

## **2. Outline on the availability of judicial relief under the legal system of Finland**

To date there has been only one case, which is currently pending in Finnish courts.

### **2.1 Procedures concerning the direct effect of Article 93(3)**

#### **2.1.1 Procedures before administrative courts**

The Finnish Constitution provides that the authorities observe the law in the course of carrying out their duties. The scope of this obligation also includes EC Treaty Articles that have direct effect, such as Article 93(3). If an authority fails to notify the Commission of an aid that it will grant, or grants the aid prior to the decision of the Commission, it may be argued that the grant of the aid has not been lawful, and that the decision to grant aid has not become enforceable. Such aid could be challenged in an administrative court based on the Act on Administrative Legal Procedures (Hallintolainkäyttölaki 586/1969), or, if the decision is made by a municipality, based on the Act on Municipalities (Kuntalaki 365/1995). The administrative court should then decide whether the aid constitutes the type of aid that should have been notified to the Commission.

The type of administrative court where the complaint should be lodged depends on the type of authority that has made the decision to grant aid. Under the main rule, a decision made by a ministry may be appealed to the Supreme Administrative Court (Korkein hallinto-oikeus), and a decision of a lower authority or municipality to a County Court (Lääninoikeus), which decision can, in turn, be appealed to the Supreme Administrative Court.

The action could be brought by a competitor of the recipient of the aid, provided that it can show that the decision to grant aid directly affects its rights, duties or benefits. In many cases it might be difficult to establish *locus standi*, though this remains to be seen when cases concerning State aids are brought in greater numbers. Generally, the right to bring an action by a party who is not the actual addressee of the decision is interpreted rather narrowly. It may, however, be noted that a decision made by a municipality may be challenged by any resident in that municipality.

The administrative court may take interim measures prior to the decision of the court on the substance of the case. An injunction prohibiting the actual granting of the aid may be issued on the court's own initiative, or at the request of the complainant. The law (Hallintolainkäyttölaki) does not contain any specific conditions for the use of interim measures, hence the court must assess their necessity separately in each individual case.

### **2.1.2 Procedures before civil courts**

An action for damages against the State that has granted the aid may be brought in a District Court (Käräjäoikeus) by a third party. Under national law such an action would be governed by the Act on Damages (Vahingonkorvauslaki 412/1974). According to this Act, an authority is liable to make good the damage which it has caused by its fault or neglect when acting as a public authority. It is also necessary to prove that the authority has not acted with the care that may reasonably be expected of it in the circumstances. There are certain other additional conditions for damages to be awarded against a public authority. Furthermore, taking into account the requirement to prove a causal link between the decision of the authority and any damage to the complainant, it would seem to be rather difficult to obtain a judgment awarding damages. The action for damages could also be initiated based on the so called *Francovich* and *Brasserie du Pêcheur-Factortame* III doctrine developed by the European Court of Justice. However, the difficulty in proving a causal link would remain.

It seems unlikely that any action for damages could be initiated against the recipient of aid since it is the grantor, and not the recipient of the aid, that would breach the rules on State aid, and there appears to be no other provision in Finnish law which would entitle a competitor to claim damages from the recipient.

While the grantor of the aid might in certain cases be able to bring a claim for recovery of the aid in a District Court on grounds of the recipient's unjust enrichment, a competitor would probably not be considered to have locus standi to bring such an action.

## **2.2 Procedures concerning the enforcement of negative Commission decisions**

The enforcement of a negative Commission decision entails the recovery of aid paid in breach of the decision. Finnish legislation contains an act concerning EU State aids (Laki eräiden valtion tukea koskevien Euroopan yhteisöjen säännösten soveltamisesta 1593/94), which provides only that an aid deemed by the Commission to violate Article 92 may be wholly or partially recovered from the recipient. Moreover, the Council of State has made a decision under the above act (Valtioneuvoston päätös valtion tukien ilmoittamisesta komissiolle noudatettavista menettelytavoista 18/1995), providing that the decision concerning the grant of the aid must contain a condition to the effect that an illegally granted aid may be wholly or partially recovered, should the Commission so decide. A recovery action may be brought against the recipient of aid in a District Court.

## **2.3 Procedures concerning the implementation of positive Commission decisions**

If a competitor of the recipient of aid were to challenge in a civil court an aid allowed by the Commission, it is likely that the court would request an Article 177 preliminary ruling from the European Court of Justice.

## **3. List of cases with summaries**

An action for damages based on State aid given to a golf course brought by a competitor in the District Court of Helsinki (DNr 97/20052) (**D**). The case is still pending (as of 30 June 1998), and the issue of *locus standi* has not yet been confirmed.