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Act on Discretionary Government Transfers

(688/2001)

In accordance with the decision of Parliament, the following is enacted:

Chapter 1 - General Provisions

Section 1 - Scope

- (1) This Act lays down the grounds and procedures that apply to granting discretionary Government transfers. For the purposes of this Act, discretionary Government transfers mean funding granted in the form of aid for an activity or project.
- (2) This Act applies to discretionary Government transfers granted from appropriations in the State budget or from extra-budgetary State funds. This Act also applies when authorization is granted in the State budget to make agreements on or commit to discretionary Government transfers.
- (3) Unless otherwise laid down elsewhere in law, this Act also applies to discretionary Government transfers for use outside Finland. However, if the recipient of the Government transfer referred to in subsection 2 is a foreign state or an institution of

a foreign state, only sections 5-8 and section 11(5) apply to the aid.

- (4) This Act does not apply to aid granted on the basis of international commitments binding on Finland.

Section 2 - Aid granted from the funds of the European Community or other European Union funds

- (1) Unless otherwise laid down elsewhere in Finnish law or the law of the European Community, the provisions laid down in sections 8-37 apply, as appropriate, to aid granted from funds of the European Community or other European Union funds. For the purposes of this Act, aid granted from the funds of the European Community or other European Union funds means aid, loans and other forms of financing, guarantees, payment reliefs and other financial benefits granted from the budgets of the European Communities or other funds governed by the European Union.

Section 3 - Relationship with other legislation

- (1) Provisions in other legislation that diverge from this Act must be observed instead of this Act.
- (2) This Act does not apply to Government transfers and discretionary Government transfers prescribed on in the Act on Central Government Transfers to Local Government (1147/1996), the Act on financing public education and cultural services 635/1998), the Act on Welfare and Health Care Planning and State Subsidy (733/1992) or the Act on Government transfers and discretionary Government transfers to municipal fire and rescue services 560/1975). Moreover, this Act will not apply to aid paid from the proceeds from slot machines, casino games or casino activities or totalisator betting.

- (3) Unless otherwise laid down elsewhere in law, the following shall not be considered discretionary Government transfers for the purposes of this Act:
- 1) aid, compensation or other benefit the entitlement to which is based on law and the criteria for determining the amount are laid down in detail in law;
 - 2) loans granted from State funds and related interest relief or other benefits;
 - 3) State sureties and guarantees;
 - 4) interest subsidy on loans granted by a credit institution or a State-owned specialist financing institution or company;
 - 5) relief on or exemption from the payment of State tax and other State claims; and
 - 6) social allowance, benefit based on social insurance and other assistance based on statutory social security granted to a private person.

Section 4 - *Definitions*

For the purposes of this Act:

- 1) State aid authority means the authority having statutory duties which include matters pertaining to a particular discretionary Government transfer; and
- 2) assistance, loans and other financing, interest subsidy, payment relief and other comparable financial benefit provided by the State, a local authority or other public sector organization or an institution or foundation under public law, or paid from their funds, and aid granted from the funds of the European Community or other European Union funds, with the exception of aid provided through the tax system.

Chapter 2 - **Grounds for granting discretionary Government transfers**

Section 5 - *Types of discretionary Government transfer*

- (1) Discretionary Government transfers may be granted in the form of general or special transfers.
- (2) General aid may be granted for the activities of the recipient of a discretionary Government transfer in general or for a particular part thereof.
- (3) Special discretionary Government transfers may be granted in the form of:
 - 1) investment aid for the purpose of procuring a tangible or intangible asset;
 - 2) project assistance for an experimental, introductory, research or development project or some other project with a defined purpose;
 - 3) a grant, scholarship or assistance for the applicant's personal use or project; or
 - 4) some other special aid comparable to those mentioned in paragraphs 1-3.

Section 6 - *Amount of discretionary Government transfer*

- (1) A discretionary government transfer granted from a budgetary or extra-budgetary State fund, with the exception of transfers referred to in section 5(3)(3), may not exceed the full amount of the total costs incurred from the activity or project in question, subject to conditions that are necessary and justifiable for the fulfilment of the purpose of granting the transfer.
- (2) Notwithstanding the provision laid down in subsection 1, the actual costs of an activity or project may be less than the discretionary Government transfer granted on the basis of computational grounds approved by a State aid authority.

- (3) Discretionary Government transfers, together with other public aid, may not exceed the maximum amount of State or other public assistance laid down in European Union or Finnish law.

