

CoESS' comments on the consultation on the practical implementation of Directive 2003/88/EC concerning certain aspects of the organisation of working time

CoESS (Confederation of European Security Services) considers that adequate implementation at national level of Directive 2003/88/EC concerning certain aspects of the organisation of working time is essential to the private security industry. From our perspective, the provision of private security services depends on the existence of maximised levels of flexibility. We must deliver our activities 24 hours a day, 365 days a year. In this sense, the special provisions contained in the Working Time Directive regarding guarding activities, make rightfully reference to the particular features of our sector. The crucial issue remains nevertheless the practical implementation at national level of the European framework established in the Directive.

Although some concrete positive experiences have been identified by our national member organisations, on the whole, we can state that we are not entirely satisfied with the manner in which the Working Time Directive has been transposed in the different EU Member States. In some countries, a reasonable transposition has been achieved. However, in most countries, the transposition has not been carried out satisfactorily, since the national legislator has not made use of the possible derogations contained in the community framework. CoESS is not in a position to provide a 'global' answer in this matter as the transposition depends upon sectoral particularities and country specificities.

On the other side, CoESS considers that national private security employers' associations have not been sufficiently consulted by the national competent authorities regarding the transposition and practical implementation of the Working Time Directive. Consultation at sectoral level has not been initiated by a number of national Member States. Consultation generally remains at the national intersectoral level, but not enough particular consideration of the concrete sectoral issues regarding the implementation of the Directive has been carried out.

CoESS firmly acknowledges that flexibility is an essential element for the adequate development of the private security sector and the quality of the services it provides. While ensuring the full respect of the workers' rights, and the necessary training and

qualifications of the personnel involved, flexible contractual figures according to the national legal framework can contribute to fit the growing demand for our services. In this sense, the inherent flexibility to the services provided by our industry can play an extremely positive role for the reconciliation process, since private security can suit with the working demands of specific workers that are affected by personnel or family circumstances.

With reference to Articles 17 and 18 of the Working Time Directive relating to derogations by means of collective agreements or agreements concluded between the two sides of industry, the main provisions related to our sector are Article 17.3.(b), which states that derogations may be made in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms, and Article 18, according to which derogations may be made by means of collective agreements or agreements concluded between the two sides of industry. As explained above, CoESS' experiences in this respect have been rather negative. Particular provisions at regulatory level have been adopted in some Member States and social agents have also made use of the possibility included in Article 18. However, these positive experiences remain the exception. Most national member associations consider that greater use of the derogations contained in the Directive would have been beneficial to the industry.

We also consider that enforcement and monitoring of the Directive at national level should be improved to avoid unfair competition practices.

CoESS is eager to provide additions and changes to the Working Time Directive and, in this respect, one of the alternatives to be eventually analysed would be the fact that the individual opt-out should be made available in the transposition process to all national legislations, while ensuring at the same time that sufficient other protective measures are present in order to ensure employers will not abuse it.