



## **CoESS AND UNI-EUROPA POSITION PAPER ON THE COMMISSION'S PROPOSAL FOR A DIRECTIVE ON SERVICES IN THE INTERNAL MARKET**

In line with its Communication on the internal market for services (COM (2002) 441 final), the European Commission, on 13 January 2004, adopted a draft Directive on services in the internal market. This initiative aims to provide an overall legal framework for the free movement of services within the internal market

The Directive has two main objectives: a) reducing the non-tariff barriers inhibiting the freedom of establishment, and b) reducing barriers to the freedom to provide services. These aims are pursued through a mixture of cooperation, mutual recognition and harmonisation tools

The broad range of services covered by the proposal represents a substantial proportion of the European Economy. 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.

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.

Although CoESS and UNI-Europa are in favour of instruments to improve the functioning of the internal market for services, which cut administrative duplications and provide more transparency for enterprises, workers and consumers, CoESS and UNI-Europa are nevertheless very concerned about the direct consequences of these regulations on the private security market within the European union.

### **Authorisation schemes (Article 9)**

In a number of Member States of the European Union, the private security sector is governed by national laws and regulations aimed at ensuring high quality standards and a high degree of professionalism. Such quality standards should exist in all EU Member States.

Authorisation procedures regulated by national legislation often require that security services can be provided only by companies which have received prior authorisation from national authorities in the country of service provision and only by private security guards who have received compulsory training and have been issued a license to act as a private security guard from the national authorities.

CoESS and UNI-Europa hold 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 "*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.

The primary objectives of an authorisation scheme in this context are to:

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

In order to guarantee a high level of professionalism in the private security sector within the European Union, it should be ensured that all persons employed have the moral and professional capacities required to work in the sector. In particular, authorisation should be granted after a thorough examination of the background (criminal record) of the applicant.

The draft directive would cut excessive documentation requirements by limiting the number of documents required. As such, and on a general level, CoESS and UNI-Europa support the disappearance of complex, lengthy and costly authorisation and licensing procedures. Nevertheless, CoESS and UNI-Europa are deeply concerned about the pressure, which would be applied to Member States to evaluate, and hence to lower the necessary guarantees, a number of conditions governing the national rules for establishment by article 15 of the draft directive.

CoESS and UNI-Europa agree that Member States must remain free to decide which conditions must be fulfilled to establish operations, provided these conditions are non discriminatory. CoESS and UNI-Europa 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, CoESS and UNI-Europa wish 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.

CoESS and UNI-Europa demand 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)**

Article 16 introduces the “country of origin” principle, according to which service providers already established in one EU member state providing services in another member state on a temporary basis are only subject to the law of the country where they are established. 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.

The draft directive takes a horizontal approach and intends to generalise the principle of the country of origin, with a number of derogations. CoESS and UNI-Europa consider 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.

In addition the directive prohibits a number of requirements for the free provision of services. CoESS and UNI-Europa believe that most of the prohibited requirements (article 16.4) on the freedom to provide services contribute towards promoting social cohesion, employment and respect of cultural identities. They should not be subject to outright prohibition

CoESS and UNI-Europa feel that due to its very specific nature, there should be derogation to the "country of origin" principle for the private security sector, including 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. Furthermore, the growth of cross-border services can cause a situation of unfair competition where national systems of regulation promote different standards along the same borders.

### **Posting of workers**

CoESS and UNI-Europa oppose any initiative or any interpretation of the country of origin principle, which would directly or indirectly undermine national labour market practices based on collective agreements and at the same time dramatically increase the risk of social dumping.

It is essential for CoESS and UNI-Europa that existing wages, working conditions and health and safety provisions, whatever the existing industrial relation system, should remain unaffected by the implementation of this EU legislation. Workers should benefit from the equivalent wages, working conditions and health and safety protection as their colleagues working in the same Member State.

The posting of workers directive is in this respect a key element of EU legislation. CoESS and UNI-Europa are aware that this legislation is weak and that its implementation at national level entails loopholes. Article 24 of the draft services directive introduces elements, which would further weaken the capacities of national authorities and labour market actors to implement and control the posting of workers directive.

CoESS and UNI-Europa demand a full exemption of matters concerning the posting of workers from the remit of this draft directive since the draft directive may reinforce problems of the existing posting directive (deletion of article 24). Wages, working conditions and health and safety provisions in force in the country where the service is provided must always apply. Full control over the application has to remain in the hands of the country where the service is provided. The directive on services in the internal market should in no way interfere with these principles.

### **Conclusion**

CoESS and UNI-Europa urge the responsible European and national authorities to conduct, before any decision, a more detailed impact assessment on the draft Directive in the whole of the European private security industry.

CoESS and UNI-Europa furthermore request 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 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 undertaking any activities.

CoESS and UNI-Europa are 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 and UNI-Europa therefore consider that

- the private security industry must be removed from the scope of the draft Directive (article 2) .
- article 24 should be deleted.

Alternatively, our demand would be basically met if:

- the security sector is specifically mentioned as being covered by article 9.1b)
- the current article 24 of the current draft is deleted.

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For CoESS  
Marc PISSENS  
President



For UNI-Europa  
Bernadette SEGOL  
Regional Secretary