swedish production aid for Swedish biomethane producers. To Landwärme's understanding, this aid was never notified to the Commission despite it significantly impacting the assessment of the tax scheme. Landwärme submitted that Sweden should take this production aid into account when determining the level of aid of the tax scheme. Otherwise, the cumulation of both aids could lead to an overcompensation. Second, Sweden should ensure that the GO for biomethane for which biomethane producers have received a production aid cannot be exported unless the subsidy is fully repaid by the biomethane producer to Sweden. Otherwise, Swedish biomethane producers will be allowed to cumulate subsidies by exporting their GO. Finally, Sweden should ensure that the grant of a subsidy is indicated on the GO to preclude circumventions and to rule out the possibility of double subsidisation in another country in the event that the GO are exported.

4. COMMENTS FROM SWEDEN

(94) This section summarises the comments received from Sweden on 5 March 2024 on the Opening Decision and those received on 6 May 2024 on the comments from third parties.

4.1. Determinants of the growth of biogas imports

(95) Sweden explained that it has no empirical data on the impacts of the tax exemptions on volumes of imported biogas but believes that there is no correlation. Since biogas is taxed equally regardless of origin, the tax exemption itself has no impact on the origin of the biogas.

(96) Sweden acknowledged that the subsidies in Denmark may have had an impact on the imports into the Swedish market. However, Sweden notes that there may be other factors determining the increase in imports from Denmark since the gas market is international and complex.

(97) In reply to Landwärme's comments, Sweden explained that the price differences between e.g. Swedish, Danish and German biogas are not created, strengthened or neutralised by a tax exemption on the consumption of biogas where all biogas is treated equally. The tax exemption may (and is intended to) affect the end market price on biogas in relation to natural gas. The tax exemption will affect the amounts of biogas and natural gas consumed in Sweden in favour of the biogas. But as long as the tax exemption is equal for all biogas, the tax exemption will never be a reason behind the relative amounts of consumed biogas with respect to different countries of origin. As long as biogas producers in one Member State receive more production aid than producers in another Member State, the production cost of biogas in the first Member State will always be lower given that other production costs are similar. Furthermore, the production costs between two Member States or two producers may always differ, regardless of received aid. Sweden concludes that an equal tax exemption does not distort or exacerbate any existing distortions between biogas actors.

4.2. Alleged overcompensation

(98) Sweden submitted that control mechanisms are in place to monitor possible overcompensation in Sweden. The monitoring reports for 2018 and 2019 show that there has been no overcompensation and forecast that there should not be in the future. The monitoring reports reflect the costs for producing biogas in Sweden. As for imported biogas, calculations are based on the import prices, which reflect aid amounts granted to a producer in another Member State and GOs. Sweden explained that it cannot consider production costs for imported biogas: neither Sweden nor importers could have any knowledge of production costs or aid granted to producers in other countries.

(99) Furthermore, Sweden acknowledged that Denmark has a control mechanism, which includes in the funding gap analysis all revenues, including revenues from GOs. Sweden explained that when Danish producers sell biogas to Sweden, the export prices are reflected in the revenues in the same manner as the import prices are reflected as costs for the Swedish buyers. The Danish and Swedish mechanisms complement each other in this respect, and monitor possible overcompensation in each market.

(100) As regards the specific comments from Landwärme, Sweden clarified that:

(a) Any revenues from GOs are included in the Danish overcompensation test.

(b) The Danish overcompensation test takes into account all revenues, i.e. also the revenues by selling the gas abroad. Danish GOs and production aid are taken into account not only in the Danish test but also in the Swedish one, through import prices.

(c) Referring to the quantification provided by Landwärme (see recital (86)), the production costs shown are underestimated based on the information in the Swedish monitoring reports and do not reflect the actual cost of biogas for a Swedish importer (which is determined by market demand conditions).

(101) As regards Landwärme's recommendation that Sweden should exclude imported biomethane which has been subsidised in its country of origin from the scheme, Sweden argued that State aid rules do not forbid cumulation of aid and that this suggestion does not consider whether the cumulation of aid actually leads to overcompensation.

4.3. **Other comments**

4.3.1. *Accounting of RES targets*

(102) Sweden clarified that there is no double counting of the same unit of energy in RES targets linked with cross-border trade of subsidised biomethane in Sweden.

4.3.2. *Feasibility of applying different tax rates*

(103) Sweden reacted on the General Court's possible indication that Sweden should or could apply different tax levels depending on the aid received in the different countries of origin ([45]).

(104) Sweden contended that applying different tax rates based on the origin of the gas is not possible or reasonable for several reasons. Excise duties are indirect taxes connected to the products and cannot be set individually but should be equal for all users of the same goods for the same purposes. Also, the rationale for EU harmonised excise duties should not be to level out differences in production costs between goods from different Member States. Moreover, tax reductions are complementary with production aid, as they serve different purposes: respectively, to increase demand and production of biogas.

(105) Sweden further indicated that, in principle, under the Energy Taxation Directive energy products with the same CN Codes (which do not consider the country of origin) should have the same tax level. Sweden also noted that there is not an EU harmonised preference on how to support biogas: by finding that production aid in one Member State makes a tax exemption in another impossible, the Commission would be choosing a preferred means of support for all Member States, i.e., production aid.

(106) As a conclusion, Sweden stated that it would be more appropriate and efficient to require that production aid must not be granted to products that are exported, compared to requiring the application of separate excise duty rates based on the biogas' origin.

