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**Subject: State Aid SA.63421 (2021/N) – Sweden
Relief in the taxation of SME employee stock options – Amending SA.
47144**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 10 June 2021, the Swedish authorities notified, according to Article 108(3) of the Treaty on the Functioning of the European Union (the "TFEU"), the above-mentioned amendment ("the notified amendment") to the existing State aid measure SA. 47144 (2016/N) "Tax reduction of employee share options", designed to enable young and small companies to recruit and retain key employees ("the existing aid scheme").
- (2) On 29 July 2021, the Commission requested additional information from the Swedish authorities concerning the notified amendment. The Swedish authorities provided the requested information on 31 August 2021.
- (3) By letter dated 9 June 2021, the Swedish authorities agreed to waive their rights deriving from Article 342 of the TFEU in conjunction with Article 3 of

Utrikesminister Anne LINDE
Utrikesdepartementet
Arvfurstens palats
Gustav Adolfs torg 1
SE - 103 23 Stockholm

Regulation 1/1958¹ and to have the present decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE AID SCHEME

2.1. Objective of the existing aid scheme

- (4) The existing aid scheme is a tax scheme designed to enable young and small companies to recruit and retain key employees they need to achieve their growth potential. Such companies often do not have enough capital or financial resources to offer a market wage, which makes it difficult for them to attract and/or retain key talented and skilled personnel, considered crucial for the company's growth.
- (5) The aid is granted in the form of a reduction in the taxation of employee stock options and more precisely in the form of a tax relief from the employer's social security contributions and to employees from income tax normally due at the time when options are exercised. By decreasing the overall employment costs for young and small companies associated with the exercising of such employee share options, the Swedish authorities aim at reducing the risk related costs for such companies when hiring new key employees as well as incentivising the retention of existing key employees. Therefore, these companies are better able to compete with well-established, incumbent companies with better and easier access to finance and financial resources.

2.2. Legal basis, granting authority, budget and duration of the measure

- (6) The legal basis of the scheme is the Income Tax Act² and the Tax Procedure Act³, which before the scheme's entry into force on 1 January 2022 will be amended by the Swedish parliament to incorporate amended eligibility conditions covered by this decision.
- (7) The aid granting authority is the Swedish Tax Agency.
- (8) The Swedish authorities have explained that as a result of the notified amendment the total annual revenue foregone due to reduced social security contributions (direct aid) has been re-estimated and would amount to SEK 199 million (approx. EUR 20 million⁴) a year from 2022 until end 2027⁵ (compared to SEK 160

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

² Inkomstskattelagen (1999:1229).

³ Skatteförfarandelagen (2011:1244).

⁴ 1 SEK = 0.09893 EUR.

⁵ As a result of the notified amendment, the Swedish state expects to increase the income from corporate tax since the tax exempted employee share options are non-deductible while social security

million (approx. EUR 16 million) a year estimated in the existing scheme). The foregone revenues resulting from reduced income taxation inflows stemming from the notified measure (indirect aid to companies) has been re-estimated and would amount to SEK 345 million (approx. EUR 34 million) a year from 2022 until end 2027⁶. Consequently, the Swedish authorities estimate that the social security contributions and income taxes foregone under the existing State aid measure subject to the notified amendment would be approximately SEK 5 024 million⁷ (approx. EUR 497 million) over the whole period of scheme's duration. These foregone revenues would however be balanced by SEK 2 618 million (approx. EUR 259 million) of increased income from corporate tax, as well as capital tax inflows. The outflows and inflows to the Swedish budget resulting from the implementation of the existing State aid measure as amended are presented in the table below (amounts are indicated in SEK).

	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
<i><u>At the level of the employer</u></i>										
Social security contribution foregone	160	160	160	160	160	160	160	160	160	160
					39	39	39	39	39	39
Increased corporate tax entries	-136	-136	-136	-136	-136	-136	-136	-136	-136	-136
					-33	-33	-33	-33	-33	-33
<i><u>At the level of the employee</u></i>										
Income taxation foregone	280	280	280	280	280	280	280	280	280	280
					65	65	65	65	65	65
Increased capital tax entries	-94	-94	-94	-94	-94	-94	-94	-94	-94	-94
					-20	-20	-20	-20	-20	-20

contributions would be deductible, if levied. In this regard, the cost of reduced social security contributions is estimated to be SEK 39 million per year and the state is expected to increase the income of corporate tax by SEK 33 million a year.

