

PANORAMIC

**STATE AID**

Sweden



LEXOLOGY

# State Aid

Contributing Editor

**Ulrich Soltész**

Gleiss Lutz

**Generated on: September 12, 2024**

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# Contributors

## Sweden

Hannes Snellman Attorneys Ltd

HANNES SNELLMAN

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**Peter Forsberg**

[peter.forsberg@hannessnellman.com](mailto:peter.forsberg@hannessnellman.com)

**Philip Thorell**

[philip.thorell@hannessnellman.com](mailto:philip.thorell@hannessnellman.com)

**Lars Lundgren**

[lars.lundgren@hannessnellman.com](mailto:lars.lundgren@hannessnellman.com)

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## OVERVIEW

### **Policy and track record**

**Outline your jurisdiction's state aid policy and track record of compliance and enforcement. What is the general attitude towards subsidies in your system?**

State aid in Sweden can in principle be disbursed at the national level – by the government and state authorities – as well as the regional and local levels – by municipalities and regions. At the beginning of the millennium, Sweden was the subject of investigations by the European Commission. These investigations concerned financial support granted by Swedish municipalities to, for example, municipal housing companies, regional airports and broadband development. State aid questions tend to arise at a local level in Sweden, which can be explained by the strong legal tradition of municipal autonomy, enabling the municipalities to formulate their own policies with a large degree of independence.

In Sweden, a few aid grantors account for a large share of the disbursed state aid, most notably the Swedish Tax Agency. Tax breaks and exemptions constitute the vast majority (approximately 81 per cent) of all reported aid in terms of value.

**Law stated - 25 March 2024**

### **Relevant authorities**

**Which national authorities monitor compliance with state aid rules and have primary responsibility for dealing with the European Commission on state aid matters?**

Supervision and disbursement of state aid is largely decentralised in Sweden, with many different authorities having different parts to play in the process of granting state aid and considering compliance with the Union rules. The grantor also plays a central role.

State aid granted by the government of Sweden can be formulated either through an act of parliament, or by the government itself through a regulation. The government of Sweden has a central role in all applications of the Union state aid rules: Only the government can notify aid, or otherwise represent Sweden before the Commission in state aid matters. The government notifies state aid through the Ministry of Climate and Enterprise.

The task of the [National Agency for Public Procurement](#) (NAPP) is to provide guidance to municipalities and regions in matters of state aid and to improve their ability to assess when and how to apply state aid rules. In a March 2024 report, the [Agency for Public Management](#) proposes that the NAPP be given an expanded role in this respect, and that the NAPP should additionally be responsible for the administration of state aid reporting in Sweden.

Although no sole authority is responsible for the enforcement of the Union state aid rules in Sweden, the [Swedish Competition Authority](#) (the SCA) is responsible for the enforcement of other provisions of competition law in Sweden. In the most recent legislative proposal on the topic of state aid (from 2013), the Swedish government considered that it was not warranted to appoint the SCA as responsible for the supervision of the Union state aid rules,

as the Swedish act on the application of the European Union's state aid rules (the Application Act) would clarify the state of the law as well as the possible venues for private enforcement.

The [Swedish Agency for Growth Policy Analysis](#) is responsible for administering the Commission's two existing state aid registers TAM and SARI2. The Swedish Agency for Public Management has recently proposed that these tasks be transferred to the NAPP in an effort to centralise the handling of state aid matters to a single authority, and thus increase efficiency and compliance.

**Law stated - 25 March 2024**

### **Relevant authorities**

#### **Which bodies are primarily in charge of granting aid and receiving aid applications?**

The body responsible for the granting of state aid depends on the applicable scheme. Regarding the most common national schemes, the [Swedish Agency for Economic and Regional Growth](#) is responsible for disbursing aid regarding regional investments and for regional promotion of enterprises, and the [Swedish Governmental Agency for Innovation Systems](#) is responsible for disbursing aid under the regulation on aid for research and development and innovation.

**Law stated - 25 March 2024**

### **General procedural and substantive framework**

#### **Describe the general procedural and substantive framework.**

In principle, a distinction can be made between national decisions regarding state aid, and decisions taken at a local or regional level.