Section 7 – General grounds for granting discretionary Government transfers

- (1) Discretionary Government transfers may be granted from a budgetary or extra-budgetary State fund if:
- 1) the purpose for which transfer is applied is socially acceptable;
 - 2) granting a transfer is justified by the objective of its use;
 - 3) granting a transfer is necessary considering other public aid received by the applicant and the type and extent of the project or activity in question; or
 - 4) granting a transfer is judged to cause only minor distortion to competition and the market in a state belonging to the European Economic Area.
- (2) A discretionary Government transfer may be granted for the applicant's activities or to be used to assist an activity or project which is not the applicant's but which meets the objective of the transfer decision. When a transfer is granted for a use that meets the requirements of the transfer decision but is not the applicant's activity or project, the recipient of the transfer must agree on its use and the supervision of its use and their terms with the party carrying out the activity or implementing the project.

Section 8 – More detailed provisions on discretionary Government transfers

Under the scope of this Act, more detailed provisions on the granting, payment and use of

discretionary Government transfers in accordance with the budget may be issued by Government decree.

Chapter 3 – **Granting and paying discretionary Government transfers**

Section 9 – *Applying for discretionary Government transfers*

- (1) Discretionary Government transfers are applied for in writing.
- (2) The State aid authority shall publicize the opportunity to apply for discretionary Government transfers and the relevant application procedure, and provide information on the general terms of granting transfers and of the transfers themselves, unless this is manifestly unnecessary.

Section 10 – *Discretionary Government transfer applicants' duty to provide clarification*

In conjunction with an application, applicants for discretionary Government transfers must provide the State aid authority with correct and sufficient information on how they intend to use the transfer and on any other matters the authority needs in order to resolve the application.

Section 11 – *Discretionary Government transfer decision*

- (1) State aid authorities will issue their decisions on discretionary Government transfers in writing (discretionary Government transfer decision).
- (2) Discretionary Government transfer decisions granting transfer must include at least the following:
 - 1) name of the recipient of the transfer;
 - 2) the purpose for which the transfer will be used;and

- 3) the amount of the transfer or the basis for calculating it.
- (3) Terms and restrictions needed to ensure that the provisions laid down in section 7(1) are met may be included in decisions to grant discretionary Government transfers.
- (4) A decision to grant a discretionary Government transfer must also indicate the following, as required by the appropriate use of the aid and to make the rights and responsibilities of the aid recipient clear:
- 1) the acceptable costs of the activity or project for which the transfer has been granted;
 - 2) the maximum share that the transfer represents of the total costs incurred from the activity or project for which the transfer was granted;
 - 3) the effect of income received by the recipient from the activity or project for which the transfer was granted and of the recipient's other income on the amount and use of the transfer;
 - 4) the period of use of the transfer and the terms and restrictions referred to in section 13(2-4);
 - 5) the recipient's duty to provide an account of the use of the transfer and the date when it should be provided; and
 - 6) other grounds for granting and paying the transfer and supervising its use.
- (5) In case a discretionary Government transfer is granted to a foreign recipient for use outside Finland, the State aid authority may in addition agree with the recipient on the use and terms of use of the transfer. The agreement must include the terms needed to ensure that the transfer is used in accordance with the State budget and for the supervision of its use.

Section 12 – *Payment of discretionary Government transfers*

- (1) Discretionary Government transfers are paid to their recipients as a lump sum or in several instalments based on the timing of expenditure. State aid authorities may decide to pay a transfer against actual costs after they have been provided with an acceptable explanation of the use of the transfer.
- (2) An advance may be paid if this is justified by the use of the transfer and expedient with regard to the supervision of its use.
- (3) Notwithstanding subsection 1, a discretionary Government transfer of a small amount referred to in section 5(3) (3) may also be paid as a lump sum if this is justified by the use of the transfer.
- (4) Recipients of discretionary Government transfers must provide State aid authorities with correct and sufficient information for the purpose of paying the transfer.

Chapter 4 – **Use of discretionary Government transfers and its supervision**

Section 13 – *Use of discretionary Government transfers*

- (1) Discretionary Government transfers may be used only for the purpose stated in the discretionary Government transfer decision.
- (2) In addition to what is laid down in this Act or in a Government decree issued under section 8, recipients of discretionary Government transfers must observe the terms and restrictions stated in the transfer decision concerning the project or activity for which the transfer was granted.
- (3) When a discretionary Government transfer has been granted for the purpose of procuring or modernizing

property used for a specific purpose defined in the transfer decision, the property may not be permanently used for any other purpose than the one stated in the decision nor its ownership or right of possession assigned to someone else during the period of time established in the transfer decision. This period may not be more than ten years from the payment of the transfer or its final instalment.

