

2. Member State system: Denmark

Under Danish law, there are no rules or regulations specifically dealing with the questions raised in point 1 concerning State aid.

Consequently, legal procedures concerning State aid are dealt with by the ordinary Danish courts in civil proceedings.

Proceedings may be brought before the local City courts (Byretten), subject to appeal to the High Courts (Landsretten). However, if a case involves the examination of a public act - e.g. a decision to grant aid - or is directed at or started by a public authority, proceedings may start in the High Courts (Landsretten), or may be referred to the High Courts (Landsretten) by the City courts (Byretten). Further, any civil case with an economic value exceeding DKK 500.000 may be brought directly before the High Courts (Landsretten).

Judgments of the High Courts (Landsretten) may be appealed to the Supreme Courts (Højesteret).

The ordinary courts may grant injunctions in cases involving State aid, provided the relevant general conditions are met. Injunctions are granted by the bailiff's courts (fogedretten), which are subdivisions of the city courts. If an injunction is granted, confirmatory proceedings before the ordinary courts have to be initiated within eight days.

2.1 The direct effect of Article 93(3)

The procedures described in 1.2 may generally be considered available in the ordinary courts.

As mentioned above, Danish law contains no procedural or substantive provisions specifically dealing with questions relating to the granting of State aid, nor any rules providing remedies to competitors or other third parties in such instance. Consequently, the legal basis for any procedure concerning State aid will have to be founded on Articles 92 and 93.

It follows from general principles of law that a third party, who can establish a sufficient legal interest, may challenge public acts in court. This principle will apply to public acts granting State aid.

It is likely that a competitor can establish a sufficient legal interest to have standing in procedures to challenge the legality of an act granting State aid, based on non-compliance with Article 93(3).

Under Danish law, a public authority may incur liability for damages caused by the authority's failure to observe obligations on it. It may be assumed that such liability can occur if a public authority breaches the obligation to notify State aid under Article 93(3), and a third party can establish that the decision to grant the aid caused injury to him.

A claim for damages may also be based directly on the rules on Member State liability developed by the Court of Justice.

It is unlikely that the recipient of illegal aid can incur liability for damages towards competitors or other third parties.

The injunction procedure may be available for a third party and/or competitor in order to hinder the implementation of a decision to grant aid which contravenes the notification requirement under Article 93(3).

2.2 The enforcement of negative Commission decisions

Negative Commission decisions may be enforced by application of the procedures described in 1.3.

A Danish court may order the repayment of illegal aid at the request of a public authority in accordance with the general rules of Danish law. This implies that an authority may generally recover payments made in breach of the relevant rules, even if this is due to a mistake by the authority itself. It may generally be assumed that the Danish courts will follow this rule, also taking into account the case law from the Court of Justice concerning recovery of illegal aid.

A third party may, under the conditions described in (i), be able to obtain a judgment against the recipient ordering repayment of illegal aid. Further, the courts may order the responsible public authority to pay damages to third parties, including competitors, under the same conditions as a means of enforcing a negative Commission decision. The fact that third parties suffering loss due to the recovery of the aid from the recipient may be in a position to claim damage from the authority is likely to be problematic.

Finally, injunctions may be granted against the implementation of aid which the Commission has declared illegal. In this situation, there will be a greater possibility of obtaining an injunction in comparison with the situation described in (i), since the bailiff's court (fogedretten) can rely on the Commission's decision.

2.3 The implementation of positive Commission decisions

Under the conditions described in (i) above (sufficient legal interest), third parties (including competitors) may invoke the procedures described in 1.4. to challenge decisions of public authorities giving effect to aid approved by the Commission.

A competitor would have to claim that the act was illegal, arguing that the basis on which the act was founded, i.e. the Commission decision to approve the aid, was not correct. Consequently, the legal basis for challenging the legality of aid approved by the Commission would in effect be the jurisprudence of the Court of Justice concerning Articles 92 and 93.

3. Member State cases

As per 30 June 1998, there are no published Danish court cases in which Articles 92 and/or 93 have been applied.