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Federal Department of Foreign Affairs FDFA

State Secretariat
International Security Division ISD

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2021 annual report on the implementation of the Federal Act on Private Security Services Provided Abroad

(1 January 2021 – 31 December 2021)

1. Introduction

Although Swiss companies working in private security abroad reduced their activities in 2021 – in large part due to the global pandemic – overall the private security sector continued to develop. The sector has seen a rapid rise in the development and importance of advanced technologies, which are often managed by private actors on behalf of the state. This has therefore become the subject of increased attention and reflection, including in security policy.¹ The role of private security providers is increasingly evident and is becoming an issue, particularly in relation to rule-making and law enforcement. The issue of proxy wars – *i.e.* the use of private military and security companies in conflict zones – was also in the centre of attention in 2021. In terms of the implementation of the Federal Act on Private Security Services Provided Abroad (PSSA),² the year 2021 was strongly influenced by the revision of the Ordinance on Private Security Services Provided Abroad (OPSA).³ The number of activities subject to the obligation to declare has decreased significantly.

The PSSA aims to safeguard Switzerland's internal and external security, realise 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 a declaration requirement and, where appropriate, investigation.⁴

Pursuant to the OPSA (Art. 3), the FDFA's State Secretariat is the authority responsible for the implementation of the PSSA. The unit operationally responsible for the implementation of the Act is the Export Controls and Private Security Services Section (ECPS) within the International Security Division (ISD). 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.

Since its reorganisation in March 2020, the ECPS has been in charge of processing cases relating to export controls submitted by the State Secretariat for Economic Affairs (SECO) for consultation. It also works closely together with the SECO to prepare policy briefs and participate in national and multilateral dialogue in this area. At the operational level, in 2021 the ECPS received about 300 cases regarding the export of war materiel and goods under the War Materiel Act (WMA)⁵ and the Goods Control Act (GCA).⁶

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. Activities in 2021

2.1 Activities related to implementing the new ordinance

While the year 2020 was characterised by the work on the revision of the OPSA, during the current period under review the competent authority was confronted with numerous questions relating to the implementation of the new provisions. This involved translating the purpose of the revision into practice, *i.e.* resolving any outstanding inconsistencies in the treatment of private security services-related cases under the PSSA, WMA and GCA.

The new ordinance includes the following key aspects: First, a more precise definition of important notions under Article 4 let. a of the PSSA such as 'operational or logistical support', 'operating and servicing weapons systems', and 'advising or training members of armed or security forces'; second, the establishment of a consultation mechanism in the case of review procedures between the FDFA, the Federal Department of Economic Affairs, Education and Research (EAER) and the Federal Department

¹ See for example the new [Arms Control and Disarmament Strategy 2022–25](#) published by the Federal Department of Foreign Affairs (FDFA).

² SR 935.41

³ SR 935.411

⁴ 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).

⁵ SR 514.51

⁶ SR 946.202

of Defence, Civil Protection and Sport (DDPS); third, the involvement of the Federal Council on any matters on which opinions diverge or which are of considerable importance to foreign or security policy; and finally, an exemption from the declaration requirement for certain services if they are in close connection with an export in accordance with the WMA or GCA (see 2020 annual activity report, section 3). Specific aspects related to implementing the new provisions and practical considerations for the companies concerned have been set out in the updated *PSSA guidelines*⁷ and the new *Instruction concerning Article 8a of the OPSA*.⁸ Both documents provide detailed explanations of the amendments and the key points companies must bear in mind when considering the delivery of private security services abroad. The internal bilateral agreement between the FDFA and the SECO has also been updated to redefine the responsibilities and processes for cooperation under the new regime. This agreement replaces the previous version from 2015.

These instruments are necessary in order to ensure that companies have understood the important changes to the law since the entry into force of the new provisions. Amended definitions of certain services (Art. 1 a/b/c OPSA) and exemptions for services provided in connection with exports that are in accordance with the WMA or GCA (Art. 8a OPSA) mean that a number of services are no longer subject to the declaration requirement, *i.e.* do not need to be submitted to the competent authority. Although a company may consult the competent authority at any point, it is the company's responsibility to check whether the planned activities meet the definitions of the services under Article 4 let. a of the PSSA or whether they meet the conditions required for an exemption.