- (4) However, the period of use of a property for which a discretionary Government transfer has been granted as referred to in section 3 above is 30 years as of granting the transfer if the transfer was granted for a purpose other than promoting business activity to procure or modernize real property, a building or a dwelling in a building. A shorter period of use may, however, be prescribed by a Government decree issued under section 8 of this Act, or in a discretionary Government transfer decision if this is justified by the purpose of the transfer.

Section 14 – *Discretionary Government transfer recipients' duty to provide information*

- (1) Recipients of discretionary Government transfers must provide the State aid authority with correct and sufficient information for the purpose of overseeing that the terms of the transfer decision are observed.
- (2) Recipients of discretionary Government transfers must notify the State aid authority without delay of any changes affecting the use of the transfer in accordance with its purpose and any other change affecting its use.

Section 15 – *State aid authorities' duty of supervision*

State aid authorities must take care that there is appropriate and sufficient supervision of

discretionary Government transfers by obtaining information on their use and monitoring, and any other information as well as carrying out inspections as needed.

Section 16 – *Right to audit*

- (1) State aid authorities have the right to audit discretionary Government transfer recipients' finances and operations as required by the payment of transfers and supervision of their use. When transfer has been granted as laid down in section 7(2) to be used in a project or activity of a party other than that of the recipient, the State aid authority is entitled to audit, as needed, the finances and operations of the party engaged in the activity or project for which the transfer was granted.
- (2) The State aid authority may issue a decision granting another authority or an outside auditor the authority to carry out the audits referred to in subsection 1. The auditor must be a chartered auditor or auditing firm within the meaning of the Accounting Act (936/1994) or the Act on chartered public finance auditors (467/1999). Auditing firms must designate an auditor to be in charge of the audit.
- (3) Outside experts may assist in audits at the request of a State aid authority.
- (4) The Administrative Procedure Act (598/1982), Language Act (148/1922), the Act on Openness of Government Activities (621/1999) and sections 14 and 15 of the Act on state civil servants (750/1994) apply to auditors and outside experts.
- (5) Provisions concerning criminal liability of public officials apply to auditors and outside experts.

Section 17 – *Auditing*

- (1) Recipients of discretionary Government transfer aid must provide auditing officials and auditors referred to in section 16(2) with all information and reports, documents, records and other material needed for the purposes of the audit and assistance free of charge.
- (2) Auditing officials and auditors referred to in section 16(2) are entitled to seize the material subject to audit if auditing so requires. A record must be made of the seizure of material during an audit. The record must state the purpose of seizing the material and indicate what has been seized. Seized material must be returned without delay when no longer needed for the audit.
- (3) Auditing officials and auditors referred to in section 16(2) are entitled to have access, to the extent warranted by the audit, to the business, storage and other such premises used in the practice of a profession or in business and other areas in the possession or use of the recipient of a discretionary Government transfer, the conditions of which have a bearing on the granting of a transfer and supervising its use. Audits may not be carried out in premises covered by domestic peace.

Section 18 – *Executive assistance*

State aid authorities are entitled to receive the executive assistance they need from the police, customs, tax and recovery authorities to carry out the supervision and audit duties referred to in this Act.

Section 19 – *Interruption of payment*

- (1) The State aid authority may decide to interrupt the payment of a discretionary Government transfer:

- 1) if grounds exist to suspect that the transfer recipient is not observing the provisions laid down in section 12(4) or section 13 or 14;
- 2) the grounds on which the transfer was granted have essentially changed; or
- 3) interruption of payment is required by European Union law.

Chapter 5 – **Repayment and claw-back of discretionary Government transfers**

Section 20 – *Repayment of discretionary Government transfers*

- (1) Recipients of discretionary Government transfer must repay without delay any transfer or part thereof they have received through error, in excess or manifestly without cause. Recipients must also repay a transfer or part thereof if it cannot be used as required in the transfer decision. If the repayable sum does not exceed 10 euros, it is not necessary to repay it.
- (2) The provisions of subsection 1 do not apply to the difference between transfer granted on computational grounds and actual costs.

