Contractual Issues in Private Security

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The choice of title for this conference might seem better suited to a doctoral thesis than to an occasion as large as this one. The issue of unfair competition emerges, however, as a major concern in the remarks and complaints we receive from private security providers during field visits. The question of economic regulation extends beyond the limits of administrative regulation defined by Article L. 632-1 of Book VI of the Internal Security Code (CSI):

> "The National Council for Private Security Activities, a legal entity under public law, is charged with:
>
> 1. An administrative police mission. It is tasked with issuing, suspending, or withdrawing the various approvals, authorizations, and professional licenses provided for in this book.
>
> 2. A disciplinary mission. It is tasked with ensuring the discipline of the profession, and preparing a code of ethics for the profession, approved by decree in the Council of State[1]. This code applies to all activities mentioned in Titles I, II, and IIa.
>
> 3. A mission of assistance and consultation to the profession.
>
> The National Council of Private Security Activities (CNAPS) shall submit an annual report setting out the results of its activities to the Minister of the Interior. It may issue opinions and formulate proposals concerning the private security professions and the public policies which apply to them. Any proposal relating to the working conditions of private security agents is subject to prior

1 Supreme court for public law

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consultation with the trade union organizations of employees and employers."

Within the framework of its disciplinary mission, the CNAPS has used the code of ethics (L. 631-8) to take up the question of abnormally low prices, winning its case before the administrative tribunal of Toulon in April 2016 and establishing a major precedent. The Council would like to see this precedent become settled law, either through similar decisions by other administrative tribunals or through confirmations by higher administrative courts.

In any case, the title of this conference at Paris Descartes University leads us directly to the topic of the economics of security. Unlike political approaches to private security, however, this line of research is not particularly developed in France, within either universities or business schools. This is strange for a sector in which companies and executives consider themselves, and conceptualize themselves, in both political and economic terms. This conference gives a chance to restore balance, in a sense, by paying closer attention to economic approaches to private security.

To introduce this conference on "Contractual Issues in Private Security," we will go through from the simplest matters to the most complex, starting from questions of terminology before passing to those of education and, finally, of enforcement. Firstly we must examine, from the point of view of contractualization, how private security emerged.

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1. HISTORICALLY, "CONTRACTUALIZATION" IN SECURITY HAS BEEN A FACTOR IN PROFESSIONALIZATION.

Contractualization is not just a condition and a characteristic of private security. It lies at the origin of a specialized, professionalized security service sector in which private and public forms of this specialization coexist. In the Middle Age and the outset of the modern period in Europe, "the duties of the judiciary and police were, to a large degree, exercised by the wealthy classes. [...] The major problem with these non-professional police systems was the social cost they placed on those who had to put them into practice. [...] Little by little, informal systems were established which bestowed police duties on individuals, paid for by the wealthy classes, who were required to carry them out in return for their payment of a flat-rate tax."[2] Similarly, in the United States, somewhat mercenary contracts between landowners and possess to provide security in large rural areas developed the same way, with "spatial constraints revealing an early form of the professionalization already taking place in European cities."[3] At this point in history, contractualization was a path towards the publicization of security, although only in part, as it also continued to develop, in parallel, between private actors.

This movement towards contractualization, as a specialization which allowed a private security market to emerge, was continuous, although more rapid in certain periods than others, and increasingly affected companies rather than private citizens, wealthy individuals, and landowners, with part of the market's initial contractualization eventually becoming "social contracting"—that is, public security: "The outsourcing of these services—which began in the 1950s and escalated in the 1990s—enabled a huge growth in 'contract security,' that is, in services offered by individuals and groups, organized as independent companies. These specialist security organizations formed the basis of a genuine security industry, which now had financial relationships with the consumers who had become their customers."[4] Contractualization refined and clarified the definition of private security, particularly in the Anglo-Saxon world, and, more broadly, has had an impact on regulation ...

2. DO CONTRACTUAL ISSUES ONLY CONCERN "CONTRACT SECURITY"?

From a terminological point of view, this conference's title might appear somewhat redundant if we look beyond our borders: particularly in the Anglo-Saxon world, private security is simply what is meant by the term "contract

2 Jobard, F., and J. de Maillard. 2015. *Sociologie de la police. Politiques, organisations, réformes*, 23. Paris: Armand Colin.

3 Ibid.

4 Valcarce, F. L. 2007. "*La mercantilisation de la sécurité. Rôles de l'Etat et de l'initiative privée dans la constitution des marchés de la surveillance en Argentine*." PhD diss., Université Paris 1 Panthéon-Sorbonne, 92.

security." Contract security is, by definition, private. The term comes from the work of Clifford Shearing and Philip Stenning on North American private security. An old white paper from Quebec, *Private Security: The Partner of Internal Security*, which preceded the establishment of the regulatory authority, notes that "contract security refers to the security services offered on the market by companies, agents, or individuals on a contractual basis, as well as trade in security products and systems."[5] Contracts, or the decision to enter into a contract (we return to this below), lie at the heart of the private security relationship; it establishes the market's very existence and, consequently, the requirement that the law of supply and demand function optimally. Contractual private security is an economic good.

In France, the term "contract security" is less well known. Frédéric Ocqueteau has repeatedly spoken in terms of "commodified security," but in order to discuss in a somewhat critical sense the creeping privatization of security. This has not helped the term's conceptual development. The hesitant adoption of the term in France makes clear that the economic approach to private security is less developed here.