During the period under review, the ECPS undertook a systematic analysis of all the submissions it received. Before examining each case on its merits, it assessed to what extent the case may have been affected by the ordinance's new provisions. Companies were often unable to determine whether a planned activity fell under the new definition of security services or whether it may be exempt under Article 8a of the OPSA. In case of doubt, companies preferred to refer the activity to the ECPS (see also section 3.5).

2.2 Activities at national level

During the year under review, the ECPS continued its information campaign to raise awareness among companies that might be affected by the law in this field. It also prepared the groundwork for a new series of meetings to be held in 2022 with companies active in various important sectors (protection, training, private intelligence, new technologies) in order to assess their activities (or the development of their activities over time), evaluate to what extent they may be affected by the PSSA, and explain the legal framework and resulting obligations.

The *5th SECO export controls seminar* on 10 November 2021, which was attended by many industry representatives, was a key event to this end. During this seminar, the ECPS gave a presentation entitled *Advice and training in technology transfer (know-how): the obligation to declare private security services under the PSSA and application of the new exemption (Art. 8a OPSA)*. This presentation made it possible to raise awareness of the new legal provisions among many companies.

2.3 Activities at international level

At the international level, the ECPS has been involved since its inception in the dialogue on national and international standards for private military and security companies (PMSCs) and on oversight mechanisms for their activities. As in 2020, the COVID-19 pandemic continued to restrict the organisation of international meetings, with many cancelled and others being held online.

- In April, the ECPS actively participated in the second virtual session of the intergovernmental working group organised by the Office of the High Commissioner for Human Rights. The goal of this working group is to develop an international framework regulating the activities of PMSCs.
- In June, the ECPS took part in a virtual panel discussion organised by the Montreux Document Forum as part of a MENA regional meeting in order to raise awareness of the Montreux Document among countries in the region, as well as to facilitate an exchange on challenges and best practice related to the regulation of PMSCs.
- In September, the ECPS participated in a working group at the 48th session of the Human Rights Council on the issue of using mercenaries as a means of violating human rights.

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

⁸ https://www.dfae.admin.ch/content/dam/eda/en/documents/aussenpolitik/sicherheitspolitik/kurzanleitung-art8a-VPS_EN.pdf

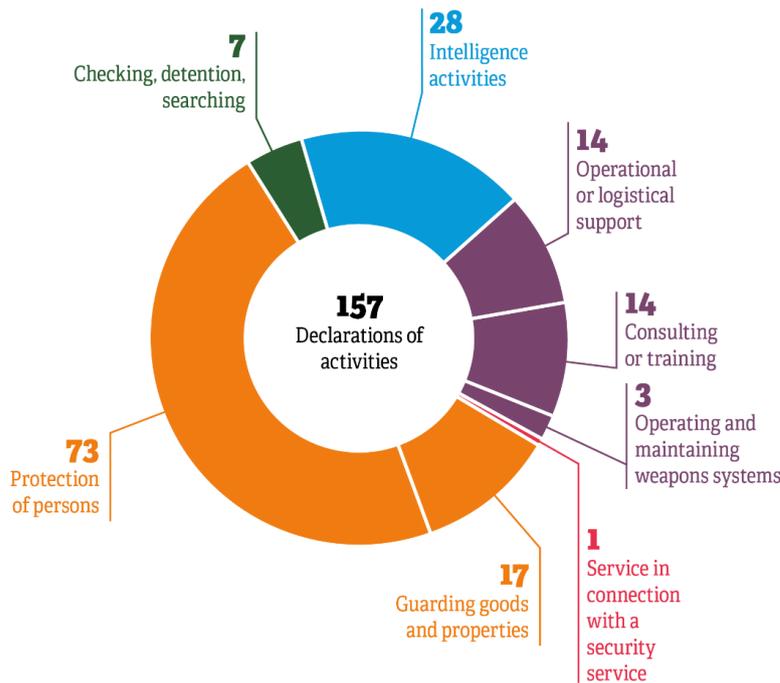
- In October, at a panel organised by the Geneva Centre for Security Sector Governance (DCAF), the ECPS presented Switzerland's approach to training to prevent the use of excessive force by private security providers.
- Lastly, the ECPS participated in the work of the annual general assembly of the ICoCA (International Code of Conduct Association). The discussions during the general assembly focused on the role of private security companies in migration and detention, working conditions in the private security sector and how to ensure that the use of technology in the field of private security is responsible and complies with human rights.