⁶ At the level of the employees (no aid), the exemption from benefit taxation at exercise of the employee share option is estimated to decrease tax revenue by SEK 280 million a year. This cost is however mitigated by an increase of the capital tax payable at the future sale of the warrants or shares acquired.

⁷ The Swedish authorities clarified that the budget for the existing measure under SA. 47144 (2016/N) amounts to SEK 160 million a year.

- (9) The existing State aid scheme approved by the Commission came into force on 1 January 2018⁸ for a duration of ten years. The Swedish authorities confirmed that they will notify a prolongation of the scheme before its expiration, if they deem it necessary to extend its duration⁹.

2.3. Amendment to the existing aid scheme

- (10) Sweden notified the following modifications to the existing State aid scheme:

- The size of the eligible undertaking, in terms of the average number of employees and the company's net turnover is increased to also include small medium sized companies; and
- Board members are included in the scope of eligible recipients¹⁰.

- (11) The budget of the measure was re-estimated to account for the budgetary impact of the notified amendment on the existing State aid measure (see recital (8)).

- (12) The changes concerning the size of the beneficiary undertakings are summarised in the table below.

<i>Existing aid scheme</i>	<i>Aid scheme as amended</i>
The average number of employees and partners working in the enterprise is less than 50 ; and	The average number of employees and partners working in the enterprise is less than 150 ; and
The company's net turnover or balance sheet total does not exceed SEK 80 million (approx. EUR 8 million).	The company's net turnover or balance sheet total does not exceed SEK 280 million (approx. EUR 28 million).

- (13) The Swedish authorities clarified that the employee share options may be used to acquire either shares or warrants in the same entity or in another entity of the same group¹¹.

⁸ SA. 47144 (2016/N) – Tax reduction of employee share options. OJ C 254, 4 August 2017, p. 8.

⁹ See recital (9) of the Commission decision SA. 47144 approving the existing scheme.

¹⁰ The Swedish authorities explained that this amendment is necessary following a ruling by the Supreme Administrative Court in 2017 and 2019, that board member assignments should be treated as salary income (instead of business income) and therefore be subject to social security contributions at the level of the company.

- (14) All other conditions remain unchanged.

2.4. Functioning of the measure

2.4.1. *Standard tax treatment of share options in Sweden*

- (15) In Sweden, taxation of income is regulated by the Income Tax Act. The taxation of income applies to three types of income: income from employment¹², business income¹³ and capital income¹⁴.
- (16) The Swedish authorities indicated that benefits in kind, i.e. any remuneration in kind received by employees from their employers for services rendered, are taxable as employment income at their fair market value. Taxable benefits also include employee share options (hereinafter also referred to as share-based remuneration). An employee granted share-based remuneration is deemed to receive a taxable benefit at the time the option is exercised (the exercise date). The economic advantage to the employee is determined by the taxable value of the difference between the market value of the underlying shares at the exercise date and the total price paid for the shares¹⁵. The income realised with the sale of the shares reduced by the market value of the shares at the exercise date is subject to capital gains taxation¹⁶.

2.4.2. *Tax treatment of share options under the existing State aid scheme*

- (17) Under the existing State aid scheme,
- a) The employee will not be taxed at the exercise of the options.

¹¹ This clarification allows to codify legal practice according to which warrants were already eligible for tax relief under the existing State aid scheme. The Swedish authorities also confirmed that this is a clarification with no budgetary impact on the existing State aid scheme.

¹² *Income from employment* includes salaries, allowances, pensions, benefits and any other income received as remuneration for work.

¹³ *Income from business* includes all revenues and expenditures because of trade, i.e. income from business activities that are carried out professionally and independently.

¹⁴ *Capital income* includes continuous returns, gains and other income from assets that should not be attributed to business. Thus, this includes interest, dividends and other returns of capital assets and capital gains and losses.

¹⁵ The Swedish authorities confirmed that if the employee does not make any profit at the time of exercising the option, this means that no benefit is generated and therefore not taxed at employee level and, as a consequence, there is no ground for the employer to pay social security contributions. This situation is similar with and without the notified scheme.

¹⁶ According to the Swedish authorities, capital gains are generally taxed at a flat rate of 30%. For non-quoted shares, the tax rate is generally 25% since 5/6 of the gain is taxable.

