The Chancellor of Justice of the Government of Finland, Dr. Tuomas Pöysti at the meeting of the EU Chief Medical, Dental & Pharmaseutic Officers, Helsinki 26 September 2019.

Integration and Digitalization are the drivers of the economy of wellbeing and the essential elements of a fair balance of rights in the future of health and social services

Distinguished minister(s), chief medical, dental and pharmaceutical officers,

It is a pleasure to be able to address such a distinguished group of medical professionals and medical policy makers. A functioning European social model and welfare policy requires common solutions and dialogue between Union institutions and Member States. I feel humble as a constitutional lawyer here on a topic which extends much beyond the narrow boundaries of law but I can comfort that is also the case for the medical profession and medical policies. The challenges we face and many of the expectations our citizens place on the Union and on us as medical, dental, pharmaceutical or legal professionals require new and multi-disciplinary thinking and dialogue.

Having worked on many fields and roles including Under-Secretary of State for Governance Policy and Digitalization at the Ministry of Finances, Under-Secretary of State for Social and Health Services Reform at the Ministry of Social Affairs and Health and Auditor-General, I today serve as the **Chancellor of Justice of Government of Finland**, by the Constitution of Finland the Supreme Guardian of the law and Fundamental & Human rights in Finland, together with the Parliamentary Ombudsman. The first constitutional remit of the Chancellor of Justice is to ensure legality of the official action of the Government and the President of the Republic (Constitution Act section 108) and to be additionally Independent Legal Adviser of the Government attending all Government (Cabinet) sessions. The Chancellor of Justice is an independent constitutional authority in the Government with the right of initiative in impeachment procedure and right of initiative in the cases of the shortcomings of the legislation and, in addition a general ombudsman institution. A specific constitutional remit of the Chancellor of Justice is **the prior constitutionality control of draft legislation**, and overseeing and enhancement of good legislative practise. We pursue a structural view on the realisation of fundamental rights and human rights. The structural perspective to fundamental and human rights and realisation of justice means looking into the societal structures, legislation and ways in which our service systems and administration is organised, resourced and uses digital technologies and information and to which extend these structures either enhance the realisation of rights or create obstacles to that. One of the specialisation areas of the Chancellor of Justice Institution is automated decision-making and digitalisation albeit we are general constitutional and legality overseers.

I have a background as an academic and some parts of the presentation appear in the Vol 65 (2018) of the Scandinavian Studies in Law.[i] The legislation related to the phenomena of digitalisation and new kinds of services and new kinds of research and innovation methods in medical domain have recently been under work in Finland at the Ministry of Social Affairs and Health, and, for a constitutional review in my institution and, also, at the Constitutional Law Committee of the Parliament. A significant Act of the Parliament in the field is a new Act on the Secure Secondary Use of Social and Health Data (552/2019. The Government's legislative plan include new Acts on Biobanks, Clinical Research, Genomic Data and Electronic Processing of Patient and Client Data in Social and Health Services in addition to pursuing a wide structural and functional reform of the social and health services. The reform includes establishment of a new kind of social and health care centres for the future provision of primary and population centric health care and related social services and specialised services of health care. Finland pursues a reform agenda with the following constitutive strategic elements: (1) wide service integration

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and strengthening of the primary services and ensuring sufficient economies of scope and scale in specialised services; (3) far-reaching digitalization to support effective treatments and population-centric prevention both in health and social services, (4) public digital platforms connected to a wider ecosystem of wellbeing; (5) enhancement of the use of patient and client data, biobanks and genomic data for research, development and innovation and for the steering of the social and health system.

My topic is **the integration and digitalisation in the social and health services as part of a wider economy and ecosystem of wellbeing** and the quest for the balance of various rights and realisation of good care and equality in the conditions of the current increasingly digital society and economy of well-being. I make the argument for a context-sensitive welfare policy and, a context-sensitive application and development of law. Purpose of this presentation is to canvass how service integration and digitalisation are tools to address some of the challenges our health and social services systems face in the current digital society and provide some insights into the governance and legislative challenges realisation of integration and beneficial use of digitalisation would require.

