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**Subject: State Aid SA.106512 (2023/N) – Sweden**  
**TCTF: Liquidity support due to increased costs of energy**

Excellency,

## 1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification of 4 April 2023, Sweden notified aid in the form of limited amounts of aid (*Förordning om elstöd till företag* (Regulation on electricity aid to enterprises), the “measure”) under the Temporary Crisis and Transition Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis and Transition Framework”) <sup>(1)</sup>.
- (2) On the 26 and 27 April and 3 May 2023, the Commission sent additional questions to Sweden, to which the Swedish authorities replied on 26 and 28 April and 4 May 2023.
- (3) Sweden exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with

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<sup>(1)</sup> Communication from the Commission on the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 101, 17.3.2023, p. 3). This Temporary Crisis and Transition Framework replaces the Temporary Crisis Framework adopted on 28 October 2022 (OJ C 426, 9.11.2022, p. 1), (‘Temporary Crisis Framework’), which had already replaced the previous Temporary Crisis Framework adopted on 23 March 2022 (OJ C 131I, 24.3.2022, p. 1), as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1). The Temporary Crisis Framework was withdrawn with effect from 9 March 2023.

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Article 3 of Regulation 1/1958 <sup>(2)</sup> and to have this Decision adopted and notified in English.

## 2. DESCRIPTION OF THE MEASURE

- (4) Sweden considers that the Russian aggression against Ukraine and its direct and indirect effects, including the sanctions imposed and the counter-measures taken, for example by Russia, have economic repercussions on the entire internal market (the “current crisis”). The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods.
- (5) The Swedish authorities explained that the wholesale electricity market in Sweden is divided into four bidding zones <sup>(3)</sup>, where the price of electricity is determined by supply and demand of electricity and transmission capacity between bidding areas. Historically, the electricity price differences between these areas were marginal. However, the situation changed in the current crisis when electricity prices increased sharply, affecting virtually every economic activity. Sweden submits that these increases were particularly pronounced in the two electricity areas located in Southern Sweden (i.e. SE3 and SE4), creating a need for liquidity aid for the undertakings located in these areas. Sweden provided energy price statistics <sup>(4)</sup> that show that in March 2022, day ahead electricity prices reached 123 EUR/MWh in SE3 and 146 EUR/MWh in SE4, which was a significant increase compared to the situation before the crisis, when the average annual (2021) electricity price in the day-ahead market was 66 EUR/MWh in SE3 and 81 EUR/MWh in SE4. Electricity prices further increased to reach 246 EUR/MWh in SE3 and 249 EUR/MWh in SE4 in December 2022 but decreased to 74 EUR/MWh in SE3 and 92 EUR/MWh in SE4 in February 2023 as the energy crisis stabilised.
- (6) Thus, the measure aims to remedy the liquidity shortage faced by undertakings in the two bidding areas in southern Sweden that are directly or indirectly affected by the serious disturbance of the economy.
- (7) Sweden confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the European Economic Area (the “EEA”) to the territory

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<sup>(2)</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

<sup>(3)</sup> Electricity area 1 (SE1) includes Norrbotten County and parts of Västerbotten; Electricity Area 2 (SE2) includes Jämtland and Västernorrland Counties and parts of Dalarna County, Gävleborg County and parts of Västerbotten; Electricity Area 3 (SE3) includes Gotland County, Stockholm County, Södermanland County, Uppsala County, Värmland County, Västmanland County, Örebro County, Östergötland County and parts of Jönköping County, Halland County, Kalmar County, parts of Västra Götaland County, Gävleborg County and Dalarna County; Electricity Area 4 (SE4) includes Skåne County, Blekinge County, Kronoberg County, and parts of Kalmar County, Halland County, Jönköping County and parts of Västra Götaland County

<sup>(4)</sup> For the evolution of the day-ahead electricity prices, see <https://www.nordpoolgroup.com/en/Market-data/1/Dayahead/Area-Prices/SE/Yearly/?view=table>

of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

- (8) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU in light of sections 1 and 2.1 of the Temporary Crisis and Transition Framework.

### **2.1. The nature and form of aid**

- (9) The measure provides aid on the basis of a scheme in the form of direct grants.