4.3.3. *Additional remarks from Landwärme on cumulation of Swedish measures*

(107) In this respect, Sweden clarified that the aid schemes referred to by Landwärme are implemented in accordance with GBER (see for instance SA.111255 and SA.112758). Sweden confirmed that, in line with the GBER requirements, any other aid, such as the tax exemption, are considered when the proportionate level of production aid in Sweden is determined which means that the alleged cumulation problem is already considered. Finally, Sweden clarified that for the time being, no GOs are issued to Swedish producers of biogas.

([45]) EU:T:2022:853, para. 122.

5. ASSESSMENT OF THE SCHEMES

5.1. Existence of aid

(108) Article 107(1) TFEU provides 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 internal market.

(109) In order to conclude if State aid is present, the Commission must assess whether the cumulative criteria of Article 107(1) TFEU (i.e., transfer of State resources and imputability to the State, selective advantage, potential distortion of competition and effect on intra-EU trade) are met for the measure under assessment.

(110) The Commission has already preliminarily concluded in the Opening Decision (see recitals (99) to (105) of the Opening Decision), that the schemes constitute State aid within the meaning of Article 107(1) TFEU.

5.1.1. *Imputability and State resources*

(111) The tax exemptions are established in the Swedish Act (1994:1776) on Excise duties (see recital (18)) and they reduce the State's tax income. They are therefore imputable to the State and financed through State resources.

5.1.2. *Selective advantage and beneficiaries*

(112) The direct beneficiaries of the schemes are the taxpayers in the motor fuel scheme and the end users in the heating fuel scheme (see recitals (32) and (33)). They are the ones that do not pay the tax that would normally be paid to the tax agency or the ones that ask the tax agency for a refund of the tax they have paid on sustainable non-food-based biogas and bio-propane.

(113) The schemes, however, also indirectly benefit producers of sustainable non-food-based biogas and bio-propane through an increased demand for their products (see recital (35)).

(114) The advantage is selective as it only concerns sustainable non-food-based biogas and bio-propane, which serve as substitute for natural gas and LPG.

5.1.3. *Effect on trade and impact on competition*

(115) Since biogas and bio-propane for transport and for heating are traded among Member States and serve as a substitute for fossil fuels, the tax exemptions are likely to affect trade between Member States and may distort competition.

(116) In particular, the South-western part of Sweden is connected to the European gas network via Denmark. Sweden therefore trades gas and biogas with neighbouring countries, and in particular with Denmark. There is also a regional gas network in Stockholm, fuelled with locally injected biogas and shipped LNG/LBG. The Commission, however, notes that for the rest, the Swedish biogas market is to a large extent off-grid with several local and regional grids or stand-alone biogas plants and filling stations (see recital (37)).

5.1.4. *Conclusion on the presence of State aid*

(117) Based on the above (see recitals (111) to (116)) and as held in previous decisions ([46]), the Commission concludes that the schemes constitute State aid within the meaning of Article 107(1) TFEU.

([46]) See for example recital (21) in Commission decision in case SA.43302 (2015/N) (OJ C 241, 01.07.2016, p. 6).

5.2. **Lawfulness of the aid**

(118) Although the schemes were notified by the Swedish authorities before being put into effect, the 2020 Decisions authorising the schemes were annulled by the General Court. The schemes must therefore be regarded as unlawful. ([47])

5.3. **Compatibility of the aid**

5.3.1. *Legal basis for assessment*

(119) Article 107(3)(c) TFEU provides that the Commission may declare compatible '*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*'. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activity (or area). ([48]) Furthermore, the aid should not distort competition in a way contrary to the common interest.

(120) As mentioned in recital (71), the Commission has assessed the compatibility of the schemes with the internal market, from 1 January 2021 until 26 January 2022, on the basis of the conditions established in Sections 3.2 and 3.3 EEAG and from 27 January 2022, on the basis of the conditions established in Sections 3 and 4.1 CEEAG.

5.3.2. *Assessment under the EEAG*

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

5.3.2.1.1. Development of an economic activity

(121) Under Article 107(3)(c) TFEU, in order to be capable of being considered compatible with the internal market, the measure must contribute to the development of certain economic activity (or area). ([49])

(122) The Commission notes that the schemes support, via tax exemptions, the consumption of sustainable biogas and bio-propane used as motor or heating fuels and thereby indirectly also the production of sustainable biogas and bio-propane (see recital (35)). The economic activity supported by the schemes is therefore sustainable biogas and bio-propane production.

(123) The objective of the schemes is to contribute to meeting the targets mentioned in recital (28).

(124) Therefore, the Commission concludes that the schemes facilitate the development of economic activities, as required by Article 107(3)(c) TFEU.

5.3.2.1.2. Incentive effect

(125) An aid measure has an incentive effect if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity pursued by the aid measure and if the change in behaviour would not occur without the aid. ([50]) This is the case, in particular, where the costs of the renewable energy exceed the market price of the form of energy concerned and the aid can help reduce these environmental extra costs.

([47]) See Article 108(3) TFEU and Judgment of 12 February 2008, *CELF*, C-199/06, EU:C:2008:79, paragraphs 61 to 64.
([48]) Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 20 and 24.
([49]) Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 20 and 24.
([50]) See, in that sense, points 49 and 120 of the EEAG, as well as judgment of 22 September 2020, *Republic of Austria v Commission*, C-594/18 P, EU:C:2020:742.

