



HAMMARSTRÖM PUHAKKA PARTNERS

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STATE FINANCED REMEDIATION VS. POLLUTER PAYS PRINCIPLE  
NEW EU STATE AID GUIDELINES

NORDROCS2008

LL.D. CASPER HERLER



## OUTLINE

- I. **Polluter Pays Principle and State Aid rules**
- II. **Remediation and State Aid**
- III. **Obligations under EU State Aid Rules**
- IV. **New Commission Guidelines**
- V. **Discussion**

## I. POLLUTER PAYS PRINCIPLE (PPP) AND STATE AID

- **PPP**
  - no competitive edge to polluters
  - environmental costs internalised in pricing
- **EU State Aid rules:**
  - Subsidies to polluter; or
  - subsidies to other entity
  - resulting in that cost liability is not allocated on the polluter
  - may be considered as state aid
  - if market is distorted or likely to be
- **PPP and State Aid rules coherent**
  - work in the same direction



## II. BUT ...

- **Problems with historical soil pollution**
- **I) Legal problems**
  - a) **Retroactivity → prohibition to enact liability for past lawful activity**
  - b) **Interpretation of old rules in historical cases**
- **II) Factual problems**
  - a) **Identification of polluter(s)**
  - b) **Allocation of liability between several parties**
  - c) **Insolvency**
- **Incentives for investigation and remediation of contaminated sites**
  - **Remove obstacles for remediation projects**

### III. EU STATE AID RULES

- **Material rules**
  - General prohibition against state aid distorting competition, art. 87(1)
  - Exemption for aid regarding facilitation of development of certain economic activities or certain economic areas, art. 87(3)c
  - 87(3)c → Basis for aid for environmental protection
  - Commission Guidelines for aid for environmental protection 2008
- **Procedural rules**
  - Notification obligation to the commission, art. 88 → risk of unlawfulness
- **De minimis-rule**
  - Total aid to any undertaking < 200,000 EUR / 3 fiscal years
  - No notification obligation



## IV. GUIDELINES FOR ENVIRONMENTAL PROTECTION

- New guidelines in force 1. April 2008 →
- Special rules for aid for remediation of contaminated sites
  - i. Aid → improvement of environmental protection
  - ii. Soil, surface water or groundwater
  - iii. When polluter is clearly identified → no state aid
  - iv. When polluter can not be held liable under national law → aid granted to polluter
  - v. Max. 100% of eligible costs (= costs – increase in land value)



## V. DISCUSSION (1)

- a) **EU monetary union**
  - more focus on state aid control
- b) **Guidelines allow diversified treatment of polluters within EU**
  - *national liability rules differ significantly*
- c) **Not much harmonisation despite EU Environmental Liability Directive**

## V. DISCUSSION (2)

- d) **Aid for remediation**
  - Not seen as significant competition law issue
- e) **Not usually a mean to support industry**
  - No significant market distortion
- f) **Interpretation of liable polluter problematic in**
  - e.g. Finland and Denmark
- g) **National subsidy etc. schemes, funds and liability provision, which have not been notified to the Commission**
  - unlawful aid



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**THANK YOU FOR YOUR ATTENTION!**

**Casper Herler  
Hammarström Puhakka Partners Attorneys Ltd.**

**casper.herler@hpplaw.fi**

**+358-50-3060107**

**+358-9-474 2206**