- b) The employee will be taxed at a later point in time, namely upon the sale of the shares, i.e. under the scheme, exercising an employee share option is not considered as a taxable remuneration.
- c) When selling the shares, the employee will be taxed at a lower tax rate¹⁷ on the difference between the income realised from the sale of said shares and the total price paid for the shares at the exercise date and not on the difference between the income realised from the sale of the shares and the market value of the shares at the exercise date.
- d) In addition, under the measure, the employer will not have to pay any social security contributions¹⁸ on the value of this benefit. On the other hand, the employer will not be entitled to deduct the value of the employee share options from the corporate income tax base.

2.5. Eligibility conditions under the existing aid scheme as amended

- (18) In order to benefit from the existing State aid scheme, subject to the notified amendment, the grantor company, the option holder and the option must fulfil certain eligibility criteria.

2.5.1. *Eligible companies*

- (19) The company whose shares are subject to the proposed tax scheme must fulfil the following criteria:
- a) It must be a Swedish limited liability company¹⁹ or a corresponding foreign company with a permanent establishment in Sweden;
 - b) It must be a small and medium sized company, which employs less than 150 full time-equivalent employees, has a net turnover or balance sheet not exceeding SEK 280 million²⁰, and has not been in operation for more than ten years (hereinafter also referred to as young SME).
 - c) The eligible company must be independent, i.e. 25 per cent or more of the shares or voting rights of the shares of the grantor company should not be directly or indirectly controlled by one or more public bodies;

¹⁷ Instead of being taxed 32% (the local income tax rate) or 52% (the local income tax rate increased by the state income tax rate applicable for taxable income above SEK 523 200), it would be the capital gains tax (25%) which would apply.

¹⁸ Currently amounting to 31,42%.

¹⁹ In Swedish: "aktiebolag".

²⁰ The Swedish authorities indicated that requirements (b) and (c) shall be fulfilled during the fiscal year preceding the year of granting.

- d) The eligible company must not be listed on a regulated market;
- e) The eligible company must not exercise any of the following activities: banking or finance, insurance operations, production of coal and steel, trade in land, real estate, raw materials or financial instrument, rent for a longer period of commercial and residential premises or provision of legal services or services related to accounting and auditing;
- f) The eligible company must not be a company in difficulty in the meaning of the Guidelines on State aid for rescue and restructuring non-financial undertakings in difficulty²¹.

2.5.2. *Eligible employees to receive the share option (option holder)*

- (20) The option holder must be an employee of the company or hold a position as a board member elected by the general meeting of the company, and during the vesting period must be employed by or hold the relevant position and receive remuneration from the grantor company.
- (21) For an employee the average working time during the vesting period must be at least 30 hours per week. Board members are not be subject to the requirement of minimum average working hours considering that their employment contract may be part-time²².
- (22) An option holder who is an employee of the company must, during the vesting period, receive from the company a remuneration at least equal to or greater than 13 basic income amounts²³. An option holder who holds a function as a board member of the company must, during the vesting period, receive from the company a remuneration at least equal to or greater than 1,5 basic income amounts.
- (23) The option holder must not control or have controlled, together with related parties, more than 5% of the shares or voting rights of the shares of the grantor company. This limitation shall also apply to board members.

²¹ OJ C 249 of 31 July 2014, p.1.

²² An option holder who is at the same time employed and holds a post as a board member or director of the company shall be regarded as an employee of the company.

²³ 'Basic income amount' refers to the minimum level of income (2021: SEK 68 200) defined, in accordance with Chapter 58, Sections 26 and 27 of the Swedish Social Insurance Code, for the year in which the share-based remuneration is acquired.

2.5.3. *Qualifying options*

- (24) The holder of the qualifying share options may exercise it to acquire any interest in the entity or in another entity that is part of the same group at the time of the acquisition of the share option.
- (25) The value of the employee share option awarded to one employee or board member at one point in time may not exceed SEK 3 million at the time of entering the option agreement.
- (26) The total value of outstanding employee share options awarded to any employee or board member by the same company may not exceed SEK 75 million when the employee share option is acquired.
- (27) The holder must hold the share options for a period of 3 years from the time of granting before its exercise. It must be however exercised within 10 years from the time of granting.

2.6. **Transparency**

- (28) The Swedish authorities confirmed that the measure will be published and accessible on the website of the Swedish Agency for Growth Policy Analysis²⁴.
- (29) In addition, information on awarded aid exceeding EUR 100,000 will be available on the Commission's State aid Transparency Public Search website: <https://webgate.ec.europa.eu/competition/transparency/public/search/home?lang=en>.
- (30) The Swedish authorities committed to publish, on the above website, the identity of the granting authority, the form and amount of aid granted to eligible employees per eligible employer, the form and amount of aid granted to an eligible employer subject to payroll tax, the date of granting, the region in which the eligible employer is located (at NUTS level II) and the principal economic sector in which the eligible SME has its activities (at NACE group level).

