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State Secretariat
International Security Division

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2022 annual report on the implementation of the Federal Act on Private Security Services provided Abroad (1 January – 31 December 2022)

1. Introduction

Russia's military aggression against Ukraine has brought war back to Europe. It strongly shaped Switzerland's foreign policy in 2022. In this context, a multitude of peace and security policy issues have become more topical. The use of private military and security companies in conflicts also became a focus of public attention worldwide due to this war of aggression. The extensive reporting on such use covered private actors' engagement in Ukraine in particular. The authority competent for implementation of the Federal Act on Private Security Services Provided Abroad (PSSA)¹ has been monitoring these developments closely and the matter continues to be a source of concern. Regarding the PSSA's implementation, the most important developments in 2022 were the audit conducted by the Swiss Federal Audit Office (SFAO) and, as in 2021, the effects of the revision of the Ordinance on Private Security Services provided Abroad (OPSA)².

The PSSA's aim is to contribute to safeguarding the internal and external security of Switzerland, realising Switzerland's foreign policy objectives, preserving Swiss neutrality, and guaranteeing compliance with international law (Art. 1). To this end, it stipulates that private security services provided by Swiss companies abroad are to declare their activities and, if necessary, be subject to a review procedure.³

According to Article 3 of the OPSA, the FDFA's State Secretariat is competent for implementing the PSSA. The Export Controls and Private Security Services Section (ECPS) of the International Security Division (ISD) is responsible for the operational implementation of the Act. The ECPS' task is to conduct the administrative procedures provided for by the law, to help develop Swiss policy regarding private security services, and to participate in the debate on rules and standards for private security service providers at national and international level. Article 37 of the PSSA stipulates that the 'competent authority', *i.e.* the ECPS, shall prepare a report on its activities, to be submitted to the Federal Council each year. The report is published on the FDFA's website.

Since it was reorganised in March 2020, the ECPS has also been responsible for the processing of the applications in the area of export controls that the State Secretariat for Economic Affairs (SECO) submits for consultation. In close collaboration with the SECO, the ECPS also helps to prepare political briefs in the area of export controls and engages in national and multilateral dialogue in this regard. Operationally, approximately 310 cases were submitted to the ECPS in 2022. These cases involved the export of goods under the War Material Act (WMA)⁴ and the Goods Control Act (GCA)⁵.

¹ SR 935.41.

² SR 935.411.

³ Activities in the following two areas are prohibited by the PSSA: Firstly, it explicitly prohibits direct participation in hostilities abroad (Art. 8 PSSA). Secondly, it prohibits the provision of private security services or services in connection therewith, 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).

⁴ SR 514.51.

⁵ SR 946.202.

2. Activities in 2022

2.1 Assessment of the implementation of the PSSA by the Swiss Federal Audit Office⁶

During the first half of 2022, the ECPS worked with the Swiss Federal Audit Office (SFAO) with regard to the SFAO's assessment of the efficiency of the PSSA's implementation. For two months, the SFAO focused on analysing the type of procedure chosen by the FDFA to implement the Act – assessing whether the latter had been deployed in such a way as to achieve the desired result in the most efficient manner. The SFAO also focused on the ECPS' implementation of this procedure, assessing whether it is sufficient and effective, whether it allows all relevant cases to be correctly identified, and whether it ensures that the review of declarations is of high quality. As part of this assessment, the ECPS provided the SFAO with all the material necessary for the latter's evaluation, including all the documentation of the origins of the PSSA procedures, explaining the SFAO ECPS-internal processes and engaging in numerous discussions with SFAO experts. At the end of the assessment period, the SFAO determined that the ECPS had designed the declaration and review procedures properly and had been applying them effectively.

As part of its assessment, the SFAO found that the limited scope of the control and monitoring instruments at the ECPS's disposal creates the risk of the companies not declaring their services or of the services offered differing from those declared. To mitigate this risk, the ECPS relies on effective cooperation with the Federal Intelligence Service (FIS), the consulates, the embassies, the defence attachés, and the Office of the Attorney General of Switzerland. Although this cooperation was deemed currently good, the SFAO underscored the necessity of the existing collaboration with the FIS being improved and deepened, particularly as regards response deadlines and the flow of information. That being said, it has to be noted that while the Federal Act on the Intelligence Service does not explicitly require the FIS to gather information regarding private security services, the Act does require the FIS to gather information regarding controls on exports of nuclear, biological and chemical weapons and of radioactive substances, war materiel and other armaments. The ECPS and the FIS are discussing how to jointly improve processes and the use of resources in the future. These discussions include an assessment of the existing legal basis.