In Sweden, state aid decisions are most often taken by the government of Sweden and parliament, and then delegated by the government to state authorities for disbursement. State aid granted by the government of Sweden can be formulated either through a proposition adopted by the Swedish parliament, or by the government through a regulation.

The [Administrative Procedure Act](#) applies to the entire matter-handling process at state authorities, and to many regional and local authorities. The act, inter alia, regulates fundamental rules of legality and proportionality, impartiality, access to the file, and many other issues central to the handling of matters by authorities in Sweden.

At the central level, aid is generally granted via regulations issued by the government of Sweden. These regulations set out objective conditions for when aid may be disbursed, and aid can then be applied for with the state authority designated by the government.

Municipalities and regions may also disburse aid to undertakings located or active within their geographical boundaries. As a general rule, municipalities and regions may only implement measures that fall within their competence under national law, mainly the local government act and the act on certain municipal powers. The local government act is based on the principle that municipalities and regions may only handle matters connected

to the interest of the body or its members (ie, the legal and natural persons seated or domiciled there, or who own real property there). Aid to a particular undertaking is only permissible if there are exceptional reasons. Beyond this restriction, however, the regions and municipalities of Sweden have a large degree of freedom in how they organise their activities.

Law stated - 25 March 2024

### **National legislation**

**Identify and describe the main national legislation implementing European state aid rules.**

There are no specific material rules in Sweden regarding state aid at the national level, and the Union state aid rules have not been transposed into Swedish law. The EU state aid rules – which are directly applicable in Sweden – are complemented by the Application Act, which contains rules on, inter alia, obligations to repay unlawful aid and for the grantor to demand the repayment of such aid.

Besides the Union state aid rules and their implementation in Sweden, the Swedish Competition Act regulates anticompetitive public sales activities, which may also cover activities in the scope of the EU state aid rules.

Law stated - 25 March 2024

## **PROGRAMMES**

### **National schemes**

**What are the most significant national schemes in place governing the application and the granting of aid, that have been approved by the Commission or that qualify for block exemptions?**

Although there is a vast number of national schemes that can be of relevance, the primary long-term national schemes are the regulations on aid for regional investments, for regional promotion of enterprises, and on support for research and development and innovation. These are designed to be compliant with the General Block Exemption Regulation (GBER).

Among the larger schemes that have been notified to the Commission in recent years is the regulation on electricity support to enterprises, which strives to offset high electricity prices incurred during 2023. This scheme has been notified to, and approved by, the Commission in matter SA.106512. Other schemes include aid to, for example, the press and media, and various tax exemptions relating to the green transition.

Law stated - 25 March 2024

### **General Block Exemption Regulation**

**Are there any specific rules in place on the implementation of the General Block Exemption Regulation (GBER)?**

There is no specific Swedish legislation directly corresponding to the GBER, although, as mentioned above, the most significant national aid schemes do indeed refer to the GBER. In 2021, aid granted in accordance with the GBER accounted for 0.52 per cent of Sweden's total GDP (approx. €2.8 billion) while the total aid reported by Sweden accounted for 1.23 per cent of the total GDP (approx. €6.6 billion).

Law stated - 25 March 2024

## PUBLIC OWNERSHIP AND SERVICES OF GENERAL ECONOMIC INTEREST (SGEI)

### Public undertakings, public holdings in company capital and public-private partnerships

Do state aid implications concerning public undertakings, public holdings in company capital and public-private partnerships play a significant role in your country?

The EU state aid rules generally play a relatively limited role in the greater Swedish legal framework, despite the relatively large degree of publicly owned companies in the Swedish economy. Publicly owned companies – such as the Swedish railway traffic company SJ AB, the power company Vattenfall AB, and the Swedish chain of apothecaries Apoteket AB – are typically operated independently from the state, on a market economy basis.

Law stated - 25 March 2024

### SGEI

Are there any specific national rules on SGEI? Is the concept of SGEI well developed in your jurisdiction?

Sweden does not have any consolidated rules designating SGEI on the national level. Decisions to designate a particular service as an SGEI can be taken at the national, regional, or local level. The 2020–2021 report on SGEIs submitted to the Commission by the government of Sweden indicates that aid valued at approximately €840 million was granted during 2021, indicating that SGEI is relatively well established as a concept in Sweden.