But while contract security is necessarily private, as opposed to taxpayer-funded public security, the term does not cover all forms of private security. If we keep within the Anglo-Saxon sense of the word, and within the economic approach, contract security contrasts with internal or in-house security, with what we call "internal security services" in Book VI of the CSI. Contract security is first of all a choice between internalizing and outsourcing a function, a choice made on the basis of a number of economic, legal, and social criteria: in-house skills, quality control, expertise, cost, legal responsibility, and so on. Conversely, from the sociological and, in a sense, political point of view more fashionable in France, there is no fundamental debate about the difference between internal and contract security: when we speak about private security agents and internal security services, on this view, "we can [...] accept that they form a category of individuals performing much the same sort of task."[6]

The choice between contract and internal security quickly leads to a broadly economic approach and provides the foundation for many of the questions to be asked at today's round tables. At this point, several examples of internal security should be discussed, which will help us understand contract security and give us a richer view of contractual issues in private security. These examples show that, in all attempts to regulate private security activities, any political approach is ultimately bound up with an economic one:

- **Spain**: internal security services, and more specifically assignments carried out on the ground, are prohibited by the 1992 law regulating the sector.[7]

5 Ministry of Public Safety. December 2003. *La Sécurité privée. Partenaire de la sécurité intérieure*, 10. Québec.

6 Valcarce. *La mercantilisation*, 184.

7 Interministerial Delegation on Private Security. "La sécurité privée en Espagne." Mission Report, July 6–9, 2012, 14–15.

In this case, private security is genuinely limited to contract security and, therefore, subject to the law of supply and demand. We should note, however, that in this context, company security directors must be trained and authorized by a regulatory body. The relatively restrictive Spanish system can be viewed as a form of largely State-driven professionalization.

- **Britain**: internal services are not subject to control by the regulator, the Security Industry Authority. Companies alone are held responsible for their security agents. To some extent, this lack of official oversight or sanction makes internal private security an economic privilege.
- **Belgium**: some internal security guarding services are not subject to authorization "when guarding activities are carried out only occasionally, and exclusively by natural persons who carry out these activities only occasionally and only free of charge. By occasional activities is meant a frequency of no more than the standard of three to four times a year. 'Unpaid' means without any form of payment, even in kind or in the form of a gratuity."[8] Here, internal private security becomes voluntary work and ceases to some extent to be an economic matter. Legal issues nonetheless exist, and these remind us of the abuses that can arise in contract security: "The phenomenon of 'false volunteers' must also be prevented: by this is meant those who volunteer repeatedly, regardless of the event organizer. These false volunteers are typically paid unofficially and are often recruited by specialized associations or companies. These are, in reality, illegal security guarding companies."[9]
- **France**: internal security services are authorized, both in the sense that they are permitted and that they must be declared to the CNAPS, which may involve an inspection. In this case, the market and the regulator work together. There are exceptions: the internal security services of SNCF and RATP do not fall within the scope of Book VI of the CSI and, as of recently, may be hired by other operators. This sort of internal private security, not regulated by Book VI, resembles contractual private security.

On closer inspection, internal security, where it exists, is often not far removed from contract security, and can also be approached from an economic point of view: it too is in practice financed by a customer and made available at a particular price. It requires an employment contract between a company and a private security agent. Internal security is only partially exempt from the market and is still generally perceived as a cost center rather than a profit center. Finally,

8 Interministerial Delegation on Private Security. "La sécurité privée en Belgique." Mission Report, February 21–22, 2012, 10.

9 Ibid.

economic pressure and potential breaches of social legislation are issues in internal security and contract security.

We should focus now on the French case and understand more concretely how customers are taken into account within the strategic framework of the reform of private security regulation.

3. "CONTRACT SECURITY" MEANS "CLIENTS AND CUSTOMERS."

The client is the essential feature of contractual private security. The existence of the client and the problems it creates are among the justifications for reforming private security regulation. We should recall that one of the first conferences organized jointly by USP and SNES in 2008 took buyers as one of its main themes, most significantly through a survey of clients and customers that found a "lack of objective qualitative criteria to evaluate service quality." Clients and service providers both wished to establish "common standards aiming to improve the service quality and customer-provider relationships."[10]

We should also recall the "SNCF/Vigimark" case from the same year, which involved a provider's use of undocumented dog handlers within the complex situation of a recovering market.[11] Vigimark's president, who was also the head of one of the two professional organizations for human surveillance, reminded the president of the SNCF of his responsibilities in an open letter titled "The SNCF Killed Me!": "You intended—without admitting, though it was all too clear to those in the know—to exonerate yourself from the full and entire joint responsibility as a buyer and a client by offering the media a scapegoat: your supplier at the time, Vigimark Surveillance."[12]

This case illustrates, in a rather climactic way, the difficulties faced by the sector, which involves suppliers, customers, and regulators alike:

- The presence of irregular employment situations;
- Working conditions which hamper the quality of services;
- Breakdowns in relationships between service providers and customers;
- Insufficiently vigilant customers.[13]

10 USP and SNES. April 21, 2008. "La sécurité privée mène l'enquête. L'USP et le SNES dévoilent les résultats d'une enquête menée auprès des prestataires et clients de sécurité privée." http://www.dpsa-securite.fr/docs/ETUDE_04-2008_CP-USP-SNES.pdf (accessed April 2, 2017).

11 De Boisfleury, S. July 30, 2009. "Affaire des maîtres-chiens clandestins: Vigimark dénonce la SNCF." Décision-Achats.fr. http://www.decision-achats.fr/thematique/decideurs-achats-1035/Breves/Affaire-des-maitres-chiens-clandestins-Vigimark-denonce-la-SNCF-30189.htm (accessed April 2, 2017).

