

4 November 2020

The Secretary
Security Industry Joint Labour Committee
Lansdowne House
Lansdowne Road
Dublin 4
By Email

Re: Proposal for a new Employment Regulation Order (“ERO”) for the Security Industry

Dear Secretary

We refer to our letter dated 19 August 2020, and write again on behalf of the members of the Irish Security Industry Association (“ISIA”), Guarding Services Division, in relation to the proposed ERO for the security industry.

Background to the ISIA

The ISIA has been representing the needs of the private security industry for over 45 years, since its foundation in 1972. The ISIA is the larger of the two trade associations representing the spectrum of employers in the private security industry. Our members, Guarding Services employers, generate approximately 70% of the industry’s turnover and employ over 7,000 employees.

Background to proposed ERO

The Security Industry Joint Labour Committee (“JLC”) began meeting to discuss proposals for a new ERO in early 2019, well before the start of the COVID-19 pandemic, and during which time the general economic landscape was entirely different. The first version of the proposed ERO was published by the JLC on the Labour Court’s website on 30 July 2020, and any person wishing to make representations to the JLC in relation to the proposals was invited to do so.

Previous ISIA representations to the JLC

In our letter of 19 August 2020, the ISIA, Guarding Services Division made representations to the JLC on behalf of its members with respect to the published proposals, in accordance with Section 42B(1)(b) of the Industrial Relations Act 1946 (as amended) (the “Act”), and formally objected to the proposed ERO on behalf of our members. We enclose a copy of that letter.

Those representations included that our members have very serious concerns about their and their clients’ inability to pay the proposed increased rates of pay until the country is in a more stable economic position. Numerous ISIA members have in fact received requests for cost reductions from clients.

On behalf of our members, we formally requested the JLC to reconsider the terms of the proposed ERO (as published on 30 July 2020) and to defer the implementation of any new ERO for the next 18 months. This was not a contrived effort to reduce labour costs in an

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underhand way. This was a legitimate and urgent appeal to the JLC to recognise the reality of the economic and financial landscape in which we find ourselves and to recognise that the draft proposals from 2019 which were suitable then, are clearly no longer suitable now.

In addition, we understand that at least four ISIA members, including Mitie, Bidvest Noonan, OCS and Synergy, individually made submissions to the JLC making similar representations to those made by the ISIA.

The ISIA and the four aforementioned members received an acknowledgment from the Secretary of the JLC that their letters had been received, but no further correspondence from the JLC was received.

We understand that the JLC is required, under Section 42B(2) of the Act, to consider any representations made in relation to the proposed ERO. We have serious concerns that due consideration was not given to the representations submitted by the ISIA and our members.

Amendment to the proposed ERO

We understand that, during the recent JLC discussions, a material amendment was made to the proposals, before the proposals were sent to the Labour Court. This material amendment provided for a deferral of the proposed first pay increase from 1 October 2020 until 1 January 2021, which might have been welcome, if the second and third proposed pay increases were also, similarly, deferred to the following years.

Instead, however, the dates of the second and third proposed pay increases remained unchanged. If implemented, these proposals would have the extraordinary result of requiring employers to implement TWO pay increases within one calendar year.

Placing this type of financial burden on employers in the middle of an unprecedented situation presented by the COVID-19 pandemic, where so many businesses are struggling financially and have to depend on emergency state financial support in the form of the Pandemic Unemployment Payment and the Employment Wage Subsidy Scheme (previously Temporary Wage Subsidy Scheme) in order to remain viable, is simply unfair, and in our respectful view, untenable.

Two pay increases within one calendar year is also a marked departure from the format of previous EROs. Frankly, it beggars belief that arising from the real, legitimate, and significant concerns raised by ISIA and its members, the only concession or recognition by the JLC, was to push back one pay increase into the second year during which employers would still face a further pay increase.

We understand that the proposals, if adopted by the Labour Court in its current form, would provide for a 3.4% pay increase from 1 January 2021, and a 3.7% pay increase from 1 June 2021. This would have the effect of increasing pay by over 7% in a six-month period, during a global pandemic and economic crisis. This would ultimately result in a 10.3% increase in 18 months.

