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Selected aspects of the Private Security Activities of Business Persons Act

Vybrané aspekty zákona o soukromé bezpečnostní činnosti podnikajících osob

Abstract

The field of commercial security includes certain specific and special activities that are not defined elsewhere and cannot be confused with other business fields – activities. The article addresses not only the analysis of the identified problems of private security activities, but points out the need for control, regulation and clearly defined rules for obtaining a licence in this field as well as provides a comprehensive list of obligations and measures in the performance of these activities. Private security activity is a right guaranteed by the constitution and other laws to natural and legal persons to defend themselves and their property and to protect rights guaranteed by the state. The new bill and its legal regulation are in accordance with the principles of legality, legitimacy and proportionality, in accordance with the constitutional order of the Czech Republic and also in accordance with international treaties to which the Czech Republic is bound.

Keywords: private security services, obligations, measures, licences, professional qualifications, current analysis of security services, security advice.

Abstrakt

Oblast komerční bezpečnosti vykazuje určité specifické a zvláštní činnosti, které nejsou nikde definované a nelze je zaměňovat za jiné podnikatelské obory – činnosti. Článek se nezabývá jen analýzou zjištěných problémů soukromé bezpečnostní činnosti, ale poukazuje na potřebnost kontroly, regulace a jasně stanovených pravidel jak pro získání licence v tomto oboru, tak komplexním výčtem povinností a opatření při výkonu těchto činností. Soukromá bezpečnostní činnost je ústavou a dalšími zákony zaručené právo pro fyzické a právnické osoby bránit sebe, svůj majetek a chránit státem zaručená práva. Nový návrh zákona a jeho právní úprava je v souladu se zásadami zákonnosti, legitimacy a přiměřenosti a v souladu s ústavním pořádkem ČR a dále v souladu s mezinárodními smlouvami, kterými je Česká republika vázána.

Klíčová slova: soukromé bezpečnostní služby, povinnosti, opatření, licence, profesní kvalifikace, současná analýza bezpečnostních služeb, bezpečnostní rada.

Introduction

The Ministry of the Interior and the professional public in commercial security have been trying to adopt a new law to regulate the operation of the private security services for many years. Currently, there are only three countries in the European Union that do not have any dedicated legislation for private security services (“PSS”), namely the Czech Republic, Germany¹ and Austria,² and furthermore in Europe Bosnia and Herzegovina³ and Switzerland.⁴

Unlike in many fields of business, the problem of PSS is that there is no uniform legal regulation of these services across the countries of the European Union. The original bill of the Act on Private Security Activities and Private Security Services and on amendments to related acts was drawn by the Ministry of the Interior of the Czech Republic pursuant to the Plan of Government Legislative Works for 2011.⁵ It was submitted to the Government at the end of 2012. It was discussed by the Government Legislative Council; it was withdrawn from the Government’s agenda for reservations of the GLC. *“It is in this part of the legislative process that another space is opened for PSS associations to enforce other, potentially even very fundamental changes in the wording of the act. This is not a negligible space given that no substantiated political discussion on the privatization of internal security has taken place in the Czech Republic so far, and given that, according to a former employee of the ABL PSS and today PM Kádner,⁶ not every PM ‘knows exactly what is the content of the services provided by security agencies and what pitfalls and problems the*

¹ Cf. KRULÍK, Oldřich; BUKÁČOVÁ, Barbora and Jaromír KRÉDL. *Obecní policie a privatizace bezpečnosti v evropských zemích*. 2nd ed. Praha: Aleš Čeněk, 2022. pp. 221-222. ISBN 978-80-7380-870-9. Currently, in the month of September 2023, the Federal Republic of Germany has started the legislative process of adopting a law regulating the activities of entities providing private security services.

² Cf. KRULÍK, Oldřich; BUKÁČOVÁ, Barbora and Jaromír KRÉDL. *Obecní policie a privatizace bezpečnosti v evropských zemích*. 2nd ed. Praha: Aleš Čeněk, 2022, pp. 245-246. ISBN 978-80-7380-870-9.

³ Two regimes are in operation, in FBiH (Federation of Bosnia and Herzegovina), where they have a mandatory chamber by law, and in RS (Republika Srpska), where there is no mandatory chamber by law; *Zakon o agencijama i unutrašnjim službama za zaštitu ljudi i imovine* (“Službene novine FBiH”, broj 78/08), translation: Act on Agencies and Internal Services for the Protection of Persons and Property (“Official Journal of the FBiH”, No. 78/08).

⁴ Switzerland is a federation of 26 autonomous cantons that are fully equal to each other also at the federal level, with the exception of six cantons (formerly officially and still colloquially called half-cantons), which have only one representative in the Council of States and half the weight in cantonal votes. Each of the cantons has its own parliament, laws, government, budget and constitution, similar to the Länder of Germany or the states of the US.

Annex 2: Reference to the Legal Regulation of PSS in EU and Non-EU Countries.

⁵ See: REICHL, Jiří. “*Ministr vnitra k zákonu o soukromých bezpečnostních službách*” of 1 October 2010. Available from: <https://www.mvcr.cz/clanek/ministr-vnitra-k-zakonu-o-soukromych-bezpecnostnich-sluzbach.aspx> [online 08.08.2023]

⁶ *In October 2022, he was elected mayor of Nová Ves v Horách* [online 19.05.2023].

Available from:

https://www.novavesvhorach.cz/modules/file_storage/download.php?file=58dd60b3%7C296&inline=1

performance of service itself brings.’ PSS and their associations will therefore have a unique opportunity to influence the very setting of rules for the provision of their services and, accordingly, the further direction of privatization of security in the Czech Republic.⁷ Privatization means the transfer of a government-backed function, in whole or in part, to the private sector.”⁸

In the next parliamentary term, a new bill of the act on security activities was drawn by the Ministry of the Interior. After discussion by the Government, it was discussed as a Government bill in the first reading by the Chamber of Deputies of the Parliament of the Czech Republic as Chamber Press No. 495. As part of the discussion of the bill in the committees of the Chamber of Deputies, a number of parliamentary amendments were applied, which resulted in the so-called comprehensive amendment of the Committee on Security of the Chamber of Deputies of 25 January 2017. There was no further discussion of this bill due to the end of the parliamentary term of the Chamber of Deputies.⁹

The prepared and processed comprehensive amendment of then acting Committee on Security was taken as the basis for further newly submitted legislation drawn pursuant according to the Plan of Government Legislative Works for 2018. The bill of the Act on Private Security Activities was again discussed and approved by the Government by Resolution No. 463 on 27 April 2020 and submitted for discussion to the Chamber of Deputies of the Parliament of the Czech Republic as Chamber Press No. 858.¹⁰ Although it was included on the agenda of the first reading several times, it was never discussed until the end of the previous parliamentary term.

The currently submitted bill of the Act on the Security Activities of Entrepreneurs, prepared on the basis of the Programme Declaration of the Government and pursuant to the Plan of Government Legislative Works for 2022, is conceptually different from the previously submitted proposals and respects more similar legal regulations of other European countries, while taking into account specific domestic conditions.

⁷ Cf. BUREŠ, Oldřich et al. *Privatizace bezpečnosti: České a zahraniční zkušenosti*. Ed. Praha: Grada, 2013, pp. 183-184. ISBN 978-80-247-4601-2.

KYNCL, Jaromír. “Rozhovor s Davidem Kádnerem”, *Bezpečnost s profesionály*, no. 3 (2011). [online 02.07.2022]. Available from: <http://kpkbcr.cz/wp-content/uploads/prosinec>

⁸ BUREŠ, Oldřich et al. *Privatizace bezpečnosti: České a zahraniční zkušenosti*. Praha: Grada, 2013, p. 37. ISBN 978-80-247-4601-2.

⁹ An integral part of any implemented policy are the stakeholders who directly or indirectly influence it. They enter into mutual interactions wherein they defend their interests, desired goals, and thus the resulting policy. In the context of the publicly presented political problem, it is necessary to identify primarily key actors, i.e. those who are able to actively influence political events and thus shape the final form of the output. The actors can be further divided to the final beneficiaries, who are directly affected by the resulting policy and will be significantly affected by the change, and the beneficiaries of the policy, who are only indirectly affected, often are not aware of this impact themselves and do not actively participate in the problem solving process. Another way of dividing the stakeholders is by: interest (solving the problem – this interest can also be determined by the fact that the actor is forced to participate in the solution by virtue of their position), power (expresses the degree of power to influence the final form of the policy) and attitude (this indicator is crucial for finding a consensus among the stakeholders).

¹⁰ Annex 1.

The bill of the PSS act was supplemented, updated and resubmitted for an interdepartmental comment procedure in July 2022 and, in line with the original plans, in January 2024. After incorporating the comments, the bill is expected to be submitted to the Office of the Government in November to be discussed by the Government at the beginning of 2023. By its resolution No. 1088 of 21 December 2022, the government extended the deadline for submitting the bill to a new deadline, until 31 December 2024.

Ensuring internal security is one of the primary obligations of the state towards its citizens and involves a wide range of actors including police, intelligence, customs and judicial authorities, to private security services. The activities of internal security services have, among other things, a significant impact on civil liberties, human rights and the quality of liberal democracy in general. The constitutional order of the Czech Republic provides for specific legislation.¹¹

The business of these entities is currently primarily regulated by Act No. 455/1991 Coll., on Trade Licensing, as amended, on the basis of obtaining a concession provided that the general conditions set out in Annex 3 to the said Act are met. The activities of PSS in the Czech Republic are currently regulated by a number of different regulations, always only to a partial extent and insufficiently. The Trade Licensing Act regulates only the general conditions for exercising business in the field of private security services from the point of view of state regulation of business, but does not regulate security activities in terms of their specific peculiarities and security risks. Legal and natural persons operating in the field of PSS are significantly involved in the prevention of crime in relation to the protection of persons and property and thus in the reduction of crime, while the current legislation does not correspond to this.

The main and fundamental benefit of the new legislation is the strengthening of the internal security of the Czech Republic against crime, namely in terms of property crimes, protection of soft targets, increase of preparedness for emergencies and increase of the professional quality of employees, under clearly defined conditions of integrity, professional and medical competence in guarding specific places. This should increase the prestige of the jobs in private commercial security. The reduction in the number of attacks on security staff should be supported by the increase in their criminal legal protection, and vice versa, their completely clean criminal records and higher professional quality should contribute to the reduction in the number of excesses by security staff towards the public.

Therefore, these aspects led the government to the intention declared in the Programme Declaration of the Government on page 33, where it is clearly stated that *“With the help of the new modern law, by the end of 2023, it will legislatively precisely define the functioning of private security agencies, similarly to most EU countries.”* The new bill has newly incorporated security activities for own use by its employees, as one of the security activities for which it is necessary to obtain a G licence, while employees must newly meet the same conditions of medical and professional competence and

¹¹ Constitutional Act amending Constitutional Act No. 1/1993 Coll., the *Constitution of the Czech Republic*, as amended by Constitutional Act No. 347/1997 Coll., and Constitutional Act No. 110/1998 Coll., *on the Security of the Czech Republic*, as amended by Constitutional Act No. 300/2000 Coll., Article 1, Article 3(2).

clean criminal record as is the case for employees of the operator – holder of an A, B and D licence.

