CoESS – UNI EUROPA JOINT POSITION ON THE PROPOSAL FOR A DIRECTIVE ON "THE MODERNISATION OF PUBLIC PROCUREMENT"

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Joint position by the European social partners of the Private Security Industry on the revision of the public procurement Directive

CoESS, the Confederation of European Security Services[1], and UNI Europa[2] have taken note of the European Commission's Directive proposal on the modernisation of public procurement and would herewith like to submit their joint position with regard to the legislative proposal. Through the present position paper, CoESS and UNI Europa wish to provide their views and analysis on a series of provisions in the Directive, which they believe will have a high impact on companies and employees providing private security services. In particular they wish to underline their joint commitment to a more socially responsible public procurement process. They also wish to provide an assessment on the Directive specifically as regards the double objectives of the reform: the strategic use of public procurement and the inclusion of social criteria in the procurement process and a more efficient use of public spending.

CoESS and UNI Europa represent more than 50,000 companies with an annual turnover of about 35 billion Euros as well as more than 2.1 million workers. They are both recognised by the European Commission (DG Employment, Social Affairs and Inclusion) as European sectoral social partners in accordance with the European Treaties. Further information can be found on the respective websites: www.coess.eu and www.uni-europa.org.

UNI Europa and CoESS have always considered the promotion of best value in public procurement as one of the highest priorities in their joint Social Dialogue. As a result of a joint memorandum adopted in 1999, a manual on this issue was published and disseminated to the most important national and European stakeholders (www.securebestvalue.org). This manual has also served as an inspiration for different sectoral Social Dialogue committees.

In 2008, the European social partners of the private security sector (CoESS/UNI Europa), the contract catering sector (FERCO/EFFAT), the cleaning industry sector (EFCI/UNI Europa) and the clothing and textiles sector (EURATEX/ETUF-TCL) signed a joint multisectoral declaration "Towards Responsible Awarding of Contracts" calling upon public and private contractors to select the

[1] CoESS is the European umbrella organisation for 27 national private security employers' associations. Founded in 1989, CoESS is the only representative European employers' organisation defending the interests of the private security services sector.

[2] UNI Europa is a European trade union federation. It unites national trade unions organising in service and skills sectors. It has 320 affiliated trade union organisations and represents 7 million workers in 50 countries

economically and socially most advantageous offer rather than the lowest bid, taking into consideration quality criteria such as competencies of the service provider, environmental and sustainable aspects, working conditions, respect of labour standards, trade union rights, social legislation and collective labour agreements of workers along the supply chain.

Introduction

Private security services are becoming more and more a part of everyday life. As an increasing number of security functions, previously carried out directly by public authorities, are now being outsourced, private security companies are becoming progressively involved in ensuring public security. This often includes the guarding of highly sensitive areas such as airports or nuclear power stations. Private security contractors have become responsible for ensuring a large part of public security and are increasingly performing functions previously undertaken by police, fire and ambulance services such as providing security at public events, escort for high-risk transportation (including prisoners, refugees etc.).

Public authorities at European, national, regional and local level therefore find themselves in a position of having to select external contractors for the provision of such services. Recent surveys show that in European countries today on average between 40% and 60% of business in the security services industry is in the public service sector. What is more, in the large majority of cases, public authorities award contracts to private security providers on the sole basis of lowest price. As a consequence of the recent economic and financial crises, with public administrations' budgets being tightened, the criterion of the lowest bid has become more and more the sole basis upon which basing the choice of the contractor while quality and socially sustainable criteria are being completely neglected. Security is hence also being jeopardised as, unfortunately, some private security companies do not pay the much needed attention to quality and professionalism.

The impact on the industry is harmful and counterproductive. In fact, as a labour-intensive sector, personnel costs in the private security sector account on average for about 80%-90%, depending on the service delivered, of production costs as the price of a service provision is mainly based on personnel costs. This results in a very high competitive pressure which causes the contractors to present very tight bids, often to the detriment of the quality of service, the working conditions and staff competences and skills.

This situation is detrimental to all efforts developed by private security services companies to provide quality services. This includes providing their personnel with the necessary training, offering good working conditions which respect locally applicable collective labour agreements and labour rights. The adaptation of the providers' response to the needs of the client in an increasingly competitive environment – where what counts is only the price and economic considerations and not the quality of the service provided – is becoming more and more difficult.

Unfair competition, social dumping and widespread illegal practices by unscrupulous companies, which have been repeatedly condemned by CoESS and UNI Europa, are the direct consequences of an increasing wage competition and a downward pressure on prices. All in all, these practices damage the image of the sector as a whole and considerably impede the development of professionalism, increase staff turnover and lower staff motivation and retention in the industry. It goes without saying that also the quality of the security provided suffers from this.

Preliminary comments

CoESS and UNI Europa welcome the new proposal as a step forward in the use of public procurement to achieve horizontal objectives such as full employment and social cohesion.

