

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

SPECIFIC CONSIDERATIONS WITH REGARD TO AUTHORISATION SCHEMES AND THE COUNTRY OF ORIGIN PRINCIPLE

Note: This position second position paper is a follow-up of CoESS' "Position paper on the Commission's proposal for a Directive on services in the internal market" of 3 may 2004 and of CoESS' and UNI-Europa's joint position paper of 15 October 2004.

General background to this second position paper

1. The European Commission has put forward a proposal for a Directive on "Services in the Internal Market", COM (2004) 2.
2. The proposal explicitly includes in its scope **security services**.
3. CoESS remains 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. CoESS remains nevertheless also very careful in the assessment of the proposed directive and wishes to express its concern on a number of issues.
4. CoESS also believes in the strength of the European fundamental principle of free movement of services and in the need to create a strong European integrated market, including for private security services, leading to a real benefits for our sector as a whole.
5. CoESS is still of the opinion that the entire private security industry must benefit from a specific approach which takes into account the particularities of the sector. If applied as such to the private security industry, the text of the proposal as it stands right now would sincerely jeopardise the whole of the industry and would therefore go against the objectives of the proposal.

Specificities of the European private security sector

The role and the importance of strong national regulations

6. The existing national regulations concerning private security all have today one similar and fundamental goal: to protect the citizen against abuse and misuse, to safeguard the necessary transparency and hence to safeguard the society as a whole, and to avoid private militias.
7. As a secondary goal and logical consequence of this primary goal, national regulations are an indispensable tool for guaranteeing a minimum level of quality and professionalism, leading to stabilization of the market by preventing "cowboy" companies to enter into or to remain on the market, improving the image of the sector and enhancing the profession.

8. National regulations have also been put in place to establish a framework for public-private partnership in security. It is only through a clearly defined framework fixing the role, the competences and the limits of private security services, that public-private cooperation can benefit to protecting the overall national security. Moreover, national regulations increasingly transfer to the private security sector specific tasks that traditionally were part of the police tasks and thus consider the private security as the extension of and as a complementary element to the core tasks of police forces and or army forces.
9. National regulations are also there to minimise the risks that obviously are very high in a sector that plays an important role in protecting a nation as a whole. The risks are inherent to the every day task of every employee working in the sector and must be on a permanent basis be considered in a pro-active way by every serious private security company.
10. Hence, although private security services are to some extent object to the principles of free offer and demand, the impact of national authorities is such that private security services have a high degree of public interest. The national authorities regulate the sector, the national authorities closely monitor and control the sector and they impose strict sanctions in case of non-respect of regulations.
11. CoESS has always supported strong national legal frameworks for the sector, as it is undoubtedly the only way to guarantee for the citizen the necessary protection and transparency, for the companies the transparency as to competition and for the employees a serious career development.

The diversity of national situations

12. National regulations can not be considered separately from their specific national context such as political climate, history, culture, social tradition and national public security considerations. Although similar as far as their objectives are concerned, national regulations vary widely as to the means and modalities to reach these objectives. They are generally established after a national (and thus specific) assessment of risks and threats to security.
13. The recently published "Panoramic Overview of the Private Security Industry in the 25 Member States of the EU - October 2004" (the Overview can be consulted on www.coess.org) demonstrates clearly the differences in areas such as entrance requirements (whether on company level or on personnel level), restrictions on background of owners and staff of private security companies, training, competences, the use of dogs, the use of arms,
14. The level of regulation also considerably varies from one EU Member State to another. Whereas some countries have very advanced levels of regulations, others have only recently begun to regulate the private security industry. And in a few countries, the starting up phase has not yet been finalised. But all national CoESS member federations are aware that the conditions necessary to ensure quality and professional conduct within the industry, hence guaranteeing continuity, must be encouraged and closely monitored.

Authorisation schemes (Article 9 of the proposal)

15. 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.
16. As expressed and motivated in its first position paper, 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. With the public interest in mind, CoESS

believes it is essential that private security companies and private security guards obtain the required national authorisation. 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.

17. CoESS strongly believes that all existing national 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. CoESS demands that the private security sector should be explicitly mentioned in article 9 1b), because it is a sector for which "the need for an authorisation scheme is objectively justified by an overriding reason relating to the public interest".

Country of origin principle (Article 16 of the proposal)

18. 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. Member States may not restrict services provided by operators established already in another Member State. It therefore enables EU-based operators to provide services in the other Member States without being subject to those Member States' rules. This principle also means that the Member State of origin is responsible for the effective supervision of service providers established on its territory even if they provide services into the other Member States. Given the very specific nature of most of the existing national regulations, based upon nation specific considerations, it is extremely difficult for a Member State to rightly assess and supervise the activities of service providers in other Member States. Nor is it possible to transpose the knowledge of security risks specific to one Member State into another Member State.
19. The draft directive thus takes a horizontal approach and intends to generalise the principle of the country of origin, with a number of derogations. CoESS considers this approach to be highly questionable, because the "country of origin principle" causes a risk of unfair competition in the private security industry. This would encourage security service providers to move their headquarters to the EU Member States with the lowest requirements, whether of a social nature or aimed at professionalism and quality. The authorities in countries with high standards would then be under pressure to lower their standards, jeopardizing public security.
20. In addition the directive prohibits a number of requirements for the free provision of services. Given that CoESS is convinced that most of the prohibited requirements on the freedom to provide services contribute towards promoting a transparent market, social cohesion, quality employment, a better protection of all stakeholders involved against risks and abuses, these requirements should not be subject to outright prohibition
21. **CoESS therefore demands that due to the very specific nature of the sector it represents, there should be a derogation to the "country of origin" principle for the private security sector as a whole, including the transport of funds and valuables (CIT).** Licensing, authorisations, regulations and standards on the national level are of paramount importance to regulate this high-risk sector and require a totally different approach than most other services. Furthermore, the growth of cross-border private security services can cause a situation of unfair competition where national systems of regulation promote different standards along the same borders.