(126) As shown in Tables 1, 2 and 3, for taxpayers, the unit cost of biogas for motor or heat purposes is higher than the market price per unit of natural gas. Sweden explains that this is also the case for bio-propane. As mentioned in recitals (51) and (57), Sweden committed to include bio-propane in the annual monitoring reports and to compare its cost with the price of fossil propane and adjust the level of aid, if necessary, in order to avoid overcompensation. Furthermore, Sweden will adapt its annual monitoring reports for taking into account ETS exemptions for the biogas fraction used in heating and CHP plants in accordance with the monitoring and reporting requirements when adopted pursuant to Directive 2003/87/EC.

(127) Since the tax exemptions will encourage the use of sustainable biogas and bio-propane, they will also incentivise the production of these types of renewable fuels. The Commission therefore considers that aid will have an incentive effect according to point (49) of the EEAG.

5.3.2.1.3. Absence of breach of any relevant provision of Union law

(128) 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 non-severable violation of Union law. ([51])

(129) As mentioned in recital (25), Sweden will ensure that any aid under the schemes is granted only to biogas and bio-propane meeting the applicable EU sustainability and greenhouse gas emission criteria, as set out in RED I and RED II.

(130) In compliance with point (113) of the EEAG, Sweden has also confirmed that no aid will be granted under the schemes to food-based biofuels (see recital (20)).

(131) As the schemes concern excise duty exemptions for energy products, the Commission also assessed its compliance with the Energy Taxation Directive.

(132) Article 16(1) of the Energy Taxation Directive allows Member States to apply an exemption or a reduced rate of taxation to biofuels. Article 16(2) limits the exemption or reduction in taxation to the part of the product that actually derives from biomass, which is the case under the schemes (recital (27)), as the tax exemption only applies to the part of biogas and bio-propane.

(133) Furthermore, the schemes also comply with Article 16(3) of the Energy Taxation Directive which states that the exemption or reduction in taxation applied by Member States shall be adjusted to take account of changes in raw material prices to avoid over-compensating for the extra costs involved in the manufacture of the products. The Commission notes that Sweden monitors annually the prices of the relevant products and, if needed, adjusts the aid levels to avoid the risk of overcompensation in the future (see recital (43)).

(134) As stated in recital (36), the exemption of excise duty is applicable regardless of the origin of the biogas or bio-propane and therefore is in line with the free movement rules. The fiscal regime applicable for excise duties to energy imported by other Member States must be made in compliance with Directive 2008/118/CE concerning the general arrangements for excise duty and repealing Directive 92/12/EEC. ([52])

(135) As regards the comment from third parties on the accounting methodology of RES targets (see recital (90)), the Commission considers that such methodological questions neither affect the object of the aid measure, namely the promotion of biogas or bio-propane as such, nor do they relate to modalities of an aid measure so indissolubly linked to the object of the aid that it is impossible to evaluate them separately. Therefore, the Commission does not assess this point in the context of this State aid decision.

([51]) Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

([52]) And from 13 February 2023 with Directive 2020/262/EU replacing Directive 2008/118/CE (Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast) (OJ L 058 27.2.2020, p. 4)).

(136) Therefore, the Commission concludes that the schemes do not infringe relevant provisions of Union law.

5.3.2.2. Negative condition: the aid measure must not unduly affect trading conditions to an extent contrary to the common interest

5.3.2.2.1. The market affected by the aid

(137) The market affected by the aid is the market of sustainable biogas and bio-propane in Sweden and in the EU.

5.3.2.2.2. The positive effects of the aid measure

(138) As indicated in section 5.3.2.1.1, the measure contributes to the development of certain economic activity, i.e. the production of sustainable biogas and bio-propane. The promotion of the development of renewable energy is one of the aims of the Union's policy on energy.

5.3.2.2.3. The negative effects of the aid measure on the internal market: the aid measure minimizes the distortions on competition and trade

5.3.2.2.3.1. Need for State intervention

(139) According to subsection 3.2.2 of the EEAG, the Member State needs to demonstrate that there is a need for the State intervention and in particular that the aid is necessary to remedy a market failure that otherwise would remain unaddressed. In the case of the production of renewable energy, the Commission presumes that a residual market failure remains, which can be addressed through aid for renewable energy, for the reasons set out in point (115) of the EEAG.

(140) Without State intervention, biogas and bio-propane would have the same tax rates as their fossil counterparts, natural gas and LPG respectively. As shown in tables 1 to 3, without State intervention, biogas and bio-propane used as motor or heating fuels would be more expensive than their fossil equivalent. The Commission considers that they would therefore not be sold to the extent needed to contribute to the environmental goals which constitutes the objective of the schemes. On this basis, the Commission concludes that the aid is necessary.

(141) In addition, as stated in recital (26), Sweden has confirmed that the biogas and bio-propane supported under the schemes would not be subject to a quota system, blending obligations or other systems with similar effect. Point (114) of the EEAG is therefore complied with.

5.3.2.2.3.2. Appropriateness

(142) According to point (40) of the EEAG, the proposed measure must be an appropriate instrument to address the policy objective concerned. According to point (116) of the EEAG, the Commission presumes the appropriateness and limited distortive effects of aid granted by Member States to achieve their climate change and sustainability targets, provided that all other compatibility conditions are met.

(143) The Commission notes that tax exemptions encourage the consumption of sustainable biogas and bio-propane and thereby foster their production. The objective of the schemes is to contribute to meeting the national and EU targets mentioned in recital (28).

(144) The Commission considers that aid in the form of a tax reduction is in principle an appropriate instrument to incentivise the consumption of renewable energy, provided all other compatibility conditions are met.

