Latvia

I. GENERAL PRINCIPLES OF LATVIA'S STATE AID LAW

The architecture of the Latvian State aid management system is compact and transparent. It is based on a framework law – Law On Control of Aid for Commercial Activity (the "**Aid Control Law**").

The provisions of the principal Community Directives and Regulations in the State aid field have been implemented into Latvian law through this Aid Control Law.

A number of regulations arising from the Aid Control Law and dealing with specific procedural and technical aspects of it (e.g. declaration of small and medium size enterprises, granting and gathering data on de minimis aid, declaration of aid to the Commission, and the provision of information to the Ministry of Finance about activities carried out by aid providers in the domain of public services) have been passed by the Cabinet of Ministers.

1. National authorities competent to grant aid and to be involved in the notification procedure

According to the Aid Control Law, the central role in the granting of aid and in its notification to the Commission is allocated to the Latvian Ministry of Finance. In addition, the Permanent Representation of the Republic of Latvia to the European Union is involved in the notification process to the Commission as an intermediary.

According to the Aid Control Law, the Ministry of Finance:

- performs the initial assessment of the planned aid programme or individual aid project submitted by the public authorities. This assessment also applies to planned amendments in existing aid programmes or individual aid projects;
- sends notifications to the Commission, through Latvia's Permanent Representation to the EU, regarding information associated with aid programmes or individual aid projects;
- sends summary information to the Commission via Latvia's Permanent Representation to the EU, regarding aid which has been provided in accordance with the conditions in Commission Regulation No. 68/2001, No. 70/2001, No. 2204/2002, No. 363/2004, No. 364/2004 and No. 1628/2006, and other Commission regulations issued on the basis of Council Regulation No. 994/98; and
- prepares an annual report regarding aid provided for commercial activities.

2. National authorities competent to recover aid and an overview of the procedure

Recovery of unlawful aid is initiated by the public authority that granted the respective aid to the beneficiary. However, according to the Aid Control Law, the public authority is only entitled to initiate recovery upon receipt of the Commission's decision ordering such recovery.

If unlawful aid has been granted to the beneficiary by an administrative decision of a public authority, recovery shall be exercised in accordance with the procedures specified in the Administrative Procedure Law. A dispute or appeal of the Commission decision shall not

suspend the operation thereof, except in the case where, in accordance with Article 273(4) TFEU, the decision taken by the Commission is appealed to the Court of Justice and the Court of Justice has satisfied a submitted claim regarding the suspension of the implementation of that decision in accordance with Article 278 TFEU.

If the aid has been granted to the beneficiary in accordance with a contract governed by civil law, the recovery of unlawful aid and other disputes associated with such contract shall be resolved according to the procedures specified in the Civil Procedure Law and other regulatory enactments.

Practically, the beneficiary of unlawful aid should appeal to the Court of Justice against the Commission's recovery decision under Articles 263(4) and (5) TFEU. The Commission's recovery decision cannot be contested before the national court if the person concerned has failed to observe the two-month limitation period for instituting proceedings against the recovery decision passed by the Commission specified in Article 263(5) TFEU.

As no recovery procedures have been initiated in Latvia so far, one can only presume that recovery would in any case be exercised in accordance with the Administrative Procedure Law. Such a presumption seems feasible, as any recovery action by national authorities may be exercised on the basis of a decision by the respective public authority based on the Commission's recovery decision, irrespective of whether the unlawful aid has been granted through an administrative act or a contract governed by civil law.

II. IDENTIFICATION OF STATE AID ISSUES AT NATIONAL LEVEL

1. State aid compliance by the national legislator and/or the executive power

There is no specific legislative *ex ante* control procedure by which national authorities could try to avoid granting unlawful State aid. However, prior to submitting draft legislation to the parliament, the Cabinet of Ministers ensures that the respective draft has passed a "round of conciliation" between the relevant ministries and State bodies. In particular, the Ministry of Finance is obliged to give its opinion on every single draft received in the area of its competence. As State aid issues fall within its exclusive competence, it has the right and the duty to examine legal drafts originating from other public authorities on their compatibility with the State aid provisions effective in Latvia (these include national regulatory enactments as well as regulatory enactments of the EU). Within the parliament, Legal Counsel for the Saeima (Latvian parliament) performs an *ex ante* control of the draft legislation to some extent.