12 Quoted in De Boisfleury. "Affaire des maîtres-chiens clandestins."

13 Following this case, the SNCF carried out an internal audit of the working conditions of the employees of their private security providers on their sites and led a drive to inspect agents' prefectoral authorizations.

The case gave rise to the SNES-SNCF Charter, signed on February 9, 2009 by the CEO of SNCF, Guillaume Pépy, and SNES's new president, Michel Ferrero, and sponsored by Eric Besson, the Minister for Immigration, Integration, National Identity, and Sustainable Development.[14] The idea of an applied code of ethics for the private security sector, using a similar soft law charter, arose at the same time.

The central, perhaps essential, role played by contractors in professionalization, improving ethical standards, and ultimately justifying a regulatory reform was still apparent, although slightly neglected, in the 2010 report by the General Inspectorates of Administration, National Police and the Gendarmerie Nationale on the inspection of private security companies, known as the "Blot-Diederichs Report." This made several specific recommendations for the security market and the treatment of customers.

The "Blot-Diederichs project" had initially recommended creating "the post of delegate to the Minister of the Interior with a mission to inform and negotiate with customers in order to promote good practice," with the more specific task, in another recommendation, of "recalling the regulations for monitoring public procurement by the future delegate to the private security market." This role was never created because it was felt, rightly, to overlap with that of the Interdepartmental Delegate for Private Security (DISP), a role also recommended by the "Blot-Diederichs project." The DISP has indeed taken up the question of customers, with, as we will see below, mixed results.

Four other recommendations targeted the private security market and showed that customers were at least one of the issues that had to be tackled in order to improve the regulation of the private security sector effectively, particularly its economic regulation:

- Involving contractors in the improvement of ethical standards: "When defining contract specifications, companies should be required to provide contractors with a list of personnel employed both by themselves and their subcontractors, as well as these employees' professional license numbers."
- Using standardization to professionalize the client–provider relationship: "The industry and public authorities should commit, without delay, to drafting a minimal standard for the profession's operating conditions, applicable both to businesses and customers, and potentially a certification system."
- Strengthening the role of security directors in purchasing decisions: "We recommend that businesses' security contracts are approved from a technical point of view by security officers before they are signed by the purchasing department."
- Involving public policymakers in the restructuring of the sector: "Provision should be made for the appointment of CNAPS members by

14 SNES. 2009. "Signature d'une 'Charte d'achat responsable.'"

ministers representing the Interior, Justice [...], Labor [...], and Finance (in order to involve this body in the question of public customers)."

At this stage of the assessment, then, customers have not been neglected in discussions of private security and regulatory reform. While not all of the recommendations above have been followed through (for instance, the Security Market Delegate), others have borne results, and have revealed some practical difficulties.

4. STRATEGIC AND PRACTICAL APPROACHES TO CONTRACTUAL ISSUES BY PUBLIC AUTHORITIES.

The establishment of CNAPS has brought with it two consequences which demonstrate the role of the customer. On the one hand, College of the CNAPS has given them a role by appointing two qualified individuals to represent them. On the other hand, the tax on private security activities, known as the "CNAPS tax," is marked at the bottom of customer invoices.[15] In a more informal way, the CNAPS quickly established a working group for providers and contractors. However, the role of the customer within the regulator or related bodies more closely resembles a partnership than a real acknowledgment of their place in the administrative and economic regulation of the sector, at least at this stage (see below).

At the outset of the 2010s, at least, the DISP took over the task of drawing up and implementing the sector's economic regulation, and has served to some extent as "Security Market Delegate," although with limited success.

After releasing an initial guide to good practices in private security purchasing in 2012, the DISP launched the Charter of Good Practice for the Procurement of Private Security Services in September 2013, with the professional associations for private security firms (ADMS, FEDESFI, GPMSE, SESA, SNES, and USP), the professional buyers' associations (the Agora des Directeurs de la Sécurité, ARSEG, CDSE), and BNP Paribas, SNCF and Société Générale as its first signatories.[16] The approach was inspired by the principles of soft law and was meant as a tool for market players similar to others available elsewhere in Europe.[17] The aim was to encourage providers and buyers "to comply with a set of good practices over the

15 Article 1609 quintricies of the General Tax Code, VII: "The amount of the contribution shall be added to the price paid by the client. It shall be signaled by a specific notice at the foot of the invoice for the service in question."

16 Ministry of the Interior/DISP. September 10, 2013. "Communiqué de presse. Charte de bonnes pratiques d'achats de prestations de sécurité privée." http://www.interieur.gouv.fr/Le-ministere/Organisation/Delegation-aux-cooperations-de-securite/Portail-relatif-a-la-Charte-de-bonnes-pratiques-d-achats-de-prestations-de-securite-privee/Communique (accessed April 2, 2017). For the initial guide, see Interministerial Delegation on Private Security. (2012) *L'achat de prestations privées de sécurité: Grands principes et bonnes pratiques*, 24pp.

17 CoESS and Uni-Europa. 1999. "Choisir le meilleur rapport qualité-prix—Guide pour l'attribution des marchés de services dans le domaine de la surveillance et de la sécurité privée," 28pp.

complete life cycle of the contractual process: a better definition of what is needed in the security sector, contracts being awarded to the best bidder, genuine transparency regarding pricing and the use of subcontractors, and regular and precise performance monitoring."[18] However, this charter has not succeeded as hoped: it reached 268 signatories in 2014 (no numbers are available for subsequent years), of which fewer than 30 are buyers and nearly 200 are members of the SNES. The absence of checks on whether the charter's principles are being met, and fear that it will nonetheless become a burden on those who sign it, have greatly limited its adoption. The involvement of the Ministry of the Interior in the market likely also reached a limit, with some economic actors finding its role too intrusive.