Law stated - 25 March 2024

## CONSIDERATIONS FOR AID RECIPIENTS

### Legal right to state aid

Is there a legal right for businesses to obtain state aid or is the granting of aid completely within the authorities' discretion?

The granting of aid is within the relevant authority's discretion in the sense that it is the government of Sweden that formulates the state aid regulations and its conditions. However, the conditions for receiving state aid must be formulated in objective terms: As long as the

applicant in question fulfils the objective conditions of the support scheme issued by the Swedish government, the applicant cannot be arbitrarily denied state aid. At the local level, aid to a particular undertaking may also be granted on an ad hoc basis.

**Law stated - 25 March 2024**

### **Main award criteria**

#### **What are the main criteria the national authorities will consider before making an award?**

scheme the applicant is seeking aid under.

The regulation on state aid to regional investments provides for three cumulative criteria, all of which must be fulfilled for the applicant to be awarded aid: the measure for which aid is requested must not have been implemented, wages and other employment benefits must be in accordance with a collective bargaining agreement (or on equal terms to those provided for by a comparable collective bargaining agreement), and the particular criterion for the relevant type of aid must be fulfilled. However, other aid schemes have more general criteria, and in those cases it is generally sufficient that (1) there are remaining funds allocated for aid that can be disbursed to the applicant, and (2) that the applicant fulfils the requirements of Chapter I, and the relevant articles, of the General Block Exemption Regulation (GBER).

**Law stated - 25 March 2024**

### **Strategic considerations and best practice**

#### **What are the main strategic considerations and best practices for successful applications for aid?**

Normally, the best practice for successful application for state aid is to carefully assess whether the applicant fulfils the conditions and requirements of the particular aid scheme, as well as to complete any forms for application with due care. The conditions will vary depending on the regulation, and general conditions are often combined with sector-specific conditions. If the general and specific conditions are met, the state may not on subjective grounds refuse an enterprise's application for state aid.

**Law stated - 25 March 2024**

### **Challenging refusal to grant aid**

#### **How may unsuccessful applicants challenge national authorities' refusal to grant aid?**

There are no statistics published regarding challenges of refusals to grant aid, although such challenges do not appear to be commonplace.

As an initial step, an applicant who has been denied aid by a state authority may engage with the relevant authority by requesting the authority to reconsider its decision. The authority has extensive possibilities to change a decision in the course of such a discussion.

Decisions by a state authority to refuse an aid application can be appealed in accordance with the Swedish Administrative Procedure Act, meaning that the administrative court in whose court district the relevant authority has its seat is generally the court of first instance.

Law stated - 25 March 2024

### **Involvement in EU investigation and notification process**

**To what extent is the aid recipient involved in the EU investigation and notification process?**

Pursuant to the Application Act, anyone who may be presumed to have information that the government needs in a matter of state aid handled at the Commission must, upon request, provide this information to the government or to the authority the government decides. The aid recipient may therefore very well be involved in the EU investigation and notification process, albeit indirectly.

Law stated - 25 March 2024

## **STRATEGIC CONSIDERATIONS FOR COMPETITORS**

### **Complaints about state aid**

**To which national bodies should competitors address complaints about state aid? Do these bodies have enforcement powers, and do they cooperate with authorities in other member states?**

There is no particular Swedish authority in charge of dealing with general complaints regarding state aid. The primary recourse of a party that considers that a public body has disbursed aid in violation of the Union state aid rules is thus to bring a legal action before a Swedish court.

On an informal level, a competitor can also address complaints regarding state aid to the government of Sweden. As the Swedish body ultimately responsible for Sweden upholding its obligations under the EU treaties, the government in practice has a strong interest in ensuring that no state authority, municipality or region violates the EU state aid rules.

Generally, the granting authority is also under a wide-reaching obligation to demand the repayment of unlawful state aid. As such, the granting authority may be approached by a competitor if the competitor can present compelling arguments for why the measure constitutes illegal state aid.

Law stated - 25 March 2024

### **Dealing with illegal or incompatible aid**

**How can competitors find out about possible illegal or incompatible aid from official sources? What publicity is given to the granting of aid?**

As a part of Sweden's obligations under the Union state aid rules, the aid grantor shall perform annual reporting and/or transparency reporting, either in SARI2 or in TAM. The Swedish Agency for Growth Policy Evaluations and Analyses has been tasked with the administration of these tools. It has been assessed, however, that there is a relatively large degree of underreporting of state aid.

