



### **Joint CoESS /ESTA position paper on the Draft Directive on Services in the Internal Market**

This position paper takes into account the clarification of the Commission on the scope and objective of the Proposal for a directive on services in the Internal Market ("The Services Directive") notably with regards to the authorisation scheme and the country of origin principle ("COO"). It follows CoESS's position paper of 3 may 2004, of CoESS' and UNI-Europa's joint position paper of 15 October 2004 and ESTAs paper of October 2004.

#### **Freedom to provide services: solve the loopholes of EU rules**

1. The European Commission has put forward a proposal for a Directive on "Services in the Internal Market", COM (2004) 2. The proposal explicitly excludes CIT from the scope of COO until 2010 or until a specific harmonisation instrument is adopted. Other security services are explicitly included in the Commission proposal and would have to comply with all provisions of the legislation.
2. CoESS and ESTA remain supportive to create a real internal market in services that operates smoothly on a level playing field.
3. CoESS and ESTA recognise that the Services Directive is a complex and sensitive matter. Our organisations are aware that the most sensitive issues of the proposal are the freedom to provide service cross border without establishment (FPS) on the basis of the country of origin principle (COO). These two principles are not introduced by the draft Services Directive but have their legal base in the Treaty (for the FPS) and in the interpretation by the European Court of Justice (for the COO).
4. CoESS and ESTA 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. However, we are concerned that the lack of convergence within the enlarged European Union of social and fiscal standards could lead to unfair competition if operators established in Member States with low standards are allowed to provide services on a frequent, regular, durable or permanent basis. We regret that the Draft Services Directive does not refer to the temporary nature of services to be provided under FPS, as stipulated in Article 50 of the EU Treaty.
5. CoESS and ESTA therefore calls on the Commission, the Parliament and the Council to use the opportunity of the Services Directive to provide a sound framework for the implementation of FPS

and COO that allows for fair competition on a level playing field, particularly in areas such as security services which is a very highly competitive market.

6. CoESS and ESTA share the opinion that the entire private security industry, and not just CIT, should benefit from a specific approach which takes into account the particularities of the sector. Our organisations call for an extension of the derogation already granted to CIT to the entire security industry. Consequently, the harmonisation instrument foreseen in Article 40 should be extended to the full security service industry and not be limited to Cash-in -Transit only.
7. As the conditions which led the Commission to propose derogation from COO to CIT in its draft Directive will still prevail in 2010, CoESS and ESTA ask the EU co-legislators to delete the limit to 2010 which is currently proposed to the derogation from CIT.

### **Specificities of the European private security sector**

#### **The role and the importance of strong national regulations**

8. The nature of private security, which is 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 has led most Member States to adopt strict regulatory frameworks. It is extremely important that the internal market for security services, be it via the Services Directive or an ad hoc vertical directive, does not weaken this framework. In our view, the Services Directive or the specific harmonisation instrument announced in Article 40 of the proposal should be used as the mean of securing high standards all over the EU.
9. This necessary regulatory framework is 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.
10. Regulatory frameworks are also needed 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 in most Member States, competent authorities 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.
11. Regulatory frameworks in place are also there to minimise the risks. The risks are specific to each Member State and the regulatory framework in place in each Member State addresses their particular risk situation. This has implications on the requirements that security companies have to meet in each Member State in terms of equipment, procedures and staff training. CoESS and ESTA stress that, if not adequately framed, country of origin would mean that some security service providers would operate in a risk environment different from that of their home country while they would still be complying with their home country rules.
12. The need for an adequate framework for security services is further reinforced by the strong link between national authorities responsible for public security and security companies. While market forces of supply and demand operate on the security service market, security service companies are an integral part of public security.

13. A strict legal framework for the sector is the passage oblige to public security, to a competitive environment and to the development of the human resources inline with the requirement for quality and professionalism of the industry, as mentioned above.

#### The diversity of national situations

14. The internal market of security services will need to take into account the diversity of Member States regulation, which reflects the domestic context such as political climate, history, culture, social tradition and national public security considerations. As stressed above, these regulatory environments reflect different risk environments.
15. 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](http://www.coess.org)) highlights clearly the differences in area's such as market access requirements (whether on company level or on personnel level), restrictions on profile of owners and staff of private security companies, training, competences, the use of dogs, the use of arms, .....

#### **Authorisation schemes (Article 9 of the proposal)**

16. 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 compulsory training and a license from the public authorities to act as a private security guard.
17. As stressed above, CoESS and ESTA holds the view that strict licensing and regulation of the private security industry throughout the European Union are essential pre-requisite for a high quality industry. With the public interest in mind, CoESS believes it is essential that private security companies and private security guards are subject to a licence. An overview of EU member states shows that the level of effective security is positively correlated to the level of regulation. It calls for high standards to be imposed at EU level.
18. CoESS and ESTA are confident that the security service industry will meet the test of Article 9 for an authorisation scheme at EU level – most Member States do impose a licence to security service operators. CoESS and ESTA call for high level of standards in the criteria for granting the licence in view of the repercussion that low level would have on public safety.

#### **Country of origin principle (Article 16 to 18 of the proposal)**

19. Article 16 refers to the country of origin principle as the driver to the freedom to provide services cross border. This article should, in line with Article 50 of the Treaty, stipulate explicitly that the freedom to provide services from another member States only concerns the *temporary* provision of services. It cannot be used as tantamount for circumventing the rules of a Member State. This precision is particularly important in the enlarged Community where economic, social and fiscal divergences between Member States remain high. Durable provision of service in a Member State should remain, as it is currently the rule, subject to establishment.
20. Without such restriction, the country of origin principle would put public security at risk and seriously distort competition.

21. The draft Directive, or the harmonisation instrument which the Commission will propose, should therefore allow providing a sound and securing framework for the freedom to provide security services cross border. We welcome the clarifications which the draft proposal provides in section 3 on rules applying to the posting of workers, which are the rules of the country of posting.

### **Conclusions**

22. CoESS and ESTA welcome the clarifications provided on the scope and substance of the Service Directive.
23. We welcome the derogation from CIT granted to CIT in article 18 and ask the Commission to extend it to the entire security service industry.
24. We urge the co-legislators and the Commission to delete the reference to 2010 in Article 18 and make the application of COO only conditional to the adoption of an harmonisation instrument, which should cover the entire industry, and not just CIT. This harmonisation should promote high standards at EU level and provide and for a licensing scheme to be imposed in all Member States
25. We urge the co-legislators and the Commission to improve the consistency of article 16 with Article 50 of Treaty and make an explicit reference to the fact that the freedom to provide service is limited to temporary activities and cannot be used as a mean to circumvent domestic requirements.
26. CoESS and ESTA will be happy to provide any assistance required for the set up of the internal market for security service .

Brussels,  
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