The content of PSS activities in the Czech Republic, in the European Union, in the newly acceding countries, and ultimately in the world is basically the same. PSS extend their activities in the range from detective services to the protection of the economic interests of companies and corporations. Security is not only a legal, regulatory or political value, it is one of the main pillars of society, it is the foundation of freedom and equality, contributes to the full development of individuals, organizations and the entire state and is an actual driver in global and national security policies. Significant progress has been made in recent years in reassessing the role of the private security sector, while recognizing the importance, effectiveness of public-private partnerships as a means to address the urgent and diverse security challenges encountered in society. Private security is increasingly considered an indispensable part of a set of measures aimed at protecting society, protecting rights and making a significant contribution to ensuring the security of citizens. Private security activity is a right of natural and legal persons to defend themselves, their property and to protect state-guaranteed rights, which is guaranteed by the Constitution and other laws.

The newly submitted bill newly distinguishes 7 types of licences for security operation:

- 1. Licence A – Protection of persons and property**
- 2. Licence B – Protection of persons and property in special cases**
- 3. Licence C – Services of a private detective**
- 4. Licence D – Transport of cash, securities and valuables in the value exceeding CZK 1,000,000 (hereinafter referred to as “transport of items of extraordinary value”)**
- 5. Licence E – Technical service for the protection of persons and property**
- 6. Licence F – Security consulting**
- 7. Licence G – Security activities for own purposes**

Despite the relatively dynamic development of the PSS sector and its positive impact on the life of society, certain fundamental problems can also be identified that cannot be resolved in the long term by the existing legislation or self-regulatory mechanisms of the private security services market.

“Problem after problem”

“According to the Ministry of Industry and Trade, there are about 14,000 economic entities that hold one or more concessions in the field of commercial security, while according to the Czech Statistical Office, only 6,500 entities operate in the field of commercial security. These data needs to be refined, sorted and clarified. Other problems include the complexity of selection of private security services by the clients (customers of services), the problematic wage remuneration of employees performing security activities and often their poor professional quality. Furthermore, there are

unlawful conduct of employees, circumvention of the act on firearms, lack of data on the operation of security activities and insufficient control activities.”¹²

“In the current economically and geopolitically tense times, we often encounter reports of civil unrest, increased crime and security threats. However, in the shade of these announcements, there are also positive news. The technical director of the largest security agency SECURITAS ČR, Jan Peroutka, summarizes 6 main trends in the field of commercial security that we should count on in the Czech Republic next year: lack of guards, favourable conditions for crime, remote security of objects, collection and processing of big data, solutions with regard to the availability of components and energy savings, dramatically improving video analysis, cybersecurity will experience another milestone – NIS2.¹³The next year will also be marked by the implementation of the new European cybersecurity standard NIS2, pressure to save energy and human work as well as dramatic progress in the video analytical capabilities of camera systems. It is expected that by 2024 about 6,000 companies and institutions in the Czech Republic will have to audit their hardware, including camera and security technologies, implement system to remove vulnerabilities and eliminate unreliable suppliers.¹⁴

Based on the specific problem described above, the question is: **“To what extent and in what range is it necessary to present a new law on private security services, which should regulate the activities of entrepreneurs in the Czech Republic in the future?”**

With regard to the problem in question, the focus and purpose of the research, the data was collected and analysed during the ordinary legislative process when creating and drafting the Act on Private Security Services. To obtain the necessary outputs, the qualitative method, its filtration, validity and subsequent analysis of the results were used.

All information and data were consulted with representatives of the state authorities concerned as well as professional chambers and associations¹⁵ as part of the agenda of the working group for the preparation of the bill regulating private security activities, established by the First Deputy Minister of the Interior. All information on

¹² *Zákon o bezpečnostních službách, konečně se dočkáme.* [online]. Available from: <https://securityguide.cz/zakon-o-bezpecnostnich-sluzbach-konecne-se-dockame/> [online 15.03.2023].

¹³ Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No. 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive).

¹⁴ *Větší rizika, nová legislativa a technologie.* Securitas ČR představuje hlavní trendy roku 2023. [online]. Available from: <https://securityguide.cz/vetsi-rizika-nova-legislativa-a-technologie-securitas-cr-predstavuje-hlavni-bezpecnostni-trendy-roku-2023/> [online 12.11.2022].

¹⁵ At the beginning of 2021, the Ministry of the Interior, the unit for private security services, contacted other Member States of the European Union through the Permanent Representation to the EU, other European states that are not Member States of the European Union were verified through the embassies of the Czech Republic operating in these states.

foreign regulations, numbers of foreign business entities and employees of business entities in the countries of the European Union was obtained through the employees of the Permanent Representations of individual Member States. Information from other European countries that are not members of the EU was obtained through our embassies operating in the respective countries. Valuable usable data was provided by the Ministry of Industry and Trade and the Czech Statistical Office.

The survey has detected some subsequent negatives, as detailed below:

Poor quality of private security staff

Physically fit and professionally qualified employees and a clean criminal record of legal and natural persons of PSS should be a guarantee of a higher level of quality of PSS employees. Preventing the employment of employees with a criminal history will enable deeper cooperation between private security services and security forces.

“Employees of private security services in all types of positions who directly participate in the performance of the service, such as security officers, private detectives, staff transporting cash and valuables, staff at centralized protection panels, all of them undergo mandatory and, above all, regular training. According to the Trade Licensing Act, their professional qualification is also examined. They must master the established security procedures in emergency situations such as outbreaks of fire, accidents related to environmental damage, leakage of dangerous substances or the necessary detention of the perpetrator, etc. Commercial security workers have extensive know-how, they are not only uneducated guards they are mistakenly taken for, but, on the contrary, they are people who know exactly the legislation, martial arts, handling weapons or tactics of police departments. They are people with knowledge and skills in ensuring safety, protection of property and people. If they are properly trained, organized and led, there is no reason why they cannot also engage in cooperation with the state administration.”¹⁶

Insufficient preparedness for emergencies

Cooperation on the basis of coordination agreements with the Police of the Czech Republic will enable the involvement of private security services in the field of critical infrastructure protection, a clearer and more coordinated procedure in cooperation with the Integrated Rescue System, and thus prospectively more effective involvement in the resolution of emergencies.

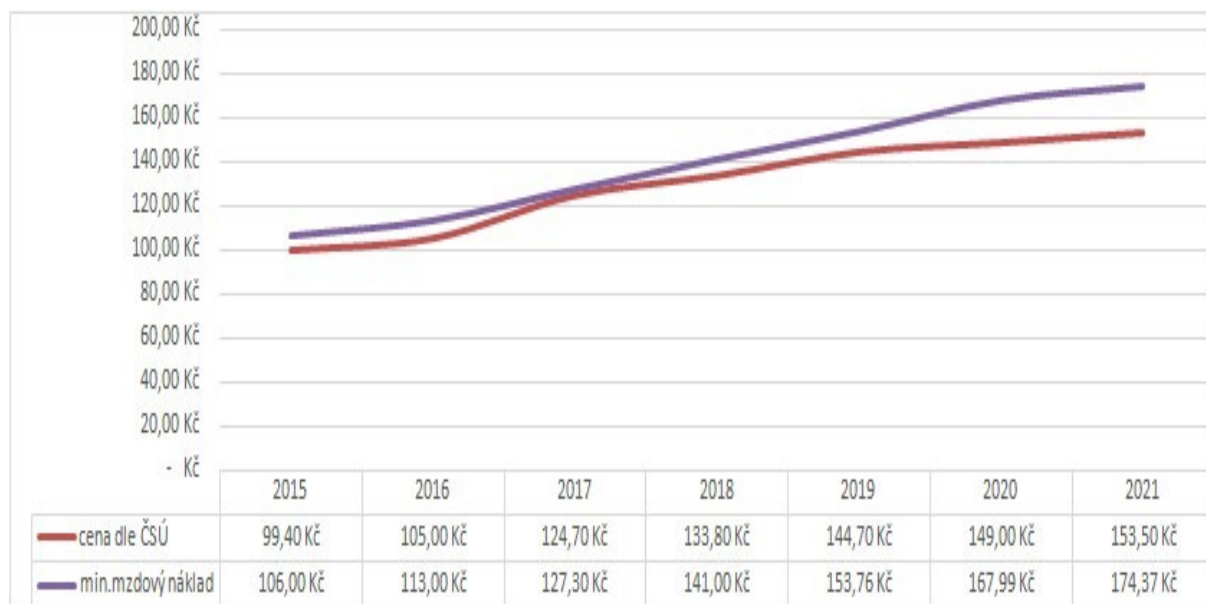
“Is the adoption of the Act on Private Security Services topical and necessary right now? It is definitely topical. We experience constantly changing security risks. We are witnessing, for example, shootings at schools, attacks in public places. Mostly it is the security sector that responds first, and only then the security forces of the

¹⁶ DOČEKALOVÁ, Lucie. SECURITY MAGAZÍN. *Soukromé bezpečnostní služby a spolupráce se státní správou*. 2021 [online 12.01.2023]. Available from: <https://www.securitymagazin.cz/security/soukrome-bezpecnostni-sluzby-a-spoluprace-se-statni-spravou-1404042858.html>
Cf. JAMELSKÁ, Renata and Jaroslav RATAJ. *Soukromé bezpečnostní služby*. 1st ed. Praha: PA ČR Praha, 2021, pp. 29-32. ISBN 978-80-7251-521-9.

state. Therefore, it is necessary to improve the quality of services and supervise their performance. Citizens are increasingly and rightly asking how the state actually cares about their safety. The Czech Republic is one of the safest countries in the world, which is great, but it is not a matter of course. To maintain this state of affairs, we need to do a lot and continue to do so. It is the responsibility of the legislature to also take care of the development of commercial security. Last but not least, property crime is also growing. And given the social differences and tensions in society caused by the unfavourable development of economies in the European area, an increase is expected in the coming years. It is necessary for the private security sector to be adequately prepared for these challenges. A good law can create conditions for this. I underline the word good. We do not want the law at any cost and partial measures can also be implemented under other legislative standards. However, the acts on PSS exist in many European countries, and it is necessary to attempt to have one in our country and pursue its preparation to a successful end.¹⁷

Low payroll valuation of employees providing security activities

Adequate financial and wage remuneration should be placed at the level of other or similar jobs.