**Law stated - 25 March 2024**

### **Dealing with illegal or incompatible aid**

**Give details of any legislation that gives competitors access to documents on state aid granted to beneficiaries.**

The Swedish Freedom of the Press Act, and the Public Access to Information and Secrecy Act provides for the fundamental principle that everyone has the right to access public documents and regulates secrecy of specific information in such documents. As such, anyone may as a main rule access documents relating to state aid by requesting access to such documents from the relevant authority. Public documents regarding state aid may be covered by secrecy wholly or in part, depending on the circumstances of the particular case.

Specific rules can also be found in the act on insight into certain financial relationships (the Transparency Act). Under the Transparency Act, a publicly owned enterprise must disclose its financial relations with authorities and the state in such a way as to show clearly which public funds it has received.

**Law stated - 25 March 2024**

### **Dealing with illegal or incompatible aid**

**What other publicly available sources can help competitors obtain information about possible illegal or incompatible aid?**

Shareholders' meetings are generally not accessible to the general public. Annual reports on financial statements must be prepared by limited liability companies, as well as larger economic associations and partnerships. These are in turn filed with the Swedish Companies Registration Office. The financial statements shall, inter alia, document all received state aid. Virtually all information submitted and registered at the Swedish Companies Registration Office's register is public.

**Law stated - 25 March 2024**

### **Other ways to counter illegal or incompatible aid**

**Apart from complaints to the national authorities and petitions to national and EU courts, how else may complainants counter illegal or incompatible aid?**

Despite the Swedish Competition Authority (SCA) not having the role of enforcing authority of the Union state aid rules in Sweden, a competitor may nevertheless approach the SCA if a certain state aid measure constitutes an anticompetitive public sales activity. This can, in particular, be the case if a Swedish authority offers goods or services on terms that are particularly beneficial to certain purchasers, thus distorting competition in favour of these parties.

In principle, nothing prevents a competitor from contacting third parties or the beneficiary to highlight the unlawfulness of the state aid. However, caution should be exercised when contacting other competitors, as such discussions may amount to an agreement restrictive of competition under the Swedish Competition Act. This may especially be the case if the information sharing involves calls for a joint boycott or similar action.

**Law stated - 25 March 2024**

## PRIVATE ENFORCEMENT IN NATIONAL COURTS

### Relevant courts and standing

**Which courts will hear private complaints against the award of state aid?  
Who has standing to bring an action?**

While a third party does not have an explicitly regulated standing in matters of state aid, an action can in principle be brought by a third party against the grantor of state aid to prohibit the continued disbursement of aid, and to order the grantor to recover the aid in question. Under the Application Act, only the grantor may bring an action against the recipient of the aid measure. Cases brought by a third party against the grantor, and by the grantor against the recipient, are heard by the district courts as the court of first instance.

If state aid is granted by a municipality or region, the assessment of legality procedure applies, meaning that every person domiciled or with its seat in in a particular municipality or region (or who otherwise owns real property there) has standing to have the legality of decisions made by that entity reviewed by appealing to the administrative court. Per the available statistics, private enforcement cases in Sweden have been ruled exclusively by administrative courts.

**Law stated - 25 March 2024**

### Available grounds

**What are the available grounds for bringing a private enforcement action?**

A decision by a state or local authority may in general be appealed under the provisions of the Administrative Procedure Act. Swedish courts have previously recognised that third parties may have a legitimate interest in challenging decisions to disburse state aid – and a competitor may thus have a right to appeal. Unlike under the assessment of legality review, the review of a decision covered by the Administrative Procedure Act can result in the court materially changing the challenged decision.

The legal tool most frequently invoked against a decision by a municipality to award state aid is that of assessment of legality under the Local Government Act. In such cases, the

administrative court will only consider whether the decision should be quashed. A decision can be quashed if it has not been made in due order, if the decision refers to something that is not a concern of the municipality, if the municipal body has exceeded its powers, or if the decision is contrary to law or a statutory provision.

