

# Conclusions and recommendations of the National Audit Office

## Supporting non-profit organisations, and certain exceptional procedures

Support is granted from the state budget to a variety of non-profit organisations, including private institutions, organisations, associations and foundations. Institutions operating under public law, such as the Finnish Institute of Occupational Health and the Finnish Forest Centre, are also considered to be non-profit organisations. The processes for granting subsidy are varied. Subsidies can be granted as annual support for general activities or as support for specific activities. The audit covered support paid from six different items in the state budget. The aim of the audit was to examine whether the applicable regulations had been followed in the application for and granting and payment of government subsidies granted to non-profit organisations, and in the supervision of the use of the subsidy. Furthermore, the aim was to determine whether the internal control of support processes is appropriately arranged.

The audit also examined certain exceptional procedures under which tasks relating to discretionary government transfers had been delegated to actors other than public authorities. The audit of exceptional procedures examined the compliance with section 124 of the Constitution of Finland and the principles of good governance in three cases where tasks relating to discretionary government transfers had been delegated to actors other than public authorities.

The audit consists of two parts: the first part covers support granted and paid to non-profit organisations and related internal control processes (Chapters 2 and 3), while the second part deals with exceptional procedures (Chapter 4).

## Organisations' support processes are largely appropriately arranged

The audit revealed that there are inconsistencies between and within different forms of subsidies regarding the use of concepts. Due to this, the scope of these concepts may remain ambiguous and thus result in differing interpretations, which in turn may impact, for example, the subsidy decision and the amount of subsidy. Provisions on the grounds for granting subsidy are laid down in a number of acts and decrees. In addition, there are also other guidelines setting out conditions and restrictions for granting subsidy. These guidelines can also include references to other public authorities or regulations for the correct interpretation. In legal drafting, attention should be paid to the consistent use of concepts. Where possible, the concepts used should comply, for example, with the concepts of the Act on Discretionary Government Transfers or of other regulations concerning the administrative branch. The concepts used in the guidelines should also comply with the concepts used in relevant regulations. The guidelines should also explain the meaning of the concepts.

Only isolated irregularities and deficiencies in internal control were detected in the audit. The audit revealed that the Act on the Operation and Financing of the Institute of Occupational Health and the related Decree are in many respects outdated and insufficient.

The government transfer decision made by the Ministry of Social Affairs and Health did not specify the rights and obligations of the

beneficiary. In addition, the Ministry has not required the Institute of Occupational Health to submit the proposal in accordance with the above-mentioned Decree regarding how the Institute intends to use its higher-than-anticipated revenues. On the basis of the audit, the Ministry's supervision of the use of government subsidy cannot be considered sufficient or the internal control of government subsidy appropriately arranged.

The Employment and Economic Development Offices (TE Offices) have not always made employment policy project support open for public application, and support had also been granted without a written application. In addition, at two TE Offices, support had been granted contrary to the relevant decree and the conditions laid down in the decision.

The audit revealed deficiencies in the internal control of the support process relating to employment policy project support: there were inaccuracies in the wording of support decisions, appendices to the payment application and guidelines, as well as in checking that the support had not been granted or used to cover costs arising to the beneficiary from its business activities or from rehabilitative work activities.

Deficiencies were found in the budgeting for facility expenses. The beneficiaries include nationally important arts and cultural institutions that have previously operated in state-owned premises free of charge. The state budget, however, does not indicate what restrictions are applied to the support.

### Delegation of public administrative tasks is constitutionally problematic

According to section 124 of the Constitution of Finland, a public administrative task may be delegated to another actor than public authorities only by an act or by virtue of an act if this is necessary for the appropriate performance of the task and if basic rights and liberties, legal remedies and other requirements of good governance are not endangered. However, tasks involving significant exercise of public powers can only be delegated to public authorities.

In the light of section 124 of the Constitution, the public administrative tasks delegated to Business Finland Oy and Motiva Oy are problematic. Sparring with and instructing customers even before they submit their application for government subsidy involves a risk that customers are not treated equally, as required under section 6 of the Administrative Procedure Act. These issues should be taken into account when assessing the need to amend legislation or change the organisation of tasks.