Explanations: price according to the Czech Statistical Office, minimum wage cost

Table 1: CZSO data and comparison with data on minimum labour cost according to the USBS CR from 2015 to 2021; correlation with the prices of unarmed building security for the 4th quarter of each year.¹⁸

¹⁷ KRÁLÍČEK, Robert. *Poslanec Králíček určen garantem zákona o soukromých bezpečnostních službách. Prvním krokem bude kulatý stůl.* [online 18. 12. 2022]. 2022. Available from: <https://www.securitymagazin.cz/security/poslanec-kralicek-urcen-garantem-zakona-o-soukromych-bezpecnostnich-sluzbach-prvnim-krokem-bude-kulaty-stul-1404068887.html>

¹⁸ ZAPLETAL, Radek. *Stav trhu soukromých bezpečnostních služeb. Opravdu dbá stát na férovou hospodářskou soutěž?* [online 14.02.2023]. 2022. Available from:

The average prices for building security services were always lower than the minimum labour cost in a given year. Paradoxically, they came closest to each other in 2017, when the average price was lower by CZK 2.60/hour than the minimum wage expenses. In 2021, the difference was CZK 20.87. The labour costs were higher by this amount than the average hourly price. If the axiom applies that 2/3 of prices do not reach the average price, the situation is catastrophic.¹⁹

“Within the EU, or in other countries of the world, it is possible to find inspiration or argumentation for the privatization, non-privatization, or even deprivatization of a whole range of ‘security activities’. Therefore, any situation (not only from the point of view of the Czech Republic) should be assessed in a broader context and several sub-questions should be asked:

- *Is it necessary to carry out a certain (security) agenda at all?*
- *If so, does this agenda need to be implemented by the state (public sector)?*
- *What would happen if the state (public sector) resigned from this agenda de jure or de facto?*
- *Are there entities that could/would like to carry out this agenda instead of the state (public sector), and if so, for what reasons?*
- *What are the arguments for and against privatization, and are they driven from ideological or factual positions?*
- *Is the privatization of a particular segment the only option for further action (or the only option besides its absolute non-coverage)?*
- *What are other possible variants and how do they compare to the ‘controlled’ (professional) privatization of the sub-segment?*

The Czech Republic and its internal security system face several possible further developments. So far, mostly short-term perspectives, mechanical cuts or postponement of solutions to certain security challenges or tensions ‘for later’ prevail. This model is not very different from a simple resignation to perform certain, publicly expected services of the state. To some extent, the state is replaced by municipalities,

<https://securityguide.cz/stav-trhu-soukromych-bezpecnostnich-suzeb-opravdu-dba-stat-na-ferovou-hospodarskou-soutez/>

VÁCLAVÍK, Radek. Kuník (SECURITAS ČR): *Jediným konkurenčním nástrojem na trhu bezpečnostních služeb je cena*. SECURITY magazin [online 04.04.2023]. 2015, Available from: <http://www.securitymagazin.cz/zpravy/integrovana-reseni-avysoce-specializovane-bezpecnostni-sluzby--to-je-budoucnost-komerčni-bezpecnosti1404048469.html>

¹⁹ ZAPLETAL, Radek. *Stav oboru soukromých bezpečnostních služeb*. 2020 [online 09. 05. 2023]. Available from: <https://securityguide.cz/soukrome-bezpecnostni-sluzby/> Unie soukromých bezpečnostních služeb České republiky (Union of Private Security Services of the Czech Republic), member of the Confederation of Industry of the Czech Republic, Mgr. Radek Zapletal, www.usbscr.cz. With effect from 1 January 2022, the tariffs of the guaranteed wage were increased by amending Government Regulation No. 567/2006 Coll. For this reason, we have taken the liberty of updating our calculation of the minimum labour cost, which we carry out whenever there is a change in this regulation or other legal obligations for employers that have a direct impact on the amount of labour costs. Available from: <https://securityguide.cz/wp-content/uploads/2022/02/StanoviskoKmzdovymakaladu2022.pdf>

*regions, non-governmental organizations and, to an increasing extent, private security agencies; their services are evaluated by a number of actors – municipalities, institutions – as the most advantageous option in the ‘value for money’ ratio. Unless there is a drastic change in the budget and other rules, when the state would ‘certify or standardize’ the performance of certain services and provide at least advisory services to those interested in supplier solutions to help separate ‘the grain from the chaff’.*²⁰

Unlawful conduct of employees providing security activities

The low professional quality and minimum wage of employees are also associated with the high risk in services provided by security agencies. This risk is manifested by the occurrence of unlawful conduct towards customers of security services, who suffer damage caused mainly by property crime. Similarly, in relation to the public, inadequate interventions occur when detecting and detaining the perpetrator of property crime.²¹

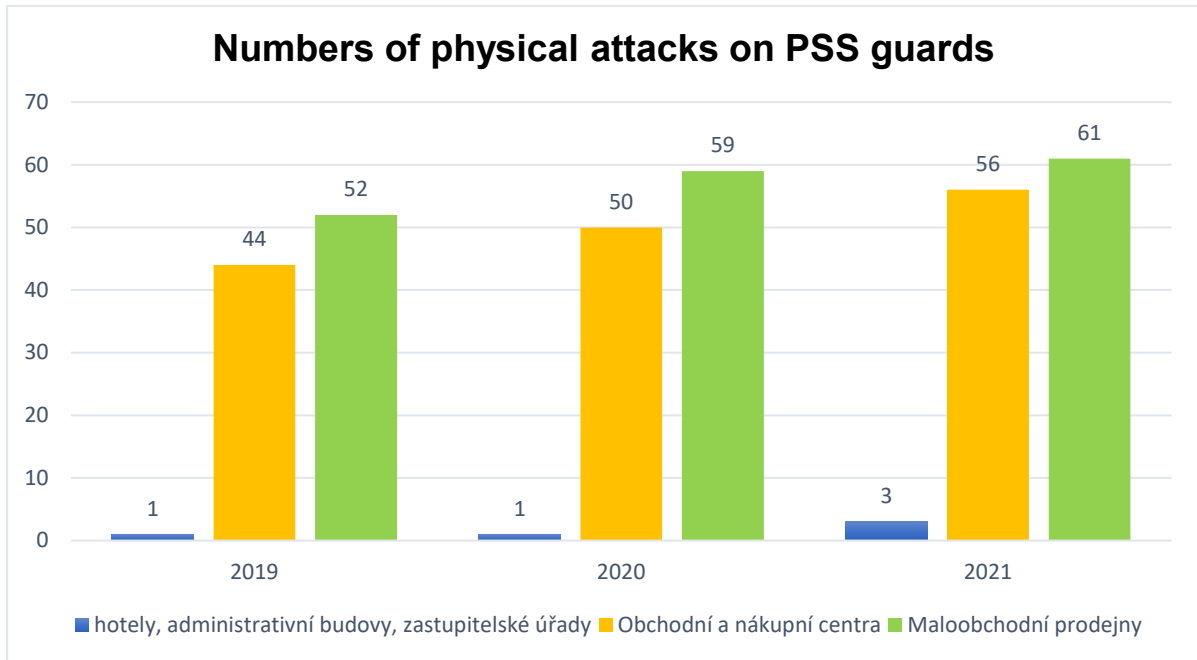
Insufficient legal protection for employees of private security services

The current legal regulation in the Civil Code addresses this in the provisions of Section 2905 and Section 2906 of the Civil Code on necessary defence and emergency, but especially the largely generally regulated right of self-help under Section 14 of the Civil Code. Those who ensure the performance of private security activities and at the same time fulfil the task of duty in the protection of life, health or property are therefore protected by the Criminal Code [Section 140(3)(f), Section 145(2)(e), Section 146(2)(d), Section 353(2)(e)], where the qualified facts allow the perpetrators of such attacks to be subject to higher criminal penalties. Similar regulations are used in a number of acts across Europe (e.g. Swedish Section 7 of Act No. 191/1974 on Security Companies, which reads as follows: “Everyone who is approved to be employed in a security company and has the task of performing security service (security guard) enjoys the protection specified in Section 5 of the Criminal Code, while they perform such a service”).

During the preparation stage and in the analysis of the environment, one of the largest providers of security services M2C (security agency in the Czech Republic) was asked to report the number of attacks on guards in 2021 and to compare it with previous years.

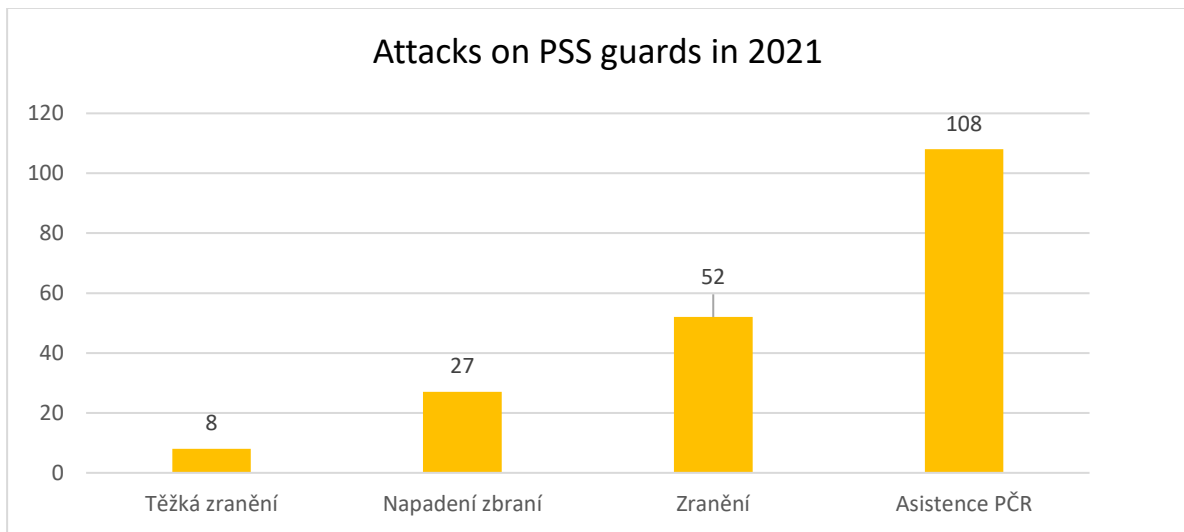
²⁰ BUREŠ, Oldřich et al. *Privatizace bezpečnosti: České a zahraniční zkušenosti*. 1st edition. Praha: Grada, 2013, pp. 75-76. ISBN 978-80-247-4601-2.

²¹ Cf. KAMENÍK, Jiří et al. *Komerční bezpečnost*. 2nd edition. Praha: WOLTERS Kluwer ČR, 2019, pp. 31-59. ISBN 978-80-7598-303-9.



Explanations: hotels, administrative buildings, embassies, business and shopping centers, retail stores

Table 2 Comparison of the numbers of attacks on M2C guards between 2019-2021.



Explanations: severe injuries – 8, assault with a weapon – 27, injury – 52, assistance of the Police of the Czech Republic – 108.

Table 3 Numbers of attacks on M2C security guards in 2021.²²

²² Available from:

https://www.m2c.eu/onas/?gclid=Cj0KCQjwldKmBhCCARIsAP0rfxGORZU5KuZliaINJu7OQ0qtzQp8Srcdh2maaQd62Orb8fM8zOkaLoaAnnLEALw_wcB [online 12.01.2023].