Section 21 – *Duty to claw back discretionary Government transfers*

State aid authorities must issue a decision ordering the discontinuation of the payment of a discretionary Government transfer and the claw back of a transfer already paid if the recipient of the transfer has:

- 1) neglected to repay a transfer or part thereof which under section 20 must be repaid;
- 2) used the transfer for a purpose essentially

different from that for which it was granted;
3) provided the State Aid authority with false or misleading information in a matter that was critical to the granting of the transfer, its amount or terms, or concealed such information; or
4) otherwise essentially violated provisions concerning the use of transfers or terms included in the transfer decision in a manner comparable to paragraphs 1-3.

Section 22 – Discretionary claw back of discretionary Government transfers

- (1) State aid authorities may issue a decision ordering the discontinuation of the payment of a discretionary Government transfer and the claw back of a transfer or part thereof already paid, if:
- 1) the transfer recipient has violated section 12(4), or section 13 or 14;
 - 2) the transfer recipient has refused to provide material referred to in section 17(1) or assistance as referred to in said subsection with regard to an audit;
 - 3) the transfer recipient has terminated the activities for which the transfer was granted, reduced them substantially or assigned them to another party;
 - 4) the transfer recipient has in violation of section 13 assigned to another the ownership or possession of property procured with the transfer;
 - 5) the transfer recipient has in violation of section 13 permanently altered the purpose of the property for which the transfer was granted;
 - 6) the transfer recipient has been subject to recovery proceedings, or placed into liquidation, bankruptcy or made subject to debt adjustment referred to in the Act on restructuring of a

business (47/1993) or debt rescheduling referred to in the Act on Debt Rescheduling for Private Individuals (57/1993), unless the purpose of the transfer requires otherwise, or;

7) the transfer recipient takes action that is in practical terms comparable to what is laid down in this subsection by giving a matter related to the granting, payment or use of the transfer a legal form that does not comply with its true nature or purpose.

- (2) If the property for which the transfer was granted has been destroyed or damaged during the period of use laid down in section 13 and new, corresponding property will not be procured to replace that which was destroyed or damaged, the State aid authority may issue a decision ordering the termination of the payment of the transfer and order that a sum that corresponds to the share of the transfer of the original acquisition price of the property be clawed back from any insurance indemnity or other compensation.
- (3) State aid authorities may also decide that the payment of a transfer be terminated and transfer already paid be clawed back if required by European Union law.

Section 23 – *Investment aid to be repaid and clawed back*

- (1) The amount of investment aid to be repaid or clawed back under sections 20-22 above is the share of the market value of the property after the completion of the investment project for which the aid was granted that corresponds to the share of the aid in relation to the original procurement costs of the said property.
- (2) If investment aid was granted to support business activity, the amount of discretionary Government

transfer to be repaid or clawed back is, by way of derogation from subsection 1, the amount paid as investment aid.

Section 24 – *Interest*

Recipients of discretionary Government transfer must pay an annual interest in accordance with section 3(2) of the Interest Act (633/1982) plus 3 percentage points on the amount to be repaid or clawed back from the day the transfer was paid.

Section 25 – *Penalty interest*

If the sum clawed back is not paid by the due date set by a State aid authority, an annual penalty interest is payable on the sum in accordance with the interest rate referred to in section 4(3) of the Interest Act.

Section 26 – *Reasonableness*

- (1) The State aid authority may in cases referred to in section 20–22 decide that a part of the sum to be repaid or clawed back, and any interest or penalty interest on it, will not be clawed back if repayment in full is unreasonable in the light of the financial standing and circumstances of the recipient of the discretionary Government transfer or the type of the property procured using the transfer or the procedure on which repayment or claw back is based or because of a change in circumstances.
- (2) For an extremely pressing cause, State aid authorities may decide not to collect the sum to be repaid or clawed back, or the interest or penalty interest on it at all.

Section 27 – *Joint and several liability*

When a discretionary Government transfer has been granted jointly to several aid recipients, all recipients are jointly liable to repay the transfer to the State aid authority.

Section 28 – *Deadline for claw back*

- (1) State aid authorities must make the decisions referred to in sections 12, 21 and 22 without delay or, if special reasons exist, within two calendar years of having received information based on which the interruption or discontinuation of the payment of a discretionary Government transfer or its claw back may be initiated.
- (2) A discretionary Government transfer and interest or penalty interest on it may not be clawed back if ten years have lapsed since the payment of the transfer or its final instalment. If a deadline is set for the use of the transfer or property in which the transfer was invested in a Government decree issued under section 8 or in the transfer decision as laid down in section 13, the ten-year period is calculated from this deadline.

