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Federal Department of Foreign Affairs FDFA

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Activity report 2015/2016 on the implementation of the Federal Act on Private Security Services Provided Abroad (1 September 2015 – 31 December 2016)

1. Introduction

Private security sector activities have undergone considerable development to meet a growing need for private security services. For several years, these activities have been attracting media and public attention. Growing awareness of the risks posed by these types of services have prompted policy-makers to debate the issue and take initiatives to regulate this sector more effectively. In Switzerland, activities carried out by private security companies within the country's borders are regulated at the cantonal or inter-cantonal level (inter-cantonal agreement). At the international level, Switzerland has promoted and played a key role in the development of two initiatives aimed at promoting respect for international humanitarian law (IHL) and human rights: the Montreux Document of 17 September 2008¹ and the International Code of Conduct for Private Security Service Providers of 9 November 2010 (the Code of Conduct)².

Based on an analysis of the situation of the private security market in Switzerland, the Federal Council decided in 2010 to pass a federal act to regulate the services provided abroad by companies based in Switzerland. The Federal Council thereby took account of motion 10.3639, 'Authorisation and oversight system for companies operating in crisis or war regions', which was put forward by the Security Policy Committee of the Council of States on 6 September 2010. The Federal Act on Private Security Services Provided Abroad (PSSA)³ was adopted by the Federal Assembly on 27 September 2013. It entered into force on 1 September 2015.

The unit in charge of implementing the new act (the competent authority) is the Private Security Services Section of the Federal Department of Foreign Affairs' (FDFA) Directorate of Political Affairs. The competent authority is tasked first with applying the PSSA and handling the administrative procedures introduced by it and, second, with helping to formulate Switzerland's policy on private security services and with taking part in the national and international dialogue on norms and standards applicable to private security companies.

Art. 37 PSSA states that the competent authority submits an annual report on its activities to the Federal Council. This report is published. In light of the entry into force of the PSSA on 1 September 2015 and to bring the publication cycle into line with the calendar-year cycle, the FDFA has decided to draw up a first report on the period from 1 September 2015 to 31 December 2016, i.e. covering a 16-month period.

¹ <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/montreux-document.html>

² www.icoca.ch

³ SR 935.41

2. Key aspects of the PSSA

Following the entry into force of the PSSA, companies are required to declare to the competent authority all private security services abroad that they intend to provide from Switzerland (Art. 10 PSSA).

2.1 Aims

The aims of the PSSA are as follows: safeguarding Switzerland's internal and external security, realising Switzerland's foreign policy objectives, preserving Switzerland's neutrality and guaranteeing compliance with international law, in particular human rights and international humanitarian law (Art. 1 PSSA).

2.2 Scope of application

Under Art. 2, the PSSA applies to natural persons, legal entities and business associations which provide from Switzerland private security services abroad, which provide services in Switzerland in connection with private security services abroad, and which establish, base, operate or manage in Switzerland a company that provides such services or which exercise control from Switzerland over such a company.

2.3 Definitions

a. Private security service

Private security service means, in particular, the following activities (Art. 4, let. a PSSA):

1. the protection of persons in complex environments;
2. the guarding or surveillance of goods and properties in complex environments;
3. security services at events;
4. the checking, detention, or searching of persons, searching of premises or containers, and seizure of objects;
5. guarding, caring for, and transporting prisoners, operating prison facilities, and assisting in operating camps for prisoners of war or civilian detainees;
6. operational or logistical support for armed or security forces, insofar as such support is not provided as part of a direct participation in hostilities;
7. operating and maintaining weapons systems;
8. advising or training members of armed or security forces;
9. intelligence activities, espionage, and counterespionage.

Services in connection with a private security service, i.e. recruiting or training personnel for private security services and providing personnel, directly or as an intermediary, for a company that offers private security services (Art. 4, let. b., no. 1 and 2), are also subject to a declaration requirement.

b. Complex environment

Under the PSSA, private security services in the area of the protection of persons and the guarding or surveillance of goods and properties must be declared if they take place in a complex environment.

A complex environment is any area experiencing or recovering from unrest or instability due to natural disaster or armed conflict in terms of the Geneva Conventions⁴ and Additional Protocols I and II⁵; where the rule of law has been substantially undermined; and in which the

⁴ SR 0.518.12; 0.518.23; 0.518.42; 0.518.51

⁵ SR 0.518.521; 0.518.522

capacity of the state authority to handle the situation is limited or non-existent (Art. 1 of the Ordinance of 24 June 2015 on Private Security Services provided Abroad - OPSA)⁶.

