

Supporting enhanced dialogue on private military and security companies (PMSCs)

Analysis of Information provided to the Annual OSCE Information Exchange



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1 INTRODUCTION AND BACKGROUND

1.1 INTRODUCTION

Security for States and their citizens has traditionally been provided by national law enforcement and armed forces; today this phenomenon is constantly challenged around the world. Private military and security companies (PMSCs) play an increasingly important role within the security sector overall and have significant potential to impact human rights, and the rule of law. Globally, the public security sector has downsized and security has been increasingly contracted to PMSCs during the last decade. It is estimated that at least half of the world's population lives in countries with more private security personnel than police officers. For instance, 232,000 private guards were employed in 2015 in the United Kingdom, compared with 151,000 policemen. There are more than 1.1 million private security guards in the United States—compared with about 660,000 police and sheriff's officers.¹ In fact, the OSCE's participating States (pS)² from the Western Europe and North America region³ account for about half of the security services market worldwide⁴ and host most of the major private military and security service providers' headquarters. With emerging security issues related to terrorist threats and refugee influxes as well as the provision of security for mass sporting events,⁵ new trends are also contributing to the increase of PMSCs across those regions.⁶

The private military and security sector has also been rapidly growing in sub-regions of the OSCE region. In Eastern and Southeast Europe, the introduction of a free market economy has spurred the creation of small- or medium-sized private security providers. This privatisation of security emerged as a significant consequence of security sector reform (SSR) in post-communist countries which had to restructure state institutions and reorganise national security capacity.⁷ Today, it is estimated that there are around 20,487 PMSCs⁸ in the sub-region with activities mainly focused on guarding commercial premises. Private security personnel largely originate from demobilised military personnel.

For Central Asia, there is insufficient data on the PMSC industry; however, available research suggests that similar to Eastern Europe, the introduction of elements of the market economy has paved the way for the emergence of private security companies.⁹ Recent reports inform that private military companies will be legalised in the countries of

the Collective Security Treaty Organization (CSTO)¹⁰ in the near future. Activities of such “organisations” (private military companies) will become legal with the adoption of the law “on private military and security organisations” which has already been sent for discussion to the Parliamentary Assembly of CSTO. The law denotes non-combatant status on such organisations and they will be authorised to carry out both military and security services.¹¹ However, their status is still unclear; particularly since private military companies' personnel could protect allies from external aggression and participate in counter-terrorism operations—meaning they would effectively have combatant status.¹²

The private security sector has been also expanding in Northern Europe, particularly in: Lithuania, Latvia and Estonia. In Estonia, for example, private security companies employed over 5,483 people in 2014, with a market size estimated at around 140.3 million euros.¹³ Estonian legislation prohibits private security companies from the sale of weapons, from providing detective services, and performing police or national defence functions, except if specifically provided by law.¹⁴ The roles and responsibilities of state authorities and the permitted services of private security companies are normatively delimited on the basis of the functions performed.¹⁵

The significant size of the industry across the OSCE reflects the diversity of PMSC services provided - from the protection of people and property, training and advising of armed forces, to the maintenance of weapons systems or logistical support. PMSC services touch on many different areas of the security sector: border patrols, detention centres, policing, and military support. PMSC personnel are also often armed with lethal or less-lethal weapons. As a result, PMSCs and their personnel create concerns for the respect of human rights and international humanitarian law: PMSCs can help to enhance security but may also contribute to more insecurity. Privatisation of security has significant consequences for effective, democratically accountable security sector governance (SSG) as well as on opportunities for security sector reform across a range of different reform contexts. Given these considerations, it can also be argued that good private security governance is also essential to the achievement of Sustainable Development Goal 16 (peace, justice

and strong institutions). A professional, legitimate, and accountable PMSC industry is a critical piece of the puzzle in ensuring security, strengthening the rule of law and maintaining peace. Good governance of the private security sector, as part of SSG, occurs when States implement effective, democratic laws, and when States monitor and hold PMSCs and their personnel accountable. The role and the impact of the private sector (both positive and negative) within the modern extended concept of national security is therefore inherently linked to wider questions of SSG and SSR.