Similarly, there is no *ex post* non-judicial control for dealing specifically with State aid issues.

2. State aid compliance by national judges and/or the national competition authority (NCA)

The Latvian Competition Board only deals with the application of Articles 101 and 102 TFEU. Thus, it has no competence in respect of State aid.

Since there are no court cases dealing with the application of State aid law, one can only theoretically assess the eventual procedures that could come before the court.

It is most likely that the administrative courts would deal with cases concerning State aid – in most cases State aid is awarded by an administrative act issued by a public authority, and even in cases where State aid is awarded by a contract governed by civil law, the conclusion of such a contract on behalf of a public body, in most cases, would be based on an administrative act.

It is possible that third parties could bring a claim before the civil courts in Latvia, by seeking the annulment of an agreement by which State aid has been awarded to their competitors. Another option would be to claim indemnification for losses incurred due to the granting of an unlawful State aid to a competitor. However, it is not clear how the civil courts will perceive such claims. Proceedings on those grounds would be complicated and the outcome difficult to predict.

It should be noted that there is a significant difference between the way in which the burden of proof is distributed between the parties in administrative and in civil proceedings. Administrative proceedings are based on the principle of an objective investigation – the court takes an active position in order to achieve a just outcome in the case (e.g. the court is entitled to give instructions and guidance to the parties involved, and to collect evidence of its own volition). In civil proceedings, on the contrary, the determining principle is one of competition between the parties – the court takes a passive position and bases its judgment on the law and evidence provided by the parties during the hearing of the case.

Thus, from a claimant's perspective, administrative proceedings are much more favourable compared to civil proceedings, as, in the latter proceedings, the burden of proof lies exclusively with the claimant.

Latvian courts have proved reluctant to make preliminary references to the Court of Justice under Article 267 TFEU. Therefore, it is impossible to foresee whether the Latvian courts will make use of Article 267 TFEU in cases concerning State aid.

III. UNLAWFUL AID AND JUDICIAL REVIEW

1. General powers of the national courts concerning the application of Article 108(3) TFEU

If a public authority acts in breach of Article 108(3) TFEU, the court may, upon submission of an appropriate application by the Commission or a third party, adopt an interim measure in the form of a court decision replacing the administrative act in issue, or obliging or prohibiting

performance of a certain action by the respective public authority, within a period prescribed by the court.

2. Prevention of the granting of unlawful aid

Under Latvian law, it is important to distinguish whether aid has been awarded by an administrative act or by contract governed by civil law, as different procedural regulations would apply for contesting the different awards.

In the case of an aid scheme, there is a substantial difference between the act on which the State aid regime is based and the act by which aid under that scheme is awarded to a beneficiary. The former usually takes the form of a law or regulation by the Cabinet of Ministers and, as such, would be of general application. The latter usually would take the form of an individually applicable administrative act. Regulatory measures of general application cannot be contested directly before the administrative or civil courts as they fall within the exclusive competence of the Constitutional Court ("**Satversmes tiesa**").

The granting or payment of an unlawful aid is avoided by obliging all granting authorities to notify the Ministry of Finance of their intention to grant aid, in accordance with the procedure set out in the Aid Control Law.

When contesting an unlawful aid before the national courts on the grounds of a procedural breach, individuals may rely on provisions of the Aid Control Law, according to which, the authority granting the aid is obliged to inform the Ministry of Finance of its intention to grant the aid to the individual(s), and the Ministry of Finance is obliged to notify the aid in issue to the Commission. However, reference to the applicable Community provisions, in addition to those of the Aid Control Law, would be useful in supporting a claim.