5.3.2.2.3.3. Proportionality (including cumulation)

5.3.2.2.3.3.1. Proportionality

(145) According to point (131) of the EEAG, operating aid granted to energy from renewable sources other than electricity needs to meet the following cumulative conditions:

(a) The aid per unit of energy does not exceed the difference between the total levelised costs of producing energy ("LCOE") from the particular technology in question and the market price of the form of energy concerned (no overcompensation).

(b) The LCOE may include a normal return on capital. Investment aid is deducted from the total investment amount in calculating the LCOE.

(c) The production costs are updated regularly, at least every year.

(d) Aid is only granted until the plant has been fully depreciated according to normal accounting rules in order to avoid that operating aid based on LCOE exceeds the depreciation of the investment.

(146) On the condition in point 131(c) of the EEAG, the Commission notes that the schemes are subject to regular monitoring by the Swedish authorities. Sweden has confirmed that it will continue to monitor the market for motor and heating fuels and that monitoring reports will be compiled and sent to the Commission regularly. These reports will include updated cost calculations for biogas (and calculations for bio-propane if such a market develops). Sweden has also committed that in case the costs evolved to risk an overcompensation, the aid levels would be adapted accordingly. The Commission considers that the condition in point 131(c) of the EEAG is therefore met.

(147) As mentioned in recital (41), Sweden has confirmed that no aid would be granted after the plants are fully depreciated according to normal accounting rules. The Commission considers that the condition in point 131(d) of the EEAG is therefore met.

(148) On the condition in point 131(a) of the EEAG, Sweden has explained that its monitoring reports for 2018 and 2019 show that there has been no overcompensation for biogas, and forecasts show that it should not occur in the future. The results of the monitoring reports compiled by the SEA provided in Tables 1, 2 and 3 indicate that there is still a price difference between natural gas and biogas to the detriment of biogas, regardless of the tax exemption granted.

(149) As far as point 131(b) of the EEAG is concerned, the Swedish authorities submitted that the rate of return for biogas in 2019 was around 10%, which has been considered as a reasonable rate of return for the industry. Sweden committed to monitor yearly the return on investment and adjust the aid level if necessary.

(150) Therefore, the Commission concludes that the requirement of point (131) of the EEAG are complied with.

5.3.2.2.3.3.2. Cumulation

(151) Following Section 3.2.5.2. of the EEAG, aid may be awarded concurrently under several aid schemes or cumulated with ad hoc aid, provided that the total amount of State aid for an activity or project does not exceed the limits fixed by the aid ceilings laid down in the EEAG.

(152) The Commission notes that it is not excluded that a producer may receive production aid and that its production may then be exempted from energy and CO_2 taxes in Sweden, to the extent that it meets the eligibility conditions detailed in section 2.2.

(153) The Commission notes that such support is granted at different stages of the supply chain and has different direct beneficiaries. Production aid intervenes at the first stage (production) and the Swedish tax exemptions schemes intervene at the last stage (consumption). The aim of production support is to encourage investment in biogas production by providing producers higher or more stable revenues than the market would normally provide. The aim of a consumption scheme is to reduce the price of biogas for end consumers so that they choose to buy biogas over natural gas.

(154) As considered by the General Court ([53]), the tax exemptions in Sweden have no impact on production cost. They could result in an increase in demand which could in turn result in increased revenues for the producer. At the same time, as also considered by the General Court ([54]), biogas that received a production subsidy would enable the producer to sell biogas at a price that can compete with natural gas.

5.3.2.2.3.3.2.1. Cumulation with production aid at national level

(155) As seen in section 2.5, the Swedish authorities explained that cumulation between the tax exemptions and measures granting investment or operating aid to biogas/bio-propane producers is possible. They also explained that aid amounts that may have been granted to producers of biogas/bio-propane in Sweden will be included in the costs reported and thereby taken into account for the compensation monitoring by the SEA.

(156) As regards the comments from Landwärme on the cumulation with Swedish production aid schemes (see recital (93)) and in view of the replies provided by Sweden (see recital (107)), the Commission does not identify any relevant issue related to the cumulation of the tax schemes and other Swedish production aid schemes. The Commission notes that on the one hand the potential production aid is considered in the overcompensation test carried out in the context of the tax schemes (see recitals (65) and (66)), and that on the other hand, Sweden ensures that the cumulation requirements of the GBER are complied with when granting production aid under the GBER (see recital (107)).

(157) On this basis, the Commission concludes that the schemes are in line with Section 3.2.5.2. of the EEAG, in the case of cumulation with that production aid at national level. ([55])

5.3.2.2.3.3.2.2. Cumulation with production aid in certain Member States

(158) As explained in the Opening Decision, the Commission had received information from Landwärme showing that the amount of biogas from Denmark had continuously increased in Sweden between 2015 and 2019.

(159) Following the Opening Decision, the comments received from third parties as well as from Sweden indicate that there has been an increase in Sweden of the imports of biogas from Denmark in the years preceding the notification of the prolongation of the schemes and after the adoption of the 2020 Decisions.

(160) Landwärme provided additional data on this fact (see recital (79)). Landwärme put forward that biomethane producers that cumulated two subsidies were overcompensated and used this overcompensation to force Swedish biomethane producers and producers from other Member States out of the Swedish market (see recital (80)).

(161) The Swedish Gas Association as well as Sweden consider that although the subsidies in Denmark may have had an impact on the imports to the Swedish market, there are other factors that may have had an impact (see recitals (78) and (96)).