For the purpose of the explanatory statement, information was provided by Mgr. Oldřich Rutar. As of the reported date, the M2C company employed approximately 6,500 employees. The company provides training and certified examinations in the fields of: Strážný (Guard) 68-008-E, Detektiv koncipient (Detective Trainee) 68-009-M, Bezpečnostní

Absence of ensuring the protection of privacy and personality of the monitored persons and the misuse of the data obtained from the client for the benefit of another client

The bill has set specific limits within which the private detective (representing the most sensitive area of performing security activities) will operate in order to comply with the law and provide customers with legal protection against unauthorized interference with their rights and freedoms (see Section 49 et seq. of the bill). The relations of private security services and their clients are private law relations,²³ with their boundaries defined by the legal standards of civil, commercial, administrative and criminal law as well as a set of rules on the protection of data and personal data under the General Data Protection Regulation (GDPR),²⁴ which is the most comprehensive set of data protection rules in the European area so far, with the aim of defending rights of EU citizens as much as possible against the unauthorized handling of their data, including personal data. The GDPR affects everyone who collects or processes personal data, including companies and institutions outside the EU that operate on the European market (companies, institutions and individuals who handle personal data – employees, customers, clients or suppliers, across segments and sectors). The protection of private, family life and residence is one of the fundamental rights of every individual, which the state is committed to protect.

Misuse of data obtained from the client for the benefit of another client

It is desired to avoid the concurrence of contractual relations in order to prevent the misuse of the obtained information for the benefit of another client, thus gaining a competitive advantage for the acquisition of contracts.²⁵

manažer v obchodě a službách (Security Manager in Trade and Services) 68-005-T, Pracovník dohledového centra (Supervision Centre Staff) 68-003-H, Pracovník převozu finanční hotovosti a cenin (Cash and Valuable Transit Crew) 68-004-H.

²³ Zákon č. 163/2020 Sb., *občanský zákoník*, kterým se mění zákon č. 89/2012 Sb., *občanský zákoník*, ve znění pozdějších předpisů a další související zákony, §§ 81, 82.

²⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 *on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)* is a regulation of the European Union, which aims to significantly improve the protection of personal data of citizens. It was published in the Official Journal of the European Union on 27 April 2016.

²⁵ Competition is generally regulated by Act No. 313/2009 Coll., *on the Protection of Competition* (hereinafter referred to as “Competition Act”), furthermore, the partial regulation regarding unfair competition pursuant to Sections 1-28 further contained in Act No. 89/2012 Coll., the *Civil Code*, as amended, provisions of Section 504, Sections 2972–2985. These laws operate with a wide range of terms, which may differ from the terms commonly used by the public. At the same time, the Competition Act regulates the procedure for the application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (hereinafter referred to as the “Treaty”) by the authorities of the Czech Republic and certain issues of their interaction with the European Commission (hereinafter referred to as the “Commission”) and with the authorities of other Member States of the European Union in the procedure under the Council Regulation (EC) on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (hereinafter referred to as the

Abnormal number of business entities compared to the European average

The purpose of the new act is not to limit business in the field of private security, but to set the rules in such a way that they correspond to the European average. The Czech Republic has about 15,000 business entities per its population of 10.5 million. Compared to the area and population, this number is unbelievably high and market regulation is more than necessary.

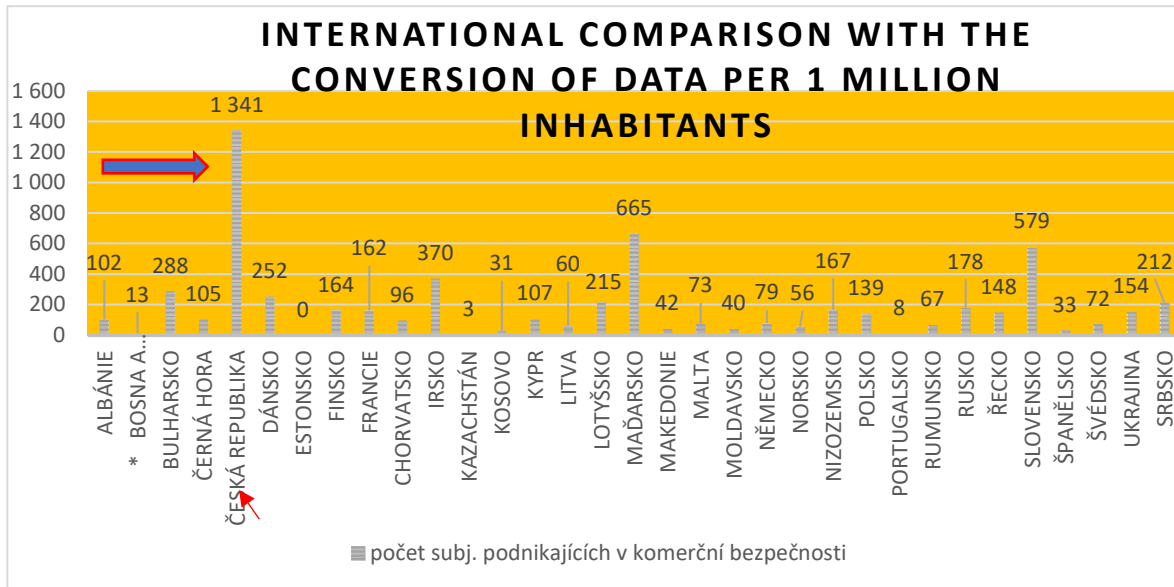


Table 4 – Numbers of business entities in Europe per 1 million inhabitants. The number of entities in the Czech Republic is based on data as of 1. 7. 2020, the same as in other countries.

The European average is 300 business entities (security services) per million inhabitants. For comparison, e.g., Portugal is comparable to the Czech Republic in terms of area, population and number of employees in private security, while it has only 82 business entities.

“Representatives of some countries state that their police forces, as well as municipal police forces, are exposed to two pressures: lack of funds and lack of suitable candidates for this job. Therefore, they are willingly clearing the space or even exerting pressure on other actors, including the non-governmental and private sectors, to fill the vacant space in order to avoid a sudden reduction in safety standards in their territory.”²⁶

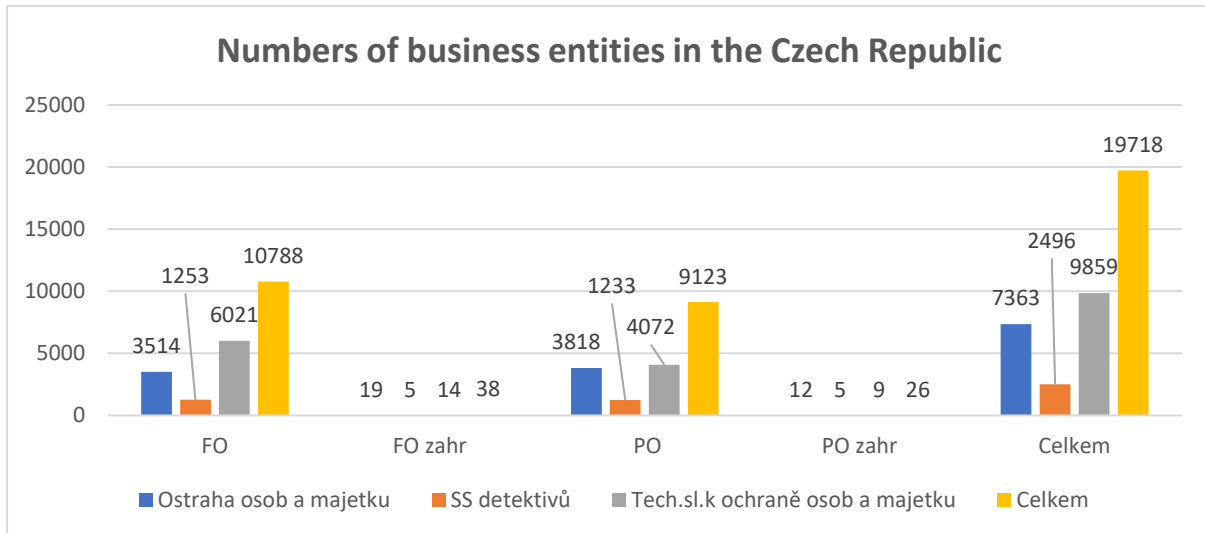
The purpose of the new legislation is not to immediately reduce, regulate, get under control, but to enable certain entities to meet the stricter criteria set out in the proposed bill and thus contribute to the better provision of (private) security activities and to be perceived as partners.

“Regulation”) and the Council Regulation (EC) on the control of concentrations between undertakings (hereinafter referred to as the “Merger Regulation”).

Cf. BRABEC, František and Jiří KAMENÍK. *Komerční zpravodajství a zpravodajský servis*. 1st ed. Praha: RITAS, 2021, pp. 18-23. ISBN 978-80-908102-0-4.

²⁶ KRULÍK, Oldřich, BUKÁČOVÁ, Barbora and Jaromír KRÉDL. *Obecní policie a privatizace bezpečnosti v evropských zemích*. 2nd ed. Praha: Aleš Čeněk, 2022, pp. 27-28 and p. 54. ISBN 978-80-7380-870-9.

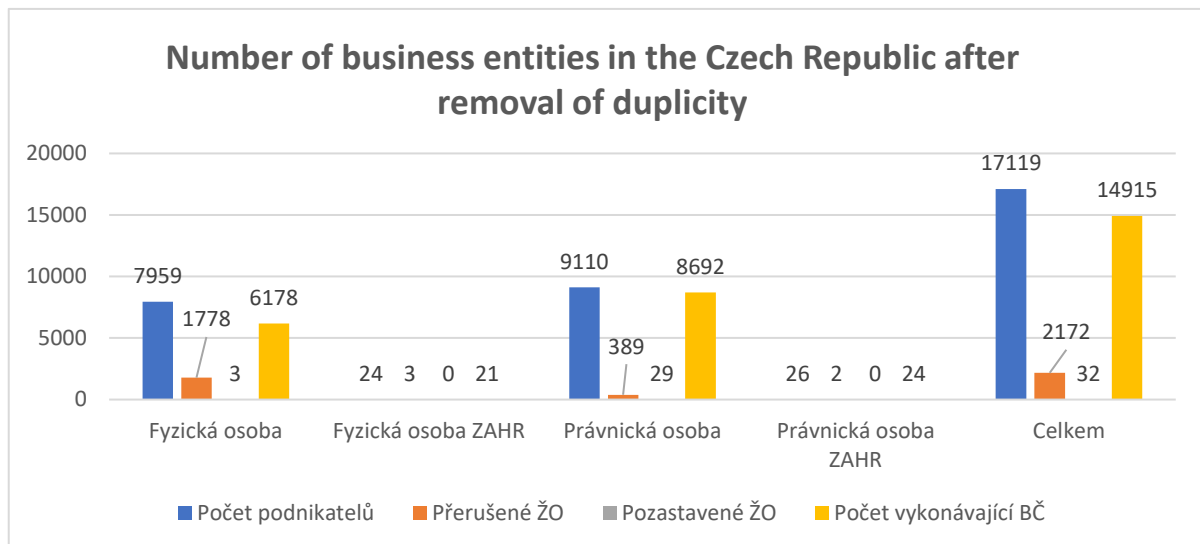
As of 11 January 2022, the number of business entities in the Czech Republic



Explanations: Security of persons and property, Private detective services, Technical services for the protection of persons and property, Total of.

