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Federal Department of Foreign Affairs FDFA

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International Security Division

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2020 annual report on the implementation of the Federal Act on Private Security Services Provided Abroad

(1 January 2020 – 31 December 2020)

1. Introduction

For the authority overseeing the implementation of the Federal Act on Private Security Services Abroad (PSSA),¹ the main focus in 2020 was the drafting of amendments to the Ordinance on Private Security Services Abroad (OPSA).² In 2019, the criteria governing the application of the PSSA had been analysed and discussed by the competent federal government services, in the media and in Parliament (see *2019 Annual Report*, Section 4). On the basis of proposals submitted to it by an interdepartmental working group, and taking into account the demands formulated by Parliament in 2019, the Federal Council decided on 11 November 2020 to amend the ordinance in question and to schedule the entry into force of the new text for 1 January 2021. The main amendments are summarised in Section 3 of this report. Please note that the activities detailed in this report were subject to the legal regime in effect prior to the entry into force of the amended OPSA.

Developments in the private security industry continued in 2020. These involved new forms of services and the use of advanced technologies. Needs surrounding management of the COVID-19 pandemic, which led governments in many countries to hire private security companies for security or logistical tasks, also had an impact on this sector. The role played by these companies during the pandemic has raised questions and concerns regarding compliance with the principles of international law.

2. Implementation of the PSSA

The PSSA entered into force on 1 September 2015. The act is intended to safeguard Switzerland's internal and external security, achieve Switzerland's foreign policy objectives, preserve its 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, a review procedure³.

Article 37 of the PSSA stipulates that the competent authority shall submit an annual report on its activities to the Federal Council. This report is published on the website of the Federal Department of Foreign Affairs (FDFA).

2.1 Competent authority

According to the OPSA (Art. 3), the FDFA's Directorate of Political Affairs⁴ is the authority responsible for the implementation of the PSSA. The unit tasked to implement the PSSA at an operational level is the Export Controls and Private Security Services Section⁵ within the Division for Security Policy.⁶

The main task of the ECPS is to handle the administrative procedures introduced by the PSSA. The ECPS also helps to formulate Switzerland's policy on private security services and takes part in the national and international dialogue on norms and standards applicable to private security companies.

Following its reorganisation in March 2020, the ECPS has taken over a number of activities that were previously the responsibility of the Arms Control, Disarmament and Non-Proliferation Section of the same division. It is now also responsible for processing cases relating to export controls, which are submitted by the State Secretariat for Economic Affairs (SECO) for consultation. The ECPS also works in close cooperation with the SECO to compile policy dossiers on export controls and participates in national and multilateral dialogue in this area. At an operational level, 576 cases regarding the export of war materiel and goods under the War Materiel Act (WMA)⁷ and the Goods Control Act (GCA)⁸ were submitted to the ECPS in 2020.

¹ SR 935.41

² SR 935.411

³ The act completely prohibits two scenarios. It explicitly 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).

⁴ From 1 January 2021: the FDFA State Secretariat

⁵ Previously: Private Security Services Section (PSSS).

⁶ From 1 January 2021: the International Security Division (ISD).

⁷ SR 514.51

⁸ SR 946.202

2.2 Information and collaboration with other services

During the year under review, the competent authority pursued its information campaign to raise awareness among companies that might be affected by the PSSA. It contacted many companies active in various sectors in order to assess their activities and explain to them the procedure, the legal framework and their obligations under the PSSA.

The competent authority worked very closely with SECO's Arms Control and Arms Control Policy Section and Export Controls/Industrial Products Section, particularly with regard to the drafting of the amendments to the OPSA. This entailed both adapting the text of the ordinance and identifying how the amendments would affect the procedures involving the two parties (see Section 3 of this report). This increased collaboration has enabled the competent services of the FDFA and the Federal Department of Economic Affairs, Education and Research (EAER) to gain a better understanding of each other's work processes.

2.3 Activities at international level

2.3.1 International meetings

At the international level, the competent authority engages in dialogue on national and international standards for private military and security companies and on oversight mechanisms for these types of activity. In the year under review, the COVID-19 pandemic caused major disruption to international meetings, with many cancelled and others held online.