CoESS and UNI Europa underline that the achievement of societal goals is even more important if the aim is a better and more efficient use of tax payers' money. Citizens and end-users expect private security guards to provide them with the security and safety they need especially in high-risk sites such as embassies, detention centres, big public events and any other specialised private guarding environments. Requiring contracting authorities to include the skills and capabilities of staff, as well as the experience of the provider needed to work in such environments is key to the performance of a high-quality service.

However, CoESS and UNI Europa believe that the revised Directive falls short in including social criteria at each stage of the procurement process. They also believe that it does not adequately address its stated objectives when it comes to integrate better employment, social inclusion and ensuring the best possible conditions to deliver high-quality services. In particular, the Directive is weak when it comes to make social considerations a requirement and call for a "should" rather than a mere and optional "may" approach in the current text. In particular, it fails to include the respect for local applicable working conditions including applicable collective labour agreements already in the award stage and in the technical specifications

Again, the option of the lowest price is still possible and it is the opinion of CoESS and UNI Europa that the lowest cost criteria should be ruled out in the Directive. In services sectors, such as in private security services, labour costs make between 80-90% of the cost of the service; hence, if a contract is to be awarded only on the lowest price basis, this will inevitably have an impact on the level of wages and working conditions and ultimately on the retention of workers in the sector and in the level of job satisfaction. Strengthening employment rights and protections should be a key focus in the new rules for a more sustainable and socially responsible public procurement.

CoESS and UNI Europa highly disagree with the recent labour market reforms that in many Member States like Greece, Spain, Portugal, Italy and Ireland are putting into question national and sectoral collective labour agreements by allowing companies' agreements to derogate over national/sectoral ones, in particular as far as economic conditions are concerned. This is an additional factor that could put workers at risk of having their pay and working conditions undercut by lowest price competition in public procurement.

Again, the European Commission's proposal is silent on the question of the respect for national/sectoral collective labour agreements and refers exclusively to the breach of EU social and

labour legislation and some international Conventions (listed in Annex XI of the Directive). The respect of collectively agreed pay rates and working conditions are essential elements for a fair and transparent competition.

Exclusion grounds (article 55)

UNI Europa and CoESS welcome the European Commission's proposal when it comes to entitling contracting authorities to exclude economic operators which have shown significant or persistent deficiencies in performing prior contracts. In addition, in the implementation stage of the Directive, social partners could contribute to the identification of the specific objectives and measurable criteria, as indicated by the legislative text, that are particularly relevant for the private security industry in assessing previous contracts' performances.

However, UNI Europa and CoESS also point out that such exclusion is based exclusively upon contracts of a similar nature with the same client. Such restricted possibility does not allow checking the track record of the bidders in previous contracts when they have been performed for a different procurer. This should be corrected.

UNI Europa and CoESS are satisfied with the new provision which calls for a sanctioning system and the mandatory exclusion in case of non-payment of taxes or social security contributions. Indeed, already in the past, both organisations have heavily criticised the practice of some disreputable security firms which omit to pay taxes and social charges as a means to cut down costs and win a contract through the adoption of such deplorable behaviour. Nevertheless, they stress that this ground of exclusion can be used only if the contracting authority is aware of a decision which has the force of "res judicata". This means that any breach in payment of social security contributions cannot be taken into account if all judicial steps have not been completed.

UNI Europa and CoESS appreciate the possibility to exclude candidates or tenderers for violations of environmental or social obligations. However, they criticise the fact that the exclusion is not mandatory and is based only on an optional approach.

For instance, the Directive should require the exclusion of bidders in case of breaches in the applicable collective labour agreement and labour laws. The legislative proposal, in its actual state, does not even mention this possibility and allows only basing the evaluation on possible breach of EU legislation and international Conventions. UNI Europa and CoESS therefore call upon the European Commission to make exclusion grounds related to non-compliance with social, labour and environmental law must mandatory, in particular They ask to exclude potential bidders from the competition where a contracting authority is aware of any violation of social or employment protection, working conditions or environmental law applying in the place where the guarding service is to be provided as set out by national legislation or collective agreements or international labour law provisions listed in Annex XI.

Selection grounds (article 56)

CoESS and UNI Europa are fairly dissatisfied with the legislative proposal when it comes to the range of selection criteria allowed. They believe the possibility to assess the sustainability of an offer is far too restrictive and should be broadened to include the respect of collective labour agreements, investment in initial and lifelong training, enhancement of skills, health and safety etc. As explained above, these are all essential characteristics to ensure that the private security service is provided by competent, qualified and fairly remunerated guarding staff as well as by competent and qualified management and supervisory teams.

