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Federal Department of Foreign Affairs FDFA
Directorate of Political Affairs DP
Division for Security Policy

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2017 annual report on the implementation of the Federal Act on Private Security Services Provided Abroad

(1 January 2017 – 31 December 2017)

1. Introduction

The private security sector has undergone considerable growth in recent decades. The sector is also remarkably dynamic. In addition to activities that have often made the headlines, such as supporting armed forces and security operations and the protection of persons, new types of services have appeared in recent years, linked for example to the use of advanced technologies. The types of companies providing private security services have also changed. Security companies in the traditional sense have been joined on the market by other actors such as consultants and industrial firms. The vitality of the sector is a challenge for the states and organisations that seek to regulate it.

Growing political awareness of the risks posed by these types of services has prompted policy-makers to debate the issue and take initiatives to regulate this sector more effectively. At an international level, Switzerland has promoted and played a key role in the development of two initiatives aimed at strengthening compliance with 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 (Code of Conduct).²

The Federal Act on Private Security Services Provided Abroad (PSSA)³ entered into force on 1 September 2015. The PSSA aims to safeguard Switzerland's internal and external security, achieve Switzerland's foreign policy objectives, preserve Switzerland's neutrality and guarantee compliance with international law (Art. 1 PSSA). To this end, it makes the provision of private security services abroad by Swiss companies subject to supervision through mandatory declaration and, where appropriate, review procedure.

The law completely prohibits two scenarios. It prohibits direct participation in hostilities (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).

The unit in charge of implementing and interpreting the new federal act (the competent authority) is the Private Security Services Section (PSSS) within the Directorate of Political Affairs (DP) of the Federal Department of Foreign Affairs (FDFA). 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 stipulates that the competent authority submit an annual report on its activities to the Federal Council. This report is published on the website of the FDFA. The current report covers the period from 1 January to 31 December 2017.

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. Implementation of the PSSA

The competent authority is responsible for implementing the law and handling the administrative procedures introduced by it.

2.1 Information and awareness raising

During the year under review, the competent authority continued its information campaign to raise awareness among companies that might be affected by the PSSA. As before, 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 public order services.

The competent authority has consolidated the exchanges it established with various federal government services such as the State Secretariat for Economic Affairs (SECO) and a certain number of cantonal police services. Furthermore, contacts have been established with the Reporting and Analysis Centre for Information Assurance MELANI in order to clarify cybersecurity-related questions and to evaluate, if and to what extent services in this domain could be concerned by the PSSA.

To gain access to more companies and inform them of their obligations in connection with the application of the PSSA, the competent authority took part in the third seminar on export control organised by SECO. It presented the PSSA and its aims in addition to the processes through which it collaborates with SECO.

2.2 Interpretation

The PSSA provides a general definition of the entities concerned and the activities covered by its scope of application (see Art. 2 and Art. 4 let. a PSSA). 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 federal act. During the year under review, the competent authority continued to consolidate its practices with regard to the scope of application of the PSSA and the concept of private security services.

The *Guidelines to the PSSA* clarify the definitions contained in the federal act and provide instructions on the declaration and the review procedure of activities targeted by the law. An update of these Guidelines was launched in 2017. The third edition will be published on the webpage of the competent authority⁴ in the course of 2018.

The agreement between the Directorate of Political Affairs and SECO regarding the coordination and single declaration procedure set up jointly with SECO for private security services contracted abroad in the areas of war materiel, specific military goods and dual-use goods has been revised. The *Aide-mémoire relatif à la LPSP* (PSSA Information Sheet)⁵, published by the competent authority, contains practical information on this procedure.

The competent authority was in contact with several new companies whose activities were likely to fall within the remit of the PSSA. It came to the conclusion that the law would not be applicable to some of these companies. For the rest of the companies, it concluded that the PSSA was applicable to their activities, or could become applicable to their activities in future.

⁴ <https://www.eda.admin.ch/eda/en/home/foreign-policy/security-policy/bundesgesetz-ueber-die-im-ausland-erbrachten-privaten-sicherheit.html>

⁵ https://www.eda.admin.ch/content/dam/eda/fr/documents/aussenpolitik/sicherheitspolitik/merkblatt-verhaeltnis-bps_FR.pdf

2.3 Training standards for private security company personnel

The PSSA stipulates that the personnel of companies whose activities are covered by the law 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 by the PSSS for private security company personnel. These standards, which are organised according to modules, serve as guidelines for companies to train their staff based on their specific areas of activity. They were submitted for consultation to interested circles and were the subject of a roundtable organised by the competent authority with representatives from the private security sector and civil society.