Section 29 – *Period of limitation*

- (1) The right to be paid a discretionary Government transfer that has been granted expires if the transfer recipient has not provided an acceptable explanation required for the payment of the transfer by the deadline set in a Government decree issued under section 8 or in the transfer decision. If no deadline has been set, the right to be paid expires within two years of the end of the financial year in which the transfer was granted.
- (2) The duty to repay a discretionary Government transfer or part thereof referred to above in section 20 will expire when ten years have relapsed

from the payment of the transfer or its final instalment. If a deadline is set for the use of transfers or property in which the transfer was invested in a Government decree issued under section 8 or the transfer decision as laid down in section 13, the ten-year period is calculated from the deadline.

Section 30 – *Offsetting*

A sum to be repaid or clawed back, including interest, may be collected by deducting it from another discretionary Government transfer paid to the same recipient and granted by the same aid authority.

Chapter 6 – **Right of access to information and granting access to information**

Chapter 31 – *Right of access to information held by other authorities*

- (1) The Act on the Openness of Government Activities applies to State aid authorities' right of access to information held by other authorities.
- (2) Notwithstanding confidentiality provisions, State aid authorities are entitled to receive from other authorities the following information they need to carry out their duties:
 - 1) information on the financial standing of the applicant and recipient;
 - 2) information of public aid received by the applicant and recipient; and
 - 3) any other information regarding the applicant or recipient of discretionary Government transfers that has significant bearing on ensuring compliance with

this Act regarding the granting and payment of a transfer and the supervision of its use.

Section 32 – *Granting access to information*

- (1) The provisions laid down in the Act on the Openness of Government Activities apply to granting access to information received under this Act.
- (2) In addition to the provisions laid down in the Act on the Openness of Government Activities on granting access to confidential information, State aid authorities are entitled, secrecy obligation notwithstanding, to grant access to information:
 - 1) to the police and other criminal investigation authorities for the purpose of preventing or solving a crime or to the prosecuting authorities for the purpose of considering charges;
 - 2) for the purpose of conducting an official review or a scholarly study commissioned by an authority on the application of this Act, provided that granting access to information is needed to conduct the review or study;
 - 3) to a competent European Union institution or other body of the Union and a competent authority of another Member State, if so required in European Community law or by some other commitment associated with Finland's membership of the European Union; and
 - 4) if an international commitment binding on Finland so requires.
- (3) The information referred to above in subsection 2 may not be used for a purpose other than that for which access to it was granted.

Chapter 7 – **Miscellaneous provisions**

Section 33 – *Notification*

Notification of decisions taken by a State aid authority, excluding those in matters referred to in sections 19, 21, 22 and 30, may be sent to the interested parties by post. Unless otherwise proven, the interested parties will be considered to have received notification of decisions on the seventh day after the decision was posted. The provisions on notices in administrative matters otherwise apply to notifications.

Section 34 – *Appeal*

- (1) Decisions made by State aid authorities may not be appealed. An interested party dissatisfied with a State aid authority's decision may apply for rectification within 30 days of receiving notification of the decision. Requests for rectification are addressed to the authority that made the decision.
- (2) Decisions on requests for rectification may be appealed as laid down in the Administrative Judicial Procedure Act (586/1996).

Section 35 – *Enforcement*

Decisions of State aid authorities may be enforced irrespective of appeal. Decisions issued in matters referred to above in sections 21 and 22 may be enforced as laid down in the Act on the Recovery of Taxes and Fees by Recovery Proceedings (367/1961).

Section 36 – *Assessment of impact*

State aid authorities must in a suitable manner monitor the effectiveness and appropriateness of the use of discretionary Government transfers granted by them and the effect of transfers on competition and the status of different population groups and their environmental and other impact. State aid

authorities must periodically assess the necessity for discretionary Government transfers and the need to develop them. State aid authorities shall provide each other with assistance to this end.

Section 37 – More detailed instructions issued by State aid authorities

State aid authorities may issue more detailed instructions on details of a technical nature that involve applying for discretionary Government transfers, the applicant's duty to provide clarification, the recipient's duty to maintain accounting records, the payment of transfers, and their use and supervision of their use.

Section 38 – Implementation and transitional provisions

- (1) This Act enters into force on September 1, 2001.
- (2) This Act repeals the Government Resolution on discretionary Government transfers (490/1965) issued as general regulations, as amended.
- (3) In the case of a discretionary Government transfer granted before this Act came into force, the provisions in force at the time when the transfer was granted and the terms of the transfer decision apply to the use and supervision of use, repayment, and claw back and appeal procedures. However, section 12 of this Act will apply unless otherwise is provided in a transfer decision issued before this Act enters into force.
- (4) Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.