3. **ASSESSMENT OF THE AMENDED MEASURE**

3.1. **Existence of State aid within the meaning of Article 107(1) of the TFEU**

- (31) Article 107(1) of the Treaty on the Functioning of the European Union (hereafter "TFEU") states that "*any aid granted by a Member State or through State*

²⁴ www.riksdagen.se

resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertaking or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”.

- (32) In order to determine whether a measure constitutes State aid within the meaning of Article 107(1) TFEU, it must be established whether a) the measure confers a selective economic advantage to the undertakings concerned, b) this advantage has been financed through State resources and the measure is imputable to the State, c) the advantage distorts or threatens to distort competition and, finally, d) the measures affect trade between Member States. These conditions must be cumulatively met, which means that if one is not met the measure does not fall within the scope of Article 107(1) TFEU.

3.1.1. Imputability and involvement of State resources

- (33) In line with well-established case law, the measure involves State resources as the employer can benefit from a social security contribution relief and the employee is exempted from income tax on the awarded share-based remuneration. This constitutes foregone revenues for the State, which would, absent the scheme, be due. The notified measure is also clearly imputable to the State as it is introduced through a legislative act.

3.1.2. Existence of a selective advantage

- (34) The exemption from employees' income tax liabilities applicable to the measure concerns only employees and board members who are private individuals and therefore Article 107(1) TFEU does not apply to them.
- (35) However, the measure confers an economic advantage to the qualifying SMEs. The relief from social contribution confers a direct advantage to these companies, as it mitigates the charges that are normally incurred on employment income. In addition, employees are attracted to the qualifying companies due to the tax-exempted share-based remuneration offered to them under the measure. Since the tax relief benefits only young SMEs the measure is selective.

3.1.3. Impact on competition and on trade between Member States

- (36) Aid granted through State resources strengthens the position of an undertaking compared with that of its competitors. Given that some of the beneficiaries are active on markets that are open for competition and trade, the notified measure is liable to distort (or threatens to distort) competition and trade between Member States.

3.1.4. *Conclusion regarding the existence of State aid*

- (37) In light of the above, the Commission concludes that the measure constitutes State aid to the eligible companies within the meaning of Article 107(1) TFEU.

3.2. Legality of the measure

- (38) The Swedish authorities have confirmed that the entry into force of the notified amendment is conditional upon its approval by the Commission.
- (39) By notifying the amendment before its implementation, the Swedish authorities have respected the notification and standstill obligation laid down in Article 108(3) of the TFEU.

3.3. Compatibility of the aid measure

- (40) The existing State aid measure approved by the Commission decision SA.47144 subject to the notified amendment was declared compatible with the internal market pursuant to Article 107(3)(c) TFEU. The Commission refers to the respective assessment outlined in the Commission decision approving the existing State aid measure.
- (41) The Commission notes the Swedish authorities' confirmation that, apart from the notified amendment, all other conditions of the existing aid measure remain unaltered (recital (14)).
- (42) In order to determine whether the notified amendments, described in recitals (10) to (12) do not alter the Commission's conclusion on the compatibility of the existing State aid measure concerned, the Commission carried out a compatibility assessment of the notified amendment based directly on Article 107(3)(c) of the TFEU.
- (43) According to Article 107(3)(c) TFEU, aid may be compatible with the internal market if it facilitates 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.
- (44) The notified amendment may therefore be considered to be compatible with the TFEU since the criteria set out in Sections 3.3.1 to 3.3.6 are met.

3.3.1. *Contribution to the development of certain economic activity*

- (45) Article 107(3)(c) of the 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, to be compatible under that provision of the Treaty, aid must contribute to the development of a certain economic activity²⁵.

a) Identification of the supported economic activity

- (46) The existing State aid measure aims at developing the economic activities of young small companies facing difficulties in recruiting and retaining key employees in Sweden. According to the Swedish authorities, because such companies often do not have enough capital or financial resources to offer a competitive market wage, they face difficulties in attracting and retaining key personnel that is crucial for the company’s growth and innovation. Creating possibilities for young SMEs to thrive is a fundamental condition for growth in the economy at large.
- (47) The Swedish authorities argue with reference to the Commission’s own policies and State aid practice,²⁶ that it is equally common for companies with less than 150 employees (small and medium sized companies) as for companies with fewer than 50 employees (small companies) to face difficulties in recruiting and retaining key employees, including experienced and knowledgeable board members, which are proved to play a key role in contributing to the growth of young SMEs in Sweden²⁷.

b) The aid facilitates the development of the economic activity

- (48) The Commission has recognised that a shortage of skilled employees adversely affects innovation and growth of young SMEs by restricting their abilities to

²⁵ Judgment of the Court of 22 September 2020, *Austria v Commission*, C-594/18 P, ECLI:EU:C:2020:742, paragraphs 20 and 24.