Table 5 – Numbers of business entities in the Czech Republic after removing the duplicity provided by the Ministry of Industry and Trade on January 11, 2022

The current legislation allows a business to have a concession document for one or more security activities. The second table shows the numbers when removing the duplicity of licences, and thus to take into account the interrupted and suspended trade licenses.



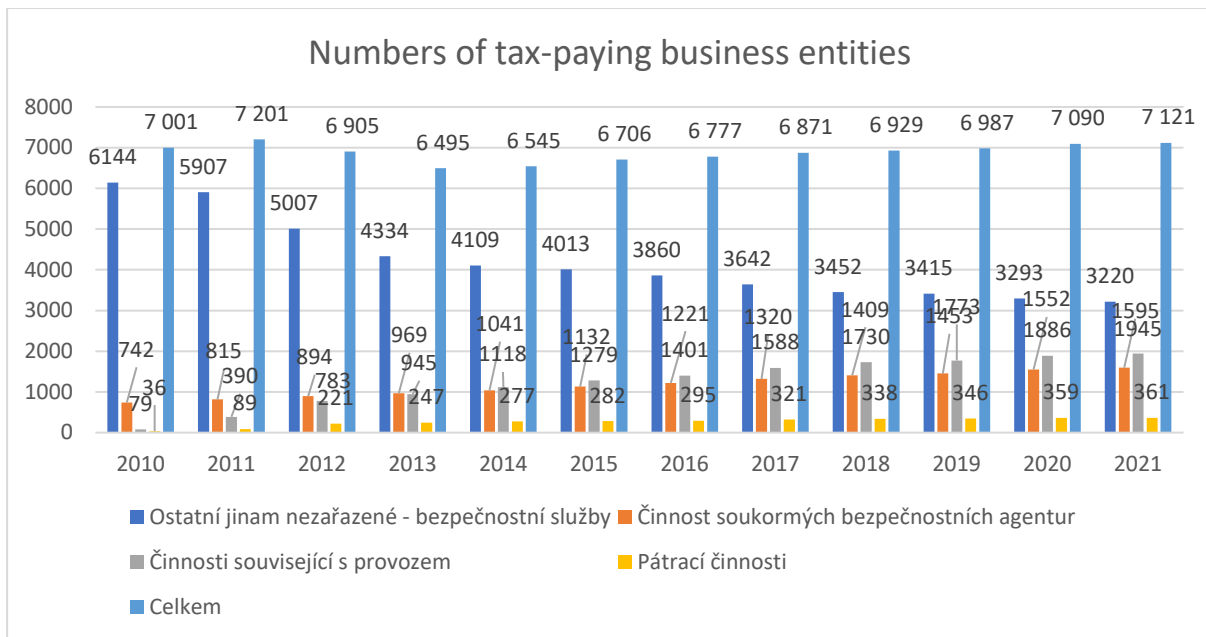
Explanations: Number of entrepreneurs, Suspension of trade licence, Suspended trade licence, Number of persons performing security services

Table 6 – Numbers of business entities in the Czech Republic after removing the duplicity provided by the Ministry of Industry and Trade on January 11, 2022²⁷

²⁷ Cf. BUREŠ, Oldřich et al. *Privatizace bezpečnosti: České a zahraniční zkušenosti*. Praha: Grada, 2013, pp. 162-171. ISBN 978-80-247-4601-2.

In the number of business entities, there is a fundamental discrepancy between the number of those authorized to conduct business in the field of PSS (as of 11 January 2022, a total of 14,915 entities) and the number of entities that regularly pay taxes in the field of PSS (as of 31. 12. 2021, a total of 7,121 entities). The means that 7,794 entities (which is 52.256%) do not pay taxes in this field despite their authorization to conduct business in this field.²⁸

The guideline for reducing the difference between the number of existing and tax-paying entities may be the “predominant area of business activity”. If the entity mainly provides security for buildings, it reports the security area as its predominant activity, although it may also provide technical services and detective work.



Explanations: Other security services unclassified, Activities of private security agencies, Activities related to operations, Search activity, Total of.

Table 7 – Number of business entities that, according to the data of the Czech Statistical Office, report taxes in the field of private security activities

The above statement is a graphically processed overview of Table No. 7.

Absence of control activity

Control of the performance of security activities is carried out by the Trade Licensing and Tax Offices as state authorities, where these focus only on matters related to their agenda and there is no regular control of other aspects, such as certificates proving the professional competence of employed persons or medical fitness according to the type of work performed, which is often insufficient and does not meet the requirements for the proper performance of the guard service.

The newly proposed legislation brings more detailed control activities by a body whose competence and activities will be clearly defined for all business entities in this

²⁸ *Legislativa obor dnes a zítra* [Online 29.06.2023]. Available from: <https://securityguide.cz/legislativa/>

field, namely the competence of the Police of the Czech Republic in the performance of the supervisory task and the supervision by the Ministry of the Interior.

*“The Ministry of the Interior also considers the corruption risks of the upcoming legislation. Certain risks may arise from the administrative procedure to issue a licence to perform private security activities, as well as from the newly proposed regulation of the control of the performance of private security activities. Given that the above should be entrusted to civil servants, we assess these risks to be low. Compared to the current situation, however, the benefits of the proposed legislation outweigh any potential risks,” concludes the Ministry of the Interior.*²⁹

Minimal knowledge of the operation and operators, complicated selection of PSS for service customers

The exact number of entities operating in the field of commercial security based on the data of the Czech Statistical Office, the Ministry of the Interior, the Ministry of Industry and Trade and professional associations differ and the numbers of entrepreneurs and individuals employed in the field of commercial security can only be roughly estimated. The proposed legislation would keep records of entities in one place. The new administrator of the PSS field will be the Ministry of the Interior, Independent Unit for Private Security Services. The establishment of a new register will be an advantage enabling selection from a publicly accessible database of PSS operators, which will contain accurate, clear and complete information about individual natural and legal persons in the respective fields. In their selection, the customer will not have to rely only on the websites of companies where the information is outdated, inaccurate or may contain fictitious services and companies.³⁰

Missing adaptation of security activities for own purposes

Until now, Czech legislation has lacked legal regulation of security activities for one's own use. The security activities for one's own use are defined under a separate licence level, which cannot be combined with other types of licences, and the conditions for employees will be set as security service employees who must meet the conditions for obtaining a licence. Currently, property security is carried out on its own, from the ranks of the employer's employees, but without any legal anchoring and without any connection to professional competence, as is the case with PSS employees. The survey (with the Czech Chamber of Commerce, Confederation of Industry of the Czech Republic, Association of Small and Medium-Sized Enterprises, Confederation of Trade and Tourism, Association of Czech Traditional Trade) has shown that none of the above associations has information on the numbers of entities and employees, as the respondents could not provide relevant data. It is this unclear area that is the most abused, when the so-called entrepreneurs employ people without professional qualifications and do not observe legislative requirements. Therefore, this activity is specified in detail for the benefit of the field.

²⁹ *Vnitro chystá léta chybějící zákon o soukromých bezpečnostních agenturách* [online].

Available from: <https://www.ceska-justice.cz/2022/01/vnitro-chysta-leta-chybejici-zakon-o-soukromych-bezpecnostnich-agenturach/> [Online 09.06.2023].

³⁰ Cf. BUREŠ, Oldřich et al. *Privatizace bezpečnosti: České a zahraniční zkušenosti*. Praha: Grada, 2013, pp. 258-267. ISBN 978-80-247-4601-2.

This will be achieved both by defining the rights and authorizations of individual security activities, ensuring a level playing field and requirements for professional competence and integrity and by defining the legitimacy of the procedure of a private security service employee. This also implies requirements for the obligations of the employer and statutory bodies or the responsible person. In the Trade Licensing Act, this area is rather insufficiently regulated in Annex 3 without the right to enforceability, without reference, for example, to medical fitness.

With regard to the PSS market, it is important that the legislation is set up in such a way that only those companies that can be fully integrated into the security system remain on the market and will develop the good reputation of PSS not only in the Czech Republic, but also internationally. The very position of the PSS in the area of the security of the state is not its main role, but only a complementary one.

The new bill may be a good basis for strengthening the legal certainty of private entities and citizens and may set the basic framework governing security activities. The proposed new legislation is in accordance with the constitutional order of the Czech Republic, it is based on the principles of legality under Article 2(3) of the Constitution and Article 4 of the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the Charter) and from the principle of the legal exercise of public authority under Article 2 of the Charter and it is in accordance with Article 1 and Article 3(2) of the Charter, the Constitutional Act No. 110/1998 Coll., on the Security of the Czech Republic, as amended by the Constitutional Act No. 300/2000 Coll., with the Ministry as the guarantor,³¹ which states, inter alia: *“The constitutional act proposes to express which components are the basis of the security system of the state, whose main mission is defence and protection. The condition for the comprehensive development of civil society is the establishment and maintenance of the internal and external security environment. Therefore, ensuring the security of the Czech Republic cannot be only a matter of components that are expressly designated for this purpose, but both state authorities and authorities of self-governing territorial units, as well as legal and natural persons must contribute their necessary share. Specification of the share and its distinction according to the scope, possibilities and capabilities will be contained in related acts.”*

In the legal order of the Czech Republic, the obligations of natural and legal persons in relation to security are regulated in a number of acts, for example in the Code of Criminal Procedure, Criminal Code, Police Act, Act on Crisis Management (Crisis Act), Act on Municipal Police, Civil Code, Act on Offences.³² The Act on the Security Activities of Entrepreneurs is thus the last missing link in the set of legal norms governing the internal security of the state. From the point of view of privacy protection against unauthorized interference by persons performing and ensuring the performance of security activities, the proposed new legislation is in accordance with Article 1, Article 2(3), Article 3(1), Article 7(1) and Articles 10, 12 and 13 of the Charter.

All measures listed in the bill that are carried out by persons ensuring the performance of security activities are not public law authorizations, because private

³¹ Zákon č. 2/1969 Sb., o zřízení ministerstev a jiných ústředních orgánů státní správy České republiky, ve znění pozdějších předpisů (kompetenční zákon) § 12 and § 24.

³² Zákon č. 250/2016 Sb., o některých přestupcích, ve znění pozdějších předpisů.

security services and their employees are not public authorities, unlike the security forces of the state or the municipal police. It may appear that the proposed legislation may affect the **freedom to conduct a business**, which is guaranteed under Article 26 of the Charter, but its purpose is not to limit business, rather to modify and set rules that would correspond to the European average.