The conditions of life and the effectiveness of care and services have tremendously improved in recent decades. This particularly concerns most of the Europeans. We in Europe have a very ambitious goal. Health and social security and social assistance are fundamental rights in the European Union. Pursuant to the WHO Constitution the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being. The health and welfare systems in the European Union are under stress and face **several challenges following societal, economic and technical changes**. The big issue concerns **equality and equal access** to this highest attainable standard of health and social protection.

All EU countries have some challenges here but we in Finland face some particular problems. The access to health care depends de facto on your income and socio-economic position. Additionally we have, albeit an equalitarian Scandinavian society, a problem of inter-generational exclusion and unemployment, which also leads to poor health. We have also very unfavourable demographic situation in Finland**, the sustainability gap in public finances** being approximately 4,5 % to GDP according to Ministry of Finance estimates. The unfavourable demography and the related cost pressures resulting from aging population is not only a Finnish problem. Common problem for all of us are the cost pressures, the real terms increase of health care costs. Finland has 2,4 & real terms growth in the latest OECD health statistics compared to OECD average of 1,8 % in 2017, for 2018 we will see in Finland a reduction of real growth in health expenditure below 2 % but the OECD average surges up to 2,5 %. Fastest growth is in the secondary and specialised services. Technologic developments have so far mainly contributed to increased expenditure, and, of course, to better results in treatments.

Equality in access and in health and social position remains a considerable challenge

All of us have the task of improving or maintaining the practical efficiency of social rights and right to health recognised in the European Union Charter on Fundamental Rights In Art. 34 concerning social security and social assistance and in Art. 35 concerning health; in addition right to environment in Art 37 contains a dimension of a healthy environment. All these rights are found in the Council of Europe European Social Charter. Digital technologies come with a significant convergence and new challenges to protect human dignity emerge. Health is also a collective good, a view long time also prevalent in population-centric health care and community work in prevention albeit our time favours individual entitlements. Finally, functioning of the health services and social services and support are important elements of the legitimacy of public services and institutions including the EU itself, a point visible also in the UK Brexit debate, or in the 2019 edition of the World Happiness Index.[ii]

The Finnish experience and a bit scattered evidence from other countries as well tell that the service integration is a feature, which is capable to better secure social rights than the fragmented and specialised services.

Social fairness and economic efficiency with sustainability of public finances can be in conflict, but they **can also be realised concurrently**. The sensitivity analyses of the cost pressures related to aging reveal an area where economic efficiencies can contribute to social fairness and wellbeing. The service

integration and effective models of services can create efficiencies and economies where social fairness is better served.

In Finland according to Ministry of Finance estimates a 1,3 % to GDP improvement in the sustainability of public finances is possible if we manage to postpone heavy intervention and service needs at least half the years of expected lengthier lives. Maintenance of a decent everyday functioning ability is here crucial. Earlier academic research and Government Institute for Economic Research and ETLA Research Institute estimates and fiscal policy audit and supervision reports by Finland's independent fiscal policy watchdog NAOF point to the same overall conclusion. The longer life years with decent functional abilities a plethora of different measures contributing to the same direction are needed and an integrated policy and service models is needed. Memory diseases are a significant cause of the need for 24 h care and a significant source of costs and reduction of the human quality of life. The improvement of the working life participation of the 55 to 64 years cohort would significantly reduce illness risks, particularly risks to cognitive capacities. With the improvement of the working life participation rate to the benchmark of Sweden would significantly reduce the burdens to public finances. The If the productivity in terms of cost effectiveness of the social and health services would be improved 0,5 % annually, the reduction in the sustainability gap would be 1,8 percentage point to GDP. There is growing evidence in Finland that service integration has improved the perceived quality of service, effectiveness of treatment and care and reduce costs.

Society is under significant change with significant consequences in health and social services

Health and social services encounter general societal trends. **Digitalisation** is a truly transformative phenomenon. Among the consequences are the personalised medicine and the very new possibilities provided by general purpose technologies such as Big data, AI, digital resources steering, Internet of Things, cloud connected robotics, MyData and quantified self -solutions. Digitalisation changes the models of organisation and value chain (impact chains in the public services) of business activities and public services the digital platforms and ecosystems build on them emerging as one of the leading models of organisation. Platformization and connection to a wider ecosystem is a strong phenomena in health and social services providing also significant potential for improvements in health and social services systems.