²⁶ SA.47144 (2016/N) – Tax reduction of employee share option, OJ C 254, 4 August 2017, p. 8; SA. 47947 – SME-focused, share-based incentive scheme – Key Employee Engagement Programme, 19 December 2017; SA.51552 (2020/N) – Danish scheme for tax reduction of and deferred tax payment for employee shares, share options and warrants in small, new Companies. OJ C 84, 7 October 2021, p. 1.

²⁷ The Swedish authorities have clarified to the Commission that, contrary to what is practice in other countries, in Sweden incorporated companies are obliged to have a board regardless of their size. The importance of board members for the Swedish system is underscored by Andersson and Poldahl (2009). They find that board members who are on several boards have a positive impact on firm growth. Board members that have a background in financial services also have a positive impact on firm growth. Andersson, F. and A. Pohldahl (2009) *Gemensamma Styrelsemedlemmarett framgångsrecept* Statistics, Sweden, IAM 2009:2 <https://www.scb.se/contentassets/b1ae4493ffd1404987a4d32cbf213ae5/gemensammastyrelsemedlemmar-ett-framgangskoncept.pdf>

explore the productive potential of novel ideas. The Commission has recognised in its past decisions,²⁸ the important role of share-based remuneration in attracting and retaining employees to young SMEs, which otherwise – contrary to large enterprises – would not be able to offer the remuneration requested.

- (49) The Swedish authorities indicated that the existing measure increases the amount of net (post-tax) share-based remuneration available to an employee of an eligible company. Enlarging the eligibility of the existing measure to include, young medium sized companies (see recitals (10) to (12) above) and board members in the measure's application scope, the competitive share-based remuneration is made available to a wider group of young and growth-oriented companies. Furthermore, an incentive is provided for key employees (including board members) to join and remain employed in young SMEs in Sweden. In fact, given that the tax relief is lost upon an employee's resignation or termination, employees are expected to have an incentive to remain with the company for a longer period of time.
- (50) The Swedish authorities also explained that, following the notified amendment, the tax relief continues to have an incentive effect by facilitating a wider group of small and growth-oriented companies i.e. young SMEs, to enter into share-based remuneration agreements with their employees. This is so because under the measure, eligible companies are not liable to pay any social security contributions on the part of the remuneration that relates to the exercised share options. Furthermore, the measure reduces the number of underlying shares to an option agreement that an eligible company would have to grant to give the same post-tax reward to employees. It therefore enables a larger group of companies affected by market failures to provide a more competitive overall remuneration package that otherwise would have only been possible through the provision of a greater shareholding value under the option.
- (51) The Commission also considers that the notified amendment to the existing measure, makes employee share-based remuneration economically more attractive for a wider group of affected beneficiaries i.e. both small and medium sized enterprises in Sweden and their employees. Therefore, the measure addresses a recognised labour and capital market failure in Europe (including in Sweden) affecting the efforts of SMEs to recruit and retain key employees.
- (52) The Commission concludes that the existing measure subject to the notified amendment continues to contribute to the development of economic activities, that is the economic activities undertaken by SMEs eligible under the notified measure, as required by Article 107(3)(c) of the TFEU.

²⁸ See footnote 26.