The DISP has also become involved in several standardization projects, in keeping with its January 2012 mission statement, which required it to "also make proposals on measures to improve the quality of services provided by businesses (certifications, quality seals, standards, and qualifications)."[19] The public authority has clearly involved itself qualitatively in contractual relationships.

The DISP then proposed to look into the establishment of a qualification scheme for companies based on their skills and experience, based on the "Qualibat" model in construction, proposing it as part of a legislative reform of the law of July 12, 1983. But this next step was judged to be too complex and to intrude too heavily on contractual relations, and was not taken.

In parallel with this undertaking, the DISP became actively involved in existing projects and initiatives, becoming a member of several standardization committees: the APSAD certification committee for monitoring services, as of November 2011; the committee for NF certification "Service 241" for safety and security businesses, as of November 2012; the "Security for Activities of Vital Importance" (SAIV) certification committee, under the aegis of the certification body SGS ICS France, as of 2014; and the committee on the certification of private security and defense services (now ISO/NF standard 18788), as of October 2013. In conclusion, the DISP has been an active participant in the development of standards for contractual relationships, but with few genuine achievements to date.

Last of all, though partnerships and cooperation between government bodies, the fight against illegal labor in private security has reached a milestone with the signing of the National Partnership Convention to Combat Illegal Labor in the Private Security Sector on December 12, 2012. Its signatories were the Minister of the Interior, represented by the Interministerial Delegate for Private Security, the Minister for Labor, Employment, Vocational Training and Social Dialogue,

18 Ministry of the Interior/DISP. "Charte de bonnes pratiques."

19 Letter from Claude Guéant, the Minister of the Interior, to the Interministerial Delegate, Paris, January 9, 2012. This follows recommendations 12 and 18 in the "Blot-Diederichs report": "The industry and public authorities should commit, without delay, to drafting a minimal standard for the profession's operating conditions, applicable both to businesses and clients, and potentially a certification system," and "The future Interministerial Delegate should be entrusted with the task of examining the question of certification."

represented by the Director General of Labor, the Minister for the Budget, represented by the National Delegate for Combating Fraud, the President of the CNAPS, the National Union of Security Enterprises, the Union of Private Security Enterprises, and the National Association of the Security Professions. Although there are no associations of buyers among the signatories, there is no question that they are affected by the convention which, in regard to safety, training, and awareness measures, involves "informing public or private customers of the resources available to service providers and the liability that they may face, jointly with employers, where regulations are breached (particularly in cases of subcontracting)."[20] The convention notes that "several laws have increased the criminal, civil and administrative penalties faced by project managers and customers, both public and private, and have reinforced their oversight obligations."[21] But this convention has had little effect beyond the meeting of the steering committee more than a year after it was agreed, and the signing of two region-specific versions, in Midi-Pyrénées on September 12, 2014 and in Ile-de-France on September 21, 2015.

5. CONTRACTUAL ISSUES OR ECONOMIC ISSUES?

We should now describe, in broad terms, the contractualization of private security. On the one hand, there has been an upward trend in public procurement, which in 2015 made up a quarter of the market, compared to a fifth of the market 10 years ago. The trend is slow, and it is difficult to describe the reasons for it: "Security was reinforced in both public and private sectors following the attacks. Indeed, the distribution of revenues between different sectors has not changed between 2014 and 2015: private procurement still accounts for three quarters of the total amount."[22] At the European level, public procurement appears to have represented 20% of demand in 2013, significantly less than in France.[23]

Breakdown of Private Security Revenues by Sector[24]

[Percentage of Revenue]

[Private Procurement]

[Public Procurement]

20 *National Partnership Convention to Combat Illegal Labor in the Private Security Sector* (December 12, 2012), 6.

21 Ibid., 3.

22 Monitoring Center for Safety and Security Professions. September 2016. "Enquête de branche Prévention—Sécurité. Données 2015," 13.

23 CoESS. 2014. *Facts and Figures 2013*, 251. We have to hedge this claim, as only about 15% of the states approached by the CoESS gave a response.

24 Monitoring Center for Safety and Security Professions. "Enquête", 13. The figures for 2015 on businesses with more than 500 employees are the same as those of the previous year.

Two distinctive features of public procurement underpin this rate of 25% of security demand. On the one hand, public demand is very diverse, including contracts signed by central or local state bodies, local authorities, and public institutions as varied as museums, universities, hospitals, the central public purchasing office (UGAP), etc.

To speak of the public client in the singular, then, and to try to develop a sort of public purchasing doctrine, is to some degree a fool's errand. On the other hand, however, all public procurement contracts must comply with the Public Procurement Code: this means that the only public purchasing doctrine for private security services is a legal one, whereas the doctrine should also incorporate political and economic aspects. Each provider knows that the Public Procurement Code drives prices down.

Private demand is even more diverse, ranging from corporate clients, which tend to use a small number of providers selected beforehand, to individuals, who rely heavily on electronic or digital home monitoring services, and to SMEs, jewelers, nightclubs, etc.

These two extremes of private demand—corporate clients and individual clients—are those that typically shape trends on the supply side, in two opposing directions. The demand for global solutions, catered for by facilities management, where a single contract covered a whole range of services (cleaning, safety, and maintenance), is a thing of the past. Book VI of the CSI prohibits the "private security" part of these contracts, which must be signed by a private security provider who meets the exclusivity principle. Is this position sustainable indefinitely? The exclusivity principle is not, in any case, wholly respected within Europe more broadly.

