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Federal Department of Foreign Affairs FDFA

**Directorate of Political Affairs DP**  
Division for Security Policy

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# **2019 annual report on the implementation of the Federal Act on Private Security Services Provided Abroad (1 January 2019 – 31 December 2019)**

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# 1. Introduction

2019 was a particularly eventful year for the authority responsible for implementing the Federal Act on Private Security Services Provided Abroad (PSSA).<sup>1</sup> The criteria for the application of the law, in particular with respect to military competencies, were examined and debated not only by the Federal Administration services concerned, but also in the media and at the political level. On 21 February 2019, the heads of the Federal Department of Foreign Affairs (FDFA) and the Federal Department of Economic Affairs, Education and Research (EAER) set up an interdepartmental working group to assess whether cases relating to the PSSA, the War Materiel Act (WMA)<sup>2</sup> and the Federal Act on the Control of Dual-Use Goods and of Specific Military Goods (Goods Control Act, GCA)<sup>3</sup> were handled consistently. The working group was tasked with examining this issue in detail and proposing appropriate solutions (see section 4.1). At the same time, a number of initiatives were undertaken at the political level to address this issue. Several parliamentary interventions on the interpretation of the law by the responsible authority were tabled in both chambers of the Federal Assembly (see section 4.2).

Private security is a dynamic and fast-growing sector. New kinds of services, involving the use of advanced technologies, are being introduced and the profile of companies providing private security services is also continually evolving. The authority responsible for the implementation of the PSSA is thus often confronted with new situations and numerous new cases which require continual adaptation regarding the implementation.

## 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 procedure.<sup>4</sup>

Article 37 of the PSSA stipulates that the competent authority shall submit an annual report on its activities to the Federal Council. The report is published on the FDFA website.

### 2.1 Competent authority

Under the terms of the Ordinance on Private Security Services provided Abroad (OPSA, Art. 3),<sup>5</sup> the FDFA's Directorate of Political Affairs is the authority responsible for implementing the PSSA. The unit with operational responsibility for implementing the PSSA is the Private Security Services Section (PSSS) within the Directorate of Political Affairs (DP).<sup>6</sup>

The main task of the PSSS is to handle the administrative procedures introduced by the PSSA. It furthermore 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.

### 2.2 Information and collaboration with other services

During the year under review, the competent authority continued, as in previous years, its information campaign to raise awareness among companies that might be affected by the PSSA. It met with many companies active in different sectors in order to better assess their activities and explain to them the procedure, the legal framework and the obligations under the PSSA. It also hosted an information stand for companies at the 4th seminar on export control organised by the State Secretariat for Economic Affairs (SECO) in Bern on 14 November 2019.

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<sup>1</sup> SR 935.41

<sup>2</sup> SR 541.51

<sup>3</sup> SR 946.202

<sup>4</sup> The act prohibits two scenarios ex officio: It prohibits direct participation in hostilities (Art. 8 PSSA) and 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).

<sup>5</sup> SR 935.411

<sup>6</sup> Since 1 March 2020: Export Controls and Private Security Services Section (ECPS).

The competent authority works closely with the SECO's Arms Control and Arms Control Policy Section and Export Controls/Industrial Products Section. A certain number of cases fall under both the PSSA and the WMA or the GCA, for which SECO is the executing authority. Adjustments to SECO's electronic licensing system for processing ELIC applications have made it possible, thanks to the introduction of mandatory fields relating to the PSSA, to automate the forwarding of the relevant SECO applications to the FDFA and thus improve the coordination of procedures.

## **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 authority took part in the following events:

- Security Dialogue on Private Military and Security Companies, OSCE Forum for Security Co-operation, Vienna, 23 January 2019;
- Privatisation of War training cycle, Hertie School of Governance, Berlin, 15 April 2019;
- Fifth Plenary Meeting of the Montreux Document Forum, Geneva, 2 September 2019;
- 2019 General Assembly of the International Code of Conduct for Private Security Service Providers' Association (ICoCA), Geneva, 20–21 November 2019.

### **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 visit to Switzerland from 13 to 17 May 2019 of 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) is particularly noteworthy.

