II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 21 December 2000
on the reduced social contributions aid scheme notified by Sweden

(notified under document number C(2000) 4354)

(Only the Swedish text is authentic)

(Text with EEA relevance)

(2001/690/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(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 provisions cited above [1],

Whereas:

I. PROCEDURE

(1) By letter dated 22 October 1999, registered as received by the Commission on 25 October 1999, Sweden notified a modified reduced social contributions aid scheme under Article 88(3) of the EC Treaty. The scheme is a modification and extension of the reduced social contributions *(Nedsatta socialavgifter)* scheme which expired on 31 December 1999. In 1997 the Commission had adopted appropriate measures regarding this scheme under No E 8/96 (Commission letter SG(97) D/6781 of 7 August 1997).

(2) By letter D/64905 of 25 November 1999, the Commission requested additional information on the above aid measure. The Swedish authorities submitted the information requested by letter dated 21 December 1999, which was registered as received by the Commission on 22 December 1999.

(3) By letter dated 4 April 2000 [2] the Commission informed the Swedish authorities of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the reduced social contributions aid scheme.

(4) The decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. The Commission invited interested parties to present comments on the aid scheme concerned.

(5) The Commission received comments from one interested party.

(6) The official response of the Swedish authorities was received by letter dated 11 May 2000.

(7) On 12 and 27 October and 21 November 2000, meetings were held between the Commission's departments and the Swedish authorities to discuss the scheme.

II. DETAILED DESCRIPTION OF THE AID

(8) **Object and form of the aid granted**

The scheme is intended to contribute to the development of low population density areas in northern Sweden. To this end, social security contributions payable for persons employed in undertakings located in the eligible region and engaged in eligible sectors/activities are reduced by eight percentage points.

[1] OJ C 184, 1.7.2000, p. 10.

[2] Reference: SG(2000) D/102835.

[3] OJ C 184, 1.7.2000, p. 10.

(9) **Eligible regions**

The area eligible under the scheme is assisted area A ([1]) in the north of Sweden with the exception of a number of parishes belonging to the municipalities of Östersund and Krokom. The eligible area has a population of around 430 000, or around 4,8 % of the total Swedish population. A detailed list of the eligible areas is contained in the letter by which the Commission notified Sweden of its decision to initiate the Article 88(2) procedure in respect of the reduced social contributions aid scheme ([2]).

(10) **Eligible sectors/activities**

The aid scheme applies to undertakings belonging to the following sectors or engaged in the following activities:

— contracting, hire and repairs,

— hotels, boarding houses and camping sites,

— restaurants and cafes run in combination with hotels, boarding houses and camping sites,

— cleansing, cleaning and laundry activities,

— recreation and cultural services with the exception of libraries,

— activities of non-profit, cultural or religious organisations and interest groups,

— establishments engaged in administrative activities that concern the management of a company, business and wages administration, bookkeeping, automatic data processing, registration, telephone sales and order booking.

The scheme does not apply to establishments performing administrative functions for undertakings engaged in the production, processing and marketing of agricultural products listed in Annex I to the EC Treaty, nor to any undertaking in the following sensitive sectors: fisheries, coal, steel, transport, shipbuilding, synthetic fibres or motor vehicles.

(11) **Combination of aid**

A reduction in social security contributions may not be granted if the applicant has been granted transport aid under the modified regional policy transport aid scheme (N 146/1999) during the same period.

(12) **Duration**

The scheme will expire on 31 December 2000.

(13) **Budget**

The budget for 2000 is SEK 313 734 000 (around EUR 36 634 000).

([1]) Assisted area A qualifies for exemption under Article 87(3)(c) of the EC Treaty and is part of the Swedish regional aid map for the period 2000 to 2006, approved by the Commission under State aid N 639/1999 (approval letter SG(2000) D/103189 of 17 April 2000).

([2]) OJ C 184, 1.7.2000, p. 10.

III. **INITIATION OF THE PROCEDURE UNDER ARTICLE 88(2) EC**

(14) In its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the reduced social contributions scheme ([3]), the Commission expressed two doubts regarding the compatibility of the notified aid measure with the Community's State aid rules:

(a) the Swedish authorities tried to justify the reduction in social contributions as transport aid to offset the 'additional distance-related costs' incurred by eligible companies. In its decision to initiate the procedure, the Commission expressed doubts as to whether the concept of 'additional distance-related costs' corresponded with the concept of 'extra cost of transport of goods'.

