



Position Paper on the European Commission Consultation Review of the EU Working Time Directive

Brussels, 23 December 2021

The Confederation of European Security Services (CoESS) thanks the European Commission for consulting with Social Partners in the context of the Review of the EU Working Time Directive and is glad to share with this paper the feedback provided by national Sectoral Employer Groups in the Private Security Services.

(I) Transposition

CoESS' members report no specific gaps or inadequacies in the initial transposition of the EU Working Time Directive by Member States and Social Partners, which was however compromised by extensive interference by the European Court of Justice (ECJ).

It has been stressed that the EU Working Time Directive was overly prescriptive - an aspect that is highly problematic when dealing with a topic which is very close to business realities of workers and companies, and often regulated by Sectoral Social Partners (depending on the industrial relations system).

This led in the long-term to an exceptionally high number of cases and interpretative rulings at the ECJ, particularly relating to Articles 7 and 17 - creating in complexity and a lack of legal certainty for companies. Members report that following ECJ rulings, Member State transposition and sectoral collective agreements were suddenly non-compliant with the Directive. In some Member States, a severely negative impact was reported on existing Collective Agreements that initially transposed the Directive, and Social Dialogue. Following ECJ rulings, there are cases where Sectoral Trade Unions went to Court and existing Collective Agreements were considered invalid.

Therefore, unfortunately, the insufficient quality of the legal text led to an excessive and unfortunate intervention of the ECJ rulings into Social Dialogues, weakening the latter and creating legal uncertainty, administrative burden and considerable additional costs for businesses until today. A lesson that should be learned for the future since legal technique is crucial.

(II) Social Partnership

Feedback from CoESS' members confirms that the Social Partners have been sufficiently consulted and involved by the national authorities in the initial transposition and implementation process. In

Finland for instance, the Social Partners have participated in a number of enforcement working groups that have implemented the obligations of the Directive or case law into national legislation.

We however underline that it is not only important to assess whether Social Partners were sufficiently consulted and involved in the Directive's transposition, but also whether their interpretation of the Directive in form of Collective Agreements was respected. In this context, we must note that we consider that the extensive interpretation of the ECJ severely intervened in Social Partner autonomy.

CoESS therefore stresses that, Collective Agreements and Social Partner interpretation should always prevail. Although Articles 17 and 18 of the EU Directive provided a crucial possibility in this respect, the extensive interpretation of the ECJ severely intervened in their provisions and Collective Bargaining. Also, both Articles do not cover derogations in Article 7 to paid annual leave, which was the basis for numerous ECJ cases and leading in some cases to interventions on Sectoral Collective Agreements in the private security services.

In general, CoESS stresses that for sectors such as the private security services, in which, due to the nature of the service, exists a need for flexible working times, provisions of Articles 17 and 18 for derogations by means of Collective Agreements are crucial. Private security services provide a 24 hours service 365 days a year and must be able to provide emergency support on short notice in cases of incidents related to public security and health.

This is supported by the European Commission's Interpretative Communication on Directive 2003/88/EC (2017/C 165/01), which states that any workers who deliver services that are intended to uphold public security can be excluded from the scope of Directive 2003/88/EC in exceptional situations - regardless of whether they are privately or publicly employed:

"The Commission considers that the decisive factor here should be the nature of the workers' activities in delivering 'public service activities' intended to uphold public order and security rather than the mere existence of a public sector employer or a public intervention in the financing or organisation of the relevant service. Although the Court has not yet ruled on this point, it would appear unjustified in the case of exceptional events cited above to temporarily exempt only public sector workers and to continue to require strict compliance with the provisions of the Directive for private sector workers, for example workers in private hospitals."

With regard to the Review of the Directive, it is therefore key to preserve Article 17.3.b, which includes a direct reference to the private security services. Following the European Commission's Interpretative Communication, we however recommend to evaluate whether the scope of Article 17 should not be extended to other Articles apart from Articles 3, 4, 5, 8 and 16, notably Article 7.

(III) Monitoring and Evaluation

CoESS' members report that enforcement and monitoring of the Directive are satisfactory. No respective problems were identified. Members confirm that the Directive meets its objectives and is fit to respond to exceptional situations such as the COVID-19 pandemic. We stress however in this regard the importance of Article 17.3.b, which support private security services in providing an essential service in the management of the COVID-19 pandemic.

Since the beginning of the pandemic, private security services provide a range of essential services in support of public authorities and other critical economic ecosystems - including infection prevention and control measures at numerous sites (incl. retirement homes and hospitals), but also the protection of empty property, Critical Infrastructure and essential supply chains. The essential service status of private security services has also been recognised by the European Commission in its Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak (2020/C 102 I/03).

Under all circumstances, it is therefore key to preserve Article 17.3.b in order to guarantee private security services with the possibility to support public authorities in emergency situations.

(IV) Outlook

In general, members report that there is no need to revise the Directive or to introduce further EU-regulation in this area. Our members have come to terms with the legal provisions, which provide them with necessary flexibility as per provisions of Article 17.3.b. It is necessary to allow Social Partners to continue to regulate working time, where appropriate as per national traditions and industrial relations systems, according to the specific needs of different sectors and companies. The relevant possibilities provided for this in the EU Directive should therefore be maintained.

Members also recommend to evaluate the use (or misuse) of the Directive. An assessment could be made of the consequences and costs for businesses due to the numerous ECJ rulings, which led to detrimental impacts and interventions in Social Partner autonomy.



About CoESS

CoESS acts as the voice of the private security industry, covering 23 countries in Europe and representing 2 million security officers as well as over 45,000 companies. The private security services provide a wide range of services, both for private and public clients, ranging from Critical Infrastructure facilities to public spaces, supply chains and government facilities. CoESS is recognised by the European Commission as the only European employers' organisation representative of the private security services. Representing a labour-intensive sector, CoESS is actively involved in European Sectoral Social Dialogue and multiple EU Expert Groups - including SAGAS, SAGMAS, LANDSEC, RAILSEC and the EU Operators Forum for the Protection of Public Spaces.

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