More recently, the phenomenon of uberisation, where service provision and contracts are personalized and individualized, appeared in France last year. The first seminar on the phenomenon was held in November 2016, on CNAPS initiative. The uberization of security services means the use of a digital platform (a smartphone app) to establish a geolocalized connection between private security agents and clients. There is a consensus both that this trend is inevitable (potentially affecting 10%–20% of agents), and that the whole phenomenon must be brought within the remit of Book VI of the Security Code. Uberization also raises the question of individual entrepreneurship once more, as service contracts are replaced by work contracts, bringing the risk of disguised salaried work. Taken in the broadest sense, the contractual issue is without doubt the chief topic to address in the future, and the CNAPS counts on the Ministry of the Interior's support to make progress in this area.

We should emphasize at this point that Book VI of the CSI and, before that, the law of July 12, 1983 have never been interpreted through the lens of commercial, business, or competition law—that is, from an economic point of **view**. After a period of administrative regulation, we now face issues of economic regulation,

which bring new questions about the delegation of authority, the full application of regulations to subcontractors, third-party invoicing, the shared responsibility of customers, and so on.

Furthermore, while customers do not yet fall within the range of infractions which the regulator monitors, they fall within its remit through the question of standardization: the standardization committee of CNAPS, established in 2015, allows us to make some predictions about standard projects which will appear at the national, European, and international level in coming years. But standardization is above all a factor in the market regulation and in contracts between clients and providers. It is one thing (and a good one) for the public regulator to take an interest in standardization as part of his or her mission to advise and assist the profession, but it would be better if those most involved, the service suppliers and customers, themselves took an interest in it.

6. CONTRACTUAL ISSUES OR LEGAL ISSUES? BUT NOW—BOTH PROVIDERS *AND* CUSTOMERS ...

Many of the papers presented at this conference address not only contractual and economic issues but also legal ones: "The Goals of Subcontracting: A Matter of necessity or a Slippery Slope?;" "Prohibited Contracts: Limits to the Delegation of Police Powers;" "The Security Service Provider's Civil Responsibility;" and "The Fight Against Illicit Practices (Illegal Lending, Illegal Labor, Laundering, and Clauses Which Contradict the Ethics Code)." Is our topic in fact the legal issues of contract security?

The move from contractual to legal issues brings into question the role of the regulator, the CNAPS, and its disciplinary mission. From this point of view, the CNAPS monitors, identifies, and punishes breaches of contract, connecting contractual and legal issues. This is true for failures to pay the tax on private security activities (which must appear at the bottom of client invoices), failures of transparency in the use of subcontracting, the use of subcontractors not authorized by the CNAPS, and breaches of the exclusivity principle. In the face of the economic issues outlined above, however, we must understand that the regulator will expand the range of infractions it concerns itself with as its own professionalization proceeds. In 2016, a protocol for combating illegal labor established by the CNAPS and the National Delegation for Combating Illegal Labor aimed to broaden this range of infractions, marking the end of trade secrecy between the CNAPS's inspectors and public officials tasked with combating illegal labor. We should recall that the Labor Code includes clauses on shared financial and criminal responsibility for customers in cases of illegal labor, something which the CSI does not (yet) include.

The regulator is already encouraging customers to take account of the regulatory obligations to which their suppliers are subject. A letter signed by the

DIRECCTE Ile-de-France, the URSSAF Ile-de-France, and the CNAPS was distributed to 800 public clients in the Ile-de-France region, noting that "prior to the conclusion of a contract, and periodically during its execution, the contracting authority must ensure that they are not incurring social, financial, or even criminal liabilities."

It is important to understand that regulation which aims to improve the ethical and professional standards of private security must proceed by improving the ethical and professional standards of the private security market, of contractual relations, and of "purchasing" relations. While customers are not directly subject to Book VI of the CSI, some sectors, like cash transportation, have already established client obligations for security provision. SAIV sites and shopping centers and car parks in some urban areas are also subject to safety and security requirements. In such cases, it is a matter of shifting the question of security regulation from providers to customers.

The CNAPS has already changed a great deal in 4 years: it has modified its remit, expanded its duties (armed protection of ships, inspection of training schemes, participation in the fight against illegal labor, use of weapons, etc.), and modernized its tools and procedures. It still faces issues and challenges, including the regulation of security and defense services companies (ESSD), the uberization of private security, the immediate suspension of illegal or non-compliant activities, and fire safety in sites subject to regulation (ERP/IGH, etc.). But contracts—making sure that they conform to regulations, that they are respected, and that they observe an economic code of ethics—are now one of the CNAPS's many tools, and one of its regulatory targets.

APPENDIX 1:
CODE OF ETHICS FOR NATURAL AND LEGAL PERSONS ENGAGED IN PRIVATE SECURITY ACTIVITIES

Subsection 1: General Provisions

Article R631-1: Scope of Application.

The provisions of this section constitute the code of ethics for natural and legal persons engaged in private security activities.

This code shall apply to all legal persons whose activities are governed by the present Book and to natural persons whose activities are governed by the same provisions, whether acting as directors of a company, including associates and managers, as persons operating in an individual or self-employed capacity, or as employees and trainees of a security or investigation company, whether private or belonging to the internal service of a company. These people are referred to as private security actors.

Article R631-2: Penalties.

Any breach of the duties defined in the present code of ethics exposes its author to the disciplinary sanctions provided for in Article L. 634-4, without prejudice to the administrative measures and penal sanctions provided for by the laws and regulations in force.