These types of increases are unheard of during boom times, let alone during an extraordinary economic crisis. In recognition of the current economic crisis, the government announced earlier this month that the national minimum wage will increase by 10c from 1 January 2021, which is less than a 1% increase on the current national minimum wage¹. With the exception of 2011, this is the lowest increase implemented by the government since the introduction of the National Minimum Wage Act 2000, and is indicative in our view of the government's recognition of the limitations on employers' abilities to pay increased wages during this time.

Consultation

As a representative body, we have serious concerns that no public consultation was initiated in relation to the amended proposals, before the revised ERO was sent to the Labour Court. The ISIA, and other interested parties, have had no opportunity to make representations on the amended proposals. It is not, in our respectful submission, within the spirit of the legislation, that the JLC can invite representations in respect of a draft ERO, and then send to the Labour Court an amended version (with material amendments) without inviting or considering representations in respect of the material amendments.

ISIA member representations

We have consulted widely with our members regarding the implications of the amended proposals. 94% of our members have expressed serious concern in relation to the amended proposals and have requested the ISIA to object to the implementation of an ERO at this juncture, as previously expressed in our letter to the JLC.

On behalf of our members, we wish to formally object to the proposed ERO (as amended) for the security industry. The basis of our objection is set out in our previous letter and in this letter, which contains further detail justifying our position. We should also point out that the majority of our members are in favour of collective bargaining through the JLC/ERO system. The objections and representations made by us do not undermine the ISIA's support for EROs generally, but seek to have the undeniably fundamentally altered circumstances recognised, and taken into account. This blatant disregard for the views of the largest representative body in the sector has the potential to undermine and erode the goodwill required for successful collective bargaining arrangements and potentially, its members' willingness to voluntarily participate.

Economic and commercial challenges

Our members have very serious concerns about the implementation of an ERO at this juncture, given the extraordinary (and frankly unprecedented) economic and commercial challenges facing the security industry as a result of COVID-19, the associated government mandated closures and restrictions, and a potential no-deal Brexit.

The COVID-19 pandemic has had a serious impact on Ireland's economy as a whole. The ERSI recently published its Quarterly Economic Commentary. It reports that COVID-19 has had "*a devastating impact on many sectors of the domestic economy*", outlining that there have been wide scale job losses, with an adjusted unemployment rate of 14.7% for

¹ <https://www.gov.ie/en/publication/9463f6-historic-nmw-rates/>

September 2020, compared to 4.9% in February 2020. The ERSI has forecasted that, by the end of the year, consumption and investment are likely to witness declines of 9.2% and 17% respectively. The ERSI further reported that a disorderly no-deal Brexit would impede any recovery to the economy, and would subject the Irish economy to “*additional contractionary pressures in 2021*”, calling it a “*perfect economic storm*”.

In light of COVID–19 and Brexit, it is now beyond dispute that the Irish economy is in a far weaker position than when the JLC met in 2019 to discuss the terms of a new ERO. It is respectfully submitted that this new landscape simply must be acknowledged in the context of the proposed ERO.

Security industry

Due to low margins on commercial contracts in the industry, wage increases from EROs have historically been passed directly onto our members’ clients, and not borne by the employers themselves. It is important therefore to look at the ability of the end consumer’s ability to pay the proposed wage increases.

Many of the sectors most negatively impacted by the fallout of Covid-19 are those in which a large number/proportion of ISIA member clients operate. These include the Retail Industry, Airline Industry, Corporate Business sectors, Entertainment and sporting events sector along with the licensed vintners and hospitality trades. The statistics on the effects of COVID-19 on these sectors have been reported as follows:

- Retail Excellence reported that retail sales fell by 30% during the first lockdown in April and Retail Ireland reported that, following the introduction of Level 5 restrictions, there is very real concern that many vulnerable retail businesses will not survive COVID-19.
- The Irish Aviation Authority recently reported that the pandemic resulted in an unprecedented fall in flights over the first nine months of the year, and that September flights in and out of Dublin Airport fell by 70%.
- The recent ESRI Quarterly Economic Analysis reported that the Arts & Entertainment sector has been one of the most severely affected sectors, with output falling by approximately 68% in Q2, compared to Q2 2019. The Arts & Entertainment sector has essentially remained closed since the original lockdown in March 2020.
- The Federation of Irish Sport recently informed an Oireachtas committee that sports organisations have lost up to 70% of self-generated revenue because of pandemic restrictions and that the sports sector is not sustainable without yearly memberships, event participants and supporters at games and events.
- The Crowe Restaurant and Hospitality Industry Sentiment Survey, carried out in August/September 2020 during Level 2 restrictions, noted that revenues for Q3 2020 for the industry were down 37% on 2019. Before the Level 3 restrictions (and a prohibition on in-house dining) were announced, the restaurants surveyed predicted Q4 2020 revenues to be down 41% on 2019 and 2021 revenues to be down 27% on 2019 levels.
- Economist Anthony Foley, in a report on the impact of Covid-19 on the drinks industry, noted that the optimistic market expectations for the second half of 2020 are that on-licence alcohol sales will be at most 50% of what is usual. The report