3.3.2. *Aid which does not adversely affect trading conditions to an extent contrary to the common interest*

a) Positive effects of the aid measure

- (53) The notified amendment to the existing measure is expected to have a range of positive effects in further facilitating the efficient matching of labour resources to the economic needs of not only small but also medium sized growth-oriented businesses in Sweden in order to increase their productivity and growth.
- (54) In this regard, the Commission emphasised in its past policies²⁹ and State aid decisions³⁰ the importance of share-based remuneration systems as a mechanism for attracting and retaining employees to young SMEs and in fostering entrepreneurship.
- (55) The notified amendment will increase the positive effects of the existing measure in terms of attracting and retaining employees in small and medium sized enterprises. It will therefore foster an improved entrepreneurial culture and create a supportive environment for those eligible SMEs benefitting from the tax relief, in accordance with the objectives set out in the Entrepreneurship 2020 Action Plan to reignite the entrepreneurial spirit in Europe.³¹
- (56) By enlarging the scope of beneficiaries eligible for the tax relief under the measure (see recitals (10) to (12) above), to include both small, as well as young medium sized enterprises and board members among the eligible recipients, the notified amendment extends the benefits available under the existing State aid measure to a larger number of beneficiaries.
- (57) According to Sweden, the notified amendment addresses in a comprehensive manner young SMEs' deficiencies in recruiting and raising key personnel (including board members), thus ensuring that the existing measure continues to have positive effects on the affected enterprises' economic growth and competition.
- (58) In light of the considerations set out in recitals (53) to (57) above, the Commission concludes that the existing measure subject to the notified amendment has positive effects and continues to contribute to a well-defined objective of common interest.

²⁹ *Employee Stock Option: the legal and administrative environment for employee stock options in the EU*, European Commission, DG Enterprises, June 2003, p.20.

³⁰ See footnote 26.

³¹ Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, *Entrepreneurship 2020 Action Plan, Reigniting the entrepreneurial spirit in Europe*, COM (2012) 795 final of 9 January 2013.

b) Negative effects of the aid measure

- (59) When assessing the negative effects of an aid measure, the Commission must assess the impact on competition between undertakings in the markets affected and on the location of economic activity.
- (60) The Commission considers that the scheme could potentially distort competition between undertakings on the Swedish market as the implementation of the scheme will lead to a situation where some undertakings will receive aid, namely those that apply and are selected, and some will not, namely those that are not eligible, that do not apply or that are not selected. This may strengthen the position of the undertakings that will receive aid under the scheme to employ and retain key employees compared to those that will have to do so at their own cost entirely.
- (61) The Commission needs to assess whether and how the aid measure minimises the distortions on competition and trade. In this regard, the Commission considers the following principles:
- a) need for State intervention: a State aid measure is targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern;
 - b) appropriateness of the aid measure: the proposed aid measure is an appropriate policy instrument to address the contribution to an economic activity; and
 - c) proportionality of the aid: the amount and intensity of the aid must be limited to the minimum needed to induce the additional investment or activity by the undertaking(s) concerned.

(i) Need for State intervention

- (62) In order to demonstrate the necessity of the measure, it has to be established that the measure enables the development of an economic activity, which would not have taken place in the absence of the measure, or at least would not have taken place on the same terms.
- (63) In its previous assessment of the existing State aid scheme, the Commission concluded that public intervention both at company and employee level is needed in order to allow smaller companies in Sweden to offer competitive remuneration

to employees compared to larger well established ones (see recital (38) to (43) of the Commission decision approving the existing measure³²).

- (64) In Sweden, asymmetric information resulting in debt or equity finance being available to a lesser degree (or with higher interest rates) or not at all, aggravates young and small companies' opportunities to offer competitive remuneration to their key employees. According to the Swedish authorities, the arguments presented in the section 3.3.2 of the Commission decision approving the existing scheme on the need for State intervention also apply to young medium sized enterprises³³, the latter being equally affected by market inefficiencies aggravating these companies' capabilities to employ and retain key employees (including board members).
- (65) The Swedish authorities provided evidence of the difficulties that young SMEs in Sweden face to compete in the labour market and attract qualified personnel. A specific survey performed on young medium sized enterprises showed that recruitment of qualified employees is the main growth barrier also for these companies³⁴.
- (66) Another study³⁵ specifically identified the recruitment of managers and professionals with accumulated tacit knowledge as a main obstacle to young SMEs growth. In this regard, the Commission takes into account that it is a peculiarity of the Swedish system that all limited liability companies are legally obliged to have a board. This implies that in Sweden there is a high demand for experienced and knowledgeable board members, who are often hired externally from other companies to establish fruitful professional contacts and allow the hiring companies to benefit from external expertise. Young SMEs, which are usually not well known in the market and suffer due to asymmetric information failures, meet with greater difficulty the competitive remuneration usually demanded by skilled, experienced managers/board members.
- (67) Furthermore, the recent interpretation of tax laws by the Supreme Administrative Court in Sweden has increased young SMEs' difficulties in recruiting board members. The fact that income of board members in Sweden must be taxed as salary income (and is no longer subject to business income taxation) means that the cost of recruiting a board member from outside the company has further increased for young SMEs. In particular, the above ruling has made board membership a less attractive position for high income earners facing a steep marginal tax rate. In this regard, the Swedish authorities have also pointed to a study conducted by the Swedish Academy of Board Directors of which findings were that 9 out of 10 of its members would reduce the number of board members

³² See footnote 8.