National legislation and oversight frameworks across OSCE participating States have to keep pace with the growth in the PMSC industry. As a result, national authorities in a number of States often face challenges in how key principles of SSG (transparency, participation, and accountability) that are enshrined in the OSCE's Code of Conduct, should be applied to the private military and security sector.¹⁶

1.2 INTERNATIONAL REGULATORY INITIATIVES ON PMSCS REGULATION

In 2006, a number of States and international experts gathered momentum on regulating PMSCs, leading to the development and 2008 launch of the *Montreux Document on pertinent international legal obligations and good practices for states related to operations of private military and security companies (PMSCs) during armed conflict* (hereafter referred to as the Montreux Document). Initiated by the International Committee of the Red Cross (ICRC) and the Swiss government, it underlines that PMSCs do not operate in a legal vacuum and promotes respect for international humanitarian law (IHL) and human rights law related to States' regulation of PMSCs. Furthermore, the Montreux Document assembles good practices addressed primarily to States but which can also be useful for other relevant actors such as international organisations, civil society organisations (CSOs), companies that contract PMSCs, as well as PMSC personnel and PMSCs themselves. In 2013, Montreux Document participants established the Montreux Document Forum (MDF). By providing a venue for informal consultation among participants, the MDF seeks to support national implementation of the Montreux Document, as well as to encourage more States and international organisations to actively support it. The MDF further aims to strengthen dialogue on lessons learned and good practices and challenges

related to the regulation of PMSCs. Today the Montreux Document is supported by 54 States and 3 international organisations, including the OSCE.¹⁷

In parallel to this State-centred initiative, the International Code of Conduct for Private Security Providers (ICoC) was developed as a result of a multi-stakeholder initiative led by Switzerland. The overarching objective of the ICoC was to articulate human rights responsibilities of private security companies (PSCs), and to set out international principles and standards for the responsible provision of private security services, particularly for PSCs operating in complex environments. Over the course of an 18-month process, Switzerland brought together industry, States (including OSCE pS such as Norway, Sweden, United Kingdom and the United States of America), CSOs, and academics to elaborate a code of conduct for the private security industry. The ICoC sets out human rights principles, IHL, and good industry practices directly applicable to private security service providers when operating in complex environments. To ensure implementation of and compliance with the ICoC, the ICoC Association (ICoCA) was formed in 2013 as an independent governance and oversight mechanism.¹⁸ Gathering members from the industry, Governments, and from civil society, the ICoCA is tasked to support certification, monitoring and complaints resolution.

Additionally, it is important to note the developments occurring within the United Nations (UN), namely the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs were issued in 2011 to operationalise the "Protect, Respect and Remedy" Framework¹⁹ which reminds States of their duty to protect against human rights abuses by business, the corporate responsibility to respect human rights and for both States and companies to provide greater access by victims to effective remedy, both judicial and non-judicial. On a multilateral level, States have also been discussing the need for a binding international instrument on PMSCs. The UN Human Rights Council established the Working Group on the Use of Mercenaries in 2005 to study the adverse effects of mercenary activities, and also to monitor and study the activities of PMSCs and their impacts on human rights. In 2009, the Working Group prepared a draft convention on PMSCs and recommended to the Human Rights Council to establish an intergovernmental open-ended Working Group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of PMSCs' activities (OEIGWG).²⁰ In the years since, the OEIGWG has been discussing and debating the development

of an internationally binding regulatory framework. During the sixth session of the OEIGWG, the Human Rights Council voted to establish a new mandate of the OEIGWG, to consider the elements of a possible convention.

These initiatives regulating PMSCs, whether State-led or multi-stakeholder, are complementary and provide a multifaceted approach to solving the challenges posed by the PMSC industry. The diversity of these initiatives creates a layered approach to regulation.