2.4 Accession to the ICoCA

Under Art. 7 PSSA and Art. 2 OPSA, companies whose activities fall within the scope of application of the Act must join the International Code of Conduct for Private Security Providers' Association (ICoCA).

The ICoCA is a Swiss non-profit association which works to implement the governance and oversight mechanism established under the articles of the Code of Conduct. As a multi-stakeholder initiative, the Code of Conduct aims to promote compliance with principles based on human rights and international humanitarian law by companies active in the private security sector. The Code aims to establish a set of standards and mechanisms for internal governance and oversight in order to deter, identify, report, and remedy violations of human rights where necessary.

2.5 Statutory prohibitions

The PSSA prohibits companies from recruiting or training personnel in Switzerland for the purpose of direct participation in hostilities abroad or from providing personnel for this purpose (Art. 8 PSSA). It also prohibits companies from providing, from Switzerland, private security services if it may be assumed that the recipients will use the services in connection with the commission of serious human rights violations (Art. 9 PSSA).

2.6 Procedure

The PSSA provides for a two-stage procedure. The competent authority conducts an initial analysis of the declaration submitted in accordance with Art. 10 PSSA. Within 14 days of receipt of the declaration it notifies the company as to whether the activity may be carried out or gives cause for initiating a review procedure.

The competent authority initiates a review procedure when there are indications that one of the assumptions described in Art. 13, para. 1 PSSA is fulfilled, i.e. where there are indications to suggest that the declared activity could be in conflict with the aims set out in the Act (Art. 13, para. 1, let. a PSSA). As a basis for its decision the competent authority consults with the concerned authorities (Art. 13, para. 3 PSSA). It may request additional information from the company concerned and from the cantonal, federal or foreign authorities (Art. 28 and 29 PSSA). If the competent authority finds that the declared activity complies with the PSSA, it informs the company that the declared activity may be pursued. However, if the declared activity is in conflict with the aims set out in the PSSA, the competent authority prohibits the activity. The decision prohibiting the activity may be appealed before the Federal Administrative Court. The review procedure may take up to 30 days; this time limit may be extended as circumstances require (Art. 13, para. 4 PSSA).

Any company intending to carry out an activity that falls within the scope of application of the PSSA must provide the competent authority in particular with the following information: the nature, provider, and place of performance of the intended activity; such details on the principal and on the recipient of the service as are necessary for an evaluation of the situation; the personnel to be deployed for the intended activities, and the training they have received; an overview of the business sectors in which the company is active; proof of accession to the Code of Conduct; the identity of all persons bearing responsibility for the company.

⁶ SR 935.411

2.7 Protection of Swiss representations abroad

Section 7 of the PSSA regulates the federal authorities' contracting of companies to carry out protection tasks in a complex environment and lays down the minimum requirements companies must meet. These provisions deal in particular with internal oversight mechanisms, the training and further training of personnel, and their equipment (for further information, see also section 5 of this report).

3. Implementation

3.1 Information and awareness raising

During the first months of its activity, the competent authority ran a sustained information campaign to raise awareness among companies that might be affected by the PSSA. In order to establish initial contacts with the companies, presentations in Switzerland's three official languages were organised in August 2015 in Bern and Lugano. Since then, the competent authority has maintained an information-sharing network comprised of about 150 companies. This information campaign has also involved associations active in the sector, such as the Association of Swiss Security Service Companies (VSSU) for companies providing security services like the protection of persons, the guarding of goods or properties and security services, and SWISSMEM for industrial companies.

Information and training sessions on the implementation of the PSSA and the interfaces between the Act and other areas of activity of the federal government were organised with several federal services: the State Secretariat for Economic Affairs (SECO), the Federal Intelligence Service (FIS), the Office of the Attorney General of Switzerland (OAG), and the Federal Police Office (fedpol). Contacts were also made with cantonal and inter-cantonal bodies such as the Commission concordataire concernant les entreprises de sécurité (Inter-cantonal commission on security companies - CES).

3.2 Interpretation

When the PSSA entered into effect in September 2015, some companies expressed caution about its application, thinking that it did not apply to them but only to companies active in areas such as the protection of persons, the guarding of goods or properties, and security services. Another reason for this reluctance was that to some companies it was not clear whether the obligation to declare an activity also meant that the activity was presumed to be illegal.