**Law stated - 25 March 2024**

### **Defence of an action**

#### **Who defends an action challenging the legality of state aid? How may defendants defeat a challenge?**

If a decision to grant aid is appealed by a third party, the authority is always the defendant in the administrative process. The Application Act does not allow third parties to bring actions for repayment of unlawful aid against the recipient. A third party may, however, bring an action against the granting authority. The government of Sweden may, on a case-by-case basis, designate another authority as responsible for defence in state aid proceedings.

**Law stated - 25 March 2024**

### **Compliance with EU law**

#### **Have the national courts been petitioned to enforce compliance with EU state aid rules or the standstill obligation under article 108(3) TFEU? Does an action by a competitor have suspensory effect? What is the national courts' track record for enforcement?**

As questions of state aid may not be settled through arbitration, the national courts hold the exclusive competence to rule in this particular subject matter. The national courts may also through an interim decision order the immediate repayment of unlawful aid and the immediate payment of interest on such aid if the claimant demonstrates probable cause.

A majority of the private actions regarding state aid have been brought by natural persons against municipalities. The success rate of these cases has not been particularly high, as most plaintiffs bring their case without the help of legal counsel and as such rarely present arguments based on the Union state aid rules. There are no indications that the Swedish administrative courts do not take case law from the ECJ into account when assessing cases concerning state aid.

Regarding cases brought before a general court, the losing party may be ordered to bear the legal costs of the counterparty. As these cases can be relatively complex, the legal costs can be significant. In the administrative process, however, the losing party may typically not be ordered to do so.

**Law stated - 25 March 2024**

### **Referral by national courts to European Commission**

## Is there a mechanism under your jurisdiction's rules of procedure that allows national courts to refer a question on state aid to the Commission and to stay proceedings?

There are no provisions in Swedish law regarding the referral of questions regarding state aid to the Commission. However, the Commission has on multiple occasions in recent years intervened in cases as amicus curiae. These opinions have been submitted in protest actions against arbitral awards regarding the interpretation of investment treaties, where the Commission has argued that upholding the arbitral award would amount to unlawful state aid. The Commission's opinions are not binding on the Swedish courts but have been followed in practice.

To avoid unnecessary delays of the court proceedings, Swedish courts are often reluctant to refer requests for preliminary rulings in state aid questions. During the period of 2007–2018, no requests for preliminary rulings were made by Swedish courts.

**Law stated - 25 March 2024**

## Burden of proof

### Which party bears the burden of proof? How easy is it to discharge?

Where an applicant claims that a measure constitutes state aid, it is typically also the applicant who bears the burden of proving that the circumstances demonstrate that aid has been provided. Unless there is a decision from the Commission, the applicant will as a starting point therefore bear the full burden of proof for proving that a particular measure constitutes state aid. As such an assessment can entail complex assessments both of the law and of the facts, it may be difficult for the applicant to prove that a measure constitutes state aid. There are no alleviations to the standard of proof.

In the case of an assessment of legality under the local government act, a municipal decision should be declared null on any of the grounds specified in the local government act. These grounds of quashing a decision are mainly procedural, and the burden of proof can in such cases typically be discharged with relative ease. Although the complainant bears the burden of proof, the municipality must in some cases be able to explain the basis for its decision.

While there is no possibility for discovery within the scope of the proceedings, there are certain other factors that may alleviate the burden of the applicant: the administrative court has a certain responsibility to itself investigate the facts of the case depending on the situation and the applicant will in most cases be able to request access to public documents from the grantor.

**Law stated - 25 March 2024**

## Deutsche Lufthansa scenario

Should a competitor bring state aid proceedings to a national court when the Commission is already investigating the case? Do the national courts fully comply with the Deutsche Lufthansa case law? What is the added

## value of such a 'second track', namely an additional court procedure next to the complaint at the Commission?

As the general courts are largely bound by the Commission's assessment of whether a particular measure is compatible with the EU state aid rules, the added value of a second track before national courts can be questioned. A Swedish court hearing such a case may stay the proceedings during the Commission's investigation and await a final decision from the Commission before issuing a judgment.

Law stated - 25 March 2024

## Economic evidence

### What is the role of economic evidence in the decision-making process?

A fundamental principle of Swedish procedural law is that of free sifting of evidence, which essentially means that the parties in a trial may rely on all the evidence they can produce and that the value of the evidence is freely assessed by the court. This principle is applicable to every court of law. However, national judges are typically not economic experts and care should therefore be taken when presenting particularly complex economic evidence.