(162) On this basis, the Commission considers that it cannot be excluded that the aid granted in Denmark may have had an impact on the increase of biogas imports from Denmark in Sweden. However, the Commission also considers that the evidence provided does not allow to infer from this development that there is a causal link to overcompensation. This development may have simply been the effect of more biogas production facilities in Denmark, which is the aim of the production aid in Denmark, and hence increased supply.

([53]) EU:T:2022:853, para. 25.
([54]) EU:T:2022:853, para. 25.
([55]) EU:T:2022:853, para. 89-91 and 108.

(163) The Commission further understands that Landwärme's reasoning is based on GOs (allowing to trace back the origin). Cross-border trade of biomethane is as a general rule based on certificates. Once biogas is injected into the gas grid, it is indistinguishable from natural gas. GOs issued for the purposes of RED II have the sole function of showing to a final customer that a given share or quantity of energy was produced from renewable sources. GOs are tradable. GOs have a market value that should be taken into consideration for the relevant support schemes. ([56])

(164) Therefore, the relevant question is not whether the GOs are traded but whether they (as well as other sources of revenue) are included in the overcompensation test(s).

(165) The Commission notes that both Sweden and Denmark carry out overcompensation tests. The Commission will begin its assessment with the Danish overcompensation test.

(166) As confirmed by the Danish authorities (see recital (82)), for the aid scheme SA.35485 ([57]), Denmark carries out an annual overcompensation assessment. The calculation is based on the annual financial statements of the beneficiaries and takes into account all costs and revenues, including among other things income related to the sales of gas and GOs, as well as the Danish aid. Denmark performs the assessment on a rolling three-year period. If the previous three-year period shows that the beneficiaries of the Danish support scheme for biomethane have been overcompensated, the aid level is reviewed and adapted by the national authorities. This is what happened following the 2023 assessment as explained by Denmark. The Danish authorities added that this method considers the effects of the Swedish schemes, as an increased demand for biogas will be reflected in an increased income reported in the annual financial statements.

(167) The Commission considers that the test carried out by Denmark is well designed to ensure the absence of overcompensation in the Danish scheme (and to take appropriate corrective measures in case of overcompensation). In 2020-2022, the Commission carried out itself a monitoring exercise on the aid scheme SA.35485 and took a close look at the overcompensation test carried out by Denmark. Therefore, the Commission can confirm the Danish arguments.

(168) The Commission notes that the Danish overcompensation test takes into account all revenues, including the potential revenues from the sale of GOs as well as any possible impact of aid granted in other Member States on the Danish producers' revenues. The Commission had already pointed out in the Opening Decision that the Danish calculation takes into account all revenues, notably income related to sales of gas and GOs (see recital (95) of the Opening Decision), contrary to Landwärme's statement. In response to the Opening Decision, neither Landwärme nor any other interested party provided evidence that this would be factually wrong.

(169) As regards the Swedish tax schemes at stake, the Swedish Gas Association and Sweden explained that the monitoring reports reflect the costs for producing biogas in Sweden, including any aid granted to producers. As for imported biogas, calculations are based on the import prices, which reflect aid amounts granted to a producer in another Member State as well as the price of GOs. Sweden explained that it cannot consider production costs for imported biogas: neither Sweden nor importers could have any knowledge of production costs or aid granted to producers in other countries (see recitals (83) and (98)).

(170) The Commission notes that the Swedish test is based on the price that the fuel supplier faces, because this is where the tax is levied. The Swedish test is designed such that the average price of biogas remains still higher than the average price of natural gas on the Swedish market, even with the tax exemption. When the biogas is imported, its price on the Swedish market corresponds to the import price (e.g. the price paid to the Danish producer (and included in the Danish test) and costs incurred by the importer (e.g. transport costs)).

([56]) See article 19 of RED II: '*Member States shall ensure that when a producer receives financial support from a support scheme, the market value of the guarantee of origin for the same production is taken into account appropriately in the relevant support scheme*'.

([57]) Commission decision of 14 November 2013 in case SA.35485 (2012/N) – Denmark, Aid for all forms of biogas use – A (OJ C 292, 4.9.2015, p.3).

(171) Landwärme considers that the calculation method used by the Commission in its compatibility assessment for biomethane aid schemes, including the Swedish schemes, allows for overcompensation by not considering revenues generated through the sale of GOs and aid granted in other Member States (see recital (85)).

(172) EREF, Eurogas and GreenGasAdvisors also raised general concerns regarding the risk of overcompensation due to the potential cumulation of multiple schemes' aids in case of cross-border trade (see recitals (88) and (89)).

(173) The Commission considers that in the present case the risk of overcompensation is appropriately addressed through the combination of the Swedish and the Danish overcompensation tests. The Danish and Swedish mechanisms complement each other and allow to ensure that there is no overcompensation taken together when assessing the compatibility of the Swedish measure.

(174) In particular, the Danish test already addresses overcompensation of Danish biomethane producers appropriately, by including GO revenues and any revenues resulting from cross-border trade. On the Swedish side, the test satisfactorily takes into account cross-border trade and potential production aid received in other Member States as the test is not based solely on domestic production but also includes imported biogas. Moreover, the aid granted in other countries is considered, since it will affect the price of biogas imported to Sweden (which is taken into account in the Swedish test).