The training standards were published at the end of 2017⁶ and communicated to companies subject to or potentially subject to the PSSA. The competent authority will organise interviews with the interested organisations in the first half of 2018 to clarify how to best implement the training standards.

2.4 International efforts

At an international level, the competent authority takes part in dialogue on national and international standards for private military and security companies and on oversight mechanisms regarding their activities. In 2017, the competent authority was also an active member of the ICoCA certification working group. It supported efforts to ensure adequate membership mechanisms accessible to as many companies as possible, regardless of their size or place of domicile⁷. It participated actively in the 2017 Annual ICoCA General Assembly held in Geneva, at which decisions were accordingly taken on this topic⁸.

The competent authority attended the Third Plenary Meeting of the Montreux Document Forum, also in Geneva⁹. 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 international organisations to promote the content of the Montreux Document. The competent authority took part in working group meetings and shared its experience in the implementation of the principles set out in the Montreux Document.

Furthermore, the competent authority participated in the sixth session 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. It is also following with interest the activities of the *working group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*.

In addition, the authority was invited to take part in the meeting of experts organised by the University of Utrecht on the theme of '*Accountability and International Business Operations: Providing Justice for Corporate Violations of Human Rights, Labor and Environmental Standards*', where it informed the participants about Switzerland's experiences with regulating private security services.

⁶ https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/sicherheitspolitik/Ausbildungsanforderungen-BPS_en.pdf

⁷ Additional Information regarding ICoCA's new Transitional Membership Process can be found here:

https://www.icoca.ch/sites/default/files/uploads/Amendment%20to%20AoA%20-%20Transitional%20Membership_Exploratory%20note%20for%20website%20PDF.pdf

⁸ The Protocol of the ICoCA General Assembly 2017 is available under:

<https://www.icoca.ch/sites/default/files/resources/ICoCA%202017%20AGA%20Minutes.pdf>

⁹ Further information regarding the third Montreux Document Forum are available in the Chair's Summary:

<http://www.mdforum.ch/pdf/2017-06-20-Chairs-Summary-3rd-meeting.pdf>

2.5 Media contacts

During the period under review, the competent authority was contacted around ten times by Swiss print and electronic media outlets and interested circles. Their questions were either about the implementation of the PSSA in general or about specific cases involving Swiss companies active in the sector.