### **2.2. Legal basis**

- (10) The legal basis for the measure is the Regulation on electricity aid to enterprises (*Förordning om elstöd till företag*, the “Regulation”), for which a draft has been submitted to the Commission, which lays down the details of the measure.
- (11) Pursuant to Article 3, the relevant provisions of the Regulation will enter into force on 8 May 2023 and aid will be granted only in accordance with the Commission’s decision approving the measure to the Swedish authorities.

### **2.3. Administration of the measure**

- (12) The Swedish Tax Agency (the “*Skatteverket*” or “granting authority”) is responsible for the assessment of applications and administering the measure.

### **2.4. Budget and duration of the measure**

- (13) The estimated budget of the measure is SEK 29 billion (EUR 2,567,394,095) <sup>(5)</sup>.
- (14) Sweden submits that the measure will be financed from the congestion income revenues (see recitals (15) and (16)) of the Swedish Transmission System Operator (Svenska Kraftnät or the “TSO”), which is responsible, under the supervision of the Swedish National Regulatory Authority (the Swedish Energy Markets Inspectorate or the “NRA”) for their collection and administration. The Swedish Tax Authority will be authorized by the Swedish Government to draw funds from the TSO for payments to beneficiaries of the aid scheme.
- (15) Congestion income is the revenue of the TSO that originates from situations where there is congestion in an interconnector, i.e. where the capacity of the electricity interconnector between two bidding zones is not sufficient to meet demand. The congestion typically causes prices in two separate zones to diverge and the power exchange administering the capacity receives congestion income either through monthly or annual auctions in the case of long-term capacity bookings or depending on the size of the price difference and the amount of electricity flowing in the case of day-ahead and intraday flows. In the latter case, congestion income arises from the difference in prices that the seller (typically located in northern Sweden) receives and the buyer (typically located in southern Sweden) pays when electricity flows from the lower price area to the higher price area. The seller acting in a lower price area receives lower price for electricity

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<sup>(5)</sup> The exchange rate used for the conversion is the European Central Bank rate valid for 19 April 2023 (EUR 1 = SEK 11.2955)

compared to the price the other party pays for electricity in the higher price area, and the surplus income is collected by the electricity exchange and distributed to the TSO.

- (16) This income has significantly increased due to the large differences in electricity prices in the four Swedish bidding zones which resulted from the increase in energy prices generated by Russia's aggression against Ukraine and the fact that there are major differences between bidding zones in terms of electricity production and consumption (while approximately 50% of electricity production is located in the south, consumption is much higher (app. 80%)).
- (17) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 31 December 2023.

## **2.5. Beneficiaries**

- (18) The final beneficiaries of the measure are undertakings active in southern Sweden (bidding zones SE3 and SE4) that are affected by the crisis. However, credit institutions or other financial institutions are excluded as eligible final beneficiaries.
- (19) Undertakings will not be eligible for aid under the measure if, at the time of the decision on the granting of aid, they are in one of the following situations <sup>(6)</sup>:
  - (a) during the previous two years, have breached the conditions for approval for F-tax (Swedish company tax) pursuant to Chapter 9, Section 3 of the Tax Procedures Law (2011: 1244) or otherwise misused an authorisation for F-tax and the abuse is not insignificant <sup>(7)</sup>;
  - (b) have not declared or paid taxes or duties under the Tax Procedures Act or equivalent foreign taxes or duties to an extent not insignificant <sup>(8)</sup>;
  - (c) have not complied with an order to submit an income tax return or special information as referred to in Chapter 33, Section 6 of the Tax Procedure Act, or have provided or approved information which is so deficient that it clearly cannot be used as a basis for taxation;
  - (d) are legally disqualified from doing business;
  - (e) have tax or fee debts or other debts which have been surrendered to the Enforcement Authority at the time of the decision and which are dealt with as a general objective for recovery; or

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<sup>(6)</sup> Paragraphs (a) and (b) shall not apply to undertakings that are approved for F-tax in accordance with Chapter 9, Section 1 of the Tax Procedures Act, to foundations, associations or registered religious congregations which are exempt from tax under Chapter 7, Section 3 of the Income Tax Act, to private housing companies pursuant to Chapter 2, Section 17 of the Income Tax Act, to estates, and to community associations.

<sup>(7)</sup> Compliance will be assessed by the Swedish Tax Agency.

<sup>(8)</sup> Compliance will be assessed by the Swedish Tax Agency.