In the year under review, the competent authority took part in the following virtual events:

- Security Dialogue on Private Military and Security Companies, OSCE Forum for Security Cooperation, 17 June 2020;
- Working Group on the International Code of Conduct Association, Montreux Document Forum, 24 June 2020;
- Maritime Working Group, Montreux Document Forum, 10 and 18 November 2020;
- Annual General Assembly 2020, International Code of Conduct for Private Security Service Providers' Association (ICoCA), 30 November to 4 December 2020.

2.3.2 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

The United Nations 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 (Working Group) visited Switzerland from 13 to 17 May 2019. The aim of this visit was to gather information on the Swiss legislation and the measures that our country has taken in the area of private security services. When the Working Group concluded its visit, it noted the pioneering role played by Switzerland in regulating private security services at the international and national level (see *2019 Annual Report*, Section 2.3.2).

The Working Group's report was presented at the 45th session of the UN Human Rights Council in September 2020. The representatives of the Working Group thanked Switzerland for the excellent cooperation and underscored the leading role played by our country in the various international forums active in the regulation of private security services and respect for international law. The Working Group encouraged Switzerland to continue its efforts and made a number of recommendations.⁹ These include keeping the range of services covered by the PSSA as broad as possible, better harmonisation of procedures under the PSSA, the WMA and the GCA, and establishing a national regime for private security services provided on Swiss territory.

2.4 Media contacts

During the period under review, the competent authority was contacted numerous 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. A number of questions concerned the current progress of the ongoing proceedings before the Federal Administrative Court regarding the 'Pilatus' case (see *Annual Activity Report 2019*, Section 3.4).

⁹ <https://undocs.org/en/A/HRC/45/9/ADD.1>

3. Amendment of the OPSA

Following the work carried out in 2019 relating to the interpretation of the PSSA (see *Annual Activity Report 2019*, Section 4), the main focus in 2020 was on the amendment of the Ordinance on Private Security Services Abroad (OPSA).

Having observed that certain services fall within the scope of the PSSA, the WMA and the GCA, and that owing to the different legislation there remain issues with regard to the consistent processing of such cases, the FDFA and the EAER set up an interdepartmental working group (IDWG) in March 2019. The IDWG was tasked with assessing similarities and differences between the authorisation and prohibition criteria laid down in the different pieces of legislation, determining what action was needed, and proposing specific solutions. The two government departments presented the outcomes of the IDWG's work to the Federal Council on 12 February 2020. At this meeting, the Federal Council decided to instruct the FDFA and the Federal Department of Justice and Police (FDJP) to carry out a partial revision of the OPSA through a new interdepartmental working group. The working group was co-chaired by the FDFA and the FDJP and included representatives of the EAER and the Federal Department of Defence, Civil Protection and Sport (DDPS).

On the basis of the outcomes of the group's work, the Federal Council decided on 11 November 2020 to amend the ordinance to the PSSA. The amended ordinance came into force on 1 January 2021.

The new version of the ordinance establishes a consultation mechanism between the FDFA, the EAER and the DDPS that is similar to those that apply to the WMA and GCA. The consultation mechanism stipulates that the authorities must submit to the Federal Council any matters on which opinions diverge or which are of major political significance. The amendments also include more precise definitions of key concepts such as 'operational or logistical support', 'advising or training members of armed or security forces' and 'operating and maintaining weapons systems', which will make it easier for the companies involved to comply with the law. Furthermore, certain services are not subject to the declaration requirement if they are in close connection with an export that complies with the WMA or GCA.

At its meeting on 12 February 2020, the Federal Council also instructed the FDFA and the EAER, in collaboration with the DDPS and the FDJP, to examine options for potential amendments to the PSSA with a view to harmonising it with the legislation on export controls, and to submit a proposal to the Federal Council by the end of 2020. After examining several options and having considered the demands made in a number of parliamentary interventions concerning the PSSA communicated at the end of 2019 (see *Annual Activity Report 2019*, ch. 4), the IDWG concluded in its report that the partial amendment of the OPSA proposed to the Federal Council largely resolves the problems of coherence between the PSSA and the legislation on export controls, and that an amendment of the PSSA is not currently necessary. Nevertheless, the Federal Council has instructed the competent authority to re-evaluate the legislation in three years in the light of experiences under the amended ordinance.

As the amended OPSA did not come into force until January 2021, the cases discussed in the following sections were not governed by the new regime. They were subject to the provisions in force until the end of 2020.