Article R631-3: Dissemination.

This code of ethics is to be visibly displayed in all private security firms.

A copy is to be given by his employer to all employees, even if hired for a temporary assignment. It is to be referred to in the employment contract signed by the parties.

This code of ethics is to be taught as part of initial and further training courses for private security occupations.

It may be referred to in contracts with clients and principals.

Subsection 2: Duties Common to All Private Security Actors

Article R631-4: Compliance with the Laws.

As part of their duties, private security actors are to abide strictly by the Declaration of the Rights of Man and of the Citizen, the Constitution and constitutional principles, all laws and regulations in force, including the Highway Code, and the professional and social legislation applicable to them.

Article R631-5: Dignity.

Private security actors are to refrain from any act, operation, or conduct, even outside the exercise of their professional duties, that would bring their profession into disrepute.

Article R631-6: Sobriety.

In a professional setting, private security actors must be in a state of complete sobriety. They shall not hold or consume either alcoholic beverages or substances prohibited by law or regulations at the location where they are to exercise their assignment.

Article R631-7: Professional Attitude.

In all circumstances, private security actors are to refrain from acting contrary to probity, honor, and dignity. They shall display discernment and humanity.

They are to act with professionalism and ensure that they acquire and maintain their skills through any required training.

Article R631-8: Respect and Fairness.

Private security actors are to show respect and fairness. In this spirit, they shall seek the friendly settlement of any dispute.

They shall refrain from any unfair competition or any project of denigration aimed at harming a colleague or supplanting them in an assignment entrusted to them. This principle does not preclude the disclosure to the competent public services of any breach of regulations or of any ethical misconduct.

Article R631-9: Confidentiality.

Subject to the cases provided for or permitted by law, private security actors shall respect the strict confidentiality of the information, technical procedures, and practices of which they become aware in the course of their activity.

They shall refrain from making any use of documents or information of an internal nature of which they have become aware, in the exercise of their duties, through a former employer or supervisor, unless the latter has expressly agreed to such use.

Article R631-10: Prohibition of All Violence.

Except in the case of self-defense provided for in Articles 122-5 and 122-6 of the Criminal Code, private security actors must never use even the slightest violence.

Where a private security actor, in the performance of his or her duties, is unable to resolve a dispute amicably with a third party who does not wish to undergo legally performed checks and inspections, they must appeal to the territorially competent police or gendarmerie.

A private security actor who apprehends the perpetrator of a flagrant offense punishable by imprisonment in accordance with Article 73 of the Code of Criminal Procedure cannot detain the person charged without immediately informing the territorially competent police or gendarmerie services. Before being presented to the police or gendarmerie, the person arrested shall remain under the supervision and protection of the person who has arrested them. They must not suffer any violence, humiliation, or treatment contrary to human dignity. If the condition of the detained person requires medical attention, the private security actors must immediately call upon the competent medical services.

Without prejudice to the provisions on armaments, and when exercising their duties in contact with the public, private security agents shall not wear any object, including any jewelry, which may cause injury to a third party.

Article R631-11: Armament.

With the exception of those who are permitted by law to carry armaments, private security actors may not acquire, possess, transport, or carry a weapon in the exercise of their assignment, and shall refrain in their communication with any potential customer from suggesting that they should be provided with weapons of any sort when performing their services.

Article R631-12: Prohibition of the Exercise of Public Authority.

Private security actors must avoid confusion, through their behavior and means of communication, with a public service, and particularly a police service.

The use of logotypes or signs bearing characteristics and colors similar to those which identify documents issued by public bodies, as well as any element which may give rise to or maintain any confusion with a service of the public authority, is prohibited.

In their communication with the public, private security actors may not avail themselves of a past or present connection with a service that is an agent of public authority. With regard to third parties, they shall not make reference to assignments or commissions from public bodies which have not been entrusted to them by the latter.

They shall refrain from using any equipment, particularly audible and luminous warning devices on vehicles, liable to create such confusion.

Article R631-13: Relations with Public Authorities.

Private security actors are to maintain fair and transparent relations with public bodies.

Their statements to them shall be sincere. They shall respond diligently to all requests by public bodies.

They shall obey any summons by judicial authorities, or police or gendarmerie services.

Article R631-14: Compliance with Inspections.

Private security actors shall cooperate honestly and immediately with inspections by certified bodies, authorities, and organizations. In compliance with the legal and regulatory provisions relating to the protection of privacy and the secrets they protect, they shall permit the consultation, immediately or in the shortest possible time, of any document required, in its original version.

They shall facilitate the copying of these documents by the agents undertaking the inspection.

Subsection 3: Duties of Companies and Their Executives

Article R631-15: Verification of Capacity to Practice.

Companies and their directors shall refrain from employing or directing, even for a short period of time, security and investigative personnel who do not meet the requirements for professional qualification or who do not possess the valid authorizations required to carry out their duties.

They shall ensure that the competencies of their personnel are appropriate to the assignments entrusted to them.

Article R631-16: Orders and Inspections.

Directors are to refrain from giving their employees, directly or through their managers, any orders which would lead them to fail to respect the present code of ethics.

They shall ensure the formulation of clear and precise orders and instructions to ensure the proper execution of assignments.

General instructions, circulars, and general orders for private security, and those relating to the duties which have been guaranteed, which employees must implement in the exercise of their duties, are to be grouped together in a memorandum, written in French, in an easily understandable style. The employee must acknowledge any changes and provide his or her signature. The memorandum must be made available to agents on company premises. It is only to be consulted by the personnel involved in the design and implementation of assignments and, without delay, by the supervisory officers of the National Council for Private Security Activities. This memorandum shall contain no remarks specific to a customer or an assignment.

