

Conclusions and recommendations of the National Audit Office

Issues concerning responsibilities in the examination of Finavia's derivative liabilities

The purpose of the compliance audit was to determine the adequacy and appropriateness of the measures taken on the basis of the performance audit of Finavia (15/2013).

Finavia's management has worked consistently and in an appropriate manner in order to resolve the issue of derivative liabilities

Finavia's derivative problems were highlighted in the financial audit of the 2011 fiscal year in February 2012 and in a company-internal review of the financial statements. After that, the problems have been examined in a complex Finavia-internal process. Finavia and its board of directors have worked consistently and in an appropriate manner to resolve the derivative problems.

In addition to taking the above-mentioned measures aimed at resolving the issue, Finavia has also filed compensation claims against various parties based on the losses arising from the prohibited derivative contracts. When taking legal action, Finavia has appropriately considered the alternative approaches concerning the resolving of the issue of derivative liabilities and has taken appropriate measures. These decisions have also been based on adequate reviews.

In ownership steering, there is a danger that the division of responsibilities between a company and the state owner is not clearly defined

As the negotiations aimed at settling the dispute between Finavia and the audit firm previously used by the company were about to start and when the negotiations on an agreement between the two parties were under way, the Ministry of Transport and Communications took measures that can be interpreted as operative and in which the decision-making and practical action should have been the responsibility of the company and its management.

It is questionable whether such action can be based on the shareholder's rights referred to in the Limited Liability Companies Act. At the same time, the manner in which the ministry has acted in the above-mentioned issues has meant that there has been an inappropriate overlap between ownership steering and operative decision-making in the company when examined from the perspective of corporate governance.

In practice, Finavia's board of directors has, as a result of the action taken by the state owner, had very little time to prepare and consider its decision on the settlement agreement, which has limited the discretion of the company's management. This means that the ministry has, in its capacity as a state owner, also interfered in Finavia's operations in an inappropriate manner.

In the view of the National Audit Office, the action taken by the state owner has weakened Finavia's position in the negotiations on a settlement. It is also questionable whether the ownership steering practices of the Ministry of Transport and Communications have in any

way helped Finavia and its former audit firm to resolve their dispute in a manner that is in the best economic interest of the state or Finavia.

The state owner could have made a decision on concluding a settlement agreement with the audit firm at the General Meeting or outside it by an owner's decision referred to in the Limited Liability Companies Act. Likewise, by making such a decision, the state owner could have waived its claims for compensation from Finavia's former management. Settling these issues by a decision of the state owner would have been the proper approach.

[It might be necessary to assess the lack of impartiality of board members in state-owned companies from a broader perspective than what is done in the disqualification provisions of the Limited Liability Companies Act](#)

The issue of the lack of impartiality of a board member was raised at the Finavia's board meeting in autumn 2015 where it was decided to file a claim in a district court against the persons that served as the company's CEO and board members in the years 2010 and 2011. A board member cannot be considered to have been disqualified in the manner referred to in the Limited Liability Companies Act.

However, assessing the lack of impartiality of board members in state-owned companies only on the basis of the provisions of the Limited Liability Companies Act might lead to problematic results in the above-mentioned situations. If there is a possibility that doubts about the impartiality of the decision-makers might arise, it might be appropriate to assess the issue of disqualification from a broader perspective than what is done in the Limited Liability Companies Act.

[As a state enterprise, Finavia was not authorised to conclude non-hedging derivative contracts](#)

The area of responsibility of the state enterprise Finavia was specified in detail in the Act on the Finnish Aviation Authority, and under its provisions non-hedging derivative contracts were outside its area of responsibility. Thus it is clear that under the provisions concerning its area of responsibility, the state enterprise Finavia was not authorised to conclude any such non-hedging derivative contracts that were reviewed in the audit.