

Swedish Gas Association

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Comments from the Swedish Gas Association on the Commission's decision on 30 January 2024 opening the formal investigation procedure in 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) – Tax exemption for non-food based biogas and bio-propane in heat generation

Swedish Gas Association confirms that this letter does not contain any confidential information. We do hereby give our consent for all content in this letter to be made available to the public.

1. Comments regarding recital 226 of the Opening Decision – determinants of the growth of biogas import

All sustainable biogas is taxed equally in Sweden, whether it's produced in Sweden, Denmark, Germany, or any other country. In that sense, the Swedish tax exemption will not impact on the relation between the biogas volumes originating from different countries. However, aid granted in Denmark may have had impact on the increase of biogas imports from Denmark.

There are also other factors that could have had impact on the growth of the biogas imports. In 2015 the CO₂ tax on fossil fuels for certain industries not included in the EU ETS was increased from 30 to 60 percent of the general taxation level. In 2016 and 2018 the CO₂ tax increased again to 80 and 100 percent respectively. In 2021 and 2022 the energy tax was also increased stepwise from 30 till 100 percent of the general taxation level. Some of these tax increases were introduced at short notice, and altogether they created a general increase in biogas demand on the Swedish market, both imported and domestically produced biogas.

2. Comments regarding recital 231 and 232 of the Opening Decision – potential cumulation and overcompensation

As described in recital 214 and 215 of the Opening Decision, aid may be awarded concurrently under several aid schemes 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. For many years now, Sweden has had a yearly control mechanism in place to detect possible overcompensation in Sweden. So far, there has been no overcompensation for biogas.

The Swedish monitoring reports reflect the costs for producing biogas in Sweden, including any aid granted to the producers. Production costs or granted aid to biogas produced in other countries are, however, not possible to monitor by any Swedish authority. Swedish importers unrelated to foreign producers cannot be expected, nor required, to be aware of the producers' production costs, subsidies, or profit margins. Moreover, the producers cannot be obliged to disclose such information to a customer. In a well-functioning market that kind of information must be considered trade secrets. Hence, for imported biogas the monitoring reports are based on the import prices rather than the production costs. In this way, any aid amounts granted to a producer in a foreign country is considered in the monitoring report since they will affect the price on biogas exported to Sweden and hence also the import prices in Sweden.

Consequently, it can be concluded that aid granted to a producer, by Sweden, Denmark, or any other country, is included in the yearly overcompensation control mechanism in Sweden. If the control mechanism reveals overcompensation, Swedish authorities have committed to adapt the aid levels.

In addition, if the Swedish tax exemption in combination with the Danish production aid would lead to overcompensation for Danish producers, this would be indicated by the Danish control mechanism mentioned in recital 230 of the Opening Decision. As described in recital 95 of the Opening Decision, the Danish calculations take into account all costs and revenues, notably income related to sales of gas and guarantees of origin, as well as the Danish aid. If the test reveals overcompensation, the aid level will be reviewed and adapted by the national authorities in Denmark (see recital 96 of the Opening Decision).

The ETD offers a possibility to differentiate tax levels based on the biomass content. However, there are no possibilities, nor requirements, in ETD to apply different tax rates based on the country of origin, production costs, or production aid levels. Moreover, according to Article 110 of 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 ETD 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.

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. Such method is used in Sweden, as described above. Should the Swedish proceeding not be approved by the Commission, this must be assumed to mean that differentiation of tax levels based on biomass content, enabled by the ETD, is not possible in practice in any EU Member State.

3. Additional comments

In addition to the above, we agree with the Commission's preliminary conclusions in recitals 117, 120, 128, 132, 142, 167, 174, 179, 197, 208, 220 and 221 of the Opening Decision.

4. About Swedish Gas Association

Swedish Gas Association is a Swedish member-funded, national business association representing 180 companies and organizations with interest in various types of biogases, biomethane, natural gas, LPG, and hydrogen. Our private and public member companies are active in the whole value

chain from production, distribution, and trading to the use of gas in transport, industry, shipping, and energy production. We also represent world-leading engineering companies, service organisations, consultants, and manufacturers in the field of gas technology.

Kind regards,



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