Directors are to ensure the proper execution of assignments, particularly by means of regular on-the-spot inspections. In this context, directors are to establish and maintain a register of internal inspections.

Article R631-17: Material Resources.

Companies and their directors shall ensure that their agents are provided with the necessary equipment to ensure their safety and to carry out their duties, particularly those provided for by the regulations.

They shall ensure that all equipment is in good working order. This equipment must undergo all necessary checks and maintenance operations, in

accordance with regulations and the manufacturer's requirements. To this end, instructions for the use and maintenance of the equipment of the security companies are to be kept up to date. Failure to maintain equipment made available by a customer shall be communicated to them immediately.

Article R631-18: Honesty in Commercial Procedures.

Companies and their directors shall refrain from any solicitation of customers by any methods or means contrary to the dignity of the profession and which may tarnish its image.

They shall refrain from giving rise to any ambiguity as to the nature of the proposed activities, particularly in view of the exclusivity principle defined in Article L. 612-2, which prohibits private security actors from any activity not related to the private security assignment, and the combination of certain private security activities.

They shall notify their clients, customers, or buyers of the legal impossibility of using the agents assigned to the performance of that service to carry out, even in part, duties other than those provided for in the contract.

Article R631-19: Transparency Regarding the Nature of Previous Activity.

A company or a manager may not, in its communications with any prospective client, make claims about the performance of a service for which subcontractors have been used or of the performance of a service for which it acted as a subcontractor, without explicitly making mention of it.

Article R631-20: Advisory Obligations.

Companies and their directors shall undertake to inform and advise the client or potential principal seriously and fairly. They shall refrain from offering them services which are disproportionate to their needs.

They shall provide them with the explanations necessary for understanding and assessing the services to be undertaken or which are already in course of execution.

Article R631-21: Refusal of Unlawful Services.

Companies and their directors shall refrain from offering services contrary to this code of ethics, even in response to a call for tenders, a competition, or a consultation involving a work specification whose clauses would be contrary to this code of ethics.

They shall refrain from accepting and maintaining commercial relations, either long or short term, based on abnormally low service prices which do not allow them to meet legal, and particularly social, obligations.

Article R631-22: Ability to Provide Services.

Companies and their directors shall not enter into a service contract or accept a mandate unless they are capable of fulfilling the legal obligations for the exercise of the relevant professions from the outset.

When they no longer meet the legal requirements for their private security activity, particularly in the event of suspension or withdrawal of authorizations and approvals, they must immediately inform their clients or constituents.

They shall take out insurance which guarantees their liabilities on the basis of a fair assessment of all risks.

They shall refrain from giving potential customers any false indication of their capabilities and the human and material means at their disposal.

They shall undertake to adapt the number and scope of the tasks they accept to their abilities, their expertise, their own ability to take action, the means they can deploy either directly or indirectly, and the particular requirements of the importance and location of these assignments.

Article R631-23: Transparency Regarding Subcontracting.

Companies and their directors shall offer a transparency clause in their contracts with clients and in contracts signed between them, stipulating whether the use of one or more subcontractors or self-employed associates is envisaged or not.

If the use of subcontracting or self-employed associates is envisaged as soon as the contract is signed, they shall inform their clients of their rights to know the content of the proposed subcontracting or collaborative contracts. To this end, the transparency clause shall recall, by reproducing them in full, the provisions of Articles 1, 2, 3, and 5 of Law 75-1334 of December 31, 1975 on subcontracting. If it is not foreseen when the contract is signed, the use of subcontracting or self-employed associates can only take place after written notice from the customer.

When concluding a contract for subcontracting or the use of self-employed associates, private security companies must ensure that their subcontractors or self-employed associates comply with social and fiscal regulations, and those regarding illegal labor, within the framework of this contract.

Any subcontract or contact with a self-employed associate may only take place after verification by the private security firm giving the order validating the authorization of the subcontractor, the approvals of its directors and associates, and the professional licenses of those employees who will be required to perform the services under this contract.

Article R631-24: Clarification of Contracts.

Private security directors shall ensure that the contracts concluded with their clients define precisely the conditions and means of execution of the service.

Subsection 4: Duties of Employees

Article R631-25: Presentation of Professional Licenses.

Employees must be able to present their professional license at any request from clients, principals, or certified authorities and organizations. They shall prove their identity to the authorities who require to know it immediately or, where this is not possible, at the earliest opportunity.

Article R631-26: Duty to Keep Employer Informed.

Employees are obliged to inform their employer without delay of any changes, suspension or withdrawal of their professional licenses, the decision of any criminal conviction, changes in their situation under the laws and regulations governing the labor of foreign nationals, or suspension or withdrawal of their driving license when necessary for the performance of their duties.

When they have become aware of it, they must inform their employer of any defect, malfunction, or expiration of the validity period of any equipment or devices placed at their disposal for the exercise of their mission.

Article R631-27: Respect for the Public.

Employees shall behave in all circumstances in a respectful and dignified manner towards the public. They shall act with tact, diplomacy, and courtesy. In

the performance of their duties, they shall refrain from any familiarity or discrimination, that is, any distinction based particularly on the origin, sex, marital status, pregnancy, physical appearance, surname, state of health, disability, genetic characteristics, way of life, sexual orientation, age, political or trade union views, or real or supposed affiliation with any particular ethnic group, nation, race, or religion.

In contact with the public, the employee must ensure that their dress is correct and that they are carrying the distinguishing signs and the equipment provided for by the laws and regulations, whatever the circumstances.

