

## FINLAND

### 1. Administrative consent procedure

The general basis for land using projects is made up by the planning mechanisms in the Land Use and Building Act (132/1999). The consent procedures applying to project planning in Finland depend on the category of the project. Building and constructing projects are in most cases, but not overall, dealt with according to the procedures set forth in the Land Use and Building Act (132/1999). Procedures for projects (or appropriate parts of them) within, or with impacts in, water areas are dealt with according to the Water Act (264/1961). This may also apply to a part of a highway (bridge, embankment). For projects with pollution-type impacts or risks, the Environmental Protection Act (86/2000) is applied.

As for highways, the Highways Act (503/2005; in force from January 1<sup>st</sup> 2006) includes the relevant project planning, consent, compulsory purchase and compensation procedures. Before January 1<sup>st</sup> 2006, the Public Roads Act (243/1954) was applicable, and will also after that be applicable to pending projects. Also regarding highways planning, the general land-use planning pursuant to the Land Use and Building Act makes up the general basis for project planning. The main rule set forth in Article 17 of the Highways Act requires highway engineering plans be based on a local detailed plan or a local master plan with legal consequences as provided in the Land Use and Building Act wherein the location of the highway and its relationship to other land use has been determined.

The general provisions of the Administrative Procedure Act (434/2003) are applicable to administrative consent procedures, inasmuch as divergent or more detailed are not included in the applicable specific act, such as the Public Roads Act. As to the appellate stages, the Administrative Judicial Procedure Act (586/1996) is applicable, insofar there are not divergent or more detailed are not included in the applicable specific act.

As to highway projects under the Highways Act, there are two stages of administrative planning/consent procedures. As the main rule, a *preliminary engineering plan* shall be drafted if the impacts of the undertaking are not insignificant or if the location of the highway and its impacts have not been determined to an adequate degree in a local detailed plan or a local master plan with legal consequences. A preliminary engineering plan shall always be drafted for undertakings to which assessment procedures as provided in Chapter 2 of the Act on Environmental Impact Assessment (468/1994) apply. The preliminary engineering plan shall contain a report on the necessity of the highway and alternatives studied, on the transportational and technical fundamental decisions, the approximate location of the road and its estimated impacts such as impacts on road and transport environment, road safety, land use, real estate structure and the environment as well as the health, living conditions and environment of human beings. The plan shall also present the opportunities for eliminating or reducing adverse impacts and a preliminary budget.

After that, a *final engineering plan* shall be drafted and adopted prior to highway construction. A final engineering plan concerning the construction of a highway shall indicate the location and elevation of the road as well as a cross section so that the road area can be marked in the terrain. An evaluation of the impacts of the road shall be appended to the plan and the measures necessary to eliminate or reduce the adverse impacts arising from the road shall be presented. Land ownership conditions shall be taken into account in the plan inasmuch as possible. The plan shall indicate the

buffer zones and lateral clearance areas of the road and also indicate whether any land shall be reserved for subsequent widening of the road. An estimate of the costs of road construction shall be appended to the plan.

An adopted final engineering plan entitles to the expropriation of land and rights designated therein.

Highway project planning is the responsibility of the Finnish Road Administration. As the main rule, final engineering plans and preliminary engineering plans are *adopted* by the Finnish Road Administration. Should the municipality, Regional Council or Regional Environmental Centre disagree with the Road Administration on essential elements of the plan, the matter shall be assigned to the Ministry of Transport and Communications for resolution. For particular reasons, the Road Administration may also otherwise transfer plans to the Ministry of Transport and Communications for adoption.

According to the Decree on Environmental Impact Assessment Procedure (268/1999), an *Environmental Impact Assessment* is always required e.g. for the construction of motorways and expressways. An assessment report as provided in the Act on Environmental Impact Assessment Procedure (468/1994) shall be appended to any preliminary engineering plan involving a road undertaking as referred to in that Act. Inasmuch as the assessment report contains the information on environmental impacts required for the application of the provisions of this Act, the same report shall not be required again. The preliminary and final engineering plan shall indicate how the assessment referred has been taken into account in the plan. When assessment procedure under the Act on Environmental Impact Assessment Procedure has been applied to the preliminary engineering plan, it shall no longer be applied to the drafting of a final engineering plan in accordance with the preliminary engineering plan.

If any project or plan, e.g. a preliminary and final engineering plan, either individually or in combination with other projects and plans, is likely to have significant adverse effect on the ecological value of a site included in, or proposed by the Cabinet for inclusion in, the *Natura 2000* network, and the site has been included in, or is intended for inclusion in, the *Natura 2000* network for the purpose of protecting this ecological value, the project's planner or implementer, in this case the Road Administration, is by the Nature Conservation Act (1096/1996) required to conduct an appropriate assessment of its impact. The same applies to any project or plan outside the site which is liable to have a significantly harmful impact on the site. The above assessment of impact can also be carried out as part of the Environmental Impact Assessment Procedure.