The ECPS also took position in two inquiries carried out by the *UN 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 first of these dealt with cyber mercenaries and other relevant actors providing military and security products and services in cyberspace, and the impact of this on human rights. The second focused on PMSCs involved in humanitarian activities and human rights concerns. The Swiss responses were drafted in coordination with the other relevant departments of the FDFA and the Confederation.

3. Statistics

3.1 Reporting procedures. Figures for different services in 2021

Between 1 January and 31 December 2021, **15 companies** submitted **157 declarations** to the ECPS regarding planned activities. The declarations submitted for 2021 to the ECPS for private security services under Article 4 let. a and b of the PSSA as of 31 December 2021 break down as follows:



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

See section 3.6 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 **three groups** of security services:

Companies providing the **protection of persons and the guarding or surveillance of goods and properties in complex environments** (Art. 4 let. a para. 1–2 PSSA, orange segments) are security companies in the usual sense of the term, generally small or medium-sized. They provide services

corresponding to the definition of 'security services' under the *International Code of Conduct for Private Security Service Providers (ICoC)*.⁹

Companies providing **operational or logistical support, operating and servicing weapons systems and advising or training members of armed or security forces** (Art. 4 let. a para. 6–8 PSSA, purple segments) are mainly industrial companies operating in the war materiel and dual-use goods sector, which vary greatly in size. The extent of the services undertaken in this sector also varies, as does the nature of the declared activities. 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 be war materiel, dual-use goods or other technological products. The training of members of armed or security forces also includes specialist consultants, for example in the field of police training.

Due to the new provisions of the OPSA (Art. 1 a/b/c, Art. 8a OPSA), as of 1 January 2021, some of the activities are no longer subject to the reporting requirement. Please refer to section 3.6 for figures on the impact of these new provisions.

Companies active in **intelligence** (Art. 4 let. a para. 9 PSSA, blue segment) are essentially investigative agencies – mainly operating in the financial sector, particularly banking – which work in the field of private intelligence.

In contrast to the previous year, in 2021 the ECPS did not register any declarations for **security services at events** (Art. 4 let. a para. 3 PSSA). 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 2021, the ECPS initiated **three review procedures in accordance with Article 13 PSSA** (2020: 3; 2019: 26; 2018: 16; 2017: 18; 2015/2016: 6). In one case, it was possible for the declared activity to be carried out. In another, the declaration was withdrawn by the company. One declaration was still pending at the end of the year. A review procedure initiated in 2020 ended with the company withdrawing the declaration that had been submitted to the ECPS.

3.3 Prohibitions

No activities were prohibited in 2021.

3.4 Sanctions

During the period under review, the ECPS did not receive any information about companies whose activities would constitute breaches under Articles 8 and 9 of the PSSA. In addition, the Federal Prosecutor's Office did not impose any sanctions in accordance with Articles 21 to 27 PSSA.