4. Statistics

4.1 Facts and figures

Between 1 January and 31 December 2020, 41 companies submitted **495** declarations to the competent authority regarding an activity (services; 2019: 478; 2018: 479; 2017: 457; 2015/2016: 306). The **declarations submitted for 2020** to the competent authority for private security services under Article 4 let. a of the PSSA as at 31 December 2020 break down as follows:



*No Activities related to guarding, caring for prisoners, or operating prison facilities.
No service in connection with a security service.*

4.2 Declaration procedures

The declarations fell into four main groups of security services:

- **Orange segments: 92 activities (2019: 206; 2018: 303; 2017: 279; 2015/2016: 114) concerned the protection of persons and the guarding or surveillance of goods and properties in complex environments (Art. 4 let. a para.1 and 2 PSSA).** Companies performing contracts in the area of the protection of persons or the guarding of goods are in the usual sense of the term private security companies, generally of a small or medium size. They provide services corresponding to the definition of 'security services' under the International Code of Conduct for Private Security Service Providers (ICoC).¹⁰

¹⁰ <https://icoca.ch/>

- **Brown segment: 33 activities (compared with zero in previous years) were in the field of security services at events.** Companies performing contracts in this area are in the usual sense of the term private security companies, generally of a small or medium size. Services in this field must be declared in all countries except member states of the European Union or the European Free Trade Association.
- **Blue segment: with 29 declarations (2019: 33; 2018: 64; 2017: 109; 2015/2016: 115), intelligence activities (Art. 4, let. a para. 9 PSSA) made up a third main segment.** It is mainly investigative agencies, usually active in the financial sector and especially banking, which operate in the area of private intelligence.
- **Purple segments: a fourth group with 334 declarations (2019: 229; 2018: 104; 2017: 50; 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 para. 6–8 PSSA).** Of these declarations, 59 cases came under the PSSA, the WMA and the GCA, and were processed jointly in SECO's electronic Elic system. Most of the companies providing services in this field are industrial companies in the war materiel and dual-use goods sector. These companies vary greatly in size. The extent of the activities undertaken in this sector also varies, as does the nature of the declared services. In some cases, the services require continuous on-site presence. Other less extensive services require on-site presence only occasionally, or must be physically carried out in Switzerland. Moreover, the types of products are also highly variable. These may include war materiel, dual-use goods or other technological products. The area of 'training' also comprises specialists and consultants, for example in the field of police training.

4.3 Review procedures

In 2020, the competent authority initiated **three review procedures in accordance with Art. 13 PSSA. (2019: 26; 2018: 16; 2017: 18; 2015/2016: 6).** In one instance, the declared activity was prohibited (see Section 4.4 below). Another application was withdrawn by the company. One declaration was still pending at the end of the year.