The SFAO commended the ECPS' commitment to prevention, *i.e.* its work to inform and raise awareness among private security companies. Furthermore, the SFAO underlined the importance of direct contact with the market and the ECPS' efforts to expand international cooperation and exchanges with other countries' regulatory authorities.

Finally, the SFAO highlighted the fact that the end of the life cycle of the application *Information System Private Security Companies*, a system used to document the procedures and archive the documents submitted by said companies, represents an opportunity to analyse the potential to boost efficiency as regards digitalisation. In agreement with this SFAO recommendation, the State Secretariat emphasised the fact that it had, in 2021, already identified the need for the application to be updated. Over the course of 2023, the ECPS will – based on the identified need – take stock of the needs so as to be able to develop a new application that allows the declaration procedure's efficiency to be improved.

The competent authority shares the SFAO's conclusions and agrees with its recommendation.

2.2 National-level activities

After work in 2021 was focused on implementing the revision of the OPSA, the year under review saw the ECPS still confronted with numerous issues related to the implementation of the new provisions of the revised ordinance. The revision's objective – to resolve the remaining consistency issues regarding the handling of services that fall equally within the scope of the PSSA and the WMA or the GCA, was further implemented. A great number of companies still had difficulty assessing whether a planned activity met the new, more precise definition of private security services or whether it fell under the exemptions from the declaration requirement stipulated in Article 8a of the OPSA. Given this difficulty, many

⁶ https://www.efk.admin.ch/images/stories/efk_dokumente/publikationen/_sicherheit_und_umwelt/beziehungen_im_ausland/21054/21054BE-Endqueltige-Fassung-V04.pdf

companies decided that, in case of doubt, they would prefer to continue declaring the activity in question to the ECPS (*cf.* also section 3.4 of this report).

In the year under review, the ECPS continued to provide information and raise awareness among companies that could potentially fall under the scope of the PSSA. It established and cultivated contact with companies active in various relevant areas (protection, training, private intelligence, new technologies) in order to assess their activities, to determine the extent to which they might be affected by the PSSA and to explain the legal framework and the resulting obligations.

In the year under review, the ECPS conducted several training and informative activities related to the PSSA. Within the FDFA, training efforts focused in particular on the staff consulted as part of the administrative procedures set out in the PSSA. Externally, a representative of the ECPS gave a guest lecture in 2022 on Swiss security service providers in international operations as part of the national security law CAS of the Zurich University of Applied Sciences. Most of the participants came from various security-related areas of public administration at all three levels of state.

In order to optimise the information available to the public and in particular to PSSA-affected companies, the ECPS completely revised its website in 2022. On the one hand, the website was updated further in line with the revised ordinance. On the other, information was added regarding the reorganisation of the ECPS.

In the context of the war in Ukraine, the ECPS was repeatedly confronted with various issues, in particular regarding the scope of the PSSA and the Ordinance of 4 March 2022 on measures in connection with the situation in Ukraine.⁷

2.3 International-level activities

At the international level, the ECPS has, from the start, been taking part in dialogue on national and international standards for private military and security companies and on oversight mechanisms relating to their activities. After two years that were challenging for international meeting planning due to the COVID-19 pandemic, planning returned to normal in 2022.

Particularly noteworthy is the participation of the ECPS in the third session of the intergovernmental working group of the UN Human Rights Council in May 2022. The mandate of this open-ended intergovernmental working group on private military and security companies is to elaborate an international regulatory framework relating to the activities of such companies, without pre-judging whether the framework is to be legally binding or not. The aim is to protect human rights, ensure compliance with international humanitarian law and ensure accountability for violations and abuses in connection with activities of PMSCs. The third session focused on the discussion of a first draft of a new UN document that contains various elements that could be included in a possible international regulatory framework. The next session was scheduled for April 2023.

