

## CoESS POSITION PAPER ON THE COMMISSION'S PROPOSAL FOR A DIRECTIVE ON SERVICES IN THE INTERNAL MARKET

1. The European Commission has put forward a proposal for a Directive on "Services in the Internal Market", COM (2004) 2. The European Parliament and Council must now approve the proposal. The Directive is currently in hands of the Council. First reactions have been positive but the Member States will need time to analyse the text and consult nationally. The first reading will not take place until the next European Parliament has been vested (after summer 2004).

2. Following a preliminary assessment of the proposed directive, CoESS has some comments on the consequences of the proposal with regard to private security services.

### General Comments

3. The broad range of services covered by the proposal represents approximately 50% of the economic activity and 60% of jobs in the EU (EU 15). The proposed directive covers most services provided to consumers and businesses except services provided directly by public authorities for no remuneration, in fulfilment of their social, cultural, educational or legal obligations. It does not include services that are already covered by specific EU legislation, such as financial services, telecommunications and transport.

4. The proposal thus includes a wide range of activities including, for example construction, leisure services, IT services, advertising, employment agencies, audiovisual services, healthcare services and **security services**. It also includes professional services such as consulting, architecture, engineering or legal advice.

5. In general, CoESS is supportive to create a real internal market in services by requiring Member States to cut administrative burdens and excessive red tape. This would enable businesses to offer their services across borders and to open premises in other Member States.

6. CoESS is nevertheless very careful in the assessment of some specific consequences of the proposed directive and wishes to express its concern on these issues.

### Authorisation schemes (Article 9)

7. The private security sector in a number of Member States of the European Union is governed by national laws aimed, a.o. at ensuring high quality standards and a high degree of professionalism.

8. Authorisation procedures regulated by national legislation often require that security services can be provided only by companies which have received prior authorisation from their public authorities and only by private security guards who have received obligatory training and a license from the public authorities to act as a private security guard.

9. CoESS holds the view that strict licensing and regulation of the private security industry throughout the European Union are essential foundations to a high quality industry (see also "*Joint Opinion of the European Social Partners in the Private Security Industry on Regulation and Licensing*"(1996), "*Joint Declaration of CoESS and UNI-Europa on the European harmonisation of*

*legislation governing the private security sector" (2001); and "Code of Conduct and ethics for the private security sector" (2003)).* Systems of licensing help to ensure that each employee and each employer is equipped with the skills and competencies to carry out the functions required in a high quality services industry.

10. The primary objectives of an authorisation scheme in this context is to:

- guarantee professionalism
- avoid abuse and misuse
- safeguard the necessary transparency and hence to safeguard of the society as a whole
- avoid "private militias"

11. In order to guarantee a high level of professionalism in the private security sector within the European Union, it should be ensured that all the people employed have the moral and professional aptitudes required to work in the sector. In particular, the authorisation should be granted by the public authorities after a thorough examination of the background (criminal record) of the applicant. In order to enable the mobility of workers and agencies within the internal market, it should be ensured that the national requirements for granting these authorisations are similar between EU Member States. These authorisations should also be mutually recognised between the EU Member States in order to enable the free flow of workers.

12. With the public interest in mind, CoESS believes it is essential that private security companies and private security guards obtain the required national authorisation.

13. CoESS holds the view that there is no justification behind the general proposal to limit the role played by the Member States. The regulation of the private security industry through national legislation is the concern of each Member State and consequently that of the entire EU. CoESS would like to stress the importance of national legislation in guaranteeing the quality of services. The provisions regulating the authorisation private security firms must be adapted to national circumstances. Furthermore it is proven that Member States with thorough authorisation procedures have often succeeded to elaborate the most advanced legislations on private security within the EU.