Current day societies give substantial weight on **the individual self-determination**. Health is not sufficiently perceived as a collective good. The individual self-determination with the changed notion of time in the social acceleration interestingly analysed by professor Harmut Rosa and professor Nigel Dodd may also lead to a generalised over-use of health services on some parts of the population while concurrently on significant segments of the population there is underuse of health services. Society is more fragmented but so are the increasingly specializing health services. Health data is fragmented and stuck on silos. Digitalization and scientific advancement provide opportunities for increasingly **personalised medicine** and also bio-politics and population centric approach. A fundamental **convergence** between medical technologies and general purpose digital tools blur the classifications between service, drug and medication, medical device and general purpose computer software and consumer devices.

Service integration can provide some solutions

Service integration is one of the ways by which social and health services are reformed to better respond to the societal, economic and equality challenges. Service integration in the context of social and health services means that a client/patient receives effective services without delay and without interruptions and that services and their components are compiled and provided to the patient / client seamlessly on the basis of his/her needs and the effectiveness of intervention. From citizen and user perspective patient sees the service integration as a smoothly functioning chain of service(s) capable of using

different types of expertise. What is more important is the experience being treated as a whole individual realising a right to a balanced wellbeing and support for that. This is a fundamental expectation on which the Finnish system is currently not as its best albeit it is highly appreciated by citizens.

In health care the service integration realises though **vertical integration**: between primary - secondary and tertiary care, specialized services in the front line to support specialists in general practise. A very important part is the integrated prevention and integrated empowerment: **population-centric health care and advice**, participation and empowerment. In Finland a lot of attention has been given to the **horizontal integration between social and health services** which seems to be promising particularly concerning persons with significant service needs, at the risk of social exclusion or other difficult situations. The horizontal integration is, to a lesser extend, also in focus on other countries and systems as well but the Finnish ambition is a rather comprehensive integration.

Challenge to this idea and policy objective follows partly from the European Union General Data Protection Regulation, which defines social services data and health data as separate categories, health data belonging to the special categories of data in Art. 9 of the GDPR. The consequences for that is that national legislator shall in national Member State legislation define when and for which purposes and functions health and social services shall work together and hence create legal bases for combined processing social services data and health data. The horizontal integration has also additional challenges in the very nature of services: many but not all social services are local whereas in health care there are more economies of scale and scope. The potential benefits of the horizontal integration extend beyond interfaces between primary health care and social services. In Finland there is, for example,
(1) evidence and plans on integration on the rehabilitation and maintenance of good personal functional capacities of an individual in working life and promotion of labour market participation and
(2) between vocational health care, public health care system and emerging welfare economies in which the specialists in occupational health partly function as integration managers for the integration of rehabilitation and follow-up of interventions in occupational health care.

Six enabling elements of service integration

Service integration does not realise by itself. These critical enableners of the service integration are:
1) **Integration of finances** including a capable organizer / commissioning of services and right incentives for service integration and effectiveness of activities
2) **Data integration**, which is the core to effective leadership, development of services and individual operations models and effectiveness of care & other services and to the fluidly functioning service chains;
3) **Integrated ICT and other digital systems** which are also connected to a wider ecosystem of services;
4) **Production integration** (same production unit responsible for a variety of services);
5) **Management integration** under one leadership, case managers, comprehensive view; and
6) **Multi-disciplinary work methods and mind** (intra-medicine,inter-disciplinary)
These elements lead to a **functional integration** in which the system is able fluidly to combine needed general and special expertise and assure fluid service chain without interruptions.

Service integration and improvement of cost effectiveness and equality are, in practise, possible only if the new digital tools and *the digital platforms together with the wellbeing and service ecosystem* attached to digital platforms supports the attainment of these policy and legislative objectives. Experience of Finland, and of other countries, tell that comprehensive legislation balancing various aspects and rights, supported by clear and comprehensive guidance information are both needed and expected by the practitioners in the field.