- (f) are subject to liquidation or bankruptcy procedures.
- (20) No aid will be granted under the measure to undertakings subject to a pending recovery order following a previous decision of the Commission declaring aid unlawful and incompatible with the common market.
- (21) Sweden confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.
- (22) Sweden confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations <sup>(9)</sup>. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

## **2.6. Sectoral and regional scope of the measure**

- (23) The measure is open to all sectors except the financial sector. It applies to undertakings with electricity consumption in the two southern bidding zones in Sweden, SE3 and SE4. This includes all of NUTS-regions 1 and 2 (Eastern and Southern Sweden), as well as the southernmost part of NUTS-region 3.

## **2.7. Basic elements of the measure**

- (24) The measure provides aid to undertakings that consumed electricity in the two southern Swedish bidding zones (SE3 and SE4) to tackle liquidity shortages and mitigate the negative economic consequences of the Russian aggression against Ukraine. The measure provides support in the form of direct grants towards higher electricity costs faced by undertakings as a result of the effects of the current crisis.
- (25) The aid is calculated by multiplying the historical annual consumption of electricity for each of the connection points of the undertaking during the period from 1 October 2021 to 30 September 2022 with a fixed rebate of 0.07 EUR/kWh <sup>(10)</sup> for the connection points located in SE4 or 0.044 EUR/KWh <sup>(11)</sup> for the connection points located in SE3.
- (26) The Swedish authorities confirm that overall aid may not exceed EUR 2 million per undertaking, per Member State at any given point in time. For undertakings

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<sup>(9)</sup> For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

<sup>(10)</sup> The exchange rate used for the conversion is the European Central Bank rate valid for 19 April 2023 (EUR 1 = SEK 11.2955)

<sup>(11)</sup> The exchange rate used for the conversion is the European Central Bank rate valid for 19 April 2023 (EUR 1 = SEK 11.2955)

active in the primary production of agricultural products, fishery and aquaculture sectors, the overall aid will not at any point in time exceed EUR 250 000 per undertaking active in the primary production of agricultural products and EUR 300 000 per undertaking active in the fishery and aquaculture sectors.

- (27) The Swedish authorities confirm that all figures will be gross, that is, before any deduction of tax or other charges.
- (28) The measure further provides that an undertaking which is an electricity consumer will qualify to receive aid under the measure if the following conditions are met:
- (a) it had the right on 17 November 2022 to withdraw electricity at a connection point on the basis of an agreement with a network operator;
  - (b) the connection point is located in one of the two southernmost bidding zones (SE3 and SE4);
  - (c) electricity was withdrawn for consumption at the connection point from 1 October 2021 until 30 September 2022;
  - (d) the electricity withdrawn for consumption is not eligible for support under Ordinance (2022:1872) on electricity support for consumers (natural persons) for October 2021 to September 2022.
- (29) The Swedish authorities submit that, in order to ensure that only undertakings that experienced electricity price increases as a result of the current crisis receive aid under the measure, the consumption of electricity from a legal entity will not be included in the calculation of aid if that entity had a continuous fixed electricity price agreement in place for their entire electricity consumption during the year following Russia's invasion of Ukraine, that is for the period running from the 24 February 2022 until 24 February 2023.
- (30) Sweden explained that network operators will be obliged to report to the Swedish Tax Agency the necessary information, including the amount of electricity withdrawn for consumption at the connection point during the relevant period together with the name and personal, coordination or registration number of the final customer who was entitled to withdraw electricity at the connection under a contract with the network operator on 17 November 2022 and the bidding zone in which the outlet point is located.
- (31) Undertakings will be required to submit an electronic application to request aid during a period running from 30 May until 25 September 2023, at the latest. The Swedish Tax Agency will issue a decision on the granting of aid until 31 December 2023, at the latest.
- (32) The Swedish authorities confirm the aid granted to undertakings active in the processing and marketing of agricultural products <sup>(12)</sup> is conditional on not being

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<sup>(12)</sup> As defined in Article 2(6) and Article 2(7) of Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural

partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.

- (33) The Swedish authorities confirm that aid granted to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market.
- (34) The Swedish authorities confirm that aid granted to undertakings active in the fishery and aquaculture sectors does not concern any of the categories of aid referred to in points (a) to (k) of Article 1(1) of Commission Regulation (EU) No 717/2014 <sup>(13)</sup>.
- (35) The Swedish authorities confirm that when an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 61(a) and 62(a) of the Temporary Crisis and Transition Framework, they will ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2 million is not exceeded per undertaking per Member State. Where an undertaking is active exclusively in the sectors covered by point 62(a) of the Temporary Crisis and Transition Framework, the overall maximum amount of EUR 300 000 will not be exceeded per undertaking per Member State.