³³ That is, those companies with less than 150 employees and a net turnover or balance sheet smaller than SEK 280 million operating on the market for less than 10 years.

³⁴ Swedish Agency for Economic and Regional Growth, Business Conditions and Reality, 2017

³⁵ Företagarna (The Swedish Federation of Business Owners), "*Småföretagsbarometern, Riksrappporten, September 2016*" (in Swedish).

as a result of the above mentioned ruling³⁶. This has further aggravated SMEs' difficulties in recruiting highly competent board members, vital for company's growth prospects. The Commission agrees that offering favourably taxed employee share-based remuneration enables young SMEs to offer competitive remuneration packages in line with those of more established companies and allows them to attract key personnel, managers and professionals, including board members³⁷. In this regard, the Commission agrees with the Swedish authorities that attracting board members with knowledge and experience from other successful companies is essential for young SMEs' potential to grow as board members enable young companies to establish contacts with other successful companies and other market players or to have access to additional sources of financing.

- (68) The possibility to postpone the payment of the remuneration for the future – where a high payoff to a board member could coincide with the company's improved situation resulting from the achieved growth potential – makes the measure particularly suited for board members and thus confirms the necessity of including also this category of employee under its scope. Moreover, given that board members have to stay with the company for at least three years, in order to exercise the options under the share based remuneration, the measure offers incentives also to board members to remain in their role.
- (69) In light of the elements in recitals from (62) to (68), the Commission concludes that the notified amendment to the existing State aid measure is needed in order to allow both small as well as young medium-sized companies in Sweden to offer competitive remuneration to key employees, including board members, and improve their conditions for a sustainable growth.

(ii) Appropriateness of the aid measure

- (70) Member States can make different choices with regard to policy instruments and State aid control does not impose a single way to intervene in the economy.

The Commission normally considers that a measure is an appropriate instrument where the Member State has evaluated whether alternative policy options exist, that are equally suitable to achieve the common interest objective but less distortive to competition than the selective State aid instruments, and where it can demonstrate the appropriateness of the measure in targeting efficiency and/or equity objectives.

- (71) According to the Swedish authorities, the existing State aid measure subject to the notified amendments continues to be so designed as to address both small as well

³⁶ Lauritzen A. and Öhman M., (2018), *StyrelseBarometern. Hur påverkas viljan att vara styrelseledamot av de nya skattereglerna för styrelsearvoden?*, StyrelseAkademien (in Swedish).

³⁷ Gidehag, A. and Lodefalk, M., (2016), *Recruiting for Small Business Growth: Micro-level Evidence*, HUI Working Paper Series, number: 119.

as young medium sized companies' specific problem (due to lack of capital) of attracting, recruiting and retaining qualified employees (including board members). The Swedish authorities acknowledge that other State aid instruments (i.e. repayable advances, soft loans) can be appropriate to tackle the eligible companies' general problems with lack of capital but would not be as focused, effective and cost effective.

- (72) The Swedish authorities are also of the opinion that a general regulatory measure would be less effective and therefore cause, in economic terms, so-called "deadweight losses" (i.e. losses of economic efficiency) as such a measure would address all companies and not target specifically those young SMEs with problems of attracting, recruiting and retaining key personnel.
- (73) The Swedish authorities indicated that a fiscal scheme aimed at addressing access to finance hurdles affecting young SMEs would not be as focused and concentrated on the eligible companies' specific problem of being able to offer competitive remuneration to key staff in order to attract, recruit and retain qualified employees.
- (74) Finally, the Swedish authorities highlighted that the State aid measure subject to the notified amendments would continue to be characterised by some additional advantages compared to other State aid instruments³⁸:
 - (a) Share-based remuneration (and similar schemes) creates a stronger sense of involvement on the side of the employees, making them more interested in the value and well-being of the company, and induces them to work harder, improve the flow of information and help to develop an entrepreneurial spirit. There is empirical evidence that companies that have introduced some kind of financial participation scheme are on average more successful than others. There is also some evidence that companies with broad based share-based remuneration schemes have higher productivity and higher growth rates;
 - (b) Standard economic theory accepts that employees who participate in the success of their company will be better motivated than employees who receive a fixed salary;
 - (c) Financial participation tends to increase (informal) horizontal control. In general, the introduction of share-based remuneration also aims at a change of culture inside the company, it can influence the way employees perceive themselves in their job and lead to more teamwork and a more entrepreneurial attitude.