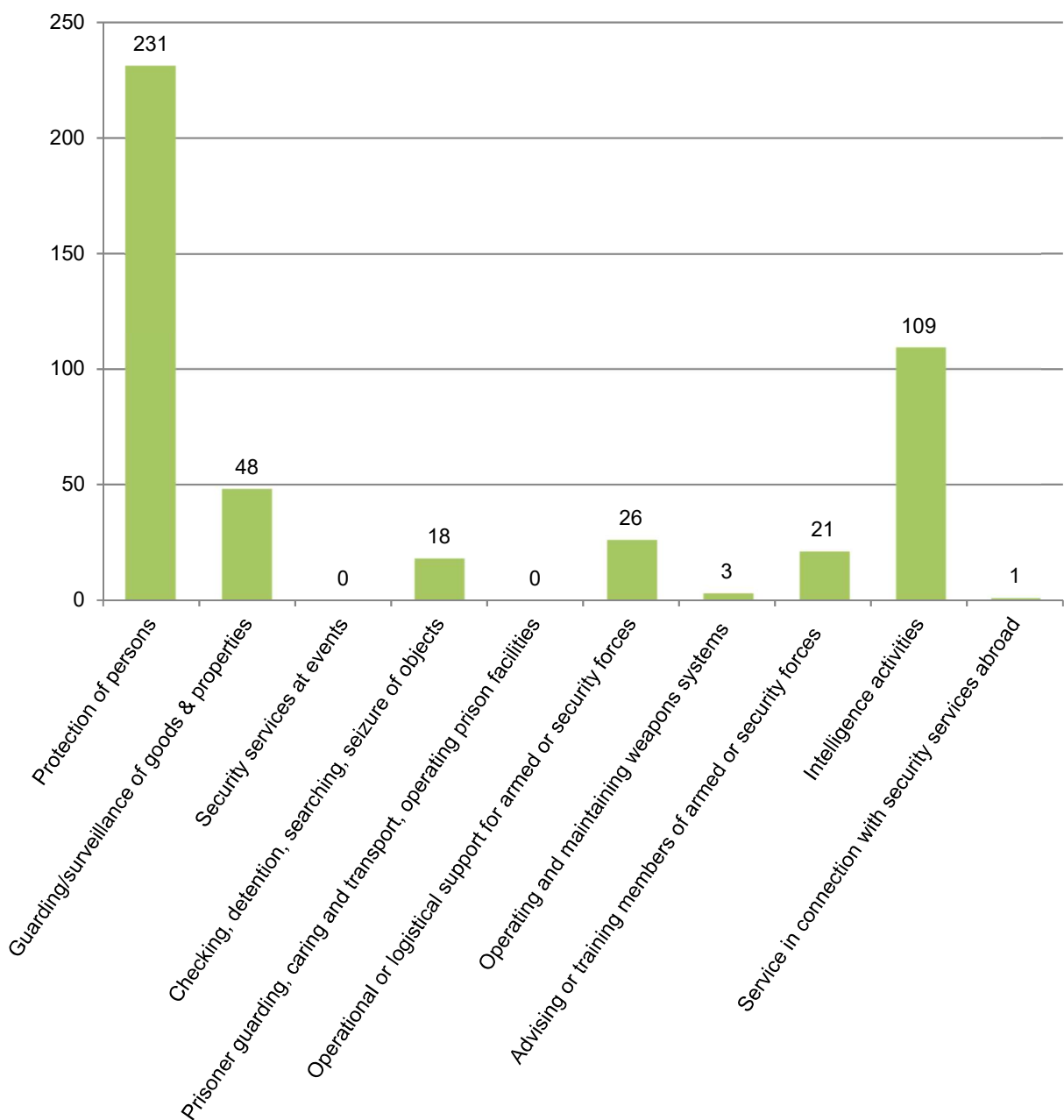
3. Statistics

3.1 Figures

Between 1 January and 31 December 2017, 24 companies submitted 459 declarations (2015/2016: 316)¹⁰ to the competent authority. In two instances, the declarations only stated the company as such and did not indicate specific activities. In 457 cases (2015/2016: 306), the declarations concerned the provision of private security services.

The declarations submitted to the competent authority for private security services under Art. 4 let. a and b of the PSSA as at 31 December 2017 break down as follows:

Declarations in 2017



¹⁰ The last report covered the timeframe between 1 September 2015 and 31 December 2016.

The declarations are mainly broken down into three groups of security services. There were 279 activities (2015/2016: 114) concerning the protection of persons and the guarding or surveillance of goods and properties in complex environments (Art. 4 let. a n°. 1 and 2 PSSA). With 109 declarations (2015/2016: 115), activities in the area of intelligence (Art. 4 let. a n°. 9 PSSA) were a second important category. A third group (50 declarations, 2015/2016: 59) concerned services for armed or security forces in the area of operational or logistical support, operating and maintaining weapons systems and advising or training members of armed or security forces (Art. 4 let. a n°. 6-8 PSSA).

The authority initiated 18 review procedures in accordance with Art. 13 PSSA. In 13 instances, the company was allowed to carry out the declared activity. In three further instances, the companies withdrew their declaration following the opening of the review procedure and decided not to pursue the planned activity. In two instances, the competent authority prohibited the declared activity.

The two instances where the activity was prohibited involved tasks which constituted logistical support for armed or security forces in the Middle East. In one instance, the declared activity was prohibited because of the risk that it would be used by the country in question to commit human rights violations. In the other instance, the activity was prohibited for reasons to do with regional stability. No appeal was made against the competent authority's decision.

The competent authority has exchanged information with other public authorities of the Confederation on a regular basis regarding the processing of the declarations, in particular in review procedures (Art. 28 PSSA). There has been no mutual administrative assistance procedure between Swiss and foreign authorities (Art. 29 PSSA).