1.3 INFORMATION EXCHANGE ON THE CODE OF CONDUCT ON POLITICO-MILITARY ASPECTS OF SECURITY

As the world's largest regional security organisation, the OSCE's support to the Montreux Document and its active participation in the Montreux Document Forum constitute an important engagement for more effective regulation of PMSCs. In 2013 the OSCE Secretary General expressed support for the Montreux Document in a letter addressed to the Swiss FDFA and the ICRC. In the same year, the Swiss Chairmanship of the OSCE Forum for Security Cooperation (FSC) organised a Security Dialogue on the Montreux Document for all pS. This Security Dialogue provided an important opportunity for pS to gain awareness of the Document and the added value of its good practices for PMSCs regulation.

Through the Montreux Document Forum, the OSCE FSC Support Section has participated in the development of implementation guidance support tools. The Legislative Guidance Tool for States to Regulate PMSCs²¹ and the Guidance Tool for Contracting PMSC Services²² were developed to support national authorities in their respective roles as regulators and clients of PMSCs. In addition to the support for the Montreux Document expressed by the Secretary General, the OSCE Parliamentary Assembly (PA) has acknowledged the need to effectively regulate PMSCs. Several OSCE PA resolutions²³ stress the lack of parliamentary oversight regarding PMSCs and emphasize that pS should establish effective parliamentary monitoring and legal recourse. More recently, the Minsk PA resolution 2017 calls on pS who outsource tasks or missions to PMSCs to meet their obligations under IHL. It further encourages parliaments to ensure democratic control of the private security industry by drawing up national legislation regulating PMSCs activities both at home and abroad on the basis of international standards.²⁴ The issue of PMSCs

was also raised in the 2016 and 2017 OSCE-wide Conferences on SSG/R; in 2017, the Austrian OSCE Chairmanship recommended that the OSCE should seek to engage more strategically with all security actors, including private security services.²⁵

Most importantly, the OSCE Code of Conduct for Politico Military Aspects of Security (CoC) has been viewed as relevant to PMSCs' regulation. As an "unparalleled norm-setting document" for OSCE pS, the Code of Conduct has been called the first "toolkit for soft security."²⁶ Launched in 1994, it is the first-ever multilateral instrument to gather norms and principles for regulating the conduct of armed and security forces both at the national and international level.²⁷ PMSCs in particular, have been of growing importance in the security sectors of most OSCE participating States. Their activities raise significant issues going to the very core of the CoC. Specifically, the Code requires States to provide effective control of their military, paramilitary and security forces by "constitutionally established authorities vested with democratic legitimacy."²⁸

Furthermore, the annual Information Exchange and questionnaire provide an opportunity for regular reporting by OSCE pS on Code of Conduct implementation and on issues impacting security sector governance.²⁹ The Information Exchange does not contain formal questions related to PMSCs. However, in 2009, several pS suggested widening the scope of the annual questionnaire. This resulted in the adoption of FSC decision 2/09³⁰ which called on participating States to include the PMSC topic in their submissions. Currently, reporting on PMSCs is voluntary and pS are encouraged to provide this information along with the questionnaire.

In 2014, a list of indicators³¹ was introduced in order to improve general reporting by States to the CoC. The implementation of this document is voluntary and helps States to identify potential gaps in their replies and find room for improvement. The indicators only include the issue of pertinent legislation on PMSCs for States to report on.³²

In the years following the development of the list of indicators, a number of pS identified a need for comprehensive questions and more detailed indicators pertaining to PMSCs. This led to the 2015 development of a "Food-For-Thought paper"³³ by a number of OSCE pS to guide delegations on how to report on PMSC-related issues. The Food-For-Thought paper is intended to improve the quality of the voluntary information sharing as specifically related to PMSCs.

The paper included three specific questions related to PMSCs (see Annex A):

- i. States' international engagements that seek to promote standards of good governance and good practices for PMSCs; as well as policy, legislation, and regulations relevant for PMSCs that operate domestically and internationally;
- ii. How PMSCs are registered, licensed and monitored;
- iii. The number of PMSCs registered and what services they deliver, both domestically and internationally.