(b) secondly, the Commission also questioned whether it was possible to establish a direct link between the amount of aid received by beneficiaries under the scheme and the amount of extra transport costs actually incurred by them.

(15) In its decision to initiate the Article 88(2) procedure, the Commission also indicated that it would consider whether harsh weather conditions and other specific circumstances could provide additional justification for the aid granted under the scheme.

IV. **COMMENTS FROM SWEDEN**

(16) By letter dated 11 May 2000, Sweden submitted comments on the Commission's decision to initiate the Article 88(2) procedure in respect of the reduced social contributions aid scheme. These comments can be summarised as follows.

(a) The aid is an effective instrument to encourage the establishment of service companies in regions that are suffering from severe handicaps (remote northerly location, adverse weather conditions, long distances and low population densities).

(b) The concept of 'extra cost of transport of goods' is not very well suited for application in the services sector. By their very nature, most service companies do not transport large quantities of physical goods. However, they are affected by heavy fixed direct costs related to long distances, low population densities and unfavourable climate. A study commissioned by the Swedish Government confirms that service companies in northern Sweden have higher 'distance-related costs' than companies in the Stockholm area.

([3]) OJ C 184, 1.7.2000, p. 10.

(c) In the past, the Commission adopted a broader definition of the 'extra cost of transport of goods', including, for example, the costs of transferring staff.

(d) The study commissioned by Sweden shows that, for the companies included in the sample, the amount of the additional distance-related costs per person employed in companies in northern Sweden is much higher than the average aid per person employed granted under the scheme. There is therefore no risk of the aid granted under the scheme overcompensating for the additional distance-related costs incurred by beneficiaries.

(e) The administrative costs of operating the aid scheme are low.

(f) Norway operates a scheme, which has been approved by the EFTA Surveillance Authority (ESA) and which is similar to the Swedish reduced social contributions aid scheme (namely the regionally differentiated social security taxation scheme).

V. **COMMENTS FROM INTERESTED PARTIES**

(17) The Norwegian Government was the only interested party to submit comments. This was done by letter dated 27 July 2000. In their letter, the Norwegian authorities confirm that Norway operates a scheme that is similar to the Swedish reduced social contributions scheme and which was approved by the ESA in accordance with Article 62 of and Protocol 27 to the EEA Agreement. Many of the arguments advanced by Norway are similar to the arguments presented by Sweden (namely those summarised under (a), (b), (d) and (e) of recital 16. In addition, Norway argues that, so far, no complaints have been received to the effect that the Swedish reduced social contributions aid scheme or the Norwegian regionally differentiated social security taxation scheme has distorted trading conditions. Furthermore, the Swedish scheme essentially covers companies in the services sector, typically serving local markets. Norway therefore concludes that it is unlikely that the scheme has a significant effect on competition and EEA trade.

VI. **ASSESSMENT OF THE AID**

The existence of aid

(18) The Commission takes the view that the reduced social contributions aid scheme constitutes State aid within the meaning of Article 87(1) of the EC Treaty because it satisfies all the conditions for the application of that paragraph. The arguments are set out below.

(19) *Aid in any form whatsoever*: under the scheme the aid is provided in the form of a reduction in social contributions paid by employers for persons employed in undertakings located in the eligible regions and engaged in eligible sectors/activities.

(20) *Aid granted by the Member State or through State resources*: employers' social security contributions are compulsory payments from employers to the State. They are an important source of revenue for the Swedish Government. In its notification, Sweden indicated that the operation of the scheme would cost the Swedish Treasury SEK 313 734 000 (around EUR 36 634 000) in foregone tax receipts in 2000.

(21) *Aid*: the effect of the scheme is to reduce the wage costs of eligible undertakings. The benefits to an individual undertaking resulting from the reduced social contributions will depend on the number of persons employed in the undertaking and their salaries. Enterprises benefiting from the reduced social contributions gain a competitive advantage by being relieved of part of their tax burden.