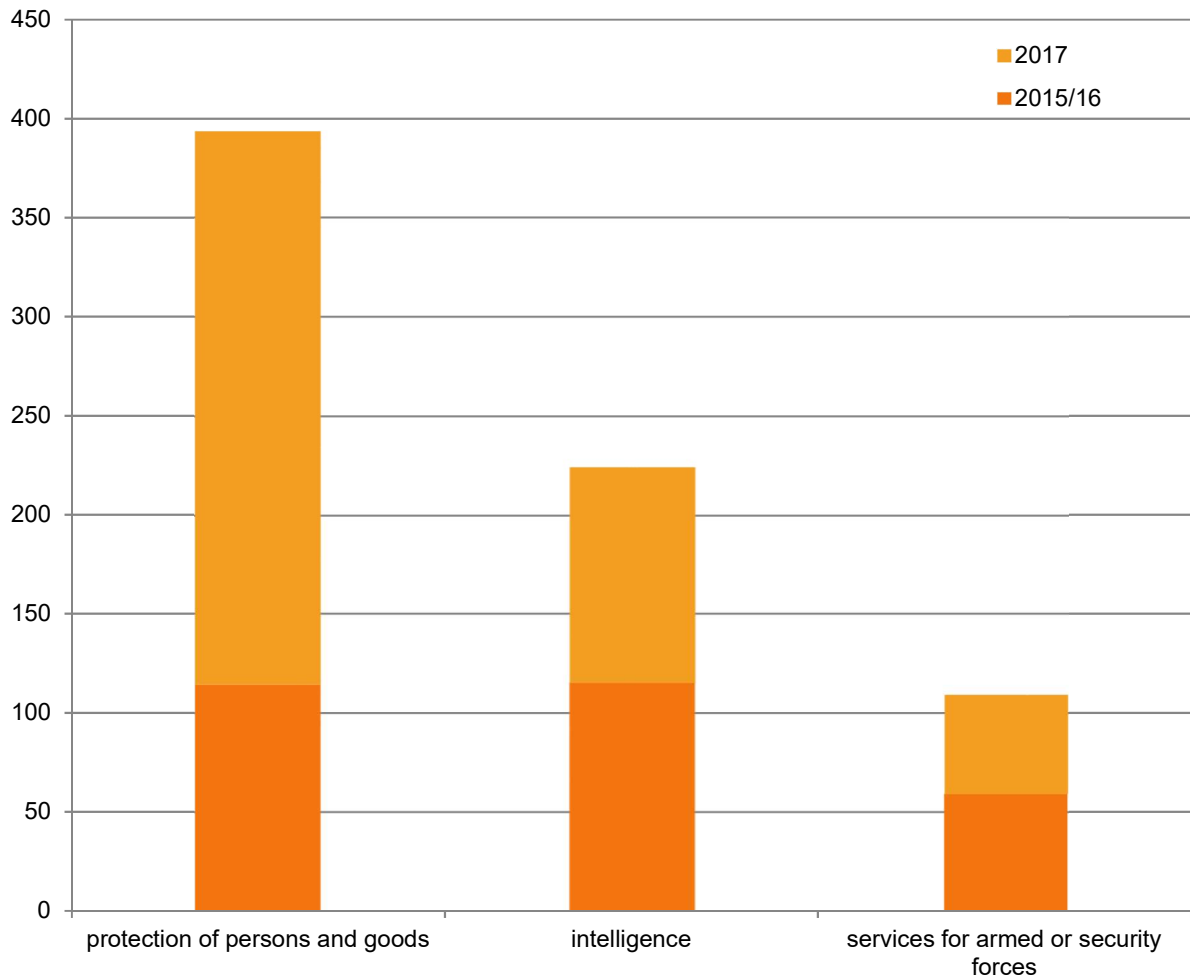
During the period under review, the competent authority did not receive information about companies operating in conflict zones or complex environments whose services would constitute legal breaches under articles 8 and 9 of the PSSA.

No decisions regarding sanctions according to articles 21 to 27 of the PSSA were taken, during the period under review.

Between the entry into force of the PSSA on 1 September 2015 and 31 December 2017, 44 companies submitted a declaration under Art. 10 PSSA. A total of 763 declarations have been submitted to the competent authority for private security services under Art. 4 let. a and b of the PSSA since 1 September 2015.