The answers to these questions enable the OSCE pS to gain an understanding of the national implementation of norms and good practices and an overview of the different national legal frameworks and policies for the regulation of PMSCs.

In 2017, a review process of the Food-For-Thought paper³⁴ was launched. The paper reiterates that the information shared should be linked to specific requirements and concerns of the Code of Conduct and revises the questions proposed in 2015. The objectives of the reviewed paper remained to support pS in providing thorough and detailed reporting on PMSCs, simplifying them to two proposed questions relating to States' policies, legislation and regulations as well as how States ensure that their use of PMSCs is consistent with obligations under international law (see Annex B). This paper is now currently being considered by pS and awaiting finalisation.

1.4 NOTE ON TERMINOLOGY

PMSCs are not explicitly mentioned in the Code of Conduct. Furthermore, there is no agreed, comprehensive, universal term definition of PMSCs on an international level. PMSCs are, however, defined within the Montreux Document (preface, paragraph 9).³⁵ In line with the Montreux Document definition, the OSCE Food-For-Thought paper uses the overarching term of "all private business that provide military and/or security services, regardless of where they function, how they operate, or how they self-identify." This paper will henceforth use this definition.

In some cases, the paper uses "PSC" or "private security company." This term is used in two types of cases: when national legislation, policy or other documentation uses the term PSC or when referring to the International Code of Conduct for Private Security Providers. The ICoC initiative only refers to PSCs in its documentation.

2 OBJECTIVES AND METHODOLOGY

Since the 2009 proposed expansion of the questionnaire, no qualitative analysis of pS reporting on PMSCs has been carried out. A thorough analysis of the information provided by pS could be useful to other OSCE pS in the development of their own regulations and oversight of PMSCs. Furthermore, no research has been conducted on possible gaps on oversight and regulation of the private security industry across the OSCE regions.