Data policy overcoming the fragmentation of data is a critical enablener to a successful wellbeing ecosystem and good results in health. The innovations in health care and social services are increasingly data driven. The policy dilemma and regulatory dilemma is how to make data driven innovations to contribute to the population centric approach and prevention and to support overall effectiveness of care and services while maintaining citizen and user trust. In this challenge the capacity to use big data

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across the health and social services system, to use also data on the closely related services (like employment and promotion of labour market participation) and to build an ecosystem of data and services, is crucial and requires legislative measures. MyData can provide individual level incentives. As important are the incentives for the various actors to turn the focus into the overall effectiveness.

Public platform is a neutral and fair solution if supported by the principles of a fair ecosystem

The Government can support a fair ecosystem by building and providing **a neutral platform** for welfare services ecosystem. This would provide sound bases for the protection of fundamental rights, fair competition and avoidance of data lock ins and a trusted use of big data. Concurrently the assurance of citizen and user trust is dependent on the cyber and information security, effective data protection and taking into use MyData -type of elements in the platforms enabling user control over their data. MyData and sufficiently reliable interfaces between various components of welfare data provide also tools and potential for good incentives for citizens and user for the preventive actiosn and, to participate to the services. Public sector can a neutral provider of a platform if it is open on fair bases and there are clear principles of its use. Platforms and Big data enable also proper training of AI to help in various functions in the health and social services including service needs advice.

In Finland a specific Act of the Parliament, **Act on the Secure Secondary Use of Social and Health Data** has recently been enacted. In the Finnish development work significant hope is placed on the use of AI empowered solution in the recognition of prevention potential and assessment of service needs. Data is at the centre of the leadership and management of a modern health and social services system(s) and the work on the improvement of both the quality and the sound use of data in all levels of management and in the bench marking of services.

The fair ecosystem and platform principles are needed to establish coherent legislation respecting fundamental rights and to maintain fair competition. On the bases of expert knowledge and recent Finnish Acts the following principles could guide the platform:

- Effective data protection and right to good quality services by design and default
- Use of MyData and giving meaningful control and participation to the users
- Data portability
- Data collection as a tool for a patient / customer initiated value creation
- Open surface and integration and integration layers and application programme interfaces when this can be permitted from the cyber and information security point of view including interfaces description and meta-data structures
- Data structures and core data under public or user ownership to prevent private lock ins to data structures and data banks
- Equal and fair utilisation rights for data resources while respecting privacy, right to protection of personal data and security
- -Up to date data banks on knowledge feeding AI powered solutions
- Interoperability following European Interoperability Framework

Messages to the European Union

In the modernisation of health and social services systems and in the establishment of the digital platforms and ecosystems a wide dialogue with the Union Institutions and Member States is needed and going beyond the classic social rights and health policy contexts. Historically the Union institutions other than European Cpurt of Justice have followed slightly fragmented approach in which de facto also the data protection plays a significant role as well as competition law including state aid law. There is no uniform European model of health system albeit benchmarking and sharing of experiences is needed and on many fields there is common legislative foundation (including Patient Rights Directive on the Cross-border use of services, Medical Devices regulations, Regulation on Clinical Trials, Pharmaceutic

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legislation). The model of health and social services systems is still different, the Nordic (Scandinavian in legal terms) relying on the universal public services as a most cost-efficient system capable of providing high standard of health and social protection. This diversity creates the need for the Union also to respect the constitutional identity of the Member States. Still with that there is much room for the joint European Union action. The EU legislation and policy on data, data protection and digital platforms have a wide impact on digitalisation including the digitalisation in the health care and the realisation of service integration and establishment of a wellbeing ecosystem with sound economics and respect of individual and collective rights. There is a specific need for a context-sensitive union law (incl. data protection law) and a coherent EU approach across the sectors. A particular issue to be addressed is the convergence of the medical technology with the general purpose digital technologies and the need to address the liability and responsibility issues related to that. This will not empty the European Pillar of Social Rights but will be an important element in it.

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[i] See Tuomas Pöysti: Trust on Digital Administration and Platforms in Peter Wahlgren (ed): 50 years of Law and IT, The Swedish Law and Informatics Research Institute 1968-2018. Scandinavian Studies in Law, Vol. 65 (2018), 321-363.

[ii] See chapter 2 of the World Happiness Report on the impact of health inequalities to happiness, https://world-happiness.report/ed/2019/changing-world-happiness/ (page visited 24.9.2019) and chapter 6 on the Big data on happiness.

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