(22) *The aid favours certain undertakings or the production of certain goods*: the Commission considers that the selectivity criterion is satisfied because the aid is granted exclusively to firms which are located in certain regions (part of northern Sweden) and which are active in certain sectors (mainly service activities).

(23) *The aid distorts or threatens to distort competition*: the effect of the scheme is to reduce the overall wage costs of eligible undertakings. The exact benefit accruing to an individual undertaking depends on the number of persons employed in the undertaking and their salaries. The aid has a direct effect on the production costs of the eligible undertakings. The Commission must therefore conclude that the reduced social contributions aid scheme is liable to enhance the ability of these enterprises to compete with enterprises in other Member States. It is clear that the provision of advantages of this nature to competitors which are located in certain regions rather than others and which are active in certain sectors rather than others could distort competition.

(24) *The aid distorts competition in so far as it affects trade between Member States*: in relation to an aid scheme of the same type as the reduced social contributions aid scheme (as opposed to an ad hoc aid case), the European Court of Justice has ruled that 'In the case of an *aid programme* the Commission *may confine* itself to examining the characteristics of the programme in question in order to determine whether, by reason of the high amounts or percentages of aid, the nature of investments for which aid is granted or other terms of the programme, it gives an appreciable advantage to recipients in relation to their competitors and is *likely* to

benefit undertakings engaged in trade between Member States' [1] (emphasis added). The reduced social contributions aid scheme is open to a number of service sectors. It is also open to establishments of all sectors [2] that are engaged in administrative activities that concern the management of a company, business and wages administration, bookkeeping, automatic data processing, registration, telephone sales and order booking. It is therefore clear that the scheme could also be applied to companies engaged in economic activities which are subject to trade between Member States.

The legality of the aid

(25) The scheme was notified in accordance with Article 88(3) of the EC Treaty.

The compatibility of the aid

(26) Having established that the reduced social contributions aid scheme constitutes State aid within the meaning of Article 87(1) of the EC Treaty, the Commission has examined it to see whether it qualifies for one of the derogations in Article 87(2) and (3).

(27) In the case of the reduced social contributions aid scheme, the Commission considers that the exemptions provided for in Article 87(2) EC do not apply, since the aid measure does not pursue any of the objectives listed in that paragraph. In addition, Sweden did not argue that this might be the case.

(28) Article 87(3)(a) EC does not apply, since, in 2000, no part of Sweden qualifies for regional aid under that provision [3].

(29) Aid under the scheme is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, nor is it intended to promote culture or heritage conservation. The Commission therefore considers that neither Article 87(3)(b) EC nor Article 87(3)(d) EC is applicable to the reduced social contributions aid scheme. It should be pointed out here that the Swedish authorities have not claimed exemption of the scheme on the basis of either of these derogations.

(30) In view of the above, the Commission examined the aid on the basis of Article 87(3)(c) EC. This examination has given rise to the following observations.

(a) The reduced social contributions aid scheme is targeted at low population density areas in the north of Sweden. Its aim is to promote the development of these areas and should therefore be examined on the basis of the Guidelines on national regional aid [4];

(b) The reduced social contributions aid scheme enables the Swedish authorities to provide aid to individual companies without reference to any initial investment or job creation by the recipient firms, as required by point 4.4 of the guidelines on national regional aid;

(c) The implication of this is that the scheme in question enables the Swedish authorities to grant, in the eligible area, aid intended to reduce the recipients' normal current costs. Such aid constitutes 'operating aid';

(d) In several communications, and more particularly in its guidelines on national regional aid, the Commission has indicated that, in view of its particularly distortive effect, operating aid may be considered compatible with the common market only in exceptional circumstances. Only two such exceptions are mentioned in the guidelines:

— point 4.15 of the guidelines provides that such aid may be granted in regions eligible under the derogation in Article 87(3)(a). As mentioned in recital 28 of this Decision, no area in Sweden qualifies for this derogation. It can therefore not be applied to the reduced social contributions scheme,

— point 4.16 of the guidelines provides that aid intended to offset additional transport costs may be authorised in the outermost regions or the regions of low population density qualifying for exemption under either Article 87(3)(a) or Article 87(3)(c).