## **2.8. Compliance with relevant provisions of Union law**

- (36) The Swedish authorities confirm that the proposed measure does not by itself, or by the conditions attached to it or by its financing method constitute a non-severable violation of Union law.
- (37) Sweden submits that the measure will be fully financed from the congestion income revenues (see recitals (14) to (16)) of the TSO.
- (38) The Electricity Regulation<sup>14</sup> and in particular Article 19 thereof, sets out rules on how the congestion income should be used. It aims at ensuring that such income is primarily used for guaranteeing the availability of the capacity of the interconnectors and for optimising the usage of the interconnectors or covering costs resulting from investments in interconnectors.
- (39) According to Sweden, congestion income revenues will be primarily used to ensure that the Swedish power grid meets the priority objectives set out in Article 19(2) of the Electricity Market Regulation. This is confirmed by the NRA's

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areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 1).

<sup>(13)</sup> Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

<sup>(14)</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), L 158/54 of 14.6.2019.

decision <sup>(15)</sup> of 21 April 2022 amending its decision of 21 June <sup>(16)</sup> on the use of congestion revenues by the Swedish power grid for 2022 which sets out the plans and allocation of funds to projects that will contribute to those priority objectives. Overall, an increase of 9100 MW of the transmission capacity of the network is projected for 2022, while other planned use of congestion income revenues will contribute to maintaining capacity. The forecast for the years 2022-2028 shows that a total of 65 different projects will be completed and put into operation during that period. Sweden further explains that the TSO has intensified its effort on short-term actions to increase grid capacity including but not limited to increased volumes of counter-trade and sum allocation, which increases the cross-border capacity between SE3 and neighbouring countries.

- (40) Sweden submits that the TSO has progressively, over a number of years, increased their grid investment ambitions <sup>(17)</sup>. This is evident in section 7.3 of the latest published investment plan <sup>(18)</sup> which shows that the TSO is planning investments of up to 32 bn SEK (app. EUR 2,8 billion) for the period 2022-2026 to increase grid capacity, including cross-zonal as well as cross-border capacity. This is a significant increase in comparison to the previous investment plan of 4.7 bn SEK (EUR 414 million). According to the information provided, the TSO's cash reserves amounted to SEK 80 billion (EUR 7,08 billion) <sup>(19)</sup>. Sweden underlines that the TSO's financial standing <sup>(20)</sup> debt ratio is at *negative* 849%. This indicates that the availability of funds is not a primary limitation of the TSO at the moment and that it is practically not possible for the TSO to increase investments beyond their current plans.
- (41) Sweden further explains that, since congestion revenue inflows were significantly higher than expected, the TSO has also used 5.6 bn SEK (EUR 494 million) to lower tariffs across the electricity network in 2022 <sup>(21)</sup> and are planning to keep tariffs low and stable during upcoming years.
- (42) Sweden submits that the remaining congestion revenues constitute 'surplus congestion income revenues' within the meaning of Article 2, point (20) of the Emergency Intervention to address high energy prices <sup>(22)</sup>, i.e. residual revenues that remain unused following the allocation of the congestion income revenues in

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<sup>(15)</sup> Case No. 2022(101658), accessible at: <https://e-diarium.ei.se/search/mypages;jsessionid=6MzMYhNgj4ecnsi5urlSJCKBNdKfk-HNQ9vVYLIZ.ei-srv-205?0&searchQuery=2022-101658>

<sup>(16)</sup> Case No. 2021(102007), accessible at: <https://e-diarium.ei.se/search/mypages;jsessionid=6MzMYhNgj4ecnsi5urlSJCKBNdKfk-HNQ9vVYLIZ.ei-srv-205?0&searchQuery=2022-101658>

<sup>(17)</sup> The Swedish authorities submit that the general trend of increased long-term investments and planning of grid reinforcements is evidenced in the TSO Annual Report for 2021 which announced investment plans of SEK 100 billion over the coming 10 years.