In the year under review, the ECPS also established informal contacts to strengthen intergovernmental exchange between national regulators regarding private security services. The aim is to gain a deeper understanding of the regulatory framework and developments in other countries, to share common challenges and best practices with regard to the national regulation of private security services, and to establish a network of points of contact. The ECPS held the first virtual bilateral talks with foreign regulators in 2022. These talks will be continued in 2023. The first is to clarify how great the need is for regular intergovernmental exchanges between national regulators in the domain of private security services. The second step will focus on clarifying the appropriate scope of and framework for such intergovernmental cooperation. One possibility already being discussed within the FDFA is to integrate these plans into the already existing Montreux Document Forum.

In parallel, the ECPS took part in other international events in 2022:

- In September, within the framework of the 51st session of the UN Human Rights Council, the ECPS took part in an online meeting of a working group on the use of mercenaries as a means of violating human rights.

⁷ SR 946.231.176.72.

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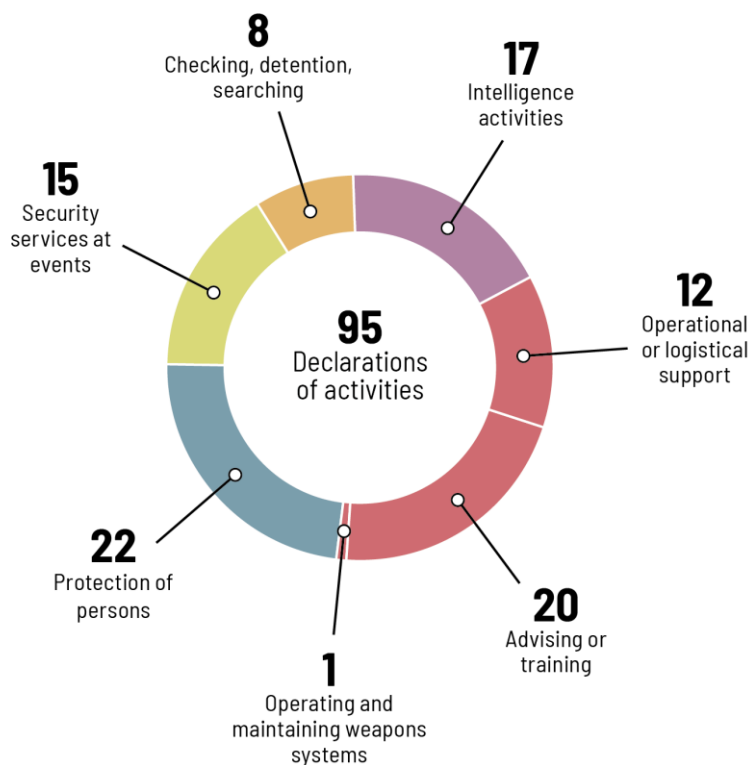
- In December, the Geneva Centre for Security Sector Governance (DCAF), with support from the FDFA, organised a workshop on the subject of private security services and surveillance. The ECPS was able to exchange views on this subject with foreign regulators at the workshop.
- Finally, the ECPS attended the International Code of Conduct Association's (ICoCA's) annual general assembly, which brought together ICoCA-participating states. The question of how the association can position itself and evolve in the future was at the forefront of the discussions.

Lastly, the work of the ECPS in the second half of 2022 was shaped by preparations for Switzerland's seat on the UN Security Council. As a unit specialised in the regulation of private security services abroad, the ECPS was able to contribute its knowledge to work done in the context of conventional private military and security companies and to provide its technical insights on actors such as the Wagner Group.

3. Statistics

3.1 Declaration requirement. Figures for different services in 2022

Between 1 January and 31 December 2022, 16 companies submitted 95 declarations to the ECPS regarding planned activities. The declarations submitted for 2022 to the ECPS for private security services under Article 4 let. a of the PSSA as per 31 December 2022 break down as follows:



No activities related to guarding goods and properties.

No activities related to guarding, caring for prisoners, or operating prison facilities.

See section 3.5 for a table and explanation of how the number of declarations has developed since the entry into force of the PSSA.