The Act on the Finnish Funding Agency for Innovation Business Finland and the limited liability company by the name of Business Finland (1146/2017) sets provisions on Business Finland, an entity composed of a funding agency, which acts as a public authority, and of a limited liability company. Under the Act, the company has the powers to make decisions on granting, changing and paying government subsidies of up to EUR 100,000, as referred to in the Act on Discretionary Government Transfers, granted according to the *de minimis* rules. The Act contains no other provisions regarding the delegation of public administrative tasks.

On the basis of the audit, it seems fairly obvious that the tasks (other than those concerning the making of funding decisions) delegated to the company by the name of Business Finland are not merely technical or tasks that support the activities of public authorities. The tasks involve

independent discretion even if they were performed under the supervision of the discretionary government transfer authority, and the authority had the competence to make the final decision in the matter. Business Finland interprets a public administrative task restrictively to apply mainly to decision-making. This interpretation is not supported by any legal sources.

The drafting documents relating to the Act on Business Finland state that the distribution of tasks between the Funding Agency and the company (which focuses on operational activities), as well as the organisation of the company, will be clarified as the implementation of the reform progresses. As the tasks transferred to the company have not been defined and specified sufficiently accurately, public administrative tasks have been transferred to the company not only by law but also by a service agreement. On the basis of the audit, Business Finland considers its competence to be such that it can organise the distribution of tasks between the Funding Agency and the company as it wishes.

Business Finland spurs with and instructs its customers even before they submit their application for government subsidy. If these tasks are performed only at the company, and they are not considered public administrative tasks according to Business Finland's interpretation, the procedures fall completely outside the scope of regulation under administrative law.

The Finnish Transport Agency (the Finnish Transport Infrastructure Agency starting from 1 January 2019) has since 2011 procured services relating to national mobility management expert and coordination work from Motiva Oy. It seems clear that public administrative tasks have been delegated to Motiva Oy by a service agreement, i.e. without authorising the arrangement under specific legal or other regulations.

On the basis of the audit, the National Audit Office issues the following recommendations.

The Ministry of Social Affairs and Health

1. should update the legislation concerning the Finnish Institute of Occupational Health to better reflect the current activities of the Institute and the requirements of the Act on Discretionary Government Transfers and relevant EU legislation;
2. should pay attention to the inconsistent use of concepts in legislation and the state budget;
3. should in its decision clearly establish the amount of expenditure of the Finnish Institute of Occupational Health that is eligible for central government transfers. In addition, the decision should also indicate the purpose of the support, the support period and the rights and obligations of the beneficiary;
4. should comment on the surplus accumulated by the Institute of Occupational Health and how this is taken into account when granting government subsidies.

The Development and Administrative Services Centre for ELY Centres and TE Offices, ELY Centres and TE Offices

5. should make employment policy project support open for public application, and support should only be granted on the basis of written applications;

6. should check that the support has not been granted or used contrary to the relevant decree or the conditions laid down in the decision, and take the necessary measures;
7. should ensure that the payment of support is sufficiently documented and the materials are archived so that the amounts paid can be later verified.

#### The Ministry of Education and Culture

8. should ensure that when processing leases at the Cabinet Finance Committee, the documents clearly indicate that the leases are covered by discretionary government transfers;
9. should improve the budgeting of the appropriation under item 29.80.53 (Discretionary government transfers for facility expenses) so that the budget would indicate more clearly the beneficiaries of the support.

#### The Ministry of Agriculture and Forestry

10. should clarify the concept of 'revenues' used in the relevant regulations and conditions and improve the consistency of considering revenues as an item reducing the need for discretionary government transfers;
11. should ensure that in the future advances are only paid on the basis of an appropriate government transfer decision.

#### The Ministry of Economic Affairs and Employment

12. should reassess how the public administrative tasks delegated to Business Finland are distributed between the Funding Agency and the limited liability company;
13. should update its guidelines relating to employment policy project support and specify the meaning of the concept of 'business activities'.