<sup>(18)</sup> See TSO Investment plan, page 27

<sup>(19)</sup> See Annual Report of the TSO no. 3063 of 22/02/2023, page 27

<sup>(20)</sup> See Annual Report of the TSO no. 3063 of 22/02/2023, page 57)

<sup>(21)</sup> See Annual Report of the TSO no. 2022/3063 of 22/02/2023.

<sup>(22)</sup> COUNCIL REGULATION (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices.



accordance with the priority objectives set out in Article 19(2) of the Electricity Market Regulation that can be used to finance measures in support of final electricity customers, as provided in Article 9 of the Council Regulation on an emergency intervention to address high energy prices.

## 2.9. Cumulation

- (43) The Swedish authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations <sup>(23)</sup> or the Block Exemption Regulations <sup>(24)</sup> provided the provisions and cumulation rules of those Regulations are respected.
- (44) The Swedish authorities confirm that aid under the measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant guidelines or regulations are respected.
- (45) The Swedish authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis and Transition Framework provided the provisions in those specific sections are respected.
- (46) Sweden confirms that for aid granted under section 2.1 of the Temporary Crisis and Transition Framework and the previous Temporary Crisis Framework, the aid ceilings provided in the respective sections of the Temporary Crisis and Transition Framework are respected at any point in time.
- (47) The Swedish authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 2.1 of the Temporary Crisis and Transition Framework, the overall maximum cap per undertaking, as set out in point(s) 61(a) and 62(a) of that framework, will be respected. Aid granted under the measure and other measures approved by the Commission under section 2.1 of the Temporary Crisis and Transition Framework which has been reimbursed

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<sup>(23)</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

<sup>(24)</sup> 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 of 26.6.2014, p. 1), Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 1) and Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 82).

before granting new aid under the notified measure will not be taken into account in determining whether the relevant ceiling is exceeded.

## **2.10. Monitoring and reporting**

- (48) The Swedish authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis and Transition Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting <sup>(25)</sup>).

## **3. ASSESSMENT**

### **3.1. Lawfulness of the measure**

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

### **3.2. Existence of State aid**

- (50) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (51) The measure is imputable to the State, since it is administered by Swedish Tax Agency and it is based on the Regulation on electricity aid to enterprises (recitals (10) and (12)).
- (52) As set out in recitals (14) and (15), the measure is financed from excess congestion income which arises from the difference in electricity prices between two bidding zones and is collected by the Swedish TSOs under the control of the National Regulatory Authority (NRA) based on clear legal obligations under national and Union law, which do not give any discretion to the collecting TSOs. Therefore, aid under the measure is financed by revenues flowing to an authority, in this case the Swedish TSO, which acts on behalf of the State, based on requirements under EU and national law. It follows that the congestion income received by the TSO remains under the control of the NRA and cannot be used for purposes other than those provided by the law being exclusively allocated to the objectives of the scheme by the legislative and regulatory provisions examined. Therefore, it can be concluded that the congestion income amounts to State resources within the meaning of Article 107(1) TFEU, because the State exercises control over it.

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<sup>(25)</sup> Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) 2022/2472 and Annex III to Commission Regulation (EU) 2022/2473.

- (53) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (24)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (54) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in all sectors except the financial sector that consume electricity in the two southern bidding zones in Sweden, SE3 and SE4 (recital (23)).
- (55) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (56) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Swedish authorities do not contest that conclusion.

### **3.3. Compatibility**

#### *3.3.1. Compatibility assessment*

- (57) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (58) Pursuant to Article 107(3)(b) TFEU, the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (59) By adopting the Temporary Crisis and Transition Framework, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods.
- (60) Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Sweden. The Commission concluded that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3), point (b) TFEU for a limited period if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the current crisis.
- (61) The measure aims at remedying a liquidity shortage of the undertakings in southern Sweden affected by an increase of electricity prices at a time when a wide range of economic sectors are affected and the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Sweden.
- (62) The measure is one of a series of measures conceived at national level by the Swedish authorities to remedy a serious disturbance in their economy. The importance of the measure to provide liquidity support is widely accepted by

economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Swedish economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Limited amounts of aid*”) described in section 2.1 of the Temporary Crisis and Transition Framework.