Declarations mainly fall into four groups of private security services:

Companies that provide services for armed or security forces in the areas of operational or logistical support, of the operation and maintenance of weapons systems, and of advice for or training of members of armed or security forces (Art. 4 let. a para. 6–8 PSSA, red segments). The majority of these services are provided by companies within the industrial sector. Training also includes specialised consultants, for example in the area of police training. Some of the activities are no longer subject to the reporting requirement as of 1 January 2021 due to the new provisions of the OPSA (Art. 1 let. a/b/c, Art. 8a OPSA). Please refer to section 3.5 for figures on the impact of these new provisions.

Companies fulfilling contracts connected with the protection of persons and the guarding or surveillance of goods and properties (Art. 4 let. a para. 1–2 PSSA, blue segment). These companies are private security companies in the traditional sense and generally small or medium sized. They provide services corresponding to the definition of 'security services' set out in the *International Code of Conduct for Private Security Service Providers (ICoC)*.⁸

Companies active in intelligence (Art. 4 let. a para. 9 PSSA, purple segment). These companies are essentially investigative agencies – mainly operating in the financial sector, particularly banking – that provide private intelligence services.

⁸ <https://icoca.ch/the-code/>

Companies providing security services at events. In contrast to the previous year, in 2022 the ECPS registered declarations for such services (Art. 4 let. a para. 3 PSSA, green segment). All of these declarations came from the same company and concerned sporting events. Declarations are only required if these services are provided outside the territory of the European Union and the European Free Trade Association.

3.2 Review procedures

In 2022, the ECPS initiated two review procedures in accordance with Article 13 PSSA (2021: 3; 2020: 3; 2019: 26; 2018: 16; 2017: 18; 2015/2016: 6). In one case, the service declared was allowed to be carried out. In another case, the procedure was still in progress at the end of the year.

No activities were prohibited in 2022 following a review procedure.

3.3 Sanctions

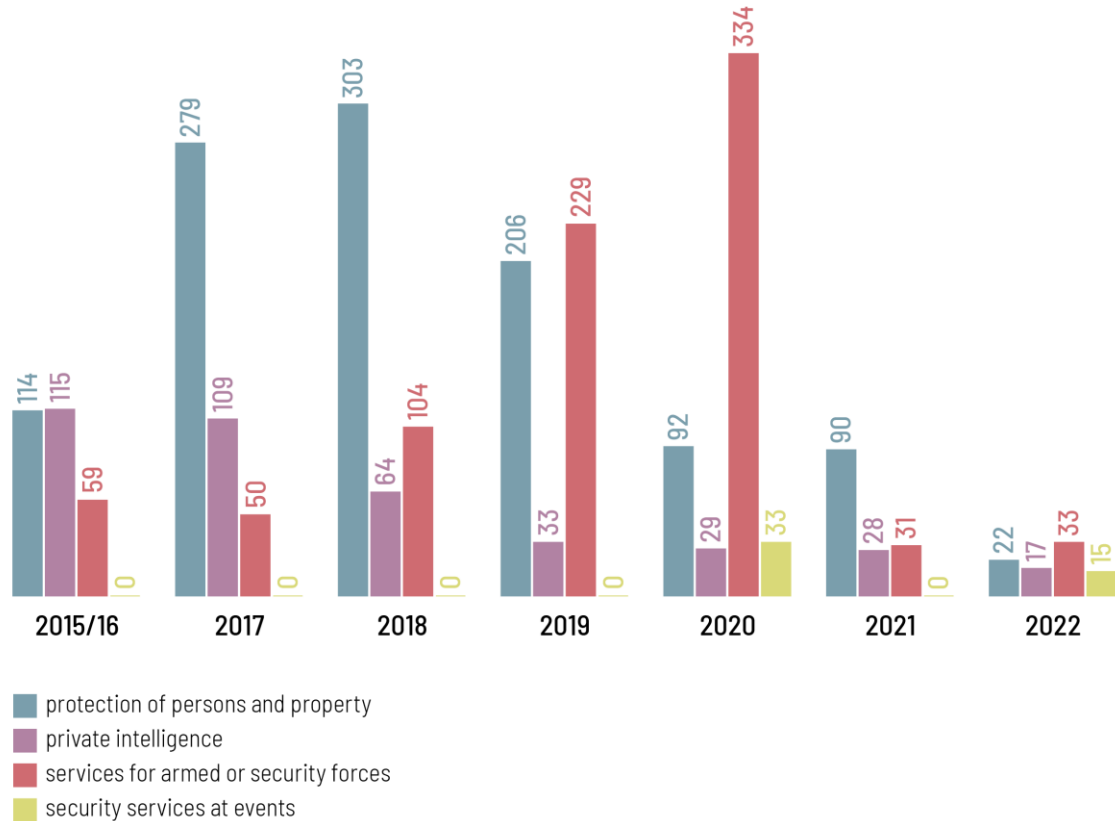
As in previous years, no sanctions under Articles 21–27 of the PSSA were imposed by the Office of the Attorney General of Switzerland. Nevertheless, the ECPS did issue a denunciation at the end of the year concerning an offence against the requirement to cooperate. The procedure was still in progress at the end of the year.