Abnormal number of business entities compared to the European average

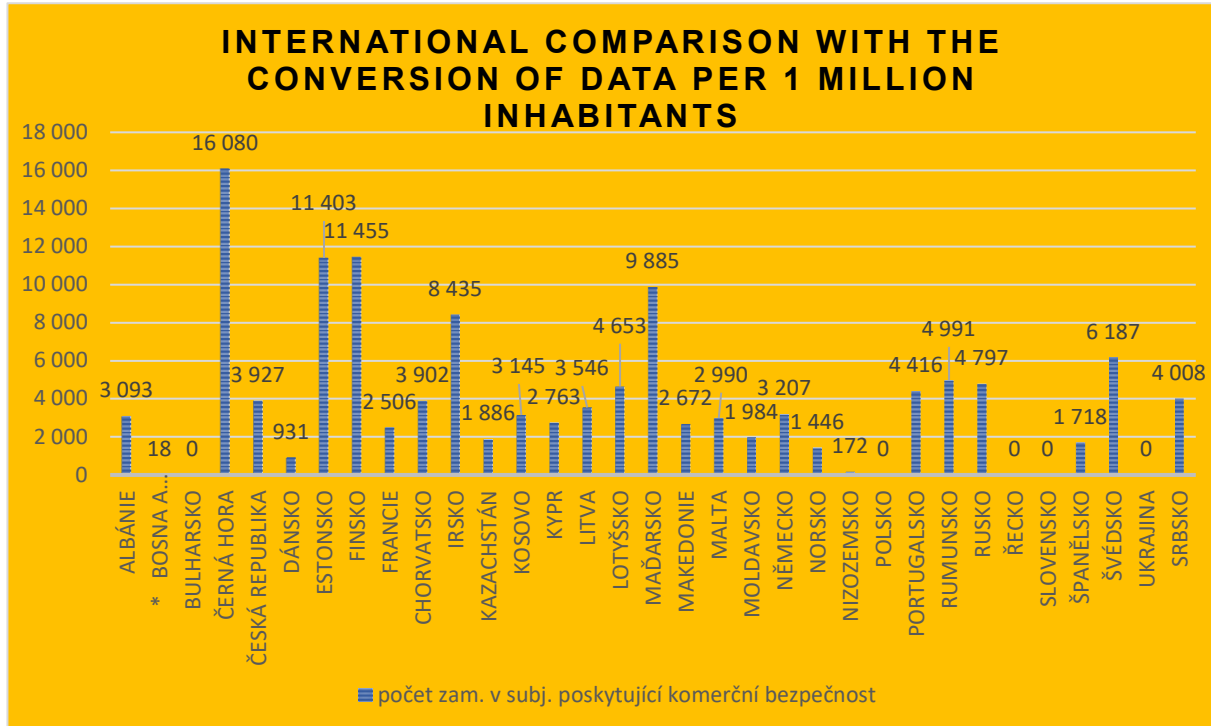


Table 8 – Number of employees in entities providing commercial security in Europe, per 1 million inhabitants. The number of entities in the Czech Republic is based on data as of 1 July 2020, the same as in other countries.³³

At the beginning of 2021, the Ministry of the Interior, the Department of Private Security Services, contacted other EU member states through the Permanent Representation to the EU with questions about the legal regulation and possible authorizations of private security services as well as the number of business entities and the number of employees providing private security services in the respective state. For other European countries that are not EU Member States, information on the legislation, authorizations, number of business entities was verified through the embassies of the Czech Republic operating in these countries. If 0 occurs in any data, it means that it was not possible to determine a reliable value either through the Permanent Representation or through the embassies.

In accordance with the constitutional order of the Czech Republic, the exercise of private security is also limited to business corporations (commercial companies and

³³ Cf. KRULÍK, Oldřich. *Soukromé bezpečnostní služby ve státech Evropské unie*. 1st ed. Praha: PA ČR Praha, 2013. ISBN 978-80-7251-396-3.

cooperatives) under the Civil Code³⁴ and the Act on Business Corporations.³⁵ Pursuant to Article 26(1) of the Charter, everyone has the right to freely choose a profession and prepare for it as well as the right to conduct business and other economic activity, on the other hand, however, the law may set conditions and restrictions for the performance of certain professions or activities in selected areas that are not accessible to everyone (banks, insurance companies, doctors, lawyers, attorneys, experts, etc.).

It is fully in accordance with Articles 26 and 41 of the Charter and in accordance with the principles of legality, legitimacy of objectives and proportionality of the interference with fundamental rights and freedoms. The legislation is fully in accordance with the constitutional order of the Czech Republic,³⁶ as defined by Article 112 of the Constitution of the Czech Republic, it respects the general principles of the constitutional order of the Czech Republic and its content does not violate the constitutional principles of equality in rights and prohibition of retroactivity, it respects the constitutional principles of the Charter and it is also in accordance with the General Data Protection Regulation (GDPR).³⁷

The bill is not directly implementing legislation in relation to EU legislation, but it is fully consistent with European Union law. In a broader context, the topics regulated by the bill are covered by the sources of EU law regulating the operation of economic entities in the common market. The bill is also not in conflict with the obligations arising for the Czech Republic from its membership in the European Union, in particular with the EU legislation, the case law of the EU judicial bodies or the general legal principles of the EU law.³⁸

However, in a broader context, the above-mentioned areas concern the sources of EU law that regulate the operation of economic entities in the common market, or some specific institutes that may be included in the area regulated by the bill.³⁹

³⁴ Zákon č. 89/2012 Sb., *občanský zákoník*, ve znění pozdějších předpisů.

³⁵ Zákon č. 33/2020 Sb., *o obchodních korporacích*, kterým se mění zákon *o obchodních společnostech a družstvech* (č. 90/2012 Sb.) a další související zákony.

³⁶ The operation of private security services is exempted from Directive 2006/123/EC *on services in the internal market*.

³⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. It will always be necessary to assess individually whether a superior body cannot be determined for the obliged entity pursuant to the provisions of Section 178 of the Code of Administrative Procedure. Only in the event that such a superior body cannot be determined, the superior body will be the Personal Data Protection Office.

³⁸ EU law does not directly regulate the requirements for the performance of security activities. Private security services are also excluded from the scope of the Directive on services in the internal market (cf. Article 2/2/k of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market).

³⁹ Treaty on the Functioning of the European Union (TFEU), Articles 45, 49 et seq. and 56 et seq., Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, Regulation (EU) No. 1214/2011 of

The bill uses the Recommendation of the Council of Europe No. R(87) of the Committee of Ministers to the Member States on the organization of crime prevention, adopted by the Committee of Ministers on 17 September 1987, and complied with the request of the Communication from the Commission of the European Communities of 21 December 2009 (COM (2009) 691 final) on the European Security Research and Innovation Agenda – the Commission’s initial position on the key findings and recommendations of the European Security Research and Innovation Forum.

In terms of ensuring the performance of security activities by eligible entities, it also reflects the requirements of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (hereinafter referred to as “the fourth AML Directive”), implemented in the legal order of the Czech Republic.⁴⁰

The proposed legislation is in accordance with the generally recognized principles of international law, with the international treaties to which the Czech Republic is bound, including the Treaty on European Union and the Treaty on the Functioning of the European Union,⁴¹ and is therefore not in conflict with the obligations arising for the Czech Republic from international treaties or generally recognized principles of international law. The proposed legislation is in line with the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols as well as the case law of the European Court of Human Rights.

the European Parliament and of the Council of 16 November 2011 on the professional cross-border transport of euro cash by road with euro-area Member States, Council Regulation (EU) No 55/2013 of 17 December 2012 concerning the extension of the scope of Regulation (EU) No 1214/2011 of the European Parliament and of the Council on the professional cross-border transport of euro cash by road between euro area Member States, Directive 2005/36/EC of the European Parliament and of the Council of 6 July 2005 on the recognition of professional qualifications as implemented by Act No. 18/2004 Coll., on the recognition of professional qualifications, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁴⁰ Zákon č. 253/2008 Sb., *o některých opatřeních proti legalizaci výnosů z trestné činnosti a financování terorismu*, ve znění pozdějších předpisů.

⁴¹ Obligations arising for the Czech Republic from its membership in the European Union, as they result, in particular, from the Legislative Rules of the Government, as amended, and from the Annex to the Government Resolution of 12 October 2005 No. 1304, *on Methodical Instructions for the Organization of Work to Meet The Legislative Obligations Ensuing from the Membership of the Czech Republic in the European Union*, as amended.

Conclusion

Special regulation of security activities of entrepreneurs concerns such type of activity that by its nature is situated between the exercise of public authority and the private performance of certain services aimed at protecting the security of persons and property. Its specificity results from the fact that it is the performance of activities that, in order to protect certain interests, may constitute interference with the rights of others, in particular private persons, in the area of the protection of certain values, even at the cost of threatening or violating the interests of other persons. On both sides of the performance of such activities there are private persons, so in this respect it is a regulation in the sphere of primarily private⁴² but also criminal law.⁴³

Until now, the performance of these activities has been regulated only by general provisions in various legal sectors. The conducted research and analysis of problems has confirmed that the need for specific and comprehensive regulation is therefore appropriate, however, it is necessary to take a position on the extent and intensity of these interferences with civil rights.

The bill mainly regulates relations under private law and it is necessary to identify and specify them. This includes, in particular, the list of measures and obligations of those involved in ensuring the performance of security activities specified in Part IV Special provisions on the performance of certain security activities, the provisions of Section 45 et seq., according to the bill. This is a special list that takes over and modifies some of the authorizations that have only been held by security authorities so far, in particular the Police of the Czech Republic (e.g. the possibility of detention, the right to issue certain orders and instructions to citizens, ask certain persons to prove their identity, etc.). From this point of view, individuals exercising security activities in order to perform their duties will have more authorizations in certain cases than other citizens, on the other hand, in some areas they will have the same authorizations (within the general institutes of necessary defence, emergency, civic detention, civic self-help). Apparently, this is why the submitters have emphasized their integrity and appropriate professional quality.

However, it must be taken into account that in the case of performing security activities, these will be private persons not subject to disciplinary regulations (not under the Act on the Service Relationship, but according to the Labour Code, violation of the employment relationship) and therefore it will be difficult to prosecute them for breaching such regulations, unless there are cases of an offence or a criminal offence. Therefore, even from a criminological point of view, it would probably not be appropriate to extend their powers too much, because exceeding or abusing them would require a very detailed and demanding assessment, which would constitute a disproportionate burden for the investigating authorities. For these cases, the bill lists individual types of offences, cases of exceeding the authority or a list of possible torts.

However, individuals performing such security activities are more likely to get into risky situations and they are and will be exposed to a higher risk of being attacked, where also the current legislation already provides increased protection to certain

⁴² Zákon č. 89/2012 Sb., *občanský zákoník*, § 14 Svépomoc, ve znění pozdějších předpisů.