(63) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis and Transition Framework. In particular:

- the aid takes the form of direct grants (recital (24));
- the overall nominal value of the direct grant will not exceed EUR 2 000 000 per undertaking per Member State; all figures used must be gross, that is, before any deduction of tax or other charges (recitals (26) and (27)). The measure therefore complies with point 61(a) of the Temporary Crisis and Transition Framework;
- aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital 2.4. The measure therefore complies with point 61(b) of the Temporary Crisis and Transition Framework;
- aid will be granted under the measure no later than 31 December 2023 (recital (31)). The measure therefore complies with point 61(c) of the Temporary Crisis and Transition Framework;
- aid will be granted only to undertakings affected by the crisis (recitals (18) and (24)). The Commission notes in particular that the consumption of electricity of a legal entity covered by a continuous fixed electricity price agreement for the period running from the 24 February 2022 until 24 February 2023 will not be taken into account for the calculation of aid under the measure because it cannot be concluded that the respective entity has experienced electricity price increases as a result of the current crisis (see recital (29)). The measure therefore complies with point 61(d) of the Temporary Crisis and Transition Framework;
- aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned (recital (32)). The measure therefore complies with point 61(e) of the Temporary Crisis and Transition Framework;
- the overall nominal value of direct grant does not exceed EUR 250 000 per undertaking active in the primary production of agricultural products per Member State or EUR 300 000 per undertaking active in

the fishery and aquaculture sectors per Member State; all figures used must be gross, that is, before any deduction of tax or other charges (recital (26) and (27)). The measure therefore complies with point 62(a) of the Temporary Crisis and Transition Framework;

- aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recital (33)). The measure therefore complies with point 62(b) of the Temporary Crisis and Transition Framework;
- aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1(1), points (a) to (k), of Regulation (EU) No 717/2014 (recital (34)). The measure therefore complies with point 62(c) of the Temporary Crisis and Transition Framework;
- where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 61(a) and 62(a) of the Temporary Crisis and Transition Framework, Sweden will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2 000 000 is not exceeded per undertaking per Member State (recital (35)). Where an undertaking is active in the sectors covered by point 62(a) of the Temporary Crisis and Transition Framework, the overall maximum amount of EUR 300 000 is not exceeded per undertaking per Member State (recital (35)). The measure therefore complies with point 63 of the Temporary Crisis and Transition Framework.

- (64) The Commission takes note that the Swedish authorities have committed to monitor the measure, to report on its implementation (recital (48)), and to take all necessary measures to ensure that the measure remains in line with relevant provisions of Union law (recital (36)).
- (65) Therefore, the Commission considers that the measure does not infringe any relevant provisions of Union law.
- (66) Sweden confirms that, in accordance with point 95 of the Temporary Crisis and Transition Framework, overall aid granted under sections 2.1 of the Temporary Crisis and Transition Framework and the previous Temporary Crisis Framework will not exceed the aid ceilings provided in the respective sections of the Temporary Crisis and Transition Framework at any point in time (see recital (46)).
- (67) The Swedish authorities confirm that, as required by point 51 of the Temporary Crisis and Transition Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (7)).

- (68) The Swedish authorities confirm that, as required by point 52 of the Temporary Crisis and Transition Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the Union, including but not limited to:
- (a) persons, entities or bodies specifically named in the legal acts imposing those sanctions;
  - (b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the Union; or
  - (c) undertakings active in industries targeted by sanctions adopted by the Union, insofar as the aid would undermine the objectives of the relevant sanctions (recital (21)).
- (69) The Swedish authorities confirm that the monitoring and reporting requirements set out in section 3 of the Temporary Crisis and Transition Framework will be respected (recital (48)).
- (70) The Swedish authorities further confirm that aid under the measure may only be cumulated with other aid if the specific provisions in the relevant sections of the Temporary Crisis and Transition Framework, the previous Temporary Crisis Framework and the cumulation rules in the relevant Regulations and applicable Communications are respected (recitals (44) and (45)).
- (71) The Commission therefore concludes that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State since it meets all the relevant conditions of the Temporary Crisis and Transition Framework.