The table below shows the evolution of the declarations broken down into the three main groups of security service indicated above for the periods 1 September 2015–31 December 2016 and 1 January 2017–31 December 2017.

Main service categories (evolution)



From the previous review period (1 September 2015–31 December 2016) to the current year under review, there has been a marked increase in the number of declarations relating to the protection of persons or the guarding of goods and properties in complex environments. The number has more than doubled. The main cause of this increase has been standardised, recurring small-scale services typical of these two areas of activity.

There was no great variation in the number of declarations for either services relating to intelligence or activities for armed or security forces.

3.2 Trends

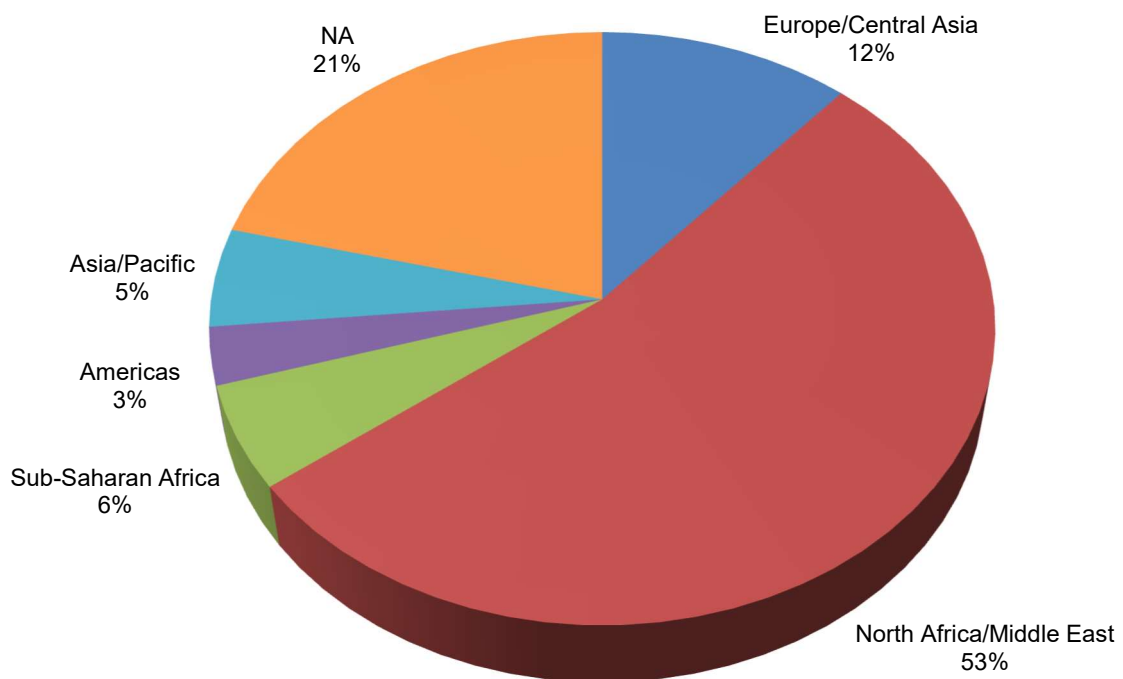
There is some consistency in the distribution of activities reported to the competent authority. Since the PSSA came into force, most of the activities declared were concentrated into the three groups of services indicated in Section 3.1.

The typology of profiles of the companies to which the PSSA has applied up to present has remained fundamentally unchanged from one period to the next. These profiles can differ significantly from one business sector to another. Thus, companies performing contracts in the area of the protection of persons or the guarding of goods are in the strict sense of the term private security companies, generally of a small size, with a very limited number of employees. They provide services corresponding to the definition of 'security services' under the Code of

Conduct.¹¹ The volume of their activities and the geographic location can vary from one year to the next, depending on opportunities. It is mainly investigative agencies, usually active in the financial sector, which operate in the area of private intelligence. Most of the companies providing services in the field of logistical support, operating and maintaining weapons systems and advising or training members of armed or security forces are generally industrial companies – of widely varying size – in the war materiel and dual-use goods sector.

From a geographical perspective, the activities that are subject to the law are mainly focused in the region of North Africa and the Middle East, where about half of the activities declared since the PSSA came into force were carried out, in addition to Europe and Central Asia.