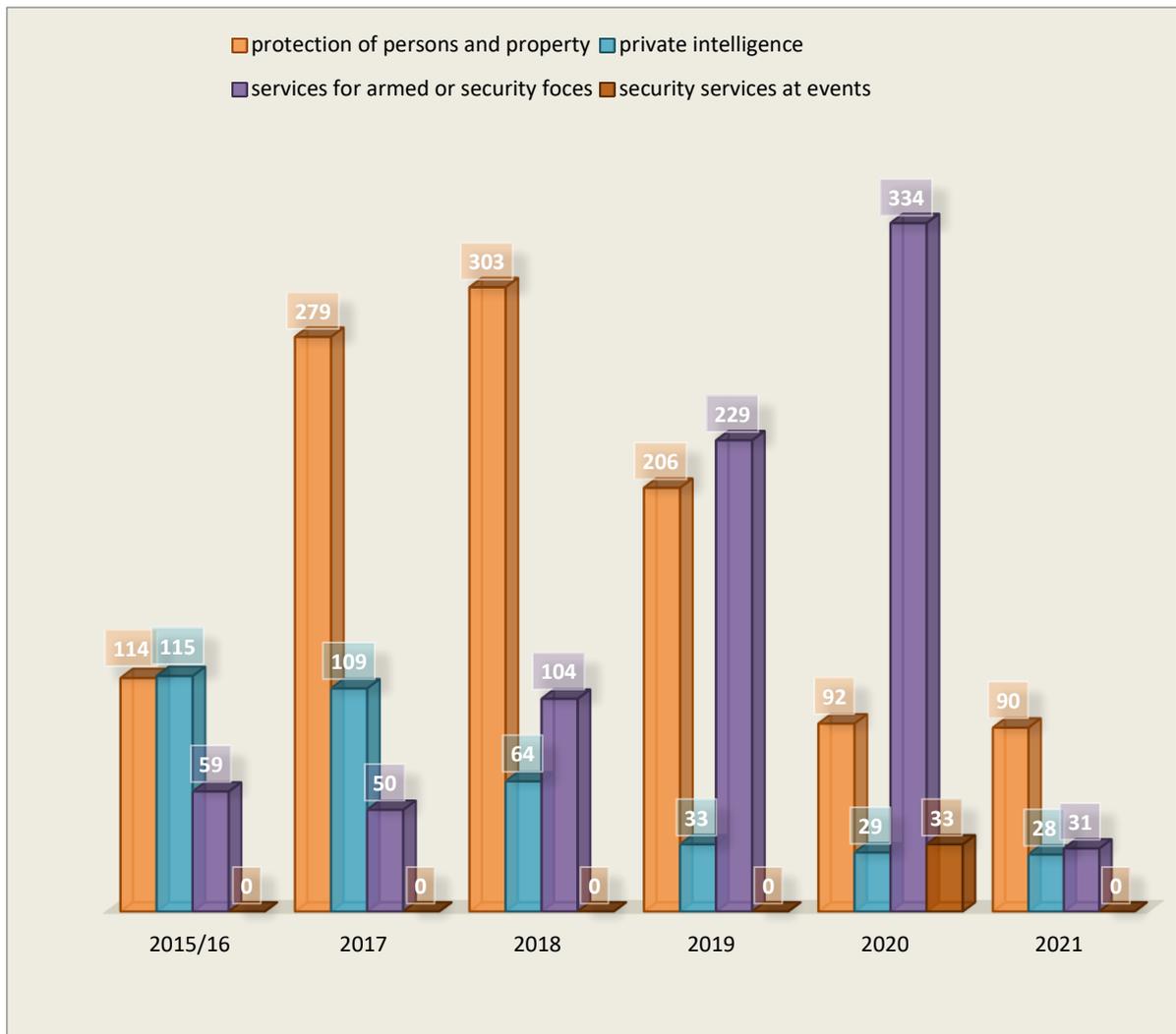
3.5 Reported activities that do not constitute a declaration (based on Article 1 a/b/c or Article 8a OPSA)

In the year under review, **85 activities** were submitted for assessment to the ECPS, which concluded that the reported services could not be considered as declarations 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. 1 let. a OPSA), operation and servicing of weapons systems (Art. 1 let. b OPSA) or advice or training of members of armed or security forces (Art. 1 let. c OPSA), as formulated in the revision of the Ordinance. Others related to the exemption from the declaration requirement under Article 8a OPSA, which was also introduced under the revision of the Ordinance that came into force on 1 January 2021.

The large number of reported activities that did not actually need to be declared can be explained by the fact that many 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 regime.