14. As an alternative, CoESS could agree with a European wide scheme of authorisation for companies (see also *"Joint Declaration of CoESS and UNI-Europa on the European harmonisation of legislation governing the private security sector" (2001)*). In order to guarantee the free flow of services and the freedom of establishment for companies in the private security sector, and also to guarantee the morality of the company managers, a European system of authorisations should be set up in all the EU Member States. These authorisations constitute a precondition for the observance of commercial, financial, social, moral and ethical rules imposed on the company. All companies and their managers working in the private security sector should be holders of such an authorisation. The evaluation prior to granting this authorisation should be done on a sector-independent basis and according to European procedures judged to be fair and transparent. It is vital that the specific requirements placed on companies for obtaining an authorisation on the European territory are applied by the Member States with reference to a minimum European framework.

15. CoESS is concerned about the direct consequences of the proposed directive on the various authorisation schemes and thus the indirect consequences of these regulations on the private security market within the European Union.

#### **Consequences of the draft directive on the various authorisation schemes**

16. The draft directive would cut excessive documentation requirements by limiting the number of documents required. As such, CoESS supports the disappearance of complex, lengthy and costly

authorisation and licensing procedures. According to Article 9 of the proposed directive, the remaining procedures would have to be based on objective criteria:

*"Member States shall not make access to service activity or to exercise thereof subject to an authorisation scheme **unless** the following conditions are satisfied:*

- a) the authorisation scheme does not discriminate against the provider in question;*
- b) the need for an authorisation scheme is objectively justified by an overriding reason relating to the public interest;*
- c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place to be genuinely effective"*

17. CoESS calls for caution when revising the existing regimes, because their reduction would call into question both regulated activities that are subject to approval or licensing procedures in several EU Member States.

18. CoESS wishes to underline that all current authorisation schemes regulating the private security industry within the various EU Member States seem to be in accordance with the principles of the proposed directive. They are not discriminatory, they are objectively justified by an overriding reason relating to the public interest (to safeguard public security) and they cannot be attained by means of a less restrictive measure.

### **Country of origin principle (Article 16)**

19. Article 16 introduces the "country of origin" principle, whereby once a service provider is operating legally in one Member State, it can market its services in other Member States without having to comply with further rules in the 'host' Member State.

20. This principle of home country control basically means that the country of origin is required to conduct effective controls on the service providers that are established in the country, even though they provide their services in other Member States.

21. According to Article 16 (4) of the proposal *"Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide services in the case of a provider established in another Member State, in particular, by imposing any of the following requirements:*

- a) an obligation on the provider to have an establishment in their territory;*
- b) an obligation on the provider to make a declaration or notification to, or to obtain an authorisation from their competent authorities, including entry in a register or registration with a professional body or association in their territory;*
- c) an obligation on the provider to have an address or representative in their territory or to have an address for service at the address of a person authorised in that territory;*
- d) a ban on the provider setting up a certain infrastructure in their territory, including an office or chambers, which the provider needs to supply the services in question;*
- e) an obligation on the provider to comply with requirements, relating to the exercise of a service activity, applicable in their territory;*
- f) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;*
- g) an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;*
- h) requirements which affect the use of equipment which is an integral part of the service provided...."*

22. This Article 16 shall not apply for a transitional period to the way in which cash in transit services are exercised. Article 18 of the proposed directive includes for **cash in transit** an

**exception** to the "country of origin principle" that would no longer apply once a Community harmonisation instrument is in place. The exception implies that one year after the adoption of the Directive, the Commission should assess whether it should present a proposal for harmonised EU-wide rules on cash in transit.

23. CoESS feels that due to its very specific nature, the "country of origin principle" should not apply to the **transport of funds and valuables**. Licensing, authorisations and standards on the national level are of paramount importance to regulate this high risk activity and require a totally different approach than services in general. Furthermore, the growth of cross-border services can cause a situation of unfair competition where national systems of regulation promote different standards along borders. For these reasons, the transport of funds and valuables should not be treated within the scope of the draft Directive.

24. Article 16 allows for a private security company established in one Member State to have its private security agents work in another Member State without obtaining an authorisation of the Ministry of Interior of this Member State, without complying with this Member State's requirements relating to the exercise of security services and without possessing the necessary identity documents to exercise a security activity as required by this Member State's legislation.

