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European Commission  
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LX 46 3/154 ; B-1049 Brussels, BELGIUM

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*Att: Ms Dora Balazs and Mr. Nicolas Kaye*

## **Comments on the document “Draft Recommendations to Member States regarding a Code of Conduct for Non-profit Organisations to Promote Transparency and Accountability Best Practices”**

### **A. General comments**

The Danish Council on Social Volunteering – a state body appointed by the Minister of Social Affairs - would like to comment on several aspects of the draft recommendations regarding a Code of Conduct (COC) for Non-profit Organisations (NPOs) to Promote Transparency and Accountability Best Practices:

The Council for Social Volunteering supports transparency practices both in general and specifically to avoid misuse of funds for criminal purposes and terror financing. However, we fear that these draft recommendations can do much harm to the non-profit sector in Denmark without clear documentation that the recommendations will address the alleged vulnerability of non-profit organisations to criminal exploitation, including the possible financing of terrorism.

The Council for Social Volunteering is of course willing to enter into a detailed discussion on how to avoid misuse and promote transparency in our sector. But in such a discussion there is a need for more detailed knowledge and, not least, documentation. The non-profit sector is very diverse and functions in various ways in the EU member states. In Denmark – and in other Nordic countries - we have a constitutional guaranteed right to freedom of association with no obligation to register. The right to organise without having to register with any governmental authority has been a fundamental right in developing the Danish democracy and welfare state.

By changing this fundamental right, we find that a minimum of factually based documentation is needed to substantiate that the alleged problems with NPOs and terror financing in Denmark are best addressed with this COC and the recommendations to member states. This is not the case at present.

### **B. We have three main concerns:**

1. *Freedom of association* will – in a Danish context - be compromised by the requirement for registration in COC. Furthermore, the registration requirement in the COC *cannot be seen as voluntary* if member states are making registration a requirement for organisations in order to obtain preferential tax treatment, the right to collect funds and access to public grants.

2. The consequences of the many types of governmental control in the COC may harm *people's willingness to get involved* in non-profit work, especially among minority ethnic/marginalised groups. Moreover, we fear it may lead to a general mistrust that is not founded or fair when we look at the way the NPO-sector works in Denmark.

3. The requirements needed for being in compliance with the COC may be *detrimental to the development of innovative and new types of organisations and network* that are not - and cannot - be as formalised or carry the administrative burden as proposed in the draft.

Thus, with this proposal we risk creating a very big monitoring system that is liable to have negative consequences for the civic engagement – even without knowing if or providing a minimum of documentation that the proposed requirements and mechanisms would work as indented in a Danish context.

Therefore, we would like to see an in depth examination of the existing level of transparency in the Danish NPO-sector, the efficiency of rules and regulations already in place (for example the regulation of public collections for charities) *and* the problems with transparency - before starting to devise new mechanisms of control. Moreover, despite lack of documentation, will NPOs who may be committing serious criminal acts be more visible for the relevant authorities in this “registration and transparency system” than today? Speaking abstractly, is it not possible to employ other means to identify the last hypothetical 0,1 percent without overburdening the 99,9 percent?

### **C. Besides these general comments and concerns, we have some specific comments to the proposed COC:**

1. In section B bullet point 1, it is not clear whether the proposal is a registration-list over *all* members in an NPO or the directors/executive committee members. While there in most organisations is transparency when it comes to executive committee members, directors and so on, it will be very critical if all members have to register. For many people membership and doing voluntary work for an organisation is a personal and private matter - registration here can be compared with being forced to register for which party you vote. If all members of an NPO have to register we fear that many would turn away from supporting and being active in NPOs, especially among marginalised groups. One example could be an organisation that works for and with HIV-infected citizens, an illness where social stigma sadly is still a reality. Here, members can risk to be exposed by a registration-list in a way they do not wish.

Moreover, it will be even worse, if these recommendations later on will create a demand for registering beneficiaries. Beneficiaries could be social clients where exactly the need *not* to register is important for the identity and raison d'être of NPOs, not seeing beneficiaries as "clients" with files. It could also be former refugees who have very bad experiences with registration and therefore will turn away from participating in society through NPOs. It could be devastating for our sector if mistrust, rules and regulations come in between NPOs and the people they are trying to help or support.

2. The requirements of proper book-keeping and Annual Financial Statements of income and expenditures (bullet point 2 in section B) are already regulated in Denmark. But the requirement of being able to present to a new regulatory authority an annual report that states how activities have promoted the NPO's General Objectives is a form of control that we cannot support. Already because it is a violation of the freedom of association. A board and leadership in an organisation is responsible towards the organisation and the members – not a governmental authority - as long as nothing illegal is taking place.

3. Bullet point 3 in section B – full and accurate audit trails of funds - could in fact also mean criminalising almost every NPO working or supporting activities outside their country. NPOs have to follow proper book-keeping practices which is currently the case. But the requirements of full and accurate audit trails can prove to be almost impossible in the real world. And in real terms it will mean a reverse burden of proof, which is inconsistent with the European Convention on Human Rights.

#### **D. Overall conclusions**

The fight against terrorism is important but a new proposal is needed. Our main concerns are:

- Lack of documentation
- The proposals are out of proportion
- Inconsistent with democratic values as freedom of association
- In real terms it will reverse the burden of proof when it comes to full and accurate audit trails of funds
- Administrative burden for NPOs
- Detrimental to the development of innovative and new types of organisations and network
- Detrimental for the social work of NPOs, especially among marginalised groups

Sincerely

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