⁹ <https://icoca.ch>

3.6 Development of main groups of services



The table above illustrates trends in reporting in the main groups of services in 2015–21.¹⁰

The number of declarations for services under Article 4 let. a para. 1–2 PSSA, *i.e.* the **protection of persons and property in complex environments**, remained more or less constant compared to the previous year. The lower volume of these activities in 2020 and 2021 compared to previous years can be explained by the disruption to economic activities due to the COVID-19 pandemic as well as the significant deterioration in the security situation in certain regions, which resulted in the presence of fewer people and companies on the ground requiring protection.

Under **private intelligence** (Art. 4 let. a para. 9 PSSA), the number of services in 2021 was roughly the same as in 2020. There had already been a decrease between 2018 and 2019, which prompted the ECPS to conduct a survey of several dozen companies specialising in private intelligence, to identify any significant changes in their activities. However, it was not possible to draw any definite conclusions about this decline in the number of cases from the survey's results (see *2020 annual activity report*, section 4.6). The pandemic may also have continued to limit the volume of activity in this and other areas in 2021.

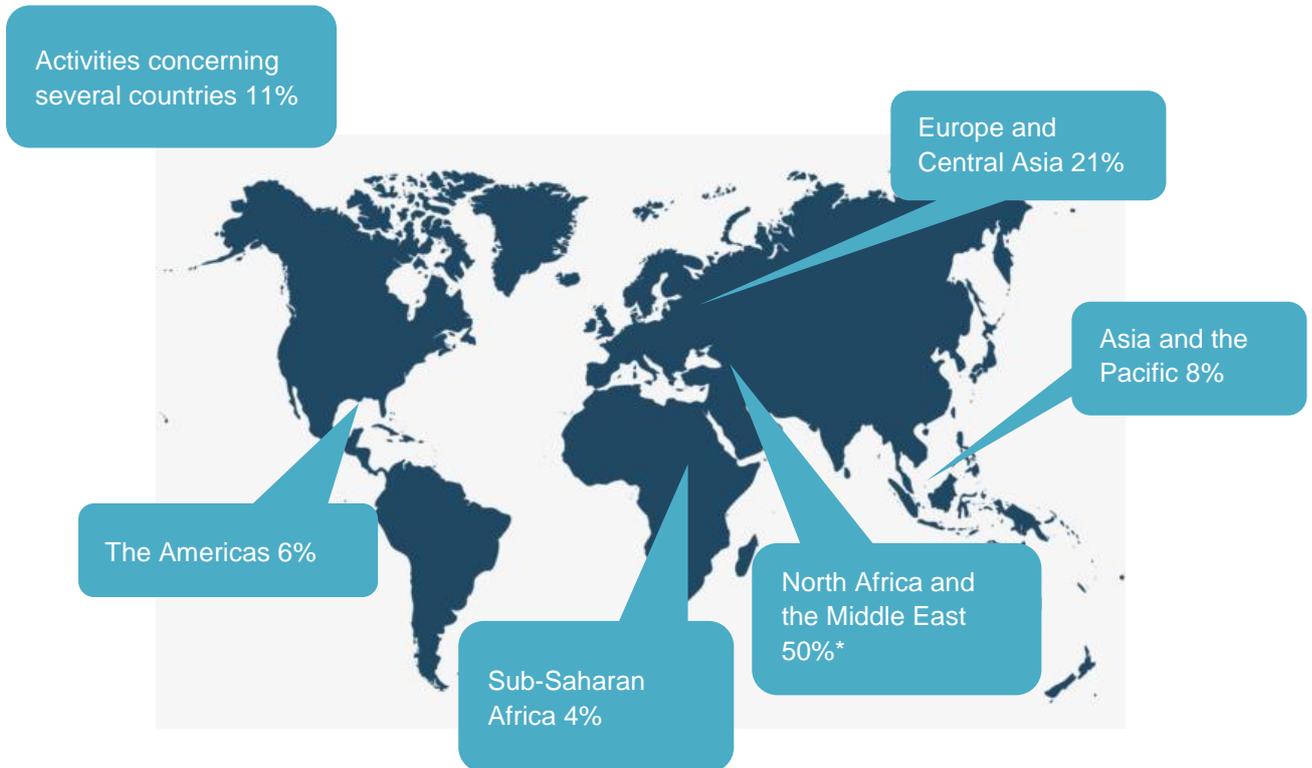
Services for armed or security forces (Art. 4 let. a para. 6–8 PSSA) were significantly fewer in the period under review. The total number of declarations in 2021 was only around one-tenth of the number submitted the year before. This is mainly because of the new provisions that came into force on 1 January 2021, when the OPSA was revised. A number of activities no longer met the new definitions of private security services under Articles 1 let. a, b and c of the OPSA, or were covered by the exemption

¹⁰ 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.

from the declaration requirement under Article 8 let. a of the OPSA. These figures demonstrate the major impact the revised OPSA has had on the implementation of the law in this area.