### 3.3.2. *Compliance with Union law*

- (72) If the supported activity or aid measure or the conditions attached to it, including its financing method when it forms an integral part of it, entail a non-severable violation of Union law, the aid cannot be declared compatible with the internal market. <sup>(26)</sup>
- (73) The measure will be financed from the congestion income collected by the Swedish TSO (recital (14)).
- (74) As stated in recital (15), congestion income arises across an interconnection due to price differences on each side of bidding zone borders. The higher the price difference, the greater the income generated. Conversely, the greater the levels of interconnection, the more arbitrage opportunities and, therefore, the lower the price differences at a bidding zone border and the congestion income revenues generated.
- (75) Congestion income is an important source of revenues for TSOs. However, the use of congestion income is subject to strict rules pursuant to Article 19 of the

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<sup>(26)</sup> Judgment of 31 January 2023, Braesch and others, C-284/21 P, EU:C:2023:58, paragraphs 96-97.

Electricity Market Regulation<sup>(27)</sup> which are meant to ensure that congestion income is primarily used to reduce congestion. Only where congestion cannot be reduced, e.g. by building new interconnections, congestion income can be used for other purposes.

- (76) According to the information received from the Swedish authorities, congestion income has increased significantly due to the increased price differential between bidding zones in Sweden which resulted from the increase in energy prices caused by the current crisis and the fact that, while electricity production capacity is distributed equally between north and south, consumption of electricity is much higher in the south (see recital (16)).
- (77) According to the NRA assessment, the TSO has met the priority objectives by maintaining and increasing cross-zonal capacities, in accordance with Article 19 (1) of the Electricity Regulation. Sweden provided information showing that the TSO will remain also obliged to invest the congestion income with priority into projects to reduce congestion as provided for in Article 19(2) of the Electricity Market Regulation (see recital (39)).
- (78) Furthermore, according to the information provided, the funding of the measure will not impair the TSO's ability to meet the priority objectives in the future. Following the increase in congestion income, the TSO's cash reserves amounted to SEK 80 billion (EUR 7,08 billion) (see recital (40)). The TSO has accelerated its grid investment ambitions for the period 2022-2026 and has already committed the relevant funds. The information at hand shows that the availability of funds is not a primary limitation at the moment for a further acceleration of projects. It is practically not possible for the TSO to increase investments beyond their current plans (see recital (40)).
- (79) Article 19 (3) of the Electricity Regulation acknowledges that there are situations where it is not possible to use all the money for investments into new infrastructure. In this case, it is considered appropriate to give the income back to consumers in the form of reduced network tariffs, as the TSO has in fact done in 2022 (see recital (41)).
- (80) Article 9 of Council Regulation (EU) 2022/1854 provides for an exceptional temporary derogation from Article 19 of the Electricity Regulation, allows Member States to use the surplus congestion income revenues resulting from the allocation of cross-zonal capacity to finance measures in support of final electricity customers. This is subject to approval by the regulatory authority of the Member State concerned and to a notification to the Commission within one month of the date of adoption.
- (81) Following the use of congestion income by the TSO in accordance with the priority objectives in Article 19 of the Electricity Regulation, in particular the scaling up of ambition for TSO investments into the grid, as well as the reduction of network tariffs, the Swedish TSO still retains significant congestion revenues. The Swedish authorities consider these congestion revenues as surplus congestion

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<sup>(27)</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), L 158/54 of 14.6.2019.

income revenues within the meaning of Article 2 (20) Council Regulation (EU) 2022/1854.

- (82) The measure provides support in the form of direct grants towards higher electricity costs faced by undertakings in bidding zones SE3 and SE4 as a result of the effects of the current crisis (see recital (24)). Given the objective of the measure, the resources used to finance it can be considered to support final electricity consumers. Furthermore, the NRA has approved the use of congestion revenues by the Swedish power grid for 2022 (see recital (39)) and Sweden has ensured that only “surplus congestion income revenue” as defined in Article 2 point (20) of Council Regulation (EU) 2022/1854 is used to finance the measure (see recital (42)).
- (83) The Commission notes further that the support is based on the historical electricity consumption (see recital (25)) and has to be approved until 31 December 2023. The scheme does not compensate future electricity consumption. Therefore, the scheme does not provide any incentives to increase electricity consumption.
- (84) Therefore, the Commission considers the measure to be in compliance with Article 9 and 10 of Council Regulation (EU) 2022/1854.
- (85) In light of the above, the Commission considers that the notified aid measure does not infringe relevant Union law.

### *3.3.3. Conclusion on the compatibility assessment*

- (86) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU, since it meets all the relevant conditions of the Temporary Crisis and Transition Framework. Therefore, the measure is compatible with the internal market within the meaning of Article 107(3), point (b) TFEU.

## **4. CONCLUSION**

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

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President