3.4 Reported activities that do not need to be declared (based on Article 1a/b/c or Article 8a OPSA)

In the year under review, 78 activities were submitted for assessment to the ECPS, which concluded that the reported activities did not need to be declared under the PSSA. Some of these activities did not correspond to the new, more precise definition of operational and logistical support for armed or security forces (Art. 1a OPSA), operation and maintenance of weapons systems (Art. 1b OPSA) or advice or training of members of armed or security forces (Art. 1c OPSA), as formulated in the revised Ordinance. The other activities concerned the exemption from the declaration requirement under Article 8a OPSA, which was also introduced under the revision of the Ordinance and came into force on 1 January 2021.

As in the previous year, the large number of reported activities that did not actually need to be declared can be explained by the fact that several of the companies concerned wanted to ensure their compliance with the new legal framework, which is why they consulted the ECPS to find out whether the planned activities were subject to the new OPSA provisions.

3.5 Main groups of services: trends



The table above illustrates trends in reporting in the main groups of services for the years 2015–2022⁹.

The number of declarations for services under Article 4 let. a para. 1–2 PSSA, *i.e.* the protection of persons, as well as the guarding of goods and properties in complex environments (blue segment), dropped sharply compared to the previous year. A large share of this fall in the volume of declared activities can be attributed to the fact that a company active in the Middle East shut down its operations over the course of 2022.

The number of private intelligence services (Art. 4 let. a para. 9 PSSA, purple segment) was lower in 2022 than in 2021. However, the ECPS has reason to suspect that some of these activities have not been declared and that the volume is higher. For this reason, it regularly reaches out to several dozen companies specialised in private intelligence in order to detect any significant changes in the industry. The ECPS is also in ongoing contact with the Federal Intelligence Service. However, as the SFAO notes in its report, the ECPS needs more information in order to better monitor this sector.

The number of declarations for services for armed or security forces (Art. 4 let. a para. 6–8 PSSA, red segment) remained more or less the same as the year before.¹⁰