Law stated - 25 March 2024

## Time frame

### What is the usual time frame for court proceedings at first instance and on appeal?

No data exists on how long these specific cases take, mainly because they are rare. The length of time it takes to resolve a case in a court of law varies greatly depending on the type of case as well as the nature and scope of the case. A case handled in the administrative courts may be handled within a year or less, whereas civil proceedings in the district courts can be expected to take longer time.

Law stated - 25 March 2024

## Interim relief

### What are the conditions and procedures for grant of interim relief against unlawfully granted aid?

According to the Application Act, the court may as interim relief order the immediate repayment of aid with interest if the claimant demonstrates with probable cause that the aid will be deemed illegal in the final judgment. Moreover, there must exist reasonable grounds for fearing that the other party, by act or omission, would prevent or hinder the exercise of the applicant's right or would substantially impair its value. An interim measure may be subject to a separate appeal.

In the event of an interim decision on repayment, the payment shall be made to the County Administrative Board of Stockholm County instead of to the grantor. The County

Administrative Board shall pay the amount and interest to the defendant to the extent that the action has been dismissed or if the case has been discontinued. If a party considers that an erroneous decision by a court has caused them damage, that party may extraordinarily request compensation from the Swedish Chancellor of Justice. Such compensation is only rarely awarded.

Law stated - 25 March 2024

### **Legal consequence of illegal aid**

**What are the legal consequences if a national court establishes the presence of illegal aid? What happens in case of (illegal) state guarantees?**

Under Swedish law, decisions taken by authorities, municipalities and regions are binding unless overturned. There is as such no rule automatically invalidating measures that entail state aid being disbursed, without any prior declaration to that end being necessary.

While Swedish courts are, in principle, able to declare null and void any decisions or agreements that violate the EU state aid rules, they are not under a general obligation to do so. The main aim of the Swedish legislation is to restore the competitive situation *ex ante*. Where this can be achieved through the court issuing orders, it is principally not warranted to void any decisions or agreements.

Law stated - 25 March 2024

### **Damages**

**What are the conditions for competitors to obtain damages for award of unlawful state aid or a breach of the standstill obligation in article 108(3) TFEU? Can competitors claim damages from the state or the beneficiary? How do national courts calculate damages?**

There is no explicit legal standing for third parties (eg, competitors) who seek to claim damages in matters of illegal state aid. The Supreme Court of Sweden has held that a general court is competent to examine a third party's action in a dispute concerning compensation for damages or litigation aimed at preventing further damage, in accordance with article 108(3) TFEU and the *Francovich* principle.

A third party may, in principle, bring an action for damages against the beneficiary of the state aid as well, although the chances of such a claim being successful are limited, as the Swedish Tort Liability Act stipulates that financial damage will only be compensated if the damage was caused through a crime.

Law stated - 25 March 2024

## **STATE ACTIONS TO RECOVER INCOMPATIBLE AID**

### **Relevant legislation**

## What is the relevant legislation for the recovery of incompatible aid and who enforces it?

Under the Application Act, the legal entity that provided the aid is obligated to recover incompatible aid (with interest) from the recipient. In fact, an action for recovery of aid and interest against the recipient can only be brought by the grantor.

Where the aid has been granted by a publicly owned company or another type of private law legal entity, the grantor may enforce recovery by issuing a claim against the beneficiary and by bringing an action for repayment.

If the aid has been provided by a region or a municipality, recovery must be carried out in accordance with the provisions of the local government act, which specifies the municipal body responsible for recovery and the formalities to be observed.

In the case of aid granted by the state, for example, through a government decision or a decision by a state authority, it shall be the responsibility of the authority that decided on the aid to recover it.

**Law stated - 25 March 2024**

## Legal basis for recovery

### What is the legal basis for recovery? Are there any grounds for recovery that are purely based on national law?

Any grantor of unlawful state aid has a general obligation under the Application Act to demand repayment of such aid, and conversely, a recipient of such aid is obligated to repay the aid in full. When state aid has been granted in accordance with a state aid regulation under Swedish law, specific grounds for recovery can be found within the regulation. In several of the Swedish state aid regulations, the same three general conditions can be found as a legal basis for recovery: the applicant has caused the aid to be granted incorrectly or excessively by providing incorrect information or in any other way; or for some other reason, the aid was granted incorrectly or at an excessive amount and the beneficiary should reasonably have realised this; or the conditions of the aid have not been respected.