Geographic breakdown of declarations (1 September 2015–31 December 2017)



N.A. = concern several countries

¹¹ The 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”.

4. Contracting of security companies by federal authorities for protection tasks carried out abroad

The FDFA continues to take action to encourage private security companies to apply for membership of the International Code of Conduct Association in regions in which no or only few companies have yet joined. The Swiss representations have been instructed to inform the security companies with protection mandates that Swiss representations located in complex environments abroad may now use only 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.

Together with the FDFA's Crisis Management Centre (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 has shown that the new legal provisions have not resulted in additional work nor have there been particular challenges for the majority of the Swiss representations.

In one country in South America, which is considered a complex environment, the Swiss representation's current security provider had, after negotiations, declared in writing in the terms of its contract that it would join the ICoCA within a year. The company subsequently shifted the responsibility to its parent company in the United States and in the end the latter stated that it did not intend to become a member. The local representation has honoured the contract with the company for the time being according to Art. 18 of the Ordinance on Private Security Services provided Abroad (OPSA¹²) and is currently assessing other options.

In a country in the Middle East, discussions about joining the ICoCA are under way with the NGO that organises security services for the few field trips of the Swiss Agency for Development and Cooperation (SDC). The NGO mainly provides services in the area of security advice and situation analysis with regard to 'in-out' business trips, in addition to chauffeur services and unarmed personnel protection. The NGO has declared its willingness to apply for ICoCA membership. Because of this NGO's limited resources, the FDFA is assisting them in the membership process, providing support where possible.

A positive outcome has been seen in a Caribbean country, where the company which guards the chancery, the diplomatic residence and the service accommodations became a member of the ICoCA in March 2017 at the representation's recommendation.

The OPSA stipulates that the contracting authority shall amend existing contracts that do not meet the requirements of the PSSA. The transitional period foreseen under the OPSA expires on 1 September 2018. This means that reporting on the application of the ordinance at all Swiss representations is still incomplete. Future consequences for Swiss representations in complex environments cannot be ruled out.

¹² SR 935.411

5. New types of services

Private security is a rapidly changing sector. It no longer resembles the situation following decolonisation or during the wars in Afghanistan and Iraq. Armed forces and security operations increasingly make use of complex weapons systems which necessitate a great deal of technical experience. Around the world, this experience is often provided by companies working in the private security sector or the arms industry.

Private security services are in increasing demand when it comes to activities involving drones, semi-autonomous or autonomous weapons or cybersecurity technologies. For example, companies active in the field of cybersecurity increasingly offer training or advice to armed or security forces to help them secure their systems and guard themselves against potential cyberattacks.

The competent authority is closely following these developments in Switzerland and worldwide, and will stimulate debate and dialogue on this issue, by participating in meetings, conferences and expert working groups.

6. Conclusions and outlook

The competent authority considers the PSSA's second year in force to have borne positive results. There is growing recognition of the importance of the oversight mechanism introduced by the PSSA for private security services abroad and the pioneering role played by Switzerland in this field. By adopting the PSSA, Switzerland has provided an innovative solution to the complex situation created by private security companies' activities in other countries.

The information sessions run by the competent authority have been extended to other companies. These events have raised awareness of the companies' obligations under the PSSA.

In 2018, the competent authority will continue to improve the processes involved in the application of the PSSA, in particular by optimising the reciprocal coordination and information mechanisms put in place with SECO. It will also update *the PSSA Guidelines*. Furthermore, the competent authority will seek to minimise the uncertainties regarding how foreign legislation may affect implementation of the PSSA. These are laws regarding defense and transfer of military technology, which could limit Swiss-based companies' ability to exercise influence over their foreign subsidiaries or to access information about their subsidiary's activities. With the help of the FDFA's Directorate of International Law, the competent authority will consider potential conflicts between the PSSA's declaration requirement and other countries' national legislation.

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 work to raise awareness of the objectives and content of the PSSA and to support the steps taken by the federal government to provide better oversight 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, such as the Organization for Security and Co-operation in Europe.

The competent authority will continue to apply itself to challenges such as the emergence of new technologies and expanding utilisation of cyberspace. It will use its experience as the authority responsible for implementing the PSSA to develop an up-to-date overview of the rapidly changing private security sector and the challenges faced.

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