25. Reading Article 9 (authorisation scheme) in combination with Article 16 (the country of origin principle), CoESS notices an absurd situation: a private security company that wants to establish itself in e.g. Belgium, must ask for an authorisation, while a company is allowed to provide private security services in Belgium without any authorisation if it is established in another Member State.

26. After examination, CoESS believes the "country of origin principle" causes a risk of abuses of competition in the private security industry since it is not harmonised within the European Union. This would encourage security service providers to move their headquarters to the EU Member States with the lowest requirements. The authorities in countries with high standards would then be under pressure to lower their standards, jeopardizing public security.

27. CoESS also regrets that the proposed directive has NOT incorporated the principle of mutual recognition. Equivalent authorisations should also be mutually recognised between the EU Member States in order to enable the free movement of services. As such, a private security company which has obtained authorisation from its competent authorities, should only be able to provide services in Member State X when the authorisation procedure would be the equivalent (i.e. the procedure guarantees the same objectives) of the authorisation procedure of Member State X.

#### **Requirements prohibited or subject to evaluation (Article 14 and Article 15)**

28. According to Article 14(7), "*Member States shall not make access to or the exercise of a service activity in their territory subject to compliance with an obligation to provide or participate in a financial guarantee or to take out insurance from a service-provider or body established in their territory.*"

29. On the contrary, CoESS believes that the obligation to participate in a financial guarantee or a social fund for private security agents is completely justified, taking into account the protection of the workers and the guarantee that the provider complies with its financial obligations. The financial guarantee would rather fit under the requirements to be evaluated (Article 15), in case it is non-discriminatory, necessary and proportionate.

30. According to Article 15 (2d) and (3), the authorities of a Member State would also have to verify that the requirements, other than those concerning professional qualifications which reserve access to the private security sector to particular providers satisfy the conditions of non-discrimination, necessity and proportionality.

## Posting of third country nationals

31. The "posting" of third country nationals covers the situation where a company in one Member State sends workers temporarily to another Member State to provide a service.

32. Article 25 of the proposal states that *"where a provider posts a worker who is a national of a third country to a territory of another Member State in order to provide a service there, the Member State of posting may not require the provider or the worker posted by the latter to hold an entry, exit, residence or work permit, or to satisfy other equivalent conditions."*

33. However, there is very tight regulation of security services in some EU Member States. Hence it would not be acceptable for a non-resident company to be able to provide security services in one Member State, using non-resident staff from a resident or non-resident base in order to circumvent the tight regulation of another Member State.

34. CoESS proposes that the posting of workers should be totally excluded from the scope of the Directive since the draft Directive risks to cause enforcement problems of the existing posting directive. On the one hand, the draft Directive explicitly acknowledges the duties of the Member State of posting to carry out on inspections on its territory and to take measures against a service provider who fails to comply with the working conditions as laid down in the posting Directive. On the other hand, the draft Directive is depriving the Member State of posting to prevent and monitor potential abuses since it prohibits to subject the provider or the posted worker with any form of authorisation.

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35. CoESS urges the responsible European and national authorities to conduct, before any decision, a more detailed and more extended assessment of the impact of the draft Directive in the whole of the European private security industry.

36. CoESS furthermore requests these authorities to conduct an examination of the ways that national systems of regulation in the private security industry can best ensure fair cross border competition, combined with high a high level of quality of the services rendered, the necessary level of professionalism, the right working conditions for the private security agents and the guarantee that all players on the private security market have been thoroughly screened prior to any activities.

37. CoESS is of the opinion that the draft Directive seriously jeopardizes the European private security industry as a whole. This risk is even increased in the light of the growing feeling of insecurity, the general European trend to transfer more and more tasks of public security to the private security sector, and the recent entry into the EU of ten new Member States where the private security sector still has a major restructuring process to undergo. CoESS therefore considers that the private security industry must be removed from the application of the draft Directive or that at least the Directive must foresee a series of fundamental exceptions related to our industry.

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CoESS  
3 May 2004