The PSSA provides a general definition of the entities concerned and the activities covered by the Act (see Art. 4, let. a PSSA, quoted in section 2). Therefore, from the time the competent authority was established, and even before the PSSA entered into force, the authority set itself the goal of clarifying the definitions contained in the Act. It interpreted the provisions of the PSSA in order to clarify its scope of application and the definition of private security services. In preparation for the entry into force of the PSSA on 1 September 2015, the competent authority drew up a first edition of the *Guidelines to the Federal Act on Private Security Services Provided Abroad*⁷. The guidelines described the nine kinds of private security services itemised in the PSSA as well as related declaration criteria. They also provided practical guidelines on the declaration requirement and review procedure.

At the same time, together with the SECO a single coordination and declaration procedure was set up for private security services contracted abroad in the areas of war materiel, specific military goods and dual-use goods. The *Aide-mémoire relatif à la LPSP (PSSA Information Sheet)*⁸, which was also published by the competent authority, contains practical information on this procedure.

To address concerns about the application of the PSSA, the competent authority had almost 100 individual meetings with about 60 companies. These discussions enabled the competent authority to assess to what extent these companies' activities were covered by the PSSA. As a result there was an increase in the number of declarations, the instruments to implement the PSSA were optimised and the Guidelines to the Federal Act on Private Security Services

⁷ https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/sicherheitspolitik/wegleitung-BPS-ausland_EN.pdf

⁸ https://www.eda.admin.ch/content/dam/eda/fr/documents/aussenpolitik/sicherheitspolitik/merkblatt-verhaeltnis-bps_FR.pdf

Provided Abroad and the Aide-mémoire relatif à la LPSP (PSSA Information Sheet), which were revised and republished in April 2016, were improved.

3.3 Training standards for private security company personnel

The PSSA stipulates that the personnel of companies covered by the Act must possess the required training for the intended activity (Art. 14, para 2, let. b). To address the companies' requests for clarification about this requirement, training standards relating to international humanitarian law and human rights were developed for private security company personnel and submitted to interested circles for consultation. The standards, which are organised in modules, serve as a guideline for companies to train their staff based on their specific areas of activity. They will be published during the second quarter of 2017 and will serve as a reference for the companies.

3.4 Projects undertaken by the competent authority

a. Early warning system

In order to speed up the competent authority's process for assessing the declarations, an early warning system was developed to determine the risks associated with the various services covered by the PSSA in every country in the world. Thanks to clearly defined information-gathering procedures, this system makes it easier to identify situations that could come into conflict with the aims set out in Art. 1 or with the prohibitions set out in Art. 8 and 9 of the PSSA.

b. IT tools

An application to manage the procedures set out in the PSSA was developed and launched in the summer of 2015. The Ordinance of 12 August 2015 on the Data Protection System for Private Security Services (PPSSO)⁹ entered into force on 1 September 2015. The corresponding internal processing regulation was adopted on 22 September 2015. Minor improvements to this offline application are made on a regular basis.

3.5 Contacts with the media

During the period under review, the competent authority was contacted on a dozen occasions by Swiss print and electronic media outlets. Their questions were either about the implementation of the PSSA in general or about specific cases involving Swiss companies active in the sector.

3.6 Engagement at the international level

At the international level, the competent authority takes part in dialogue on national and transnational standards for private military and security companies and on oversight mechanisms relating to their activities. For example, the authority took an active part in the ICoCA Annual General Assembly in 2015 and 2016. It supported efforts to put in place procedures for monitoring the activities of the ICoCA's member companies and a mechanism for handling complaints that companies had breached the principles of the Code of Conduct. In addition it supported the Association's efforts to define the membership procedure in a way that makes the Association accessible to the largest possible number of companies.

The competent authority also participated in the second meeting of the Montreux Document Forum. The Forum aims in particular to support the implementation of the Montreux Document by fostering dialogue on best practices, lessons learned and challenges in regulating private security companies. It also seeks to encourage more states and

⁹ SR 935.412

international organisations to promote the content of the Montreux Document. The competent authority also participated in the fourth and fifth sessions of the UN working group tasked with considering the possibility of drawing up an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies.

4. Statistics covering the period from 1 September 2015 to 31 December 2016

4.1 Figures

Between 1 September 2015 and 31 December 2016, 34 companies submitted a declaration to the competent authority in accordance with Art. 10 PSSA.