3.7 Geographical distribution of activities (1.9.2015 – 31.12.2021)

In terms of geographical distribution, the activities subject to the PSSA continue to be mainly concentrated in North Africa and the Middle East, where nearly half of the activities declared since the act came into force were carried out, as well as in 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.

4. Contracting of security companies by federal authorities for protection tasks carried out 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 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 abroad about potential service providers and the requirement for ICoCA certification, which has prompted several companies to join the association in recent years. Swiss representations requiring security services, which are located in a region that is not categorised as a complex environment, are also advised to give preference to companies with ICoCA membership.

The ECPS together with the Crisis Management Centre (KMZ) and the Contracts, Procurement, Compliance Division (VBC) of the FDFA support and advise the foreign representations, as well as other federal authorities and delegations of the Confederation, which make use of protection services abroad. In addition, a number of tools are available such as the *Guidelines on the procurement of security guard services by FDFA representations*, multilingual templates for contracts and performance specifications 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 companies contracted to providing security services are meeting their contractual obligations, particularly in terms of training and equipment.

5. New types of services

An important task of the ECPS is to observe developments in the private security services market internationally and in Switzerland, and to identify potential consequences of these developments. It 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 ECPS closely followed the development of new technologies, particularly in the military sector, which are increasingly operated and maintained by specialised private companies on behalf of armed and security forces.

In 2021 however, public attention was mainly centred on PMSCs and thus constituted another element of interest for the FDFA. While several Anglo-Saxon companies were in the spotlight in the 2000s – notably the British *Aegis* and the American *Blackwater* for the grave abuses committed against the civilian population in Iraq in 2005 and 2007 – in the last decade, PMSCs from other countries have also appeared in various conflicts. These companies sometimes operate alongside local militias, government units, volunteer groups or other organisations. Their rise is based on doctrines that emphasize non-traditional forms of intervention and the use of non-state actors in conflict management in order to support national interests. The term *proxy war* is sometimes used in this context. The role of these PMSCs is quite complex: security (protecting people and infrastructure), military (training partner armies, taking part in combat), intelligence (gathering strategic information), propaganda, and also economic, as some of them may belong to conglomerates pursuing business objectives. In this context, the appearance of such as actors, e.g. the Russian group *Wagner* in sub-Saharan Africa, has regularly made the headlines in 2021.

The FDFA is concerned about these developments and follows them closely. Some of these companies, which do not operate within any legal framework, can have a destabilising effect on security and politics. In the field of private security, as in other areas, Switzerland is committed to ensure that international law (human rights and international humanitarian law) is respected.

6. Conclusions and outlook

In its capacity as competent authority, the ECPS gave a positive assessment of the work carried out during this sixth year since its inception. The year 2021 proved to be particularly challenging due to the entry into force of the new OPSA on 1 January 2021, which brought about key changes to the way the law is implemented. In light of the new instruments, the cooperation between the ECPS and the relevant SECO and DDPS units – which had been successful during the revision process of the Ordinance – also required modification. The new set-up is operating well and will continue to be consolidated in the future, based on the experience made. The impact of the OPSA amendments will require monitoring and analysis in the medium term, and processes and methods will also need to be adapted on an ongoing basis. The ECPS has continued to provide information and make companies aware of the new legal framework and related obligations.

Switzerland's experience with the regulation of private security services has been widely recognized at the international level, in particular through the participation of the ECPS in various events devoted to this topic.

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Effingerstrasse 27, 3003 Bern
Tel. +41 58 464 69 88
sts.seps@eda.admin.ch