**Law stated - 25 March 2024**

## Commission-instigated infringement procedures

### Has the Commission ever opened infringement procedures before the CJEU because of non-recovery of aid under article 108(2) TFEU?

To date, the Commission has not opened infringement procedures before the CJEU because of non-recovery of aid under article 108(2) TFEU against Sweden. The Commission has, however, in a few cases ordered Sweden to enforce recovery of granted state aid in accordance with article 108(2) TFEU. These cases include an exemption from electricity taxes for the Swedish manufacturing industry, as well as public property sold below market price by municipalities.

**Law stated - 25 March 2024**

## Implementation of recovery

### How is recovery implemented?

The grantor can independently conclude that an aid measure is illegal. Nevertheless, the grantor is generally only empowered to unilaterally demand the repayment of the aid if the agreement or decision stipulates as such, or if any of the specific provisions in the administrative procedure act are applicable (such as where the beneficiary has provided incorrect information).

A municipality or region that has granted unlawful state aid is required to take the necessary measures to recover the aid on its own initiative. If the recipient does not repay the aid voluntarily, the municipality or region shall bring an action in a general court under the Application Act.

Law stated - 25 March 2024

## Article 108(3) TFEU

### Can a public body rely on article 108(3) TFEU?

Although a somewhat different situation, the government of Sweden has on at least one occasion claimed that compensating an undertaking for damages resulting from violations of the right to property would constitute state aid. While these defences have been unsuccessful, such cases show that it is indeed possible to invoke the EU state aid rules, even for the public body that would be the grantor of the presumptive aid.

In theory, a public body may as such argue that upholding its obligations under a particular contract would amount to illegal state aid. However, a court is not obligated to void a contract that contains measures amounting to state aid, as the court may decide that a less intrusive measure – such as ordering the aid to be repaid – is sufficient to restore the *ex ante* situation and to uphold Sweden's obligations under the EU state aid rules.

Law stated - 25 March 2024

## Defence against recovery order

### On which grounds can a beneficiary defend itself against a recovery order?

### How may beneficiaries of aid challenge recovery actions by the state?

The grounds on which a beneficiary can defend itself against a recovery order are largely dependent on the grounds on which the recovery order is based on. All state aid regulations contain general and, where applicable, sector-specific conditions for the granting of state aid, and a breach of such a condition will result in a recovery order.

Law stated - 25 March 2024

## Interim relief against recovery order

## Is there a possibility to obtain interim relief against a recovery order? How may aid recipients receive damages for recovery of incompatible aid?

Parties may obtain interim relief against a recovery order in accordance with the Swedish Code of Civil Procedure. If the district court has granted attachment or declared that the judgment may be enforced before the judgment has become final, the court of appeal may by an interim decision decide that the district court's decision may not be enforced until further notice.

Cases regarding damages on the legal basis of culpa in contrahendo are generally rare, and the legal standard for when damages are awarded is considered as high. It is questionable whether a company could successfully rely on culpa in contrahendo as this presupposes that the recipient can hold legitimate expectations due to good faith. The Supreme Administrative Court has stated that legitimate expectations are not sufficient as a ground for defence against a recovery order of state aid, and it is therefore likely that it would not suffice for damages due to culpa in contrahendo either.

Law stated - 25 March 2024

## UPDATE AND TRENDS

### Key developments of the past year

Are there any emerging trends or hot topics relating to state aid control in your jurisdiction? What are the priorities of the national authorities? Are there any current proposals to change the legislation? Are there any recent important cases in the field of fiscal aid (taxes), infrastructure, or energy? Any sector enquiries?

In March 2024, the Agency for Public Management published a report on state aid in Sweden, concluding that the handling of state aid issues is fragmented and inefficient. Today, multiple authorities are responsible for handling a multitude of tasks related to state aid. Some tasks are not the responsibility of any authority and are only carried out to the extent the authorities choose to take responsibility for them.

Law stated - 25 March 2024