The drafting of a final engineering plan shall *begin within 8 years* of the end of the year in which the preliminary engineering plan on the undertaking was adopted. Otherwise, the decision to adopt the preliminary engineering plan shall become null and void. The drafting of a final engineering plan is considered to have begun once notification thereon has been made. As a main rule, decision to adopt a final engineering plan becomes null and void if roadwork has not been initiated before four years have passed since the end of the year in which the final engineering plan was adopted.

The plan decisions are *appealed against* in the manner provided in the Administrative Judicial Procedure Act (586/1996). This means that the competent appellate court depends on the authority that has adopted the plan.

After an executable plan has gained legal force, the *expropriation* of land and rights needed for road purposes, based on the plan, takes place in a Road Survey carried out by an engineer of the National Land Survey and trustees. Here the provisions of the Expropriation Act (603/1977) largely apply.

The provisions of the Act on Compensation for Environmental Damage (737/1994) are partly applicable in a Road Survey. The appellate bodies here are the specific Land Courts and, subject to leave of appeal, the Supreme Court.

## **2. Public involvement**

**a-b.** In the drafting of preliminary and final engineering plans, real estate owners and other parties to the matter as well as *those upon whose housing, employment or other conditions the plan may impact shall be afforded an opportunity to participate* in the preparation of the plan, to evaluate the impacts of the plan and to comment orally or in writing on the matter. Prior to adoption of the plan, the parties mentioned above shall be reserved an opportunity to lodge their objection to the plan. To this end, the municipality shall keep the preliminary and final engineering plans *available for public viewing for a period of 30 days*. Objections to the plan shall be submitted to the municipality before the end of the viewing period. The municipality shall forward to the Road Administration its comment on the plan available for viewing and on objections thereto, as well as any written objections submitted. The municipality shall make public announcement of the plan being available for viewing and of the manner and time for lodging objections in the manner in which municipal notifications are made in the relevant municipality. The Road Administration shall send a written notification of the plan being made available for viewing to such owners or holders of real estate in the area impacted by the plan that reside in another municipality and that have been mentioned in the documents or otherwise identified. Parties lodging an objection who have so requested in writing while also giving their address shall be notified of the comments, inclusive of grounds, of the Road Administration to the their objection.

The Road Administration shall request comments on preliminary and final engineering plans from those Regional Environmental Centres, Regional Councils and municipalities in whose area the plan is situated or in whose area the impacts of the plan otherwise appear. The Road Administration shall request comments from other authorities in deliberating their decision as necessary.

Decisions on the adoption of preliminary and final engineering plans and the extension of the period of validity of final engineering plans shall be publicly announced. To that end, the Road Administration shall forward the decision and the underlying documents to the relevant municipality, which shall notify of their being available for public viewing. The decision and the documents shall be made available for public viewing in the municipality for a period of 30 days.

The Road Administration shall notify parties lodging objections to preliminary and final engineering plans of the decision to adopt such plans at the same time as the decision is announced, if the address for such parties is known. In addition, the Road Administration shall send notification of the decision to adopt preliminary and final engineering plans to municipalities, Regional Environmental Centres and Regional Councils and to other authorities as necessary.

**c.** No rights to appeal against a planning decision in an administrative court are lost, even if an objection has not been made.

However, a decision to adopt preliminary engineering plan may not be appealed against inasmuch as the location of the highway and technical solutions have already been approved with legal force in a land-use plan with legal consequences. The same rule also applies to decisions on adopting final engineering plans. Such decisions may also not be appealed inasmuch as the location of the highway and technical solutions have already been approved in a preliminary engineering plan with legal force.

### **3. Judicial process**

Appeals against decisions of the Road Administration are heard by the Regional Administrative Courts, the decisions of which are subject to further appeal to the Supreme Administrative Court. The Supreme Administrative Court as the only instance hears appeals against decisions of the Ministry of Transport and Communications.

Pursuant to the Administrative Judicial Procedure Act, an appeal shall be lodged within 30 days of service of the decision. According to a specific rule in the Highways Act, service is considered to have taken place when the decision on the adoption of a preliminary or final engineering plan has been made available for public viewing.

No leave to appeal is required.

The appellate administrative court is responsible for reviewing the matter. Where necessary, it shall inform the party or the administrative authority that made the decision of the additional evidence that needs to be presented. The court shall on its own initiative obtain evidence in so far as is the impartiality and fairness of the procedure and the nature of the case so require. The court shall obtain a statement from the administrative authority that made the decision in the matter, unless this is unnecessary. For purposes of obtaining evidence a statement may be requested also from another authority. A time limit shall be set for the issue of the statement.