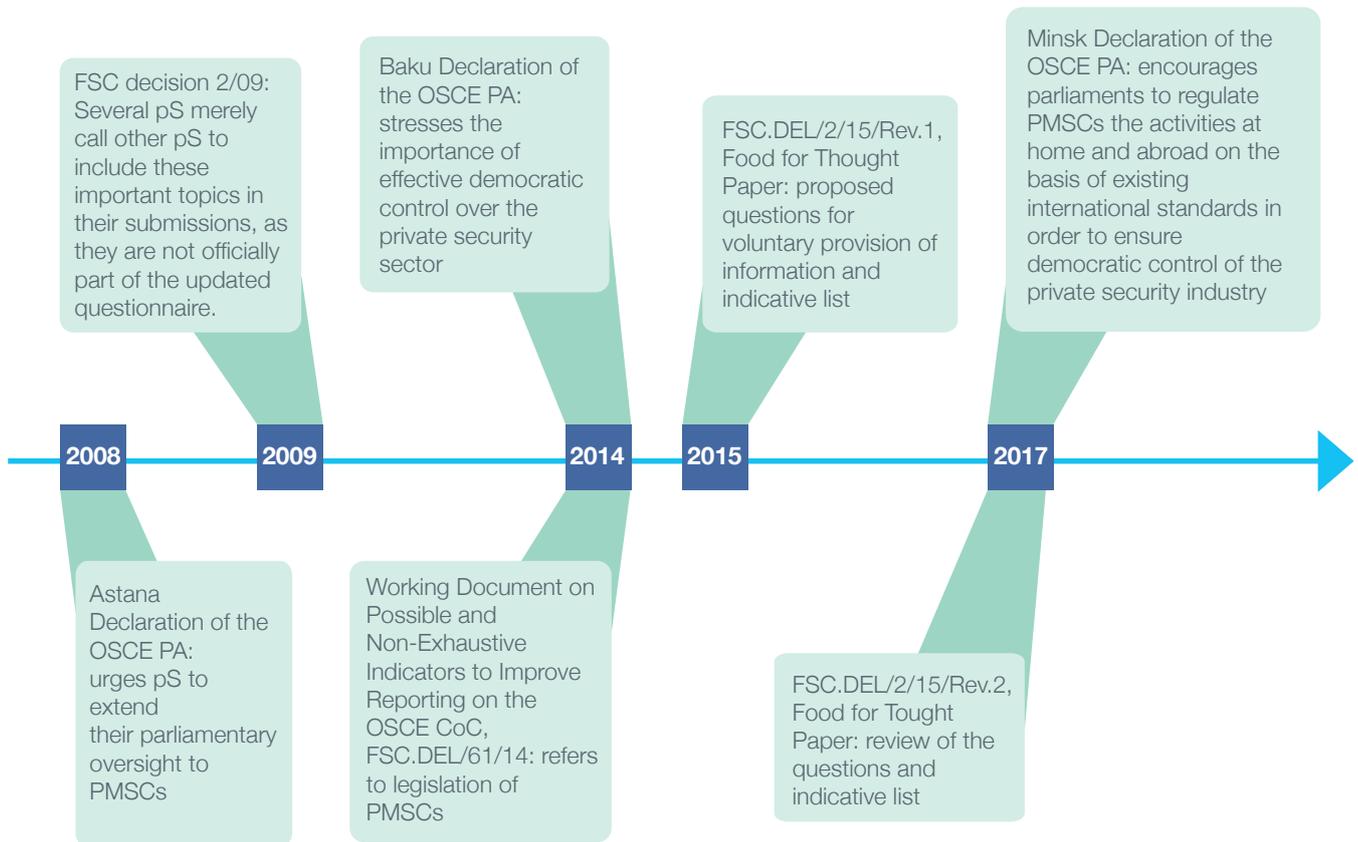
In consideration of this, the Conflict Prevention Centre has tasked the Geneva Centre for the Democratic Control of Armed Forces (DCAF) to carry out an analysis of pS' responses to the voluntary reporting on PMSCs. The analysis focuses on OSCE pS efforts in the regulation and oversight of PMSCs and identifies additional avenues to support States' reporting. The paper also aims at filling the research gap in understanding OSCE pS' experiences and how they have engaged with the reporting on PMSCs in the Information Exchange. It also gives an insight on how OSCE institutions and international regulatory initiatives can support OSCE participating States as they seek to overcome challenges in regulation of PMSCs.

The paper's concrete objectives are the following:

- Analyse the responses of OSCE pS related to PMSCs;
- Highlight the added value of participating States' comprehensive responses on PMSCs;
- Raise awareness and support the sharing of good practices in the regulation of PMSCs among pS based on international norms and good practices;
- Identify ways to foster a thoughtful dialogue among pS on the roles of PMSCs in SSG/R;
- Provide practical and feasible recommendations based on reviews of best practice and lessons learned on the regulation of PMSCs.

The timeframe of the research and analysis covers pS' responses to the Information Exchange in the period from 2009 to 2017. The rationale for this time period is due to the FSC decision 2/09 update where some pS called for the voluntary provision of information on PMSCs in addition to the Information Exchange. It takes into account the year

PMSCs-related key milestones at the CoC Information Exchange



The above graph serves as a chronological timeline and does not imply any correlation between the different documents.

of submission of the information (there were pS that provided information for multiple years in the same questionnaire). No individual pS are mentioned in the response's analysis. It is hoped that the 'non-attributive' format will serve to focus on and highlight good practices and challenges in a constructive manner without singling out any State individually.

The main focus of this paper is on analysing the overall substance, completeness and presentation of the submitted information. This provides the basis for a number of findings referring to general trends in the reporting and more specifically for observations based on individual responses. In order to supplement the findings, the authors also performed desk-based research and informative interviews with relevant contact points from OSCE field operations and a civil society organisation with expertise on the region to gather insights. The analysis paper concludes with specific recommendations on activities and support initiatives which could be undertaken by the OSCE pS and Executive structures in order to support pS' effective regulation of PMSCs.³⁶ This paper will be presented to the OSCE pS for consultation and discussion.