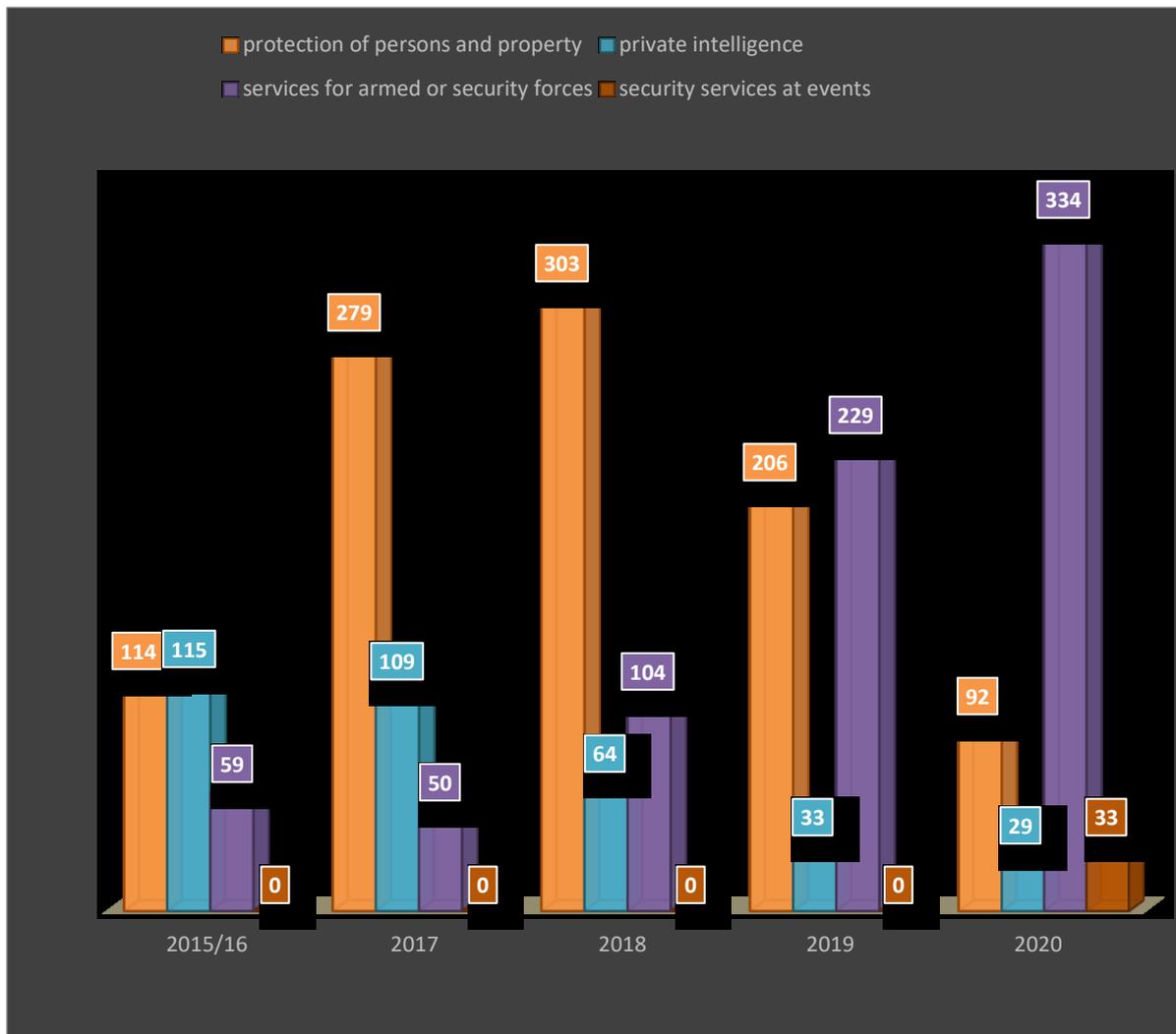
4.4 Prohibitions

In 2020, **three activities were prohibited (2019: 2; 2018: 7; 2017: 2; 2015/2016: 1),** two on the basis of a review procedure initiated in 2019. In one case, the services involved were in the area of logistical support for armed or security forces in an African country. The other two cases involved advising or training members of armed or security forces in two Middle Eastern countries. In all three cases, the FDFA considered that the provision of services was not compatible with Switzerland's foreign policy objectives, particularly in the area of human rights.

4.5 Sanctions

During the period under review, the competent authority did not receive any information about companies whose services would constitute breaches under Articles 8 and 9 of the PSSA. In addition, no sanctions under Articles 21 to 27 PSSA were imposed by the Office of the Attorney General of Switzerland during the period under review.

4.6 in groups of services – evolution



The table above illustrates trends in reporting in the main groups of services for the years 2015–2020.¹¹

There was another sharp fall in declarations concerning services covered by Art. 4 let. a para. 1 and 2 PSSA, i.e. the **protection of persons and property in complex environments**. The number of declarations fell by half during the period under review. Unlike previously, the lower numbers were not solely due to the general deterioration of the security situation in certain regions (specifically the Middle East). In 2020, disruptions to economic activity caused by the COVID-19 pandemic also reduced the presence of foreign investors, who are the main beneficiaries of such protection services.

In 2020, the authority received for the first time declarations in the area of **security services at events** provided outside the territory of the European Union and the European Free Trade Association. Although these involved a limited number of actors and services, this is statistically speaking a marked change from previous years.