In 10 instances, the declarations only stated the company's status and did not indicate specific activities. In 306 cases, the declarations concerned the provision of private security services.

As of 31 December 2016 the declarations submitted to the competent authority for private security services as defined in Art. 4, let. a PSSA break down as follows:

| | | |
|---|---|-----|
| 1 | protection of persons in complex environments | 103 |
| 2 | guarding or surveillance of goods and properties in complex environments | 11 |
| 3 | security services at events | 0 |
| 4 | checking, detention, or searching of persons, searching of premises or containers, and seizure of objects | 18 |
| 5 | guarding and caring for prisoners, operating prison facilities, and assisting in operating camps for prisoners of war or civilian detainees | 0 |
| 6 | operational or logistical support for armed or security forces | 18 |
| 7 | operating and maintaining weapons systems | 14 |
| 8 | advising or training members of armed or security forces | 27 |
| 9 | intelligence activities, espionage, and counterespionage | 115 |
| | TOTAL | 306 |

During the period under review, the competent authority did not receive any declarations concerning private security services covered by Art. 4, let. b PSSA.

The authority initiated six review procedures in accordance with Art. 13 PSSA. In two instances, the company was allowed to pursue the declared activity. In two further instances, the companies withdrew their declaration following the opening of the review procedure and decided not to pursue the planned activity. In one instance, the competent authority prohibited the declared activity. One case was still pending at the end of the period under review.

The case where the activity was prohibited involved logistical support for security forces. The declared activity was prohibited because of the risk that it would be used by the country in question to commit human rights violations (protection of privacy rights and freedom of speech). No appeal was made against the competent authority's decision.

4.2 Trends

The figures given in section 4-1 show that the declarations submitted to the competent authority by the end of 2016 mainly fall into three groups of activities. Approximately one-third of the declared activities involve the protection of persons and the guarding or surveillance of goods and properties in complex environments (Art. 4, let. a, no. 1 and 2 PSSA). Private intelligence activities represent another substantial segment. A third significant group concerns activities related to the export and use of war materiel and dual-use goods and to the expertise in the military sector in general. This third group involves services in the areas of logistical support for armed or security forces, operating and

maintaining of weapons systems and advising or training members of armed or security forces (Art. 4, let. a, no. 6 to 8 PSSA).

The specific characteristics of the companies can differ significantly from one area of activity to another. Thus, companies performing contracts in the area of the protection of persons or the guarding of goods provide services that correspond to the definition of a private security company set out in the Code of Conduct¹⁰. The companies active in the private intelligence sector are in most instances investigation and detective agencies. Most of the companies providing services in the field of logistical support for armed or security forces, operating and maintaining weapons systems and advising or training members of armed or security forces are industrial companies in the war materiel and dual-use goods sector.

Activities in the field of the protection of persons and the guarding or surveillance of goods and properties in complex environments are carried out by a limited number of companies, most of which are small. The geographic location of these companies and the volume of their activities vary. Altogether it appears that their operations in complex environments are mostly sporadic and irregular. During the period under review, some companies in this category remained on operational standby while they planned future operations. It can therefore not be excluded that in the next few years more companies will be active in this sector.

The competent authority was contacted by foreign companies wishing to establish their main office in Switzerland. It can be inferred from this that for these companies compliance with the PSSA does not constitute a prejudice and that notwithstanding this law Switzerland offers them a comparative advantage over their current country of domicile.

During the period under review, the competent authority did not receive information about companies operating in conflict zones or complex environments whose services would constitute legal breaches under articles 8 and 9 of the PSSA. In two instances, the competent authority intervened causing the company to cease providing services that seemed on first examination to be related to the recruitment and training of staff in Switzerland for the purpose of direct participation in hostilities abroad (prohibited under Art. 8 PSSA). In both cases, the services were at the initial implementation stage (they had been advertised in the press) and were highly amateurish in nature.

No decisive geographic trends can be identified at this time.

¹⁰The Code of Conduct defines security services as “guarding and protection of persons and objects, such as convoys, facilities, designated sites, property or other places (whether armed or unarmed), or any other activity for which the Personnel of Companies are required to carry or operate a weapon in the performance of their duties”.