concluded that consumer demand will be lower after lockdown due to higher unemployment and reduced earnings and that it will likely be 2023 before the industry reaches pre-Covid labour market conditions.

Many of these businesses have remained closed throughout the pandemic, or are operating at a heavily reduced capacity. The Level 5 restrictions that have been implemented for an initial period of six weeks will have a further negative impact on these businesses. For example, non-essential retailers are not currently permitted to open, hotels cannot facilitate non-essential guests, and sporting matches are only permitted to continue behind closed doors and without crowds of supporters. Without a vaccine or a considerable fall in COVID-19 transmission levels, it is extremely likely that the government will continue to extend restrictions.

Because many ISIA's members' service the sectors most negatively impacted by the fallout of Covid-19, this in turn is already putting pressure on ISIA members, as demand for services has (obviously) reduced and there is pressure on costs (both in recovery of fees due, and in negotiating or renegotiating costs). There is obviously some commercial sensitivity around this, but we are advised by our members that as a direct result of the extraordinary pressure on their clients' businesses during the pandemic, a large number of their clients have actually requested cost reductions, as client revenues continue to decline month on month as a direct result of COVID-19. Our members' clients have reforecast budgets to implement a fresh wave of cost reductions, which they will seek to pass on partly to our members. This has a direct impact on our members and must be considered by the JLC. Our members simply cannot afford to absorb both client cost reductions and wage increases at this time. At this time, the goodwill previously afforded by clients to continue to pay security officers on some sites during the pandemic has now expired, and these clients are now seeking cost reductions.

While the ISIA has always supported the ERO process in principle, the failure to recognise and properly consider the current economic climate demonstrates an inexplicable determination by the JLC to increasing the cost of employment for employers who have been severely affected by the current COVID-19 crisis. This is of serious concern to the ISIA and its members. The security industry is a labour intensive industry, and as a result, is very exposed to wage induced cost increases.

Proposed pay increases

The 2017 ERO for the Security Industry, S.I. No. 231 of 2017, provided for pay increases of approximately 2.6%, once a year, for three years. The proposed ERO (as amended) seeks to provide for two pay increases during the first half of 2021, which amount to an overall increase of 7.1% in 2021, and a 3.2% pay increase in 2022. In light of the economic pressure faced by our members, and their clients, these types of pay increases are simply not tenable, and set a dangerous precedent for the future. Our members do not support any proposition that two pay increases be implemented within one calendar year.

Deferral of ERO

To protect against the effects of these new economic realities faced today by our members, and against the grim forecasts which are even more worrying, the members of the ISIA

formally request that the terms of the amended proposals be rejected and that the JLC defer the implementation of any new ERO for the security industry for at least the next 18 months, until we can better understand the economic fall-out resulting from COVID-19 and Brexit.

We believe it is prudent, appropriate and, for the future of the sector, vital, that the JLC revisits discussions around the proposed ERO and realigns timelines due to the current economic and commercial landscape. We understand the Labour Court has considered the draft proposals and has sent the proposals back to the JLC. We seek this opportunity for the views of ISIA members to be heard and considered by the JLC.

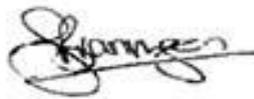
Should the JLC send further amended proposals to the Labour Court for consideration, we will be formally requesting an invitation to attend at any hearings to consider the draft ERO to allow us to elaborate on our representations made in this letter and previously and to answer any questions the Court may have in respect of our submissions.

We look forward to engaging with you and would like to thank you in advance for taking the time to give consideration to our concerns on this matter.

Sincerely,



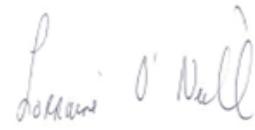
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cc The Labour Court
Leo Varadkar T.D., Tánaiste and Minister for Business, Enterprise and Innovation