There was another slight decrease compared with 2019 in the number of services in connection with **private intelligence**. There had already been a decrease between 2018 and 2019, which prompted the competent authority to conduct a survey of several dozen companies specialising in private intelligence, to identify any significant changes in their activities. Based on the information provided, most of these companies have not however substantially changed their activities with regard to the criteria governing the declaration requirement in this area under the PSSA. It is therefore difficult to draw any definite conclusions about the fall in the number of intelligence declarations. Some industry operators say that the fall in the number of cases between 2018 and 2020 was due to a decline in requests for support in due diligence investigations and dispute settlements concerning emerging markets in particular. The

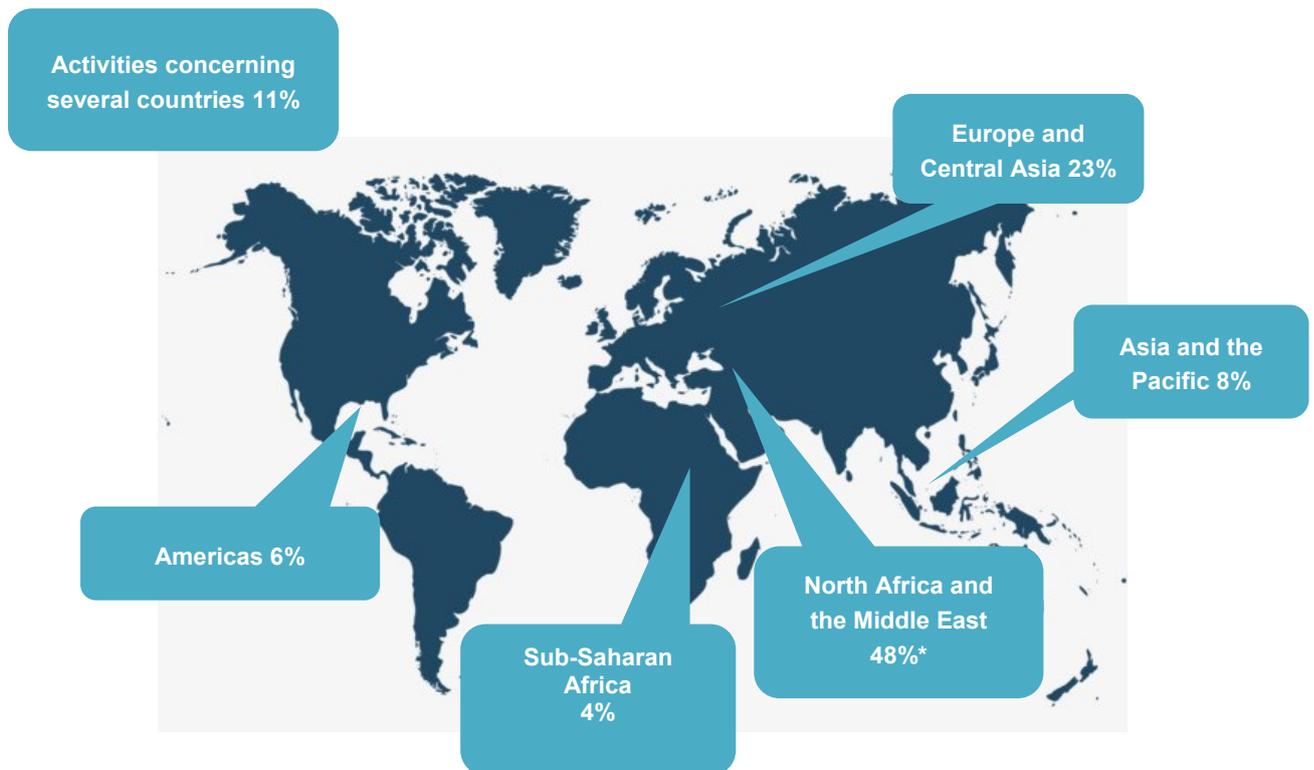
¹¹ Since the PSSA came into force on 1 September 2015, the figures for 2015 (1 September to 31 December) are shown together with those for 2016.

COVID-19 pandemic appears to have played a role in the slight fall in the number of declared activities between 2019 and 2020 in this and other categories.

However, there was a significant rise in the number of declarations relating to **services for armed or security forces** (Art. 4 let. a para. 6, 7 and 8 PSSA). In 2020 (as in 2019), these represented the largest group of services. While several factors may have contributed to this (greater awareness of the obligation to declare on the part of companies, more efficient coordination procedures with SECO), an important cause for the increase in activity in this sector between 2019 and 2020 seems to have been that more declarations were submitted along with applications to renew general export licences under the GCA, which normally concern several countries at the same time.