In its decision to initiate the Article 88(2) procedure in respect of the Reduced Social Contributions aid scheme, the Commission concluded that the area eligible under the scheme qualifies as a region of low population density under Article 87(3)(c).

[1] Case 248/84 *Germany* v *Commission* [1987] ECR 4013.
[2] With the exception of those to which special Community State aid rules apply.
[3] The Swedish regional aid map for the period 2000 to 2006, approved by the Commission under State aid N 639/1999 (approval letter No SG(2000) D/103189 of 17 April 2000), does not contain any regions eligible under Article 87(3)(a).
[4] Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9 and OJ C 258, 9.9.2000, p. 5).

In view of the above, the Commission examined whether the reduced social contributions aid scheme satisfied the criteria regarding transport aid as laid down in point 4.16 of and Annex II to the guidelines on national regional aid. The results of this examination are set out in paragraph (e).

(e) The Commission considers that the reduced social contributions scheme does not satisfy the following conditions specified in point 4.16 of and Annex II to the guidelines on national regional aid:

— footnote 37 of and the second indent of Annex II to the guidelines specify that transport aid may be given only in respect of the extra cost of transport of goods,

— the first indent of Annex II to the guidelines provides that the aid may serve only to compensate for the additional cost of transport and that there must never be overcompensation,

— the third indent of Annex II to the guidelines requires that transport aid must be objectively quantifiable in advance, on the basis of an aid-per-kilometre ratio or on the basis of an aid-per-kilometre and an aid-per-unit-weight ratio.

The amount of aid granted under the scheme to an eligible undertaking does not bear any relation to the additional transport costs actually incurred by that particular undertaking. The aid granted depends on the size of its wage bill, which depends in turn on the number of persons employed and their average salaries. It can therefore scarcely be argued that the aid is 'objectively quantifiable in advance on the basis of an aid-per-kilometre ratio or on the basis of an aid-per-kilometre and an aid-per-unit-weight ratio'. The implication is also that it cannot be excluded that there is overcompensation of the additional transport costs in at least some cases.

Sweden tries to justify the aid granted under the scheme by arguing that service companies in northern Sweden have additional distance-related costs compared with service companies in the Stockholm area. Sweden defines these distance-related costs as travel and accommodation costs, telecommunications costs, and costs of management, training and other business services. This goes far beyond the concept of 'extra cost of transport of goods', which can be accepted as a justification for the granting of transport aid according to the guidelines (footnote 37 and the second indent of Annex II). In addition, the use of extra distance-related costs as defined by Sweden as a basis for the granting of transport aid does not provide any guarantee that there is no overcompensation of the extra cost of transport of goods actually incurred by the recipients of the aid;

(f) The Commission considers that the criteria of harsh weather conditions, low population density, remoteness and long distances are all interrelated. Low population density and long distances are largely a consequence of the harsh weather conditions and the remoteness of the areas concerned. The Commission recognises that, taken together, these factors represent a significant handicap for the northern regions of Sweden. This is why the guidelines on national regional aid contain a number of special provisions in favour of low population density areas such as northern Sweden. The ability to grant transport aid is only one of these special provisions made in the guidelines in favour of this type of region. In addition, point 3.10.4 of the guidelines facilitates eligibility of low population density areas for the regional derogation under Article 87(3)(c). Furthermore, point 4.10.8 of the guidelines enables Member States to apply higher regional aid intensity ceilings in low population density areas than is permitted in other Article 87(3)(c) regions (with the exception of the outermost regions). The Commission considers that, taken together, these arrangements provide adequate compensation for the handicaps faced by low population density regions;

(g) Sweden has not argued that the reduced social contributions aid scheme falls within the scope of the Guidelines on aid to employment [1]. It may nevertheless be possible to interpret aid granted under the scheme as contributing to the maintenance of jobs in the affected low population density areas. The Commission has therefore analysed this possibility. Point 22 of the guidelines allows the Commission to authorise aid to maintain jobs, but only if one of the following criteria is met:

— the purpose of the aid is to make good the damage caused by natural disasters or exceptional occurrences in accordance with Article 87(2)(b) of the EC Treaty,

— the aid is limited to Article 87(3)(a) regions.