In order to establish the facts of the case, the court may arrange an on-site inspection.

Before the resolution of the matter, the parties shall be reserved an opportunity to comment on the demands of other parties and on evidence that may affect the resolution of the matter. The matter may be resolved without a hearing of the party if his claim is dismissed without considering its merits or immediately rejected or if the hearing is for another reason manifestly unnecessary. A party shall be given a reasonable time limit for his comments. At the same time he shall be notified that the matter can be resolved after the expiry of the time limit even if no comments have been made.

As a starting-point, the procedure and hearings take place in writing, except for where oral hearing is held. There is consequently no oral main hearing or final pleading. Pursuant to the Administrative Judicial Procedure Act, an oral hearing shall, where necessary, be conducted for purposes of establishing the facts of the case. A regional Administrative Court shall conduct an oral hearing if a private party so requests. The same applies to the Supreme Administrative Court where it is considering an appeal directly against the decision of an administrative authority. The oral hearing requested by a party need not be conducted if the claim is dismissed without considering its merits or immediately rejected or if an oral hearing is manifestly unnecessary in view of the nature of the matter or for another reason.

When an appeal has been lodged, the appellate court may prohibit the execution of the decision, order a stay or issue another order relating to the execution of the decision.

Pursuant to a specific provision in the Highways Act, appeals concerning decisions to adopt preliminary and final engineering plans that shall be considered socially significant shall be dealt with as urgent.

### **4. Standing**

The general rule on standing is expressed in the Administrative Judicial Procedure Act, Section 6, pursuant to which any person to whom a decision is addressed or whose right, obligation or interest is directly affected by a decision may appeal against the decision. In addition, an authority may appeal against a decision pursuant to an express provision in an Act or if it is essential to exercise the right of appeal to protect a public interest supervised by the authority.

In practice, the rules and situations vary strongly, and there are numerous specific, more or less divergent rules in sectoral legislation. Especially in cases in the environmental, water and land-use sectors there may be a large number of appellants and opposing parties: persons of various types, associations, authorities of the state and of the municipalities. In the Highways Act, the following provisions complement Section 6 of the Administrative Judicial Procedure Act:

Pursuant to the Highways Act, municipalities, Regional Environmental Centres and Regional Councils are entitled to appeal against decisions to adopt preliminary and final engineering plans whose impacts extend into the municipality or the sphere of operation of the authority. In matters coming under their purview, registered local or regional associations or foundations are entitled to appeal decisions to adopt preliminary or final engineering plans whose impacts extend into the sphere of operations of the association or foundation.

Moreover, there is a general EIA-related provision on standing in the Nature Conservation Act: In addition to what is prescribed separately elsewhere regarding appeals, the Regional Environment Centre has the right to appeal a decision taken under other Acts concerning the issue of a permit or the adoption of a plan, on the grounds that the decision is contrary to the provisions or regulations laid down in or under the Nature Conservation Act. Similarly, the Act on Environmental Impact Assessment assigns the Regional Environment Centre a general right of appeal based on lacking EIA.

*All the plaintiffs in points 1-5 have standing before the competent administrative court. As for point 5, the Highways Act has changed the legal position of such associations (see, however, a dissenting opinion in decision 2003:99 of the Supreme Administrative Court).*

Regarding point 6 (the situation of which is very improbable in Finland, due to geography), the answer is not quite evident. As a starting point, the wording of the provisions on the standing of associations requires the association be "local". But there are also other norms to pay attention to. Pursuant to Article 3 of the 1974 Treaty on Environmental Protection between Norway, Sweden, Finland and Denmark, a person who may suffer from a harmful activity taking place in another party state to the treaty, may challenge the activity before an authority of such a state and appeal against its decision to the same extent and subject to the same qualifications as a legal subject of the state of activity. However, as to public interests, there is a specific rule on the standing of an authority of another state party in Article 4.

## **5. Scope of claims**

In the legal practice of the Supreme Administrative Court regarding the previous Public Roads Act (243/1954), those individually affected have also given the right to claim infringements of public environmental interests and the unlawfulness in general. One main reason is, that many crucial substantive provisions at the same time take into account various impacts and interests, without making a sharp difference between private and public. The provisions of the Highways Act hardly give reason to a different approach.

## 6. Scope of judicial review

The appeals may be based on lacking legality of a decision, both in procedural and substantive respects.