As will be detailed in the next section, this analysis paper is drawn from a small sample, given the lack of responses from pS. The paper covers only 13

of 57 pS with a strong Western and Southeast European focus, and therefore cannot be considered representative of the OSCE region as a whole. As a result, the analysis paper's subsequent insights and recommendations should be read keeping in kind these constraints.

3 OVERVIEW OF THE INFORMATION ON PMSCS PROVIDED IN CODE OF CONDUCT RESPONSES

This section gives a snapshot of the number of State's responses from 2009-2017 to the CoC questionnaire and the responses' content consistency. The research has identified a total of 13 out of 57 participating States that have included information on their national private military and security industry during that period. This means that only 23% of all OSCE pS voluntarily reported on PMSCs related issues. Among those 13 pS, there were certain pS that did not report every year, therefore the maximum response rate per year amounts to 12 pS (see Chart 1).

Overall, the provided information rarely covers the topic comprehensively (only 6 pS out of the aforementioned 13 provided detailed answers during the years). Furthermore, the information relevant to PMSCs is sometimes scattered within the overall text of the questionnaire replies, which results in fragmented information. Despite those inconsistencies, the answers constitute unique and valuable information on pS practices on PMSCs regulation. Additionally, it should be kept in mind that a voluntary reporting mechanism on PMSCs does not exist within any other international or regional organisation.

Following the FSC decision 2/09 which encouraged reporting on PMSCs, only 1 pS submitted information. The pS only listed the relevant legislation covering PMSCs. The following year, 2 pS provided information pertaining to PMSCs. In 2011 and 2012, only 1 further pS has joined these efforts. The pS outlines its domestic regulation, including the general conditions that private security companies must fulfil to be awarded a contract and draft legislation on PMSCs regulation operating in the areas of crisis or conflict.

Interestingly, both a quantitative and qualitative improvement of the information exchange can be observed in 2013. During this year, 5 pS provided information on PMSCs in their annual information exchange. In 2014, the response rate on PMSCs increased significantly: 11 pS reported with more detailed answers on national and international good practices on PMSCs regulation. This is an increase of 120 % compared to the 2013 information exchange. In the following years, more information continued to be submitted on PMSC regulation which contained more comprehensive details that could feed into the

analysis (information was provided by 11 pS in 2015, 12 pS in 2016 and 10 pS in 2017).

In terms of geographical distribution, pS from 3 sub-regions reported on their PMSC industry- 47% from Western Europe, 38% from Southeast Europe and 15 % from Central Europe. Those sub-regions represent a concentration of contracting and home states for PMSCs as well as small and medium-sized private security providers.

■ Geographical distribution of the OSCE pS responses (2009 | 2017)

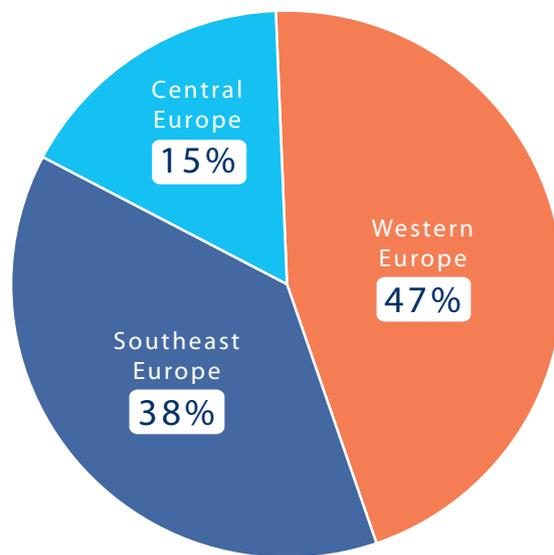


