

Audit of the implementation of the Federal Act on Private Security Services Provided Abroad

State Secretariat of the Federal Department of Foreign Affairs

Key facts

In 2020, the global market volume for private security services was approximately CHF 120 billion. Swiss service exports represent a negligible part of this. In Switzerland, these include personal protection, surveillance, intelligence activities, operational and logistical support for armed and security forces, operations, maintenance, consulting and training.

Until 2015, there was a legal loophole in Switzerland in this sector, which led to large international security companies contemplating setting up operations in Switzerland. Switzerland then became one of the few countries to enact a law to regulate the industry: the Federal Act on Private Security Services Provided Abroad (PSSA). The Export Controls and Private Security Services Section (ECPS) in the State Secretariat of the Federal Department of Foreign Affairs is responsible for its implementation. At the international level, Switzerland is playing a pioneering role in two initiatives. The so-called Montreux Document reaffirms the obligations of states under international law with regard to the activities of private military and security companies. The International Code of Conduct for Private Security Service Providers (ICoC) aims to ensure respect for human rights and international humanitarian law.

The audit focused on the PSSA procedure concept and showed that the FDFA's reporting and verification procedures are appropriately designed and effectively implemented within the limits defined by the legislator.

Legislator favours a simple reporting procedure

In contrast to the War Material Act (WMA) and the Goods Control Act (GCA), the Federal Council and Parliament chose a notification procedure rather than a licence procedure for the PSSA in order to avoid too great an administrative and financial burden. The notifications to the ECPS are a "duty to inform" on the part of the companies. Until a positive decision is made by the authority, the services may not be provided and the companies have a duty to cooperate in the procedure. The ECPS checks whether the reported activity falls under the PSSA and whether there are grounds for an in-depth verification procedure. A procedure can lead to a service being prohibited.

Outside the reporting and verification procedure – i.e. *before* and *after* a notification by the company – the ECPS has no legal control powers and no scope for administrative sanctions. The WMA and the GCA do not contain these restrictions: periodic control measures are possible both in Switzerland and abroad, both *before* and *after* a licence has been granted. In the context of information gathering, the ECPS relies, among other things, on the support of the Federal Intelligence Service (FIS), the Swiss consulates, embassies, defence attachés (DAs) and – in the case of breaches of the PSSA – on the Office of the Attorney General of Switzerland.

The procedural concept is effective considering the limited control powers

Due to the limited legal control and monitoring instruments of the ECPS, there is a risk that companies do not declare service exports or provide security services abroad differently than declared. Collaboration with other authorities therefore serves to identify previously unknown or problematic companies and services better and faster. The FIS is an important partner here: it can provide the ECPS with information on companies, their leaders and activities, both nationally and internationally. In view of this, it is important to strengthen this collaboration. The channel to consulates, embassies and DAs is well established. They are also able to provide the ECPS with valuable information on the activities of security companies worldwide.

The ECPS is also involved in awareness-raising, training and prevention. Direct contact with the market is crucial, as the security industry is a dynamic sector. It is important to remain in discussion with companies whose activities potentially fall under the PSSA.

As few countries have legislation on exporting private security services, intergovernmental cooperation and exchanges between regulators are still difficult. Against this background, at the time of the audit, the ECPS was working on promoting intergovernmental dialogue between national regulatory experts, e.g. by means of an expert circle. This initiative is to be welcomed.

The ECPS has a well-established application processing system

The reporting and verification procedures are quality assured. In most cases, assessment procedures are submitted to the Secretary of State for her decision. Although the procedures are highly dependent on the individual case, the ECPS has established a useful standardisation of the processes by providing decision sheets. In the case of individual dossiers in the specialist information system for private security companies (IPS), the scope of the documentation on decision-making in the procedures still shows potential for improvement. Likewise, in addition to the dual control principle, an annual declaration of independence for ECPS employees would be advisable, since they are in daily contact with companies.

In terms of digitalisation, efficiency at the ECPS could be increased. As the specialist application IPS will soon reach the end of its life cycle, the time is right for a cost-benefit analysis.

Reporting at the ECPS is reliable, although the statistics and graphics in the annual activity report still have room for improvement.

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