⁴³ Zákon č. 141/1961 Sb., *zákon o trestním řízení soudním (trestní řád)* § 76 odst. 2. Zákon č. 40/2009 Sb., *trestní zákoník*, authorization to use a weapon under Section 32.

categories of persons (e.g. in the form of stricter qualified facts of some crimes, especially in the case of bodily harm, dangerous threats, etc.).

It should also be taken into account that over the long-term development of the organizational or technological nature, certain changes could hardly be imagined beforehand. The space for continuous improvement, also due to the more or less endless possibilities of human society, which the trend of innovation directly expects, is logical here.

The bill has accepted a number of comments arising from the interdepartmental commentary procedure and after their incorporation the bill has been streamlined, especially in the field of administrative proceedings, by granting a licence for an indefinite period. On the contrary, it has kept some preventive aspects, in particular the verification of the competence of a dog used in services. Other modifications include deletion of the legal provision governing physical fitness, exclusion of intelligence services from the decision-making procedure for granting a licence, adjustment of the duration of possible inactivity to 12 months and suspension or withdrawal of the licence. The Security Services Council will be newly established, which will be an advisory body of the Ministry for the area of these activities, its operation will be methodical and it will participate in the creation of standards of professional qualifications, assessing individual cases, such as a withdrawal or refusal of a licence, and issuing opinions on them. It will also be guaranteed that the Council will include experts from professional chambers, employers' organizations, trade unions and associations of legal entities involved in security activities. After incorporating the comments, some of the terms and expressions used have been clarified, which makes the drafted bill more transparent.

In its core, the bill contains everything that is necessary to establish order and law in this area of human activities. There is no need to describe in detail what is already well described in other acts, but it is necessary to lay the foundations for a thorough, consistent and effective control of the field and their employers and employees, where capable professionals should prosper and should not be confused with the activities of entities without a licence.

The question is whether it is not also appropriate to incorporate into the bill the possibility of ensuring control over the execution of alternative penalties, which is currently provided by the probation and mediation service, or to extend certain authorizations of employees ensuring the performance of security activities for elements of critical infrastructure. This would undoubtedly include, for example, the possibility of identifying persons entering or moving around in the premises of critical infrastructure elements or conducting a 'check on entry' using detection frames. However, even in the present prepared form, it is a modern law, using elements of international comparison, which should fully meet its set goals.

In general, the professional public is of the opinion that in all countries where separate legal regulation of PSS activities was adopted, there was a significant increase in the quality of services provided and price equalization. Along with the higher level of quality of services provided, there was also a significant reduction in unwanted excesses by employees of private security services.

Legislation and resources

Ústavní zákon č. 1/1993 Sb., *Ústava České republiky*, ve znění ústavního zákona č. 347/1997 Sb.

Ústavní zákon č. 110/1998 Sb., *o bezpečnosti České republiky*, ve znění ústavního zákona č. 300/2000 Sb.

Zákon č. 455/1991 Sb., *o živnostenském podnikání*, ve znění pozdějších předpisů.

Zákon č. 33/2020 Sb., *o obchodních korporacích*, kterým se mění zákon o obchodních společnostech a družstvech č. 90/2012 Sb. a další související zákony.

Zákon č. 163/2020 Sb., *občanský zákoník*, kterým se mění zákon č. 89/2012 Sb., *občanský zákoník*, ve znění pozdějších předpisů a další související zákony.

Zákon č. 141/1961 Sb., *zákon o trestním řízení soudním (trestní řád)*.

Zákon č. 40/2009 Sb., *trestní zákoník*, ve znění pozdějších předpisů.

Zákon č. 253/2008 Sb., *o některých opatřeních proti legalizaci výnosů z trestné činnosti a financování terorismu*, ve znění pozdějších předpisů.

Zákon č. 2/1969 Sb., *o zřízení ministerstev a jiných ústředních orgánů státní správy České republiky*, ve znění pozdějších předpisů (kompetenční zákon).

Zákon č. 143/2001 Sb., *o ochraně hospodářské soutěže*.

Zákon č. 250/2016 Sb., *o odpovědnosti za přestupky a řízení o nich*.

Zákon č. 13/2020 Sb., *o zbraních a střelivu*, ve znění pozdějších předpisů.

Zákon č. 90/2016 Sb., *o posuzování shody stanovených výrobků při jejich dodávání na trh*, ve znění pozdějších předpisů.

Zákon č. 49/1997 Sb., *o civilním letectví*, ve znění pozdějších předpisů.

Zákon č. 6/1993 Sb., *o České národní bance*.

Zákon č. 240/2000 Sb., *o krizovém řízení*.

Zákon č. 263/2016 Sb., *atomový zákon*.

Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

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Regulation (EU) No 1214/2011 of the European Parliament and of the Council on the professional cross-border transport of euro cash by road between euro area Member States.

Council Regulation (EU) No 55/2013 concerning the extension of the scope of Regulation (EU) No 1214/2011 of the European Parliament and of the Council on the professional cross-border transport of euro cash by road between euro area Member States.

- Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications, implemented by the Act No. 18/2004 on recognition of professional qualifications.
- Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents.
- Regulation (EU) No. 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union.
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 *on the protection of natural persons with regard to the processing of personal data and on the free movement of such data* and repealing Directive 95/46/EC (General Data Protection Regulation).
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- Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 *on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency*, and amending Regulations (EC) No. 2111/2005, (EC) No. 1008/2008, (EU) No. 996/2010, (EU) No. 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No. 552/2004 and (EC) No. 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No. 3922/91, as amended.
- Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 *on unmanned aircraft systems and on third-country operators of unmanned aircraft systems*, as amended.
- Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 *on the rules and procedures for the operation of unmanned aircraft*, as amended.
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Annex 1

From the explanatory memorandum to the bill, Chamber Press 858.

It characterizes why and what the act should bring:

Poor quality of the private security services provided

Based on consultations with representatives of the Czech Chamber of Commerce and professional associations operating in the field of private security services, the following factors have been identified as the obvious causes of the low quality of services provided:

- existence of business entities that purposefully offer dumped prices for the services they provide in order to win contracts at any price, i.e. regardless of their quality, qualifications of their employees, etc.;
- existence of customers who are directly looking for businesses with low prices, they are not interested in genuinely protecting values, but especially in formally meeting certain conditions required by another entity (for example, an insurance institution) in connection with, for example, another contractual legal relationship;
- existence of companies carrying out private security activities for the benefit of problematic companies – both entities operate in the so-called ‘grey zone of economy’, whereas neither of the ‘contracting parties’ is interested in the transparency of their activities;
- setting up public contracts based only on one decisive criterion – the lowest possible contract price;
- low quality of ordinary employees performing the security activity itself (ensuring direct performance) due to low economic valuation of their work.

One of the objectives of the proposed new legislation is to introduce a licensing system that will make the entities performing individual types of private security activities transparent, exclude from the market those entrepreneurs who cause the above-mentioned problems and by setting qualification prerequisites for all interested persons improve the quality of services provided by them.

Annex 2: Overview of States and Legal Regulations on Private Services

ALBANIA	
BELGIUM	
BOSNIA AND HERZEGOVINA	http://www.fbihvlada.gov.ba/bosanski/zakoni/
BULGARIA	https://www.lex.bg/en/laws/ldoc/2137180492
CZECH REPUBLIC	trade licensing act
DENMARK	https://www.retsinformation.dk/Forms/R0710.aspx?id=172767
ESTONIA	https://www.riigiteataja.ee/akt/106122010010
FINLAND	
FRANCE	https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000025503132&dateTexte=20160621
CROATIA	https://www.zakon.hr/z/291/Zakon-o-privatnoj-za%C5%A1titi
IRELAND	https://www.oireachtas.ie/en/bills/bill/2001/1/
ITALY	https://www.brocardi.it/testo-unico-pubblica-sicurezza/
ICELAND	https://www.althingi.is/lagas/nuna/1997058.html
KAZAKHSTAN	http://adilet.zan.kz/kaz/docs/Z000000085
KOSOVO	https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2741
CYPRUS	http://www.cylaw.org/nomoi/enop/non-ind/2007_1_125/full.html
LITHUANIA	https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a8c91d92bae111e7b3c5b8cb755e684a?jfwid=-fa58h7sjw
LATVIA	https://likumi.lv/ta/id/264785
LUXEMBOURG	http://legilux.public.lu/eli/etat/leg/loi/2002/11/12/n1/jo
HUNGARY	https://net.jogtar.hu/jogszabaly?docid=a0500133.tv
MACEDONIA	
MALTA	http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8856&l=1
GERMANY	trade licensing act https://www.gesetze-im-internet.de/gewo/ .
NORWAY	https://lovdata.no/dokument/NL/lov/2001-01-05-1
THE NETHERLANDS	https://wetten.overheid.nl/BWBR0008973/2013-07-04/
POLAND	http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19971140740
PORTUGAL	http://legislacao.mai.gov.info/v/comum/seguranca-privada/
AUSTRIA	general commercial law https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002491
ROMANIA	http://legislatie.just.ro/Public/DetaliuDocumentAfis/45134
RUSSIA	http://www.consultant.ru/document/cons_doc_LAW_385/
GREECE	https://www.e-nomothesia.gr/kat-epikheireseis/kat-idiotikes-epikheireseis-uperesion/n-3707-2008.html
SLOVAKIA	https://www.aspi.sk/products/lawText/1/60783/158/2/zakon-c-473-2005
SLOVENIA	https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlid=201117&stevilka=690
UNITED KINGDOM	
SPAIN	https://www.boe.es/buscar/act.php?id=BOE-A-2014-3649
SWEDEN	https://open.karnovgroup.se/ordning-och-sakerhet/SFS1974-0191
SWITZERLAND	
TÜRKIYE	https://www.ozelguvenliktr.com/5188-nolu-kanun
UKRAINE	https://zakon.rada.gov.ua/laws/show/4616-17
SERBIA	http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2013/104/3/reg