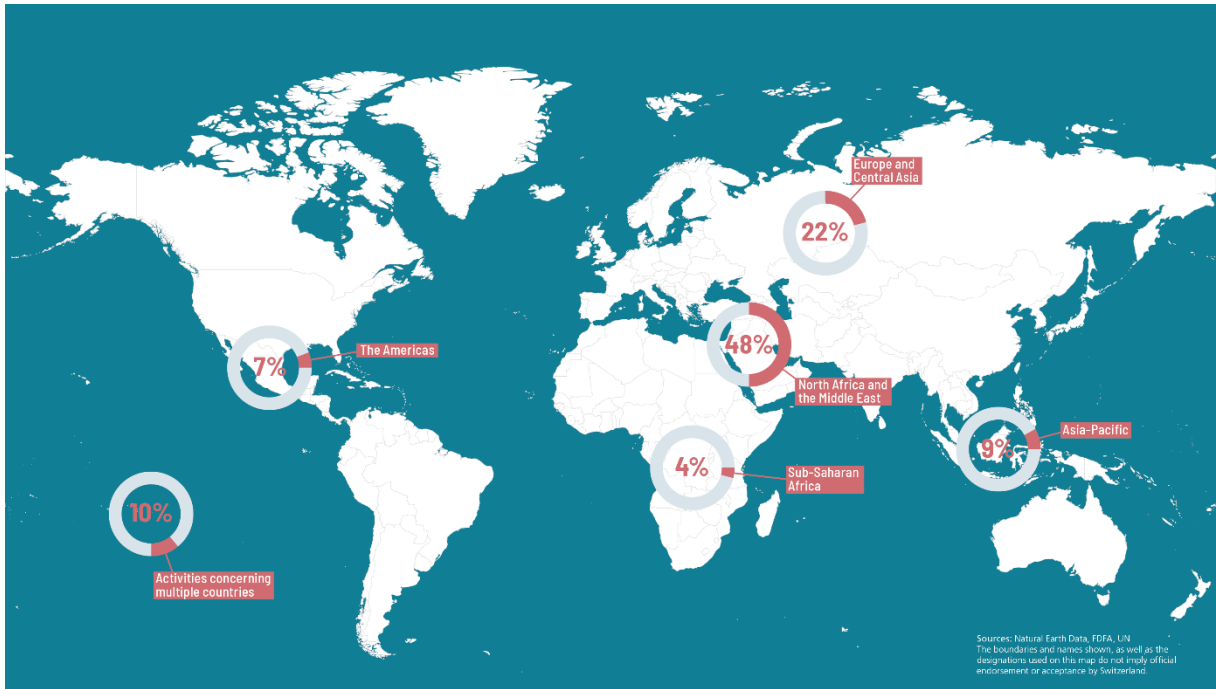
The increase in declarations connected with security services at events (Art. 4, let. a, para. 3 PSSA, green segment) is due to the activities of a company that operates in the motor sport sector.

⁹ As the PSSA came into force on 1 September 2015, the figures for 2015 (1 September to 31 December) are shown together with those for 2016.

¹⁰ After the revision of the PSSA took effect on 1 January 2021, the number of declarations for these kinds of services dropped sharply, as many services did not fall under the delaratory requirement anymore (see 2021 Annual Report).

3.6 Geographical distribution of activities (1.9.2015–31.12.2022)

In terms of geographical distribution, the activities subject to the PSSA continue to be mainly concentrated in North Africa and the Middle East, where approximately half of the activities declared since the Act came into force were carried out, in addition to Europe and Central Asia.



4. Federal authorities' use of security companies for protection tasks abroad

The PSSA stipulates that Swiss representations located in a region categorised as a complex environment can only hire companies providing security services that are members of the International Code of Conduct Association (ICoCA).

The FDFA is active in encouraging private security providers operating in areas with few or no ICoCA members to join the Association. It also takes a proactive approach to informing the representations about potential service providers and that cooperation in complex environments is only possible for ICoCA-certified companies. This approach has prompted several companies to join the Association in recent years.

Representations located in a region not categorised as a complex environment are also advised to give preference to companies with ICoCA membership when availing themselves of security guard services.

The ECPS, Crisis Management Centre (KMZ) and FDFA Contracts, Procurement, Compliance Division also provide support and advice to foreign representations as well as other federal units or delegations that use private security services abroad. In addition, a number of tools are available and updated on an ongoing basis, such as the Guidelines on the procurement of security guard services by FDFA representations, multilingual templates for contracts and service instructions that meet the legal requirements, as well as detailed explanations of the documents.

During its regular security missions abroad, the KMZ also provides support to the representations by ensuring that the hired security service providers are meeting their contractual obligations, particularly in terms of training and equipment. As regards training, the KMZ develops training modules that are used in the context of security missions.

As per 2023, the FDFA is rolling out a new, digital security and crisis management platform with a separate security services module. Going forward, this will ensure, among other things, optimal information sharing and a certain level of standardisation in the management of private security companies abroad.

5. Conclusion and outlook

Despite the major challenges the competent authority was confronted with in 2022, particularly due to foreign policy developments, it draws a positive balance for the year: On the one hand, the SFAO's audit showed that the procedural concept developed is effective and that the quality of the processing of the declarations is assured. The few suggestions for improvement are helpful for the ECPS, because they show where there is potential to further increase efficiency and effectiveness. On the other hand, by reaching out to companies, the ECPS was able to further develop their awareness of the legal framework and the associated obligations.

The issue of private military and security companies will not lose its relevance in the coming year. As the thematically responsible unit within the Confederation, the competent authority will continue to follow these developments closely and work at all levels to improve the regulation of these actors.