The Commission considers that neither of the two criteria is met in the case of the reduced social contributions aid scheme;

[1] Guidelines on aid to employment (OJ C 334, 12.12.1995, p. 4).

(h) The coverage of the reduced social contributions aid scheme is not limited to R & D projects, training aid measures, environmental protection projects or to rescue and restructuring projects in conformity with the provisions of the Community framework for State aid for research and development [1], the framework on training aid [2], the Community guidelines on State aid for environmental protection [3] or the Community guidelines on State aid for rescuing and restructuring firms in difficulty [4]. Nor is the scheme limited to small and medium-sized enterprises as defined in the Community guidelines on State aid for SMEs [5]. The Commission therefore concludes that the reduced social contributions aid scheme does not qualify for the derogation provided for in the above frameworks and guidelines either.

In view of the above, the Commission concludes that the reduced social contributions aid scheme does not qualify for any of the derogations provided for under Article 87(3)(c).

(31) As to the other comments made by Sweden and by Norway (see recitals 16 and 17, the Commission makes the following observations.

(a) The fact that Sweden considers that the scheme constitutes an effective instrument to encourage the establishment of service companies in the eligible region underlines the fact that the scheme has a significant impact on competition. However, the Commission is of the opinion that the fact that a particular scheme is effective in terms of its impact on regional development does not necessarily mean that the scheme is also compatible with the Treaty. Article 87(3)(c) EC provides that aid to facilitate the development of certain economic areas may be considered compatible only where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(b) Similarly, the Commission considers that the fact that a particular aid scheme is easy or cheap to implement is not relevant to the assessment of its compatibility with the common market;

(c) The existence of a similar scheme in Norway (namely the regionally differentiated social security taxation scheme) is not a sufficient reason to approve the Swedish reduced social contributions scheme. In this context, the Court of Justice has ruled that 'any breach by a Member State of an obligation under the Treaty in connection with the prohibition laid down in Article 92 cannot be justified by the fact that other Member States are also failing to fulfil this obligation. The effects of more than one distortion of competition on trade between Member States do not cancel one another out but accumulate and the damaging consequences to the common market are increased' [6];

(d) Finally, the fact that the Commission adopted a more flexible approach in its 1997 Decision on appropriate measures regarding the predecessor of the reduced social contributions aid scheme (E 8/96) [7], which expired on 31 December 1999, cannot be taken as a justification for approving the modified successor scheme which is the subject of the present Decision. In this connection, the Court has ruled that a measure of general application cannot be impliedly amended by an individual decision and that such an individual decision cannot be subsequently relied upon, on the basis of the principles of equal treatment and the protection of legitimate expectations, in order to justify a further infringement of those rules [8].

(32) On the basis of the analysis presented in recitals 26 to 31, the Commission takes the view that the reduced social contributions aid scheme does not qualify for any of the derogations provided for in Article 87(2) and (3). The Commission therefore concludes that the scheme is incompatible with the common market.

(33) This Decision does not affect the possibility for the Member State of applying the rules on *de minimis* aid, to assist non-economic activities or to grant aid which does not affect trade between Member States, irrespective of whether or not it is based on the notified reduced social contributions aid scheme,

HAS ADOPTED THIS DECISION:

Article 1

The reduced social contributions aid scheme is incompatible with the common market. Accordingly, it may not be implemented.

[1] Community framework for State aid for research and development (OJ C 45, 17.2.1996, p. 5).
[2] Framework on training aid (OJ C 343, 11.11.1998, p. 10).
[3] Community guidelines on State aid for environmental protection (OJ C 72, 10.3.1994, p. 3).
[4] Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 368, 23.12.1994, p. 12).
[5] Community guidelines on State aid for small and medium-sized enterprises (OJ C 213, 23.7.1996, p. 4).
[6] Case 78/76 *Steinike & Weinlig* v *Germany* [1977] ECR 595.
[7] Commission letter No SG(97) D/6781 of 7 August 1997.
[8] Case C-313/90 *Comité international de la rayonne et des fibres synthétiques and others* v *Commission* [1993] ECR I-1125.

Article 2

Sweden shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 21 December 2000.

For the Commission

Mario MONTI

Member of the Commission