5. Contracting of security companies by federal authorities for protection tasks abroad

5.1 New requirements imposed by the entry into force of the PSSA

The entry into force of the PSSA, the OPSA and the revised Ordinance of 24 June 2015 on the Use of Private Security Companies by the Federal Government (OUPSC)¹¹ has resulted in new requirements for the private security service providers contracted by the federal authorities abroad. This affects the guarding of chanceries, offices, residences, official lodgings and other buildings where the federal government or representation contracts services. Security escort services may also be affected. The requirements differ depending on whether or not the representation is located in a complex environment. If the representations are located in a complex environment or activities take place in such an environment, the contracts with private security services providers fall under the scope of application of the PSSA and the OPSA. However, the use by federal authorities of private security services providers in a context other than a complex environment is governed by the provisions of the OUPSC.

Private security companies contracted to carry out protection tasks in complex environments must comply with the following legal requirements:

- Fulfilment of existing requirements with regard to reputation, training, equipment, internal oversight etc.
- Membership in the ICoCA

The FDFA is also obliged to encourage companies to join the ICoCA in regions where no company has done so.

5.2 Information and support for Swiss representations

On 31 July 2015, the FDFA's Crisis Management Centre (KMZ) wrote to the representations abroad informing them of the legal changes that took effect on 1 September 2015. It also referenced the possibility of extending contracts in effect before the beginning of September 2015 in accordance with the old system, as a provisional solution.

Since then, the representations abroad have been instructed to inform the security companies that Swiss representations located in complex environments abroad may now only use private security service providers that are members of the ICoCA. In a context other than a complex environment it is recommended that representations also choose private security service providers that are members of the ICoCA.

In cooperation with the competent authority and the KMZ, the new model contracts which are obligatory for contracting security companies were adapted to the new legal provisions and published on the intranet in February 2016 in five languages together with a detailed guide to the model contract.

5.3 Operational consequences for Swiss representations

Together with the KMZ, the competent authority evaluates the list of complex environments on a quarterly basis, taking into account recent developments in the situation in various countries and regions. Experience in the first 16 months has shown that the new legal

¹¹ SR 124

provisions have resulted in additional work and costs for Swiss representations in only a small number of locations. In only one location in Central America which had been classified as a complex environment no private security company had joined the ICoCA despite repeated efforts to explain this requirement. That said, the security company that has been working for the Swiss representation until now has declared its intention to join the ICoCA within one year. In another case in the Caribbean, the security company contracted by the Swiss representation was persuaded to apply for ICoCA membership. In a country in the Middle East, discussions about joining the ICoCA are under way with the NGO that organises security services for the small number of SDC business field trips.

In the other locations in complex environments, the new legal requirement for FDFA representations has so far had a less pronounced impact on the choice of private security company. Depending on the country or the country's region, representations either rely on protection provided by state security forces, or they employ their own security personnel, or they have identified security service providers that are already ICoCA members. It should be noted here that because the transitional periods provided for by the OPSA are still partly in effect, not enough practical experience has been gained regarding the consequences of the new legal provisions for Swiss representations in complex environments.

6. Conclusions and outlook

The competent authority gives a positive assessment of the first 16 months of the PSSA. The importance of the oversight mechanism for private security services abroad introduced by the PSSA and the pioneering role played by Switzerland in this field are widely recognised. Many companies have explicitly acknowledged the need for market regulation and are cooperating with the competent authority to this end. By adopting the PSSA, Switzerland has provided an innovative solution to the complex situation created by the activities of private security companies abroad.

The information and awareness-raising efforts carried out by the competent authority for the companies have begun to bear fruit. After an adjustment phase, several companies have set up internal mechanisms to declare their activities in order to fulfil their legal obligations.

In 2017 the competent authority intends to give more visibility to the PSSA, its objectives and requirements to ensure that it is better understood and accepted by all stakeholders. The competent authority will continue to clarify the legal bases and develop its administrative procedures. At the same time, it will consolidate the working tools and simplify the processes adopted during the last 16 months.

Furthermore, the competent authority has set itself the goal of contributing to better governance in the private security sector both in Switzerland and internationally. To this end, the competent authority will continue to support the steps taken by the federal government to provide better regulation of the activities of private security companies. Drawing on Switzerland's pioneering experience and expertise in soft law, it will work towards the adoption of rules and standards by other countries and international organisations.

Private security is a rapidly changing sector. The competent authority intends to respond to new challenges brought on, for example, by the emergence of new technologies. Thanks to its practical experience as the authority charged with implementing the PSSA, it will help provide a current overview of the private security sector, its dynamism and its challenges. With a view to ensuring compliance with applicable law, it will draw attention to the emergence and development of new sectors and new forms of service provision in this area.

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