Subsection 5: Duties Specific to Certain Activities

Paragraph 1: Self-Employed Private Investigation

Article R631-28: Respect for the Fundamental Interests of the Nation and of Trade Secrets.

Natural or legal persons engaged in private investigation shall ensure that their investigations are not likely to contravene the laws and regulations protecting the fundamental interests of the Nation or trade secrets, particularly in matters of science, industry, commerce, the economy, finance, or national defense. Otherwise, they shall refrain from engaging or pursuing them, directly or indirectly, and shall inform their client or principal of this.

Article R631-29: Prevention of Conflicts of Interest.

Natural or legal persons engaged in private investigative activities may not provide services to more than one client or principal in the same case if there is a serious conflict or risk of conflict between the interests of its clients or principals.

They shall refrain from engaging in commerce with all clients or constituents concerned when there is a conflict of interest, when trade secrets may be violated, or when their independence may no longer be complete.

They may not accept an assignment entrusted by a new client or principal if trade secrets given by a former client or principal are likely to be violated or if knowledge of the business of the latter would favor the new client or principal.

Where private investigators acting in an individual capacity are members of a group or pool their resources, the provisions of the three preceding subparagraphs shall apply to that group as a whole and to all its members.

Article R631-30: Contract.

Individuals or legal entities engaged in private investigative activities shall ensure that written business contracts or terms define the assignment and its legal framework. If circumstances require, they shall undertake to obtain for the client or principal an extension of their assignment. In the absence of any agreement between the private investigator and the client or principal, the fees or service prices shall be fixed according to standard practice, depending on the difficulty of the assignment, expenses incurred, and due diligence carried out. Natural or legal persons conducting private investigative activities shall inform their client or principal, as soon as they have been referred to them, and then on a regular basis, of the procedures for determining fees and prices and foreseeable changes in the amount of these. If applicable, this information shall be included in the fee agreement. A flat fee or price may be agreed. The provision for costs and expenses may not exceed a reasonable estimate of expenses and likely outlays incurred in the course of the assignment.

Natural or legal persons engaged in private investigative activities shall ensure that contracts distinguish between assignments subject to the obligation of result and those subject to the obligation of means. They shall report on the performance of their duties at the request of their clients or principals and provide them with copies of any documents, accounts, or reports relating thereto, irrespective of the result of their assignment.

Individuals or legal entities conducting private research activities shall carry out their assignments until they are completed, unless their client or principal releases them. In the event that they decide not to continue the assignment, the client or principal shall be informed in good time so that their interests are safeguarded.

Article R631-31: Rationales for Remuneration.

Natural or legal persons engaged in private investigative activities shall at all times hold, for each assignment, a precise and separate statement of fees, any amounts received, and the use made of them, except in the case of a flat-rate fee.

Before any final settlement, they shall give their client or principal a detailed rationale. This account shall clearly show expenses and disbursements, fee-based emoluments, and fees. It shall refer to amounts previously received, either provisionally or in any other way.

Paragraph 2: Dog Training
Article R631-32: Respect for Animals.

The dog handler shall refrain from any maltreatment of his animal and shall ensure that it is in all circumstances in a state of proper care and cleanliness.

APPENDIX 2:
EXTRACT FROM THE DECISION OF THE ADMINISTRATIVE COURT OF TOULON (3RD CHAMBER) NO. 1401533 OF APRIL 21, 2016

12. Whereas, in the case of relations based on abnormally low prices, under Article 21 of Decree No. 2012-870: "Companies and their directors shall refrain from offering services contrary to this code of ethics, even in response to a call for tenders, a competition, or a consultation involving a work specification whose clauses would be contrary to this code of ethics. They shall refrain from accepting and maintaining commercial relations, either long or short term, based on abnormally low service prices which do not allow them to meet legal, and particularly social, obligations;"

13. Whereas these provisions are not, as the claimant maintains, aimed at preserving competition but have an ethical goal;

14. Whereas it appears from the documents in the casefile that Guard Security Group entered into subcontracting agreements on March 1, 2012 with Paris Sécurité and Welcome Security Gardiennage, under which an hour of security guarding was remunerated at €15.50 and €15, respectively; whereas, in its decision of February 14, 2014, the National Commission for Accreditation and Inspection noted that these amounts were lower than the cost price and did not meet legal requirements; whereas the collective agreement on prevention and security estimates the hourly cost of an agent as of July 1, 2012 to be €16,494 for a safety and security officer (coefficient 120) and €20,483 for a supervisor (coefficient 150); whereas this document specifies that the hourly cost of an agent is based on strict consideration of minimum social and legal obligations in accordance with the national collective agreement titled "Safety and Security" and that each service supplier must, for setting its prices, add the impact of its structural charges; whereas the prices of subcontracting services, being lower than the cost price of an agent, do not make it possible to meet the tax and social obligations imposed on subcontractors, even though, for 2012, Guard Security Group, of which Mrs Neuville was then the co-manager, fixed for its customers the hourly rate for a security guard from €17.20 to €17.50 excluding taxes, and the company thus took advantage of these practices as it received benefits at a lower cost; whereas the fact that the subcontractors had fewer than 10 employees and had lower costs per agent was not established in light of the record of the administrative hearing of the manager of Welcome Sécurité Gardiennage dated November 27, 2012 that its company currently employs about 30 agents; whereas the National Commission for Approval and Monitoring was therefore right to consider that the company had infringed the legal and regulatory provisions in force and had charged abnormally low prices when service costs are lower than actual costs and do not meet legal and social obligations; [...]