

# Main findings and opinions of the National Audit Office

## Energy subsidies

### Applying for and granting and payment of government aid and monitoring of its use

The first aim of the audit was to determine whether the applying for and the granting and payment of government aid and the monitoring of its use have been in accordance with the law.

In the view of the National Audit Office, the applying for and the granting and payment of energy tax subsidies, energy subsidies and renewable energy subsidies and the monitoring of their use have been in accordance with national law, except for the shortcomings in the granting of the energy tax subsidies provided by the Finnish Customs and the monitoring of the use of the energy subsidies granted by the Centres for Economic Development, Transport and the Environment (hereafter 'ELY Centres').

The Finnish Customs has not taken into account all legal requirements when granting energy tax subsidies. A company had received full tax refund on natural gas (134,008 euros) intended for energy-intensive enterprises even though the company had not used natural gas in a manner that would have entitled it to a refund. The amount of energy taxes on natural gas should have been checked with the beneficiary before the payment of the refund because there were discrepancies between the application and the documentation supporting it. Moreover, it also emerged that in the granting of the subsidies by the Finnish Customs there were shortcomings in the manner in which statutory information was requested and the guidelines issued by the Finnish Customs were observed.

It was noted that as regards the monitoring of the use of the energy subsidies there were shortcomings in the adherence to the decree on general conditions concerning the granting of the subsidies (1313/2007 and 1063/2012). The ELY Centres, which act as the government aid authorities, do not control the use of the aid by making inspection visits to the beneficiaries. Moreover, the ELY Centres have not always requested the beneficiaries to submit all statements and information that are required under the decree before making aid payments. Under section 15 of the Act on Discretionary Government Transfers, government aid authorities must ensure appropriate and adequate supervision of the discretionary govern-

ment transfers by obtaining information on their use and monitoring and other information and by carrying out inspections as needed. Based on the audit results, the conclusion was that, as a whole, the supervision of the discretionary government transfers granted as energy subsidies cannot be considered adequate. The National Audit Office recommended that the Ministry of Employment and the Economy should provide ELY Centres with more detailed guidelines concerning the requirements for appropriate and adequate supervision of national energy subsidies. We also recommend that ELY Centres should start making inspection visits to aid beneficiaries.

## Internal control of the government aid process

The second aim of the audit was to determine whether the internal control of the government aid process is appropriately organised. Here the aim was to provide a general opinion on whether the administration of the government aid has been substantially in accordance with the guidelines and the law.

In the view of the National Audit Office, the internal control of the production subsidies for renewable energy is largely adequate. A small number of shortcomings were noted in the organisation of internal control of energy tax subsidies and energy subsidies.

It was noted in the audit that there are shortcomings concerning the functioning of the ex-ante control of the energy tax subsidies granted by the Finnish Customs as a result of which the Finnish Customs should take appropriate measures. The Finnish Customs must ensure that the ex-ante control of the energy tax subsidies is workable, that its resources are appropriately focused and that adequate resources are allocated for ex-post control. The economic materiality of the matter must also be taken into consideration.

The audit showed that there are a small number of shortcomings in the organisation of the internal control of the energy tax subsidies granted by the Finnish Tax Administration. The Finnish Tax Administration has initiated corrective measures as a result of the findings.

In the organisation of the internal control of the energy subsidies granted by the ELY Centres, shortcomings emerged concerning unified practices, documentation of preparation documents, adequate guidelines and control of the use of the subsidies. The ELY Centres and the Ministry of Employment and the Economy should take measures as a result of these findings.

## Reporting on the use of government aid

The third aim of the audit was to issue an opinion of limited assurance on whether the government aid had been used for the intended purpose and whether true and fair information on the use of the aid had been provided.

The view of the National Audit Office is that no material shortcomings emerged from the audit based on the accounting material and documents. However, shortcomings concerning the information on the use of the aid emerged from the audit visit to the beneficiary. The beneficiary had not kept project accounts of the energy saving investment subsidies as part of the energy efficiency agreement as required under law in a manner that would have allowed the authorities to control their use without difficulty.

## EU state aid provisions

The state aid provisions of the EU and their impacts on national energy subsidies were examined in the audit. As a result, in addition to finding answers to the three main questions, the aim was also to ensure that the aid programmes examined in the audit are in compliance with the state aid provisions of the EU.

The energy tax subsidies granted by the Finnish Customs to energy-intensive enterprises and the energy subsidies provided by ELY Centres are in compliance with the state aid provisions under Articles 21, 23, 24 and 25 of the Commission regulation on general block exemption (2008/800/EC, hereafter 'General Block Exemption Regulation'). The energy tax subsidies provided by the Finnish Tax Administration and the production subsidies for renewable energy granted by the Energy Market Authority are in compliance with the provisions under separate decisions of the EU Commission.

The audit on the energy tax subsidies granted by the Finnish Customs showed that efforts have been made to ensure that the minimum requirements laid down for the national legislation in the Council Directive restructuring the Community framework for the taxation of energy products and electricity (2003/96/EC, hereafter 'Energy Taxation Directive') have been taken into account in the national legislation. Even though a detailed and comprehensive comparison between the national legislation and the Energy Taxation Directive is outside the scope of this audit, it should be noted that the concept of value added influencing the amount of the subsidy is defined differently in the Energy Taxation Directive than in the national legislation. Because of the different definitions, it has been impossible to determine conclusively whether the minimum refund levels for

energy-intensive enterprises laid down in the directive can be achieved in Finland by means of national energy taxation legislation.

Article 1 of the General Block Exemption Regulation prohibits the application of the regulation to companies in difficulty. The Finnish Customs has not examined the financial situation of the company applying for energy tax subsidies in 2013 or before that year. The risk is that the national energy tax subsidies paid to a company in difficulty under the General Block Exemption Regulation is a form of state aid that is in violation of the state aid provisions of the EU. Under an amendment to the national legislation introduced at the beginning of 2014, the Finnish Customs can no longer grant support to companies in difficulty. As the General Block Exemption Regulation is directly applicable in the Member States, the Finnish Customs should examine whether it could recover any of the subsidies from companies that were already in difficulty before 2014. The ban on granting aid to companies in difficulty contained in the General Block Exemption Regulation also applies to the electricity taxation subsidy laid down in the Act on Excise Duties on Electricity and Certain Fuels. The Finnish Customs should examine whether it is possible to assess the economic situation of the beneficiaries of electricity tax subsidies.

Based on the audit results, the conclusion is that the refunds on tax-free use cannot be considered state aid from the perspective of the state aid provisions of the EU. According to the mandatory wording of the Energy Taxation Directive, the tax exemption must apply to most of the energy products included in the system of refunds on tax-free use. As the state collects the tax on tax-exempt energy products, the companies must be refunded the tax if certain conditions are met. As such tax revenue is not revenue that the state is entitled to, the budgeting should be examined from the same perspective. The conclusion reached in the audit was that the refunds should not be budgeted as transfers as they could be budgeted as reductions in revenue.

## Legislative changes

The self-financing requirement of 25 per cent laid down in section 4(6) of the Decree on General Conditions concerning the granting of Energy Subsidies (1313/2007) is defined in a misleading manner as far as municipalities are concerned. The text of the amended decree (1063/2012) is more in accordance with the actual intent of the provision. The conclusion reached in the audit is that a procedure that is in accordance with the new decree was already applied before the entry into force of the amended decree. Ensuring that all operations are in accordance with the law is an essential

element of good governance. For this reason, the necessary statutory amendments should be put into effect immediately after it has emerged that there is a discrepancy between the practical situation and the wording of the law. However, the old provisions must be observed as long as they are in force.