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**VIEWS OF THE ASSOCIATION OF FINNISH LOCAL AND REGIONAL AUTHORITIES  
ON THE COMMUNICATION FROM THE COMMISSION ON SOCIAL SERVICES OF  
GENERAL INTEREST IN THE EUROPEAN UNION COM(2006) 177**

The Commission has issued a Communication on social services of general interest. The Association of Finnish Local and Regional Authorities considers a discussion of the European social model and of the future of social services to be necessary. The Commission Communication is of very topical relevance and important.

**Finnish local government system**

In all Member States of the European Union, the local and regional authorities are a fundamental part of the democratic structure. It is at local and regional level that citizens are confronted with the European Union and its legislation. It has been estimated that as much as two thirds of EU legislation and programmes are implemented at the local and regional level.

In Finland as well as in other Nordic countries, local and regional authorities have a key role in providing welfare services and maintaining the technical infrastructure. Nordic local authorities perform a wide range of functions and enjoy a relatively strong autonomy, safeguarded by the Constitution, including the right to levy taxes and make decisions independently. They also have a fairly comprehensive set of statutory duties and major financial responsibility for securing the welfare of citizens and the necessary technical infrastructure. In Finland, local authorities have a particularly strong role and wide range of functions. In the Nordic countries, welfare services are mainly provided through non-commercial activities of state, local and joint authorities as well as non-governmental organisations.

The central objective of the EU is strengthening competitiveness. With regard to competitiveness, the quality and reliability of public institutions have emerged as key factors. European competitiveness surveys indicate that the Nordic countries have successfully managed to carry out structural reforms without having to give up their high-quality welfare services. In addition, OECD studies show that administrative decentralisation makes the implementation of policies more efficient. The Nordic

countries feature the most decentralised administrative structures in the whole of Europe.

### **Framework regulation of services of general interest**

In the contexts of both the Green and the White Paper on services of general interest, the Government and Parliament of Finland have viewed the general framework legislation with strong reservations. At the same time, however, a sector-by-sector examination has been considered possible. The most important theme of criticism has been that the Union's framework legislation can easily reduce the political and other powers that, under the Founding Treaty, are vested in the Member States with respect to the provision and funding of services of general interest. Inclarities with respect to concepts and differences between systems in Member States have also prompted criticism. Differences between systems can result in problems relating initially to definition and later to application. The Finnish position, stated in several contexts, is that we do not accept a new legal base for the Union in relation to framework regulation of services of general interest.

Nor has the Commission regarded Community-level framework legislation appropriate, but has instead considered a sector-by-sector approach to be a better solution. The Commission has regarded it as necessary to re-examine the matter of framework regulation when the Constitutional Treaty is brought into force. The Union's powers in relation to services affecting the general economic interest are explicated in this Treaty, but the Union is not being given a new legal base for framework guidance of services of general interest.

The Association of Finnish Local and Regional Authorities has supported Finland's policies. Like the State, the Association has referred to the concepts-, definitions- and application-related problems of services of general interest. By means of framework definition, powers that belong to the Member States can easily be transferred to the Union via a circuitous route.

### **Differences between welfare systems in Member States**

The concept of services of general interest does not suit the Nordic municipal system and welfare policy well. In conjunction with the Communication on Social Services of General Interest it would be necessary also to examine the contents of the Services Directive. The Directive does not limit the right of a Member State to define services affecting the general economic interest. The scope of the Directive does not include, for example, services of general interest, some social services nor health services. One key problem is that the Union – especially the Court of Justice – does, however, guide the provision of services of general interest through the Community's rules concerning competition and the Single Market. An attempt is made in the Commission Communication to explicate definitions and concepts of social services, but it does not in this respect offer a new explication for questions relating to powers.

The hearings and dialogue procedure proposed by the Commission in relation to the special features of Member States demonstrates that the Commission clearly recognises in its Communication on social services that there are differences between Member States in the ways they arrange welfare services. The Commission regards the Communication as an additional stage in attempts to take the special features of social services into consideration on the European level. However, the Commission has not now specifically given up the possibility of framework guidance in future measures.

The definition of social services given in the Communication demonstrates well that it is not possible for Member States to comprehensively formulate general principles of or criteria for social services. It is very difficult, for example, to assess what "Community rules" a Member State should take into consideration in the way proposed by the Commission when it decides nationally on social services in its own system. What also remains unclear is why just the social services of the type described in the Communication are of such a nature that they may need framework guidance by the Union at a later stage.

### **Court of Justice case law**

Something that the Association of Finnish Local and Regional Authorities regards as a central problem is that the Court of Justice, through its case law in relation to application of competition and Single Market rules, influences the provision of services of general interest. That being the case, the powers of the Member State are restricted in practice. Decisions do not suit Finland's national systems well if application of the competition and Single Market rules are the Court's primary consideration when making its rulings.

Some of the Court's interpretations in relation to the arrangement of health services and procurements of public services have limited the powers of the Member States, where they have prompted astonishment and uncertainty about their correctness. Especially the most recent decisions of the Court have drawn criticism from also the Committee of the Regions, European organisations representing municipalities and regions as well as bodies representing public employers and public companies. The Committee of the Regions has expressed its concern that, unless services of general interest and the competence question associated with them are explicated, the Court will continue to create a "new law" for services of general interest by interpreting competition rules. In Finland, the Court's decisions have also created a need to remove intermunicipal procurements from the scope of application of the Procurements Directive.

The Commission admits in its Communication that the case law of the Court of Justice has caused uncertainty for the Member States in their arrangement of public services. However, the Commission is examining the case law a priori on the basis of competition aspects and not, as it were, in the light of powers issues. In the view of the Association of

Finnish Local and Regional Authorities, the scope of application of the EU's competition and Single Market rules to services of general interest and public service obligations should be limited in such a way that conflicts between competition law, the competences of the Member States and in association with it the tasks of the public sector are avoided.

### **Strengthening the European social model and the future of social services of general interest**

The Association of Finnish Local and Regional Authorities takes the view that efforts to strengthen the Union's competitiveness and economic renewal process need to be supported by a strengthening of welfare services and social aspects.

The Communication from the Commission is a necessary and important step in efforts to strengthen the status of welfare services and the European social model in the activities of the Union.

Making allowance for the special nature of social services as well as a more precise evaluation on the European level of concepts of services of general interest are necessary. However, the differences between systems in the various Member States are so great that it is neither possible nor necessary to create one-size-fits-all definitions or general framework regulation. The Association of Finnish Local and Regional Authorities still views framework directives with clear reservations.

The hearings procedure that the Commission proposes in relation to the special features of the Member States' social services as well as the procedural and reporting arrangements for dialogue between the Union and the Member States are good alternatives to framework regulation. The procedures give the Member States the opportunity to describe to the Union special national issues associated with the arrangement of services of general interest and the problems of Union regulation.

The Member States must retain clear powers in relation to defining, arranging and funding services of general interest. The independent powers of the Member States as well as their national identity and special features in the provision of services of general interest must be respected when services are examined from the perspective of competition rules and the Single Market. The welfare tasks of the public sector in Finland include clear public service obligations that emphasise such things as equality and universality. Community legislation should not be applied in such a way that a Member State, municipalities and regions are prevented from fulfilling public service obligations or it is made more difficult for them to do so. The Association of Finnish Local and Regional Authorities considers it desirable that the Commission takes also this aspect under consideration.

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