On the other hand, CoESS and UNI Europa welcome that the technical and professional ability of tenderers, which includes the "necessary human and technical resources and experience to perform the contract as well as the skills, efficiency and reliability" has been included as selection criteria. CoESS and UNI Europa reiterate that a sector which is requested to provide security services, also in highly sensitive areas as well in emergency situations, can and must be supplied only by reputable and socially responsible companies which are able to demonstrate their commitment to a "security philosophy", that have the highest level of specialisation and a number of years of experience in the sector.

Finally, CoESS and UNI Europa regret the different approach adopted in relation to the operator's economic and financial standing references. From the former approach that referred to a complete list, which was incorporated in the national legal framework, the proposal now leaves the identification process to the national legislators. This can be particularly harmful in some countries.

Contract award criteria (article 66)

UNI Europa and CoESS welcome that the qualification and experience of the staff assigned to performing the contract in question "may" be taken into consideration. This is a further recognition of the special status of services providers. By adding this paragraph, the European Commission seems to understand that, as already mentioned above, the skills, training and competences of private security services personnel and their management team is a necessary pre-condition to deliver a service of quality. However, UNI Europa and CoESS point out again that these criteria should be requirements and not only optional and voluntary choices.

What is more, they point out that, although essential to the quality of services, they are not the only quality elements and other characteristics are to be taken into account. For instance the criteria identified in the Best Value Manual, which was jointly produced by CoESS and UNI Europa and promoted in the Conference organised in 2008 by the European Commission, refer to guarding personnel, contract management/operations, contract infrastructure and company criteria.

UNI Europa and CoESS deplore that the European Commission has decided to include the "lowest price" option again as one of the award criteria. On several occasions in the past, as well as in their joint Best Value Manual, UNI Europa and CoESS have rejected the lowest price criteria and have repeatedly emphasised that the application of the principle of awarding contracts to the lowest bidder leads to a gradual lowering of quality standards especially when it comes to staff training, as well as in the level of supervision and quality management. Therefore, they call for the removal of

the lowest price option and ask the European Commission to upgrade the MEAT (most economically advantageous offer) as the default option for all bidders.

In the view of UNI Europa and CoESS, the inclusion of a life-cycle cost approach is still positive, as it recognises that the cost of a service is not only made of the price, but believe that other external costs have to be taken into account. However, they are critical when it comes to assessing such external costs since social externalities have been completely neglected. Once more, low level of staff motivation high turnover rates, health and safety problems, an increasing risk of accidents on the workplace and insufficient prevention of violence and dangerous situations, which are intrinsically linked to the guarding profession, are some of the social costs that should be assessed in a life-cycle costing analysis.

Abnormally low tenders (article 69)

CoESS and UNI Europa believe that when the price of the tender appears to be abnormally low, bidders should be able to provide evidence, amongst others, that this is not due to the lack of application of employment protection and working conditions applying in the place where the guarding service is to be performed as set out by national legislation or collective agreements or international labour law provisions listed in Annex XI. However, the European Commission only asks to justify price and costing when the price is lower than 50% of the average, while leaving, "the other reasons" without a requirement of explanation. These are too much restrictive situations and CoESS and UNI Europa therefore ask the European Commission to correct and amend this provision to include a wider range of verification methods starting from the respect of the national labour laws and collective labour agreements applied in the place where the guarding service is provided. As stated in the introductory paragraph of this paper, labour costs account for 80-90% of the private security service costs. Therefore, if a service is offered at an extremely low price, the impact on staff costs including wage, costs of training, health and safety standards is quite inevitable.

Conditions for performance of contracts

UNI Europa and CoESS welcome the possibility to lay down special conditions relating to the performance of the contract and, in particular, when it comes to social considerations such as favouring on-site vocational training, the respect of employment conditions and safety at work (i.e. laws, regulations and collective labour agreements in force) that apply during the performance of the contract. Once again, these conditions should be made binding by the contractor and a strict monitoring and a sanctioning system, including the interruption of the contract in case of serious breaches to the contract clauses, should be foreseen. The involvement of social partners in assessing the performance from the point of view of the application of collectively agreed working conditions should be made possible and encouraged by public authorities. UNI Europa and CoESS welcome the European Commission's proposal for setting up independent monitoring bodies, but stress that objective, verifiable and measurable targets and objectives should be used. These targets must include all the abovementioned social criteria.

Concluding remarks

UNI Europa and CoESS call upon the European Commission to:

- **Remove the lowest price option and upgrade the MEAT criteria as the default option;**
- **Include the respect for employment protection and working conditions applying in the place where the guarding service is to be performed as set out by national legislation or collective agreements or international labour law provisions listed in Annex XI as exclusion, selection and award criteria;**
- **Expand the range of social considerations that "should" be taken into account by public authorities;**
- **Make social criteria compulsory and not only a voluntary option;**
- **Further recognise that the quality of services is strictly linked to the staff and management's terms and conditions of employment;**
- **Include a better governance and monitoring system that provides for the involvement of social partners in the assessment of tenderers when it comes to evaluate the respect of social criteria as well as in the performance stage.**

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