(175) As regards the calculation provided by Landwärme with the aim to show the overcompensation of Danish producers (see recital (86)), the Commission notes that the calculation is driven by assumptions and is based on a misunderstanding of the overcompensation test that Denmark performs. Landwärme assumed that the Danish production aid is the difference between the biogas production cost and the price for natural gas and then added the Swedish tax rebate (assuming the entire rebate was passed on to Danish producers) as well as the GO price. On the contrary, the test performed by Denmark is based on actual financial data from Danish producers with *all* revenues and costs, as already described in recital (95) of the Opening Decision. This implies that potential extra revenues to Danish producers due to the Swedish tax break ([58]) as well as from selling GOs are included in the overcompensation test and are therefore deducted from the Danish production aid. The Commission therefore cannot conclude that it has received evidence of overcompensation arising from the Swedish schemes to producers in cases where production aid is granted by another Member State (see recital (231) of the Opening Decision). Specifically, the calculation presented by Landwärme does not invalidate the above findings that overcompensation in Denmark is adequately addressed.

(176) In their comments, some third parties, including Landwärme, proposed that Sweden excludes imported biomethane which has been subsidised in its country of origin from the schemes (see recital (87)). As a reply to this suggestion, Sweden stated that State aid rules do not forbid cumulation of aid and that this suggestion does not consider whether the cumulation of aid actually leads to overcompensation (see recital (101)). Moreover, Sweden noted that there is not an EU harmonised preference on how to support biogas: by finding that production aid in one Member States makes a tax exemption in another impossible, the Commission would be choosing a preferred means of support for all Member States, i.e., production aid (see recital (105)). In line with point 56 CEEAG, the Commission notes that cumulation of aid in relation to the same eligible costs is possible provided that the total amount of aid for a project or activity does not lead to overcompensation. The Commission also refers to point 93 CEEAG which states that given the scale and urgency of the decarbonisation challenge, a variety of instruments, including direct grants, may be used. In the current case, the Commission understands that this suggestion from Landwärme is proposed as a way to address overcompensation. The Commission would therefore only have to assess this as a relevant point in case it had found evidence of overcompensation. The same applies to whether different levels of taxation might be applied or not (see recitals (91) and (92) and (103) to (106)).

([58]) As mentioned in footnote 49, Landwärme is simply assuming that Danish producers would receive the full value of the tax break granted to end consumers in Sweden.

5.3.2.2.3.3.2.3. Conclusion on cumulation

(177) Based on the above, the Commission concludes that the schemes comply with Section 3.2.5.2. of the EEAG.

5.3.2.2.3.3.3. Conclusion on proportionality (including cumulation)

(178) In light of the conclusions in recitals (157) and (177), the Commission concludes that the schemes are proportionate.

5.3.2.2.4. Weighing up the positive effects of the aid with the negative effect on the internal market

(179) The negative effects of the measure on competition and trade must be sufficiently limited, so that the overall balance of the measure is positive. The Court of Justice has clarified that in order to assess whether a measure adversely affects trading conditions to an extent contrary to the common interest, the Commission must weigh up the positive effect of the planned aid for the development of the activities that aid is intended to support and the negative effects that the aid may have on the internal market. ([59])

(180) On the positive side of the balance, the Commission notes that the measure supports the consumption of sustainable biogas and bio-propane and thereby facilitates the development of sustainable biogas and bio-propane production. Moreover, the aid should induce positive indirect effects in terms of environmental gains.

(181) In this regard, the Commission notes that the promotion of the development of renewable energy is one of the aims of the Union's policy on energy pursuant to Article 194 TFEU. Moreover, point (30) of the EEAG recognises that an increased level of environmental protection may be attained through a shift to a low carbon economy with a significant share of variable energy from renewable sources.

(182) As explained in recital (30), the cost of producing biogas is too high for these fuels to be able to compete with their equivalent fossil fuels without aid.

(183) On the negative side of the balance, the Commission notes that the schemes provide an indirect advantage to sustainable biogas and bio-propane producers, to the exclusion of other fuels producers.

(184) Point (116) of the EEAG establishes a presumption that aid to energy from renewable sources has limited distortive effects provided all other compatibility conditions are met.

(185) On this basis, the Commission concludes on the absence of undue negative effects on competition and trade between Member States.

5.3.2.3. Transparency

(186) Member States are required under Section 3.2.7 of the EEAG to publish certain information related to the beneficiaries of aid. Sweden will continue complying with these provisions and to publish the relevant information on a website (see recital (68)).

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

(187) As seen in recital (69), the Swedish authorities will continue ensuring that no aid will be granted to firms in difficulty or to those which are subject to an outstanding recovery order following a previous Commission decision declaring an aid measure illegal and incompatible with the internal market, in compliance with points (16) and (17) of the EEAG.

([59]) Judgement of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 101.

5.3.2.5. Conclusion on the compatibility of the schemes

(188) 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 provisions of EEAG.

5.3.3. *Assessment under the CEEAG*

(189) Following the adoption of the CEEAG, the Commission has assessed the compatibility of the schemes on the basis of the CEEAG for the period from 27 January 2022. 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).

(190) The Commission has assessed the schemes 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.

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

5.3.3.1.1. 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

(191) 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.

(192) The Commission notes that the schemes support, via tax exemptions, the consumption of biogas and bio-propane used as motor or heating fuels and thereby indirectly also the production of biogas and bio-propane, therefore contributing to the development of this economic activity (see recital (35)). As explained in recital (28), Sweden considers that by promoting the use of sustainable renewable fuels, the schemes contribute to meeting the EU and national targets mentioned.

(193) In compliance with point 80 CEEAG, Sweden has confirmed that the supported fuels will be compliant with the sustainability and greenhouse gases emissions saving criteria in RED II and its implementing or delegated acts (see recital (25)).