³⁸ See in particular *Employee Stock Option: the legal and administrative environment for employee stock options in the EU*, European Commission, DG Enterprises, June 2003, p.19.

- (75) In light of the elements detailed in recitals (70) to (75), the Commission considers that the State aid measure subject to the notified amendments remains coherent with the market failure that the aid measure aims to address. As the notified measure as amended remains focused on young SMEs, which are affected by problems of recruiting and retaining key employees in Sweden, the Commission considers it remains an appropriate State aid intervention.

(iii) Proportionality of the aid

- (76) Under Article 107(3)(c) of the TFEU, the amount and intensity of the aid must be limited to the minimum needed to induce the additional investment or activity by the undertaking(s) concerned.
- (77) The Swedish authorities indicated that the existing measure contains certain safeguards to limit the aid granted to the company, which are not amended by the notified measure (see recitals (59) to (64) of the Commission decision approving the existing State aid measure). These safeguards mentioned in the Commission decision approving the existing State aid measure are as follows:
- (78) Firstly, the advantage under the State aid measure subject to the notified amendment only materialises when the employee share options are exercised and when the share price exceeds the agreed exercise price. Since the advantage depends on the growth in the company's share price and the financial gain made by employees at exercise, this contributes to the proportionality of the aid.
- (79) Secondly, the amount of employee share options awarded is the result of bargaining between individual companies and their employees with opposite motives, which has the effect of minimising the aid provided to the minimum necessary and producing the least possible distortion. Both independent economic actors will have to negotiate on the exercise price, the premium and the amount of shares to be awarded under the option. While employees will have preferences for greater remuneration, employers will have an incentive to minimise the costs.
- (80) Finally, the scheme also has a cap on the total value of employee options that a company may issue and the total value of the employee options that each option holder may hold. In fact, the existing measure foresees a number of qualifying criteria for companies, employees and options, which also provide safeguards that the measure targets the above identified market failures, while still limiting the aid to the minimum.
- (81) The Commission therefore considers that the amendments notified to the existing State aid measure do not affect its proportionality, as the measure continues to provide for a number of safeguards ensuring that any aid is limited to the minimum necessary to achieve the objectives.

3.3.3. *Avoidance of undue negative effects on competition and trade and balancing test*

- (82) A State aid measure must be designed in such a way as to limit distortions of competition within the internal market. The negative effects have to be balanced against the overall positive effect of the measure.
- (83) In the present case, the Commission notes that the measure continues to be targeted at a well-defined restricted set of young companies i.e. young SMEs, which typically face difficulties in recruitment and retention of key employees. It is widely recognised in economic literature and EU policies that larger well-established companies do not suffer from the same magnitude of the market failure and therefore would be able to compete successfully in the labour market by offering competitive remuneration packages. Therefore, the measure is unlikely to discourage investments by larger companies.
- (84) The notified measure increases the ability of young SMEs to offer competitive remuneration packages to employees. The scheme has thus a potential to improve the efficient matching of labour resources to a greater number of productive and growth oriented economic activities.
- (85) Finally, the Commission notes that the State aid characteristics ensure that the potential distortions of competition are limited to a minimum. The tax relief only benefits young SMEs. Moreover, it only materialises if there is real, productive growth and the employee exercises the option obtaining a gain. This is likely to facilitate innovation and the development of new products and services. Furthermore the maximum aid amount is limited and that the aid is targeted to a well-defined purpose.
- (86) The Commission is therefore able to conclude that the distortions of competition and negative effects on trade due to the measure will be limited.

3.3.4. *Transparency*

- (87) The Commission considers that the Swedish authorities comply with their transparency obligations (see section 2.6).

3.3.5. *Conclusion with regard to the compatibility of the measure*

- (88) In light of the above, the Commission considers that the measure as amended can be declared compatible with the internal market on the basis of Article 107(3)(c) TFEU.

3.3.6. *Compliance with other provisions of EU Law*

- (89) Based on the information submitted in the notification, the Commission has no reason to doubt that the measure complies with EU law.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

Your request should be sent electronically to the following address:

European Commission
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President