3. Recovery of unlawful aid and interests

Recovery of unlawful aid by a public authority would, presumably, be in the form of an administrative act obliging the beneficiary to repay the unlawful aid and interest, if any. Such an administrative act would, most probably, lead to administrative proceedings before the administrative court.

In the case of a public authority's reluctance to recover unlawful aid, competitors and/or third parties could institute "horizontal proceedings". However, such proceedings would presumably also be in the form of an administrative procedure – the respective competitor or third party would ask the granting authority to pass a decision by which the unlawful aid is recovered from the beneficiary, and a negative decision by the relevant public authority in respect of such a request would be contested before the administrative courts.

4. Damages claims by competitors/third parties against the granting authority before the national courts

Damages claims against the granting authority would have to be brought in accordance with the Law on Indemnification of Losses Caused by Public Authorities. However, there is no substantial case-law relating to the application of this law.

5. Damages claims by the beneficiary against the granting authority before the national courts

Damages claims against the granting authority would have to be brought in accordance with the Law on Indemnification of Losses Caused by Public Authorities. However, there is no substantial case-law relating to the application of this law.

6. Damages claims by competitors/third parties against the beneficiary before the national courts

To date, as there is no case law concerning damages claims against the beneficiary of an unlawful aid. It is impossible to predict, therefore, the court's attitude to such claims. Presumably, damages claims would have to be based on the non-contractual liability provisions of Latvian law.

Civil proceedings in Latvia may last for several years if a case is heard by all instances of the judiciary.

7. Interim measures taken by national judges

There is no case-law relating to interim measures developed by the courts in State aid related cases.

IV. CONTROL OF RECOVERY PROCEDURE

1. Challenging the validity of national recovery order

A national recovery order would usually be challenged in accordance with the procedure described in the Administrative Procedure Law.

An administrative act may be contested by its addressee or by a third party, whose rights or legal interests are restricted by the relevant administrative act and who has not been invited to participate in the proceedings as a third party. Thus a failure to act, or improper action (both of which are subject to the Administrative Procedure Law), can also be challenged, inter alia, by third parties.

It would take approximately three to four years for a case to be heard by all the instances of administrative court and, therefore, to obtain a final and undisputable decision, it would take approximately three to four years.

If an unlawful aid has not been recovered effectively from the beneficiary, third parties may also rely on the administrative procedure in order to ensure that the relevant public authority complies fully with its obligation to recover unlawful aid effectively.

The usual time frame for an appeal for judicial review is within one month of the date of the court's decision in the relevant case.

2. Damages for failure to implement a recovery decision and infringement of EU law

Assuming that the State fails to implement a decision of the Commission on unlawful aid, a third party could use the same procedure as described above to challenge the Member State's failure to act.

V. STANDING OF THIRD PARTIES BEFORE NATIONAL COURTS

Regarding the *locus standi* of a competitor or third party, the Administrative Procedure Law contains only one condition to be fulfilled in order to obtain standing before the national courts – that the rights or legal interests of that competitor or third party have been restricted. It is for the court to decide in each individual case whether this condition has been met.

VI. COOPERATION WITH EU AUTHORITIES

There is no case-law concerning cooperation with the Court of Justice and with the Commission.

VII. TRENDS – REFORMS – RECOMMENDATIONS

It is a common impression in Latvia that the public authorities and individuals are insufficiently informed in relation to the notion of State aid and its legal regulation on both a national and Community level.

Application of the Aid Control Law is relatively rare. It is possible that regulatory enactments and many public authority decisions contain provisions which, under the Community regulations, could be regarded as granting State aid, or even unlawful State aid, to certain persons or groups of persons. However, since competitors and third parties are not aware of their legal

right to institute proceedings contesting such regulatory provisions and administrative acts, no case law concerning State aid issues has developed in Latvia so far.

Having said that, it would be useful for the Commission to initiate an information campaign in Latvia by which public authorities and individuals are informed of State aid laws at Community and national level. It would certainly improve the awareness of the general public of State aid related issues and would help to obviate distortion of competition through the inaccurate application, or even deliberate breach, of State aid laws and regulations.