(194) The Commission therefore considers that the schemes comply with the requirements of Section 3.1 and of point 80 CEEAG.

5.3.3.1.2. Incentive effect

(195) 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. ([60])

(196) 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. 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 net present value 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.

([60]) 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.

(197) In the schemes, the Commission notes that the factual scenario is the consumption of sustainable biogas or bio-propane and the counterfactual scenario is the consumption of the equivalent fossil fuel.

(198) In this context, the Commission considers that, in line with point 110 CEEAG, the relevant applicable quantification for the schemes 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 biogas (or bio-propane) and the costs of the equivalent fossil fuel.

(199) As demonstrated in Tables 1, 2 and 3, the costs of sustainable biogas for motor or heat purposes are higher than the costs of the natural gas. The aid contributes to reducing those extra costs. The Commission therefore considers that the tax exemptions will encourage the use of sustainable biogas (and bio-propane ([61])) and, as a consequence, will also indirectly incentivise the production of these types of renewable fuels.

(200) On this basis, the Commission considers that the requirements in points 26 to 28 CEEAG are fulfilled.

(201) 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.

(202) As stated in recital (40), 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 schemes are the successor of existing fiscal schemes so that the activity was already covered by the previous schemes. Therefore, the requirements in point 31 CEEAG are fulfilled.

(203) Therefore, the Commission concludes that the aid under the schemes has an incentive effect.

5.3.3.1.3. No breach of any relevant provision of Union law

(204) 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. ([62])

(205) In the present case, the Commission has assessed, in particular, whether the schemes contravene any relevant Union legislation in the energy sector. The Commission notes that aid under the schemes to support the relevant products will be granted in compliance with the sustainability and greenhouse gas emissions reductions criteria laid down in RED II (see recital (25)).

(206) As the measure concerns excise duty reductions and exemptions for energy products, the Commission has also to assess its compliance with the Energy Taxation Directive.

([61]) For bio-propane, Sweden committed to provide monitoring report and adjust the level of aid is necessary to avoid overcompensation.
([62]) Point 33 CEEAG, and Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

(207) Article 16(1) of the Energy Taxation Directive 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 (27)).

(208) Furthermore, the measure also complies with Article 16(3) of the Energy Taxation Directive which states that the exemption or reduction in taxation applied by Member States shall be adjusted to take account of changes in raw material prices to avoid over-compensating for the extra costs involved in the manufacture of the products. The Commission notes that Sweden monitors annually the prices of the relevant products and, if needed, adjusts the aid levels to avoid the risk of overcompensation in the future (see recital (43)).

(209) As regards the comment from third parties on the accounting methodology for RES targets (see recital (90)), the Commission considers that such methodological questions neither affect the object of the aid measure, namely the promotion of biogas or bio-propane as such, nor do they relate to modalities of an aid measure so indissolubly linked to the object of the aid that it is impossible to evaluate them separately. Therefore, the Commission does not assess this point in the context of this State aid decision.

(210) In light of the above, the Commission has no indication that neither the schemes, nor the conditions attached to them, entail a non-severable violation of relevant Union law. The Commission therefore concludes that the requirements of point 33 CEEAG are fulfilled.

5.3.3.1.4. Conclusion

(211) The Commission concludes that the schemes fulfil 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.

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

5.3.3.2.1. Necessity of the aid

(212) 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.

(213) Sweden has confirmed that the biogas and bio-propane supported under the schemes are not subject to a quota system, blending obligations or other systems with similar effect (see recital (16)).

(214) Without State intervention, biogas and bio-propane would be subject to the same tax rates as their fossil counterparts, natural gas and LPG respectively. As shown in tables 1 to 3, without State intervention, biogas and bio-propane used as motor or heating fuels would be more expensive than their fossil equivalent. The Commission considers that they would therefore not be sold to the extent needed to contribute to the environmental goals which constitutes the objective of the schemes.

(215) For the duration of the schemes' 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 (43)).

(216) On this basis, the Commission concludes that the aid is necessary.

5.3.3.2.2. Appropriateness

(217) 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.

(218) The Commission notes that tax exemptions encourage the consumption of sustainable biogas and bio-propane and thereby foster their production.

(219) The Commission considers that aid in the form of a tax reduction is in principle an appropriate instrument to incentivise the consumption of renewable energy, provided all other compatibility conditions are met.

5.3.3.2.3. Eligibility

(220) 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.

(221) The Commission notes that the schemes are open to non-food-based biogas and bio-propane used as motor or heating fuel that comply with the sustainability and greenhouse gases emission reduction criteria of RED II (see recital (25)).

(222) The Commission also notes that the schemes include all technologies that are currently in competition (see recital (23)).

(223) As mentioned in recital (24), 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.

(224) The Commission therefore considers that the requirements of section 4.1.3.3 CEEAG on eligibility are complied with.

5.3.3.2.4. Proportionality (including cumulation)

5.3.3.2.4.1. Proportionality

(225) According to point 47 CEEAG, 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.

(226) According to point 110 CEEAG, 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.

(227) Sweden has confirmed that the aid, framed as a general tax reduction, is open to any undertaking which fulfils the eligibility criteria (see recital (40)).

(228) The Commission notes that the schemes do 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 biogas/bio-propane.

(229) Sweden explained the tax exemptions are granted to compensate for the difference between the higher costs of sustainable non-food-based biogas and bio-propane and the costs of natural gas and LPG respectively (see recital (42)). The scheme is subject to regular monitoring by the Swedish authorities. Sweden has committed to submit to the Commission annual monitoring reports and to adapt the aid levels, if necessary, to avoid any overcompensation in the future (see recital (43)). The monitoring reports are based on detailed information collected by the SEA from the taxpayers, both in respect of domestically produced and of imported biogas (see recital (44)).