The working group's mandate is to strengthen the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries. It also monitors mercenary-related activities in all parts of the world. It is tasked with identifying the sources, the causes and the orientations of mercenarism and to assess its impact on human rights, including on the right of peoples to self-determination. Its mandate also requires it to study the impact on the respect of human rights of activities carried out by private companies that provide assistance, consultancy and security services, including military services, on the international market.

The purpose of the working group's visit was to gather information on Swiss legislation and the measures taken by Switzerland in this area. It focused primarily on the activities of private security companies, including services provided under a federal authority mandate. The members of the working group met with representatives of several federal government departments as well as cantonal and inter-cantonal institutions.

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. It underlined the responsibility assumed by Switzerland in adopting two multilateral initiatives aimed at promoting respect for international humanitarian law and human rights (Montreux Document of 17 September 2008 and International Code of Conduct for Private Security Service Providers of 9 November 2010) and stressed the importance of the PSSA implementation. The working group encouraged Switzerland to continue its efforts in this area.

The working group's report will be presented at the September 2020 session of the UN Human Rights Council. Switzerland will then have the opportunity to comment on the conclusions.

## **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

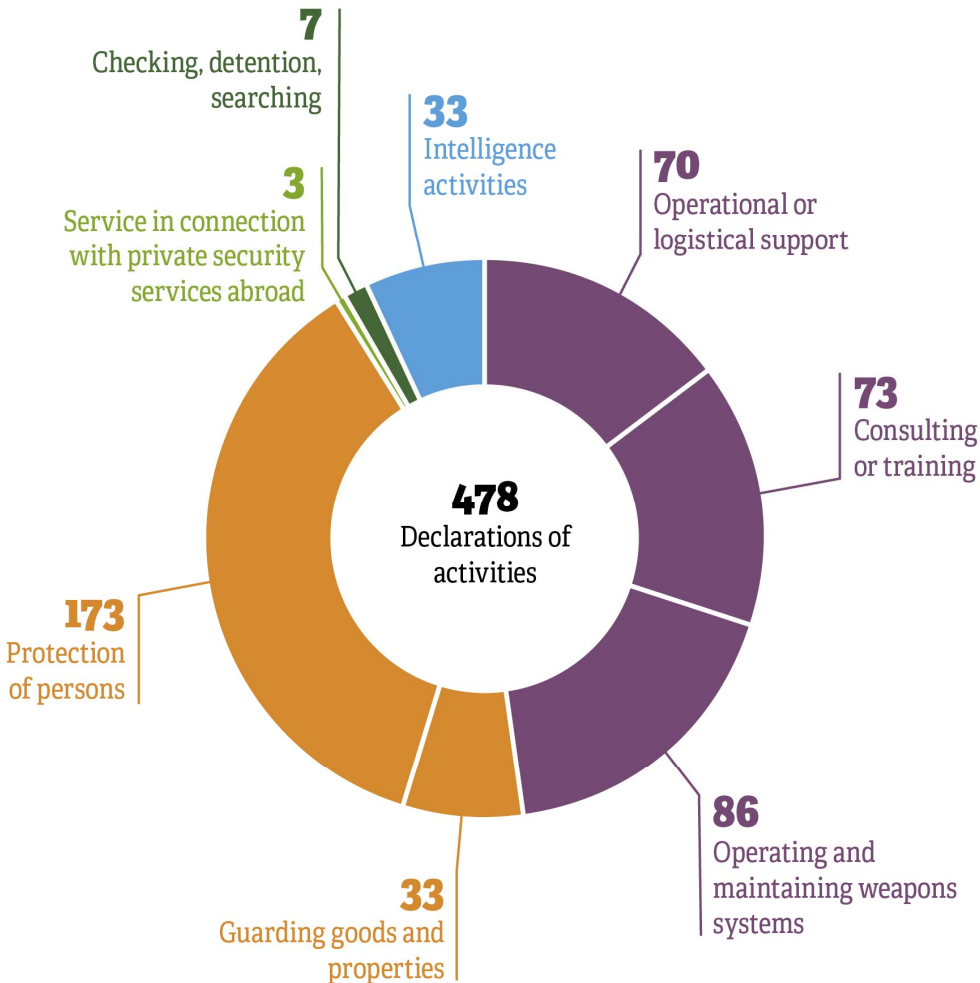
sector. A major issue in this context was the Pilatus case (see section 3.4), which prompted many questions from the press, especially in the first half of 2019.