4.7 Geographical distribution of activities (1.9.2015–31.12.2020)

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



**This percentage is especially large because of insecurity in the region, and the protection of persons and property that is required. It has however shrunk since 2019 due to the overall decrease in services for the protection of persons and property, which are strongly represented in this region.*

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

Under the PSSA, Swiss representations abroad may only use private security companies which are ICoCA members for protection in complex environments. Together with the Crisis Management Centre (KMZ), the ECPS regularly reviews the list of complex environments, taking into account the development of the security situation in the relevant countries and regions.

The FDFA encourages private security service providers in regions with few or no ICoCA members to join the association. In the past, a number of companies have been persuaded to join ICoCA after Swiss

representations informed potential security partners that Switzerland could only work with ICoCA-certified companies.

It is not only official Swiss representations that work with local security companies in other countries. Other federal authorities abroad also use such services, as do delegations from Bern. In this context, the ECPS is working together with the KMZ and the Competence Centre for Contracts and Procurement (CCP)¹² to proactively raise awareness with individual services of the recent guidelines and directives, using the specially conceived *Guidelines on the Procurement of Security Guard Services by FDFA Representations*.

Even in countries which are not categorised as 'complex environments', an expanded assessment process for working with security companies is in place. Although ICoCA certification is a recommendation and not a binding criterion, the general contractual provisions are more closely adhered to than is the case among companies not involved in security.

6. New types of services

An important task of the competent authority is to monitor developments in the private security services market internationally and in Switzerland, and to identify potential consequences of these developments. The competent authority aims not only to assess how they will affect the application of the PSSA, but also to anticipate risks and consequences for the monitoring and regulation of these activities in the various sectors concerned.

During the period under review, the competent authority closely monitored the development of new technologies used by companies active in private security, particularly in the military sector. However, developments in the private security sector were not only driven by technological advances. The COVID-19 pandemic, which was ongoing throughout 2020, also had repercussions in the security sector, which generated a great deal of debate in the press and in academic and political circles.

The year under review saw an increase in response to the pandemic in the number of public contracts awarded to private security companies, sometimes in areas deemed sensitive. According to some observers, the need for swift action did not always allow for adequate compliance with public procurement processes designed to ensure that companies employ suitably quantified personnel. Moreover, some countries declared a state of emergency to better manage the public health crisis and quickly stem the spread of the disease. The fact that services were often performed under a state of emergency is thought to have increased the risk that some rights of sections of the population vulnerable to the crisis would not be respected. Observers have reported incidents in connection with activities to maintain public order, for example. Another factor has been more extensive use of private companies in immigration detention centres at borders and in juvenile and adult prison facilities, where sanitary conditions have worsened during the pandemic. Some observers believe that this may have led to the use of excessive force, or even – in the most serious cases – to human rights abuses. The unconsidered contracting of private companies to supply health logistics services (test management, tracing methods) can also incur considerable risks for the protection of people's personal data and privacy.

It has been argued that governance mechanisms in the private security sector have proven inadequate during the pandemic firstly because of the non-binding nature of existing legal frameworks (e.g. the Montreux Document¹³) and secondly because such mechanisms were designed with other situations in mind (than those faced during the pandemic), i.e. 'complex environments' and situations of armed conflict. Experiences – good and bad – from this period of crisis may provide fresh impetus in the debate surrounding the need for regulation in the private security sector, a debate which has been ongoing for several years.

7. Conclusions and outlook

The competent authority gives a positive assessment of its fifth year of operation. The importance of the declaration mechanism concerning private security services provided abroad introduced by the PSSA and the pioneering role played by Switzerland in this area are widely recognised, as shown by the report

¹² From 1 January 2021: Contracts, Procurement, Compliance Division (CPC)

¹³ https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/20192511-montreux-document_EN.pdf

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which the UN Working Group on the use of mercenaries presented at the 45th session of the UN Human Rights Council in September 2020 (see 2.3.2).

The competent authority pursued its efforts to provide information and raise awareness, which further increased companies' understanding of their obligations under the PSSA.

The entry into force of the amended Ordinance on Private Security Services provided Abroad on 1 January 2021 entails significant changes to the application of the PSSA. The FDFA State Secretariat and the competent SECO and DDPS services stepped up their collaboration to good effect during the drafting of these amendments. This has prepared them to meet new challenges and to improve their processing of declarations on the basis of initial experiences. They plan to regularly review and continually improve these procedures.

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