(230) As shown in recitals (47) and (54), the Swedish authorities explained that the tax reductions do not exceed the difference between the cost of sustainable biogas and bio-propane and the cost of natural gas.

(231) The Commission notes that all main costs are taken into account in the calculation. Moreover, revenues from the sales of by-products are included in the calculation. Sweden has however indicated that there is no system of guarantees of origin in place in Sweden for biogas (see Tables 1, 2 and 3).

(232) 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 RED II.

(233) Sweden has confirmed that it complies with the requirements of Article 30 RED II and that it is currently working on the introduction in Sweden of the Union Database referred to in RED II and further developed in RED III (see recital (67)). The Commission notes that this system was neither available when Sweden designed and notified the schemes, nor when the Commission has undertaken the present assessment, and therefore it was not possible to take into account information from the mass balance system documentation. Nevertheless, Sweden has explained that when the Union Database is fully operational and the information therein comprehensive, this will not require any changes to the design of the schemes, as support granted to producers of biogas and bio-propane abroad is already considered in the monitoring through import prices, and thereby taken into account for the assessment of overcompensation. Therefore, the Commission takes the view that the requirements of point 111 CEEAG are without impact on its assessment of the schemes.

(234) Therefore, the Commission concludes that the requirements of section 4.1.3.5 CEEAG are complied with.

5.3.3.2.4.2. Cumulation

(235) According to point 56 CEEAG, aid may be awarded concurrently under several aid schemes or cumulated with ad hoc or de minimis aid in relation to the same eligible costs, provided that the total amount of aid for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under these guidelines. If the Member State allows aid under one measure to be cumulated with aid under other measures, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point.

(236) As the point on cumulation and the assessment as regards potential overcompensation is common to both guidelines, the Commission refers here to its assessment in section 5.3.2.2.3.3.2.

(237) Similarly to its conclusion in recital (177), the Commission concludes that the schemes comply with Section 3.2.1.3.1 of the CEEAG.

5.3.3.2.4.3. Conclusion on proportionality (including cumulation)

(238) In light of the conclusions in recitals (234) and (237), the Commission concludes that the schemes are proportionate.

5.3.3.3. Transparency

(239) 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 (68)).

5.3.3.4. Avoidance of undue negative effects on competition and trade

(240) Point 70 CEEAG explains that the Commission will approve measures under these guidelines for a maximum period of 10 years. As stated in recital (58), the schemes will run under the CEEAG for nine years, i.e. from 2022 to 2030.

(241) 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.

(242) The Commission notes that the overall objective of the schemes is to replace fossil fuels with sustainable biomass fuels. The use of sustainable biogas and bio-propane instead of natural gas or LGP, will deliver overall greenhouse gases emissions reductions.

(243) 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 that 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.

(244) In the present case, the aid aims at reducing the level of tax applicable to sustainable biogas and bio-propane, so that they become a competitive alternative to their fossil fuel equivalents for the final consumer (see recital (42)). 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 (43)).

(245) 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 RED II, is unlikely to produce positive effects which could outweigh the negative effects of the measure.

(246) As detailed in recital (20), no support is granted to food and feed crops-based biomass fuels, under the schemes.

(247) Point 132 CEEAG states that for schemes 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.

(248) The Commission notes, as the aid is granted in the form of a general tax exemption on sustainable biogas and bio-propane, it is unlikely that it will benefit a particularly limited number of beneficiaries. The Commission notes that in 2018, 16 companies, which have benefitted from the motor fuel scheme, submitted data for the monitoring reports for biogas used as motor fuel (see recital (47)).

(249) Therefore, the Commission concludes that the relevant requirements of section 4.1.4 CEEAG are complied with.

5.3.3.5. Weighing up the positive and negative effects of the aid

(250) 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.

(251) The Commission notes that the schemes will contribute to the achievement of Sweden's and the EU's energy and climate objectives and that the supported biomass fuels will comply with the sustainability and greenhouse gases emissions saving criteria set out in RED II. The Commission finds no obvious indications of non-compliance with the 'do no significant harm' principle.

(252) Based on the above, the Commission conclude that the positive effects of the schemes outweigh the negative effects on the internal market.

5.3.3.6. Companies in difficulty and under recovery order

(253) As set out in recital (69), Sweden has confirmed that in order to be eligible for the aid, the direct beneficiaries 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.

(254) Based on the above, the Commission concludes that the schemes comply with points 14 and 15 CEEAG.

5.3.3.7. Conclusion on the compatibility of the schemes

(255) 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 provisions of CEEAG.

6. **CONCLUSION**

(256) The Commission finds that Sweden has unlawfully implemented the schemes in breach of Article 108(3) of the Treaty on the Functioning of the European Union. However, the Commission finds that the measure is compatible with the internal market on the basis of Article 107(3)(c) of the Treaty, in light of the relevant provisions of the EEAG and of the CEEAG,

HAS ADOPTED THIS DECISION:

Article 1

The aid schemes in the form of a tax exemption for biogas and bio-propane used as motor fuel or for heat generation, which Sweden has implemented pursuant to the Swedish Act (1994:1776) on Excise Duties on Energy, are compatible with the internal market within the meaning of Article 107(3), point (c) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 23 October 2024.

For the Commission
Margrethe VESTAGER
Executive Vice-President