## 7. EU environmental law

**a.** If EIA has not been carried out at all, it is evident that the plan will be annulled. Motorway is an Annex I (Article 4(1)) project according to the EIA Directive and hence without problems in this respect. [As to Annex II (Article 4(2)) projects, the competence of the court in a similar situation has been somewhat unclear, but the Governmental Bill 210/2005 proposes the Act on Environmental Impact Assessment be clarified by stating that the national administrative decision not to require an EIA on an Annex II basis may be challenged by appellants in the consent procedure.]

If the EIA has been carried out unduly or insufficiently, the competence of the court has been somewhat unclear. The Governmental Bill 210/2005 is going to remove also this ambiguity.

**b.** The question is mainly theoretical, because the Commission has, with minor reservations for additions, already approved the lists for SCI areas regarding the alpine and boreal regions, which cover whole Finland. The national proposal decisions by the Cabinet, pursuant to the Nature Conservation Act, have been subject to appeal before the Supreme Administrative Court. According to the same Act, already the national proposal has been assigned the legal effects of the final Natura network, unless the Supreme Administrative Court ordered otherwise or unless the Cabinet for imperative reasons of overriding public interest granted an exception that has acquired legal force. If the Cabinet has not at all proposed the natural habitat in question, the answer to the question of a possible quashing of the project plan would be no at least on the basis of the wording of the Nature Conservation Act.

**c.** In case of adverse impacts on an area transmitted to the Commission as eligible for designation as a SCI area but which has not yet been included in a Commission list, the project plan decision would be annulled. As stated above under b, already the Cabinet proposal decision has the same legal effects as a final SCI area (provided that the proposal decision of the Cabinet has not been annulled by the Supreme Administrative Court and that an exception for imperative reasons of overriding public interest has not been made).

**d.** If the area has been included in the national proposal as a SPA, the answer under c above applies also here. Such a plan decision would be annulled.

The answer is more difficult in such a situation, where the area has not at all been listed nationally. Such a situation is of course very improbable, because the Commission already has listed the bird sanctuaries in alpine and boreal regions, with certain reservations, however. There are project-case decisions of the Supreme Administrative Court in the grounds of which the obligations set forth by the Birds Directive regarding unlisted sites have been evaluated.

**e.** If the motorway is likely to exceed the (e.g. PM<sub>10</sub>) limit values of the Ambient Air Directive, it is possible that the project as such would not be allowed, not at least as such. However, the technical relationship between the Decree on Air Quality (by which Directive 1999/30/EC has been implemented, under the Environmental Protection Act) and the Highways Act is not unambiguous.

There are cases where the negative impacts of a road project may be reduced by specific provisions, which the court can add to the decision and hence also make a third solution possible. E.g. regarding noise abatement, the court may decide upon the technical arrangements independently. If also the exceeding of limit values on particulate matter in the air could be prevented by technical measures, such measures would probably be added to the decision by the court, or the case could be returned to the Road Administration (or Ministry) for this purpose.

## **8. Consequences of procedural and substantive deficiencies in planning decisions**

- a.** There are no such deficiencies that regularly render a plan decision void.
- b.** A defective plan decision is directly annulled (or, where appropriate, directly amended). Because there is no private applicant (unlike in various permit cases), the case is usually not returned to the authority for a new consideration. A new administrative decision, subject to new appeal, is anyway possible.
- c.** As to minor substantive deficiencies, the court may, depending on the situation, directly make the necessary amendments. Also certain future duties to the Road Administration may be ordered.

A special problem in Finland has been caused by the flying squirrel (*Pteromys volans*) which is a species listed in Annex IV (a) of the Habitats Directive. The destruction and deterioration of breeding sites and resting places used by specimens of animal species referred to in that Annex is prohibited in Article 12(1) of the Directive (and in the national provision respectively). This is relevant also in motorway projects. However, in special cases, a Regional Environment Centre is authorized to grant derogations from the prohibition on grounds specified in Article 16 (1) of the Habitats Directive. The derogation procedure is an independent one, in which the environmental organizations have standing. In respect to a place where the ban on destruction and deterioration is in force, a plan causing such impacts may not be accepted without a valid derogation. In the ruling 2003:99 of the Supreme Administrative Court, the motorway plan decision at stake was upheld, but (as far as flying squirrel is regarded) due to the fact that the appeals by environmental associations against the relevant derogations were rejected on the same day by another decision of the Court (2003:98).

- d.** A good global answer can hardly be given. It is e.g. usual that expropriation of some farmland or forest is allowed.

## **9. Remedy of deficiencies**

Minor substantive deficiencies in the plan decision may be remedied (see 7 and 8 above), depending on the situation.

Procedural deficiencies at the administrative stage may, in principle, not be remedied as such. However, the outcome may depend on the factual conditions and the individual need of legal protection. E.g. a minor formal error in notifications may remain without consequences, if the subjects at stake have otherwise received all information relevant to them and the deficiency has not disabled them procedurally.