Annex 3: Overview of States with an Act on Private Security Services

STÁT	rozloha	počet obyvatel	průměrný měsíční příjem	oprávnění k podnikání (provolení - druh)	doba platnosti oprávnění	kdo vydává povolení	zpoplatnění licence	povinné pojištění ze zákona	existence bezpečnostní činnosti pro vlastní potřebu	ma povolení celostátní nebo pouze omezenou územní platnost	počet subj. podnikajících v komerční bezpečnost	počet zam. v subj. poskytující komerční bezpečnost	mají zam. oprávnění k použití síly	je toto oprávnění silnější než pro běžného občana	povinná komora ze zákona
ALBÁNIE	28 748 km ²	2 881 057	320 EUR / 6.177 Kč	Licence a, b, c	Neomezená	GR št. police vydává licenci, zaměstnanec povoluje okr. policii / ředitel	AND	NE	AND (při stejné, nerecituje vlastní a komerční)	Celostátní platnost	294	8911	AND	AND	NE
BELGIE	30 529 km ²	1 157 043	Největší	Licence	5 let	Ministerstvo vnitra	Největší	AND	AND	Největší	Největší	Největší	AND	NE	NE (Královský poradní výbor)
BOSNA A HERCEGOVINA	51 209 km ²	3 504 957	Největší	Provolení	Neomezená	Ministerstvo vnitra kantonu	AND	AND	AND	Omezená územní platnost	45	64	AND	AND	AND (Razim Rihaj NE Razim RS)
BULHARSKO	110 994 km ²	7 050 034	Největší	Licence	Neomezená	GR národní policie MV	AND	NE	AND	Celostátní platnost (ze všech omezení na vyhrazené území)	2033	Největší	AND	AND	NE (Molozov zajišťuje zřízení zřízek poradním orgánem při MV)
ČERNÁ HORA	13 812 km ²	621 873	527 EUR / 1466 Kč	Provolení	7 let	Police	AND	NE	AND	Celostátní platnost	65	3000	AND	AND	NE
ČESKÁ REPUBLIKA	78 870 km ²	10 46 mil.	38 525	Koncovaná činnost	Neomezená	Zřizovací úřad	AND	NE	NE	Celostátní platnost	7000 platí daně, 14 tis má licenci	41000	AND	NE	NE
DÁNSKO	42 924 km ²	5,8 mil.	43 487 DKK / 146 421 Kč	Provolení	5 let	Státní policie	AND	NE	NE	Celostátní platnost	1462	5400 (Podlejší přechodnou schválení)	NE	NE	NE
ESTONSKO	45 339 km ²	1 306 574	1360 EUR / 33 221 Kč	Licence	1-5 let	Generální ředitel radí policie a pohraniční stráž nebo jeho zástupce	AND	NE	AND	Omezená územní platnost	Největší	14899	AND	NE	NE
FINSKO	338 432 km ²	5,5 mil.	Největší	Licence	Neomezená	Policijní rada - kolektivní orgán	AND	NE	NE	Celostátní platnost	900	63 000 (Podlejší přechodnou schválení)	AND	AND	NE (Zřizování poradní výbor)
FRANCIE	543 965 km ²	67 848 136	Největší	Provolení	FO 5 let, PO bez omezení	CMP5 - upadáje pod MV	NE	AND	AND	Celostátní platnost	11 000	170 000	NE	NE	AND (Národní rada pro souř. bezpečnost)
CHORVATSKO	56 594 km ²	4 174 954	7038 HRK / 23 985 Kč	Sociální ministerstvo, provolení	Neomezená	Ministerstvo vnitra	AND	AND	AND	Omezená územní platnost	399	16290	AND	AND	NE
IRSKO	70 273 km ²	4 757 976	Největší	Licence	6 měsíců až 3 roky	Úřad pro bezpečnostní průmysl	AND	AND	NE	Celostátní platnost	1790	40134	NE	NE	NE (Zřizování poradní výbor a odborní komise)
ITALIE	301 338 km ²	60 507 590	Největší	Licence	3 roky	Prezident	Největší	NE	Největší	Omezená územní platnost	Největší	Největší	AND	Největší	NE
ISLAND	103 125 km ²	341 250	Největší	Licence	5 let	Národní policijní komisař	Největší	NE	NE	Celostátní platnost	Největší	Největší	NE	NE	NE
KAZACHSTÁN	2 717 300 km ²	18 556 688	11 000 Kč	Licence	Neomezená	Místní příslušný krajský odbor MV	AND	AND	AND	Celostátní platnost	57	30-40 tisíc	AND	AND	NE
KOSOVO	10 905,25 km ²	1 907 592	500 EUR / 12 777 Kč	Licence	3 roky	Ministerstvo vnitra	AND	NE	AND	Celostátní platnost	60	6000	AND	AND	NE (Zřizování komise pro střední SBS)
KYPR	9 351 km ²	1 266 676	Největší	Licence	5 + 5 let	Policijní náčelník vede rejstřík úřad SBS	AND	NE	NE	Celostátní platnost	136	3500	NE	NE	NE (Zřizování pro řešení otázek SBS)
LITVA	65 200 km ²	2 819 753	Největší	Licence	Dle typu licence 5 / neomezená	Instituce pověřená úřadou	AND	AND	AND	Celostátní platnost	170	10 tisíc	AND	AND	NE
LOTYŠSKO	64 589 km ²	1 934 218	Největší	Licence / ověření	5 let	Státní policie	AND	AND	AND	Omezená územní platnost	416	Více než 5 tisíc	AND	AND	NE
LUSEMBURSKO	2 586 km ²	590 667	Největší	Provolení	5 let-5let	Ministr spravedlnosti	Největší	AND	NE	Celostátní platnost	Největší	Největší	Největší	Největší	NE
MAĎARSKO	93 036 km ²	9 712 887	298405 HUF / 78 558 Kč	Licence	5 let +	Místní příslušný policijní správní orgán	AND	AND	AND	Celostátní platnost	6461	96 008	AND	AND	AND
MAKEDONIE	25 713 km ²	2 076 255	478 EUR / 12 164 Kč	Licence	Neomezená	Ministerstvo vnitra	AND	AND	AND	Celostátní platnost	87	5548	AND	AND	AND (Komora Mak. republiky pro správu Zbrojovkám)
MALTA	316 km ²	463 515	Volič, min. min. mzda	Licence	1 rok	Komisař Police	AND	AND	NE	Celostátní platnost	33	1 353	AND	NE	NE

STÁT	rozloha	počet obyvatel	průměrný měsíční příjem	opravnáční k podnikání (povolení – druh)	dobu platnosti oprávnění	kdo vydává povolení	zpracování licence	povinné pojištění ze zákona	existence bezpečnostní činnosti pro vlastní potřebu	má povolení celostátní nebo pouze omezenou územní platnost	počet subj. podnikajících v komerční bezpečnosti	počet zam. v subj. poskytující komerční bezpečnost	mají zam. oprávnění k použití síly	je toto oprávnění silnější než pro běžného občana	povinná komora ze zákona	
HOLDAVSKO	33 843 km ²	2 998 235	8716 lei /10 502 Kč	Povolení	5 let	Ministerstvo Vnitř	AND	AND	AND	Celostátní platnost	120	5948	AND	AND	NE	
NĚMECKO	357 023 km ²	82 392 185	Nejistiženo	Povolení	Neomezená	Žirostnostní úřad v otkrese	AND	AND	NE	Celostátní platnost	Nejistiženo	Nejistiženo	NE	NE	AND	
NORSKO	385 207 km ²	5 387 590	48 750 NOK /117 536 Kč	Licence	Neomezená	Police	AND	AND	AND	Omezená územní platnost	302	7763	NE	NE	NE	
NIZOZEMSKO	41 526 km ²	17 400 000	2245 EUR /37 370 Kč	Licence	5 let	Ministri bezpečnosti a spravedlnosti	AND	AND	AND	Celostátní platnost (le však omezi na vyhr. území)	2 300	30 000	NE	NE	NE	
POLSKO	312 679 km ²	38 433 600	Nejistiženo	Koncese	Neomezená	Ministerstvo pro vnější záležitosti a správu	AND	AND	AND	Celostátní platnost	5350	Nejistiženo	AND	AND	NE	
PORTUGALSKO	92 391 km ²	10 276 617	750 EUR /91 166 Kč	Licence	5 let	Generální sekretariát vnější správy	AND	AND	AND	Celostátní platnost	82	65379	NE	NE	AND	
RAKOUSKO	83 876,99 km ²	8 882 653	Nejistiženo	Licence	Neomezená	Žirostnostní úřad	Nejistiženo	Nejistiženo	Nejistiženo	Celostátní platnost	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	AND	
RUMUNSKO	238 391 km ²	19 653 136	3547 RON /18 899 Kč	Licence	3 roky	Generální inspektorát rumunské policie (s před. souhlasem ZS)	NE	NE	AND	Celostátní platnost	1318	98079	NE	NE	NE	
RUSKO	17 095 246 km ²	45 911 570	25 6016 RUB /7 346 17 638 Kč	Licence	5 let	Federální výkonný orgán pro soukromé bezpečnostní činnosti nebo jeho územní orgán	AND	NE	NE	Omezená územní platnost	26 000	700 000	AND	AND	NE	
ŘECKO	131 948 km ²	11 152 158	Nejistiženo	Licence	5 let +	Výšší náčelník štábu federálního policijního ředitelství	AND	NE	AND	Celostátní platnost	1653	Nejistiženo	NE	NE	NE	
SLOVENSKO	49 036 km ²	5 441 899	Nejistiženo	Licence	10 let	Krajské ředitelství Police SR	NE	NE	AND	Celostátní platnost	3150	Nejistiženo	AND	AND	NE	
SLOVYNSKO	20 273	2 051 085	Nejistiženo	Licence	Neomezená	Ministerstvo vnitra	NE	AND	AND	Celostátní platnost	Nejistiženo	Nejistiženo	AND	AND	NE (nepovinná komora)	
SPOJENÉ KRÁLOVSTVÍ	243 610 km ²	66 040 200	Nejistiženo	Licence	3 roky	Bezpečnostní příravný úřad	Nejistiženo	Nejistiženo	NE	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	
ŠPANSKO	504 782 km ²	48 958 159	1200 1800 EUR /30 666 40 888 Kč	Povolení	Neomezená	Generální správa štátu nebo autonomních spolků	AND	AND	AND	Omezená územní platnost	1600	84125	AND	AND	AND	
ŠVEDESKO	449 964 km ²	10 182 291	27 000 SEK /66 829 Kč	Povolení	Neomezená	Správní rada kraje po zákání stanovisko policijního orgánu	AND	NE	NE	Celostátní platnost	735	63 000	NE	NE	NE komora, ale několik sdružení	
ŠVÝCARSKO	41 285 km ²	8 301 484	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	Nejistiženo	
TURECKO	783 356 km ²	83 429 615	Nejistiženo	Povolení	Neomezená	Podlejší povolení ministerstva vnitra na základě rozhodnutí bezpečnostní komise	AND	AND	NE	Celostátní platnost (le však omezi na vyhrázené území)	Nejistiženo	Nejistiženo	AND	AND	NE	
UKRAJINA	603 700 km ²	44 033 874	Nejistiženo	Licence	3 roky	Kabinot ministrů Útrajpy a usídlení výkonný orgán v oblasti bezpečnostních činností.	AND	NE	NE	Celostátní platnost (le však omezi na vyhrázené území)	32 velkých, 75 středních a 623 malých spol. a 6062 mikrospol.	Nejistiženo	AND	AND	AND	NE
SRBSKO	88 361 km ²	8 982 652	560 EUR /14 055 Kč	Licence	5 let	Ministerstvo vnitra	AND	AND	AND	Omezená územní platnost	1500 povolení a PO 400	36 000	AND	AND	NE (žitena zvláštní prac. skupina odborná rada)	

* Vysvětlivky: BOSNA A HERCEGOVINA - Dva režimy; jednak FBiH (Federace Bosny a Hercegoviny) Povinná komora ze zákona AND, jednak RS (Republika Srbská) Povinná komora ze zákona NE