

WRITTEN QUESTION P-1609/08
by Harlem Désir (PSE)
to the Commission

Subject: Transposition of the directive on services in the internal market

The process launched in the Member States of transposing the directive on services in the internal market (2006/123/EC)¹ raises the question of the arrangements concerning the exclusion of social services when the service providers are mandated by the State.

This means that the concept of mandating, which exists in Community competition law relating to services of general economic interest (SGEIs), has for the first time been included in a text relating to the internal market, without the scope or practical arrangements for the formulation of that concept in national law being defined anywhere apart from the 'Handbook on Implementation of the Services Directive' and the requirement set out therein to provide the social services concerned. Nevertheless, that information document does not have legal force.

Should one equate the concept of mandating under internal market law with the one developed in competition law relating to SGEIs and recently referred to specifically in the BUPA judgment (T-289/03)?

Does it necessitate an official mandating act, as is the case in Community competition law? Does an obligation of a contractual nature, binding the service provider to the public authority by means of a public contract, concession or grant agreement, constitute mandating within the meaning of Article 2.2j?

Since the national legal frameworks relating to certain social services, such as the one in force in France, do not provide either for the explicit mandating of service providers or lay down obligations to provide social services, and do not explicitly define them as SGEIs, can the relevant provisions of articles 2.2j, 15.4 and 17.1 be applied to them? If they cannot, there would be a risk of numerous social services being subject to the Services Directive when the European Parliament has excluded them from the scope of that Directive.

¹ OJ L 376, 27.12.2006, p. 36