### 3. Statistics

#### 3.1 Facts and figures

Between 1 January and 31 December 2019, 31 companies submitted **478** declarations to the competent authority regarding an activity (services; 2018: 479; 2017: 457; 2015/2016: 306).

The **declarations submitted for 2019** to the competent authority for private security services under Art. 4 of the PSSA as at 31 December 2019 break down as follows:



No activities related to guarding, caring for prisoners, or operating prison facilities.  
No security services at events.

#### 3.2 Declaration procedures

The declarations are mainly broken down into three groups of security services:

- Orange segment: 206 activities (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).
- Blue segment: with 33 declarations (2018: 64; 2017: 109; 2015/2016: 115), intelligence activities (Art. 4, let. a, para. 9 PSSA) made up a second segment. It is mainly investigative agencies, usually active in the financial sector and especially banking, which operate in the area of private intelligence.
- Purple segment: a third group with 229 declarations (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). Most of the companies providing services in this field are industrial companies – of widely varying size – in the war materiel and dual-use goods sector. The intensity of the activities undertaken in this sector also varies and the declarations are of varying natures. In some cases, these are services that require a constant physical presence on site, but there are also less vital services requiring only an ad hoc presence. In some cases the services are even provided 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 specialist consultants, for example in the field of police training.

### 3.3 Review procedures

The competent authority initiated 26 review procedures (2018: 16; 2017: 18; 2015/2016: 6) in accordance with Art. 13 PSSA. In 23 instances, the company was allowed to carry out the declared activity. In one case, the application was withdrawn by the company. Two cases were pending at the end of the year.

### 3.4 Prohibitions

In 2019, two prohibitions were issued on the basis of a review procedure initiated in 2018. Both pertained to activities by Pilatus Aircraft Ltd (Pilatus).

On 25 June 2019, the FDFA issued a ban on certain logistical services provided by Pilatus Aircraft Ltd in Saudi Arabia and the United Arab Emirates. The FDFA deemed the provision of these services to be incompatible with Switzerland's foreign policy objectives.<sup>7</sup> On 20 August 2019, Pilatus appealed to the Federal Administrative Court against the FDFA's decision. The review procedure was still pending at the end of the period under review.

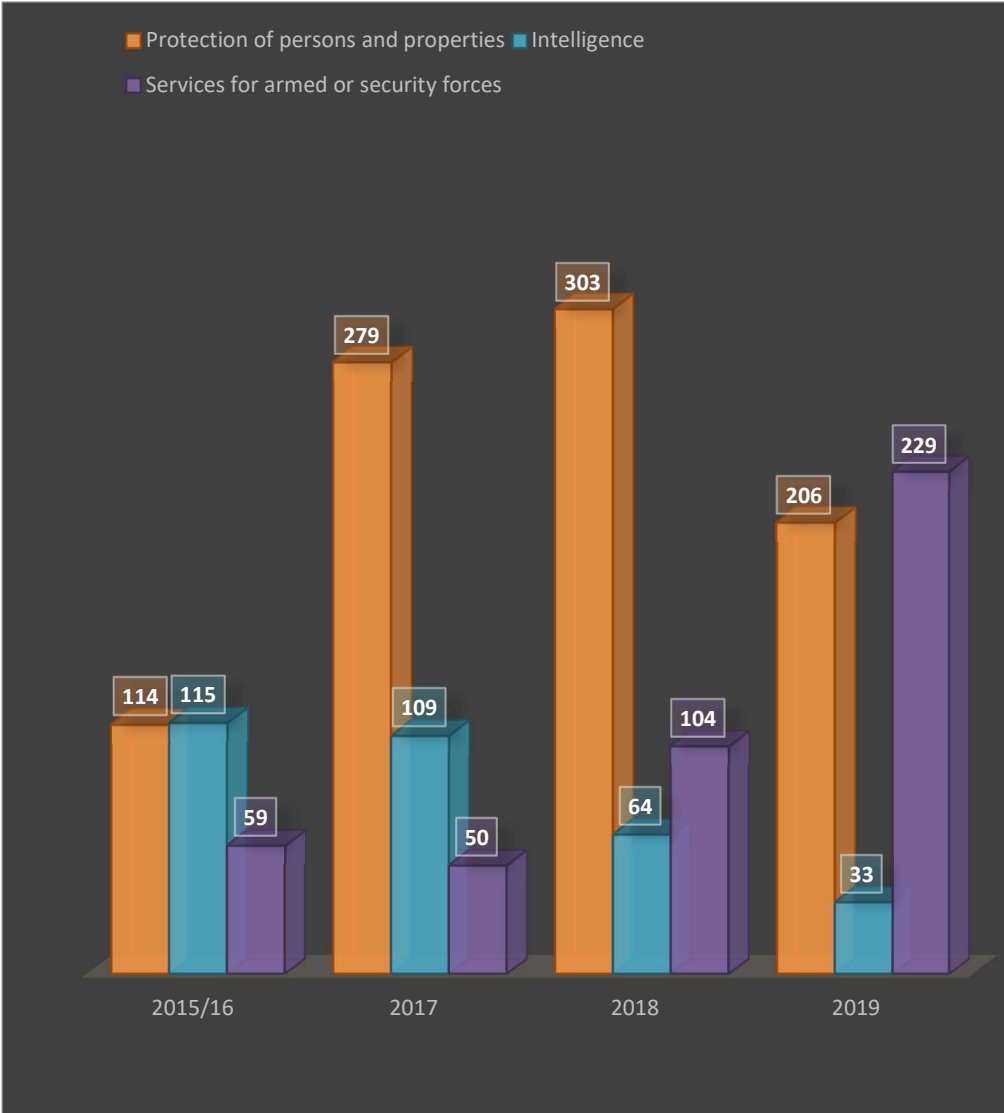
Owing to indications that Pilatus had failed to fulfil its reporting obligation (Art. 27 para. 2 PSSA), on 25 June 2019 the FDFA was obliged to file a complaint with the Office of the Attorney General of Switzerland (OAG). On 18 November 2019, the OAG decided not to pursue this complaint.

### 3.5 Sanctions

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

<sup>7</sup> <https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/news.html/content/eda/en/meta/news/2019/6/26/75587>

### 3.6 Main groups of services – evolution



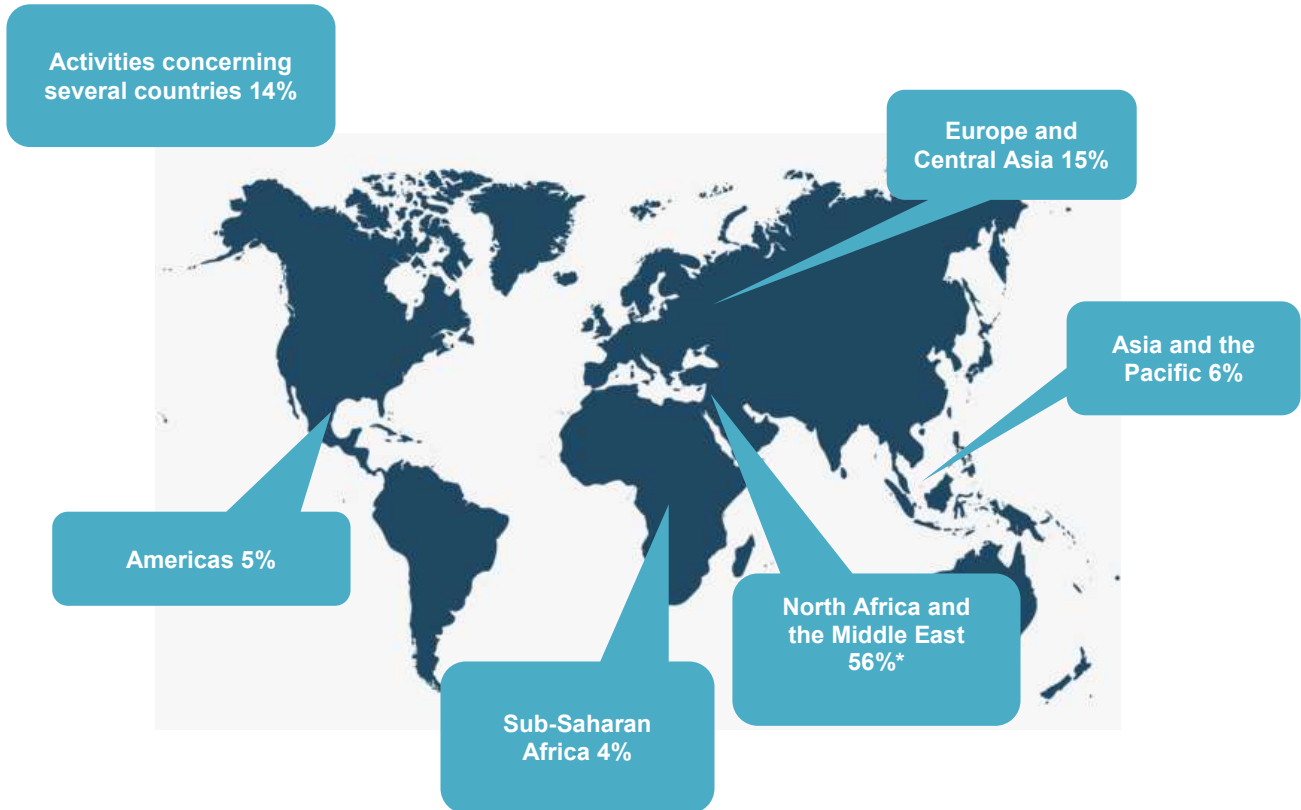
The table above shows the evolution of the declarations broken down into the three main groups of security service previously indicated, for the periods 1 September 2015–31 December 2016, 1 January 2017–31 December 2017, 1 January 2018–31 December 2018, and 1 January 2019–31 December 2019.

Since 2018, the competent authority has observed a decline in intelligence-related services. It intends to analyse this phenomenon in 2020 in order to identify the reasons that might have caused this decline. The results of this analysis will be included in the next report (2020) on the implementation of the PSSA. 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 2019, these represented the largest group of services. Several factors may have contributed to this increase: greater awareness of the obligation to declare on the part of companies as a result of the competent authority's awareness-raising and information efforts; improved effectiveness of coordination procedures with the SECO (see 2.2); the submission of declarations linked to the renewal of general export licences under the GCA, concerning several countries at the same time.

Regarding 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 declined by about one third between 2018 and 2019. This decrease may be attributable to a deterioration in the security situation in certain regions (notably the Middle East) and fewer international investors in those countries, many of whom make use of such protection measures.

### 3.7 Geographic breakdown of activities (1.09.2015 – 31.12.2019)

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



\*This percentage is higher because of the insecurity in the region, and the protection of persons and property that is therefore required.

## 4. Interpretation of the PSSA

The interpretation of the PSSA was an important issue for the Federal Administration during the year under review. It was also debated in the press and in Parliament.

### 4.1 PSSA/WMA/GCA interdepartmental working group

Acting on instructions from their heads of department, on 21 February 2019 the secretaries general of the FDFA and EAER set up the PSSA/WMA/GCA interdepartmental working group (hereafter IDWG). The IDWG was established in recognition of the fact that certain services fall equally within the scope of the PSSA, the WMA and GCA. A process to optimise the coordination of procedures was put in place in accordance with Art. 16 PSSA, but substantive inconsistencies remain because of the different legal frameworks. Representatives of the FDFA, EAER, FDJP and DDPS sat on the IDWG. The IDWG was tasked with assessing similarities and differences between the authorisation and prohibition criteria laid down in the legislation, determining what action was needed, and proposing specific solutions in relation to the PSSA.

The IDWG's proposed solutions focused on the possibility of amending the PSSA and its implementing ordinance and on adapting and harmonising their interpretation. The IDWG also considered the

establishment of a consultation mechanism with the EAER, as currently provided for in the Ordinance on War Material (WMO)<sup>8</sup> and the Goods Control Ordinance (GCO)<sup>9</sup> as well as the possibility of referring cases to the Federal Council when the authorities concerned are not in agreement and in cases of major political importance. The IDWG completed its work at the end of 2019 and submitted a report (de, fr) to the two heads of department concerned.<sup>10</sup>

## 4.2 Parliamentary interventions

Several parliamentary interventions relating to the criteria for implementing the PSSA were tabled and debated by the competent parliamentary committees during the year under review. These were: motion 19.3969 "Businesses need legal security; Switzerland needs security"<sup>11</sup> tabled by the Security Policy Committee of the National Council (SPC-N); interpellation 19.3983 "For a consistent interpretation of the Confederation's foreign policy objectives"<sup>12</sup> tabled by Council of States Member Damian Müller; motion 19.3991 "Private security services provided abroad. Say no to a PSSA blanket and return to the original spirit of the text"<sup>13</sup> tabled by Council of States Member Hans Wicki; motion 19.4019 "Ensuring that the Federal Act on Private Security Services Provided Abroad is no longer subject to interpretations that could jeopardise the legal security that is essential to the Swiss economy"<sup>14</sup> tabled by Council of States Member Peter Keller; postulate 19.4297 "Export economy. Legal Security"<sup>15</sup> tabled by Council of States Member Peter Schilliger; and motion 19.4376 "Preventing the exodus of companies that are important for Switzerland's national security"<sup>16</sup> tabled by the Security Policy Committee of the Council of States (SPC-N). On 20 November 2019, the Federal Council proposed that these motions be rejected and that the above-mentioned postulate be accepted. The debate on these interventions began in both chambers of the Federal Assembly during the winter session of 2019.

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

According to the PSSA, Swiss representations abroad can only mandate a security company for protection in a complex environment if it is a member of ICoCA. The competent authority and the FDFA's Crisis Management Centre (KMZ) regularly evaluate the list of complex environments, taking into account recent developments of the situation in the countries and regions concerned.

During the period under review, a Swiss embassy in North Africa carried out short missions ('in-out' missions) in a neighbouring country that was classified as a complex environment and where the Swiss representation was temporarily closed. The KMZ actively helped to select an ICoCA-certified security company to support the missions. As more and more companies are obtaining ICoCA certification, it is becoming increasingly easier for Switzerland to operate in compliance with the PSSA's provisions, even in countries with highly complex profiles. In countries where it is virtually impossible to find certified companies, transfers of Swiss delegations may be carried out under the protection of international partners.

The FDFA continues to encourage private security service providers to join ICoCA in regions with few or no members. Swiss representations are therefore advised to inform surveillance companies that Swiss representations operating in complex environments will in the future only work with private security service providers that are members of ICoCA. Swiss representations are advised to always use private security service providers that are ICoCA members even outside complex environments.

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<sup>8</sup> SR 514.511

<sup>9</sup> SR 946.202.1

<sup>10</sup> <https://www.news.admin.ch/newsd/message/attachments/60204.pdf>

<sup>11</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20193969>

<sup>12</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20193983>

<sup>13</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20193991>

<sup>14</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20194019>

<sup>15</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20194297>

<sup>16</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20194376>



## 6. New types of services

For a number of years, increasing use has been made – particularly in the military field – of complex systems and applications requiring significant technical expertise. This expertise is often provided worldwide by companies active in the arms industry and the communication technology sector. Private security services are in increasing demand when it comes to activities involving drones, semi-autonomous or autonomous weapons or cybersecurity technologies.

The competent authority is closely monitoring these developments in Switzerland and is working to acquire the necessary knowledge to assess which services in this field are subject to the obligation to declare (which services fall within the scope of the PSSA?) and the degree of sensitivity of these services (which services are contrary to the aim set out in Art. 1 PSSA?). Given the rapid development of this sector, this work is ongoing.

## 7. Conclusions and outlook

After four years of operation, the competent authority draws a positive assessment. 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. The interest shown by the United Nations Working Group on the Use of Mercenaries in Switzerland's activities in the field of private security services (see section 2.3.2) is a clear indication of this recognition.

The competent authority extended its information and awareness-raising activities to new companies, and helped to raise companies' awareness of their obligations under the PSSA.

In light of the parliamentary interventions and debates concerning the interpretation and implementation of the PSSA mentioned above, it is likely that certain aspects of the PSSA will be further clarified in 2020. In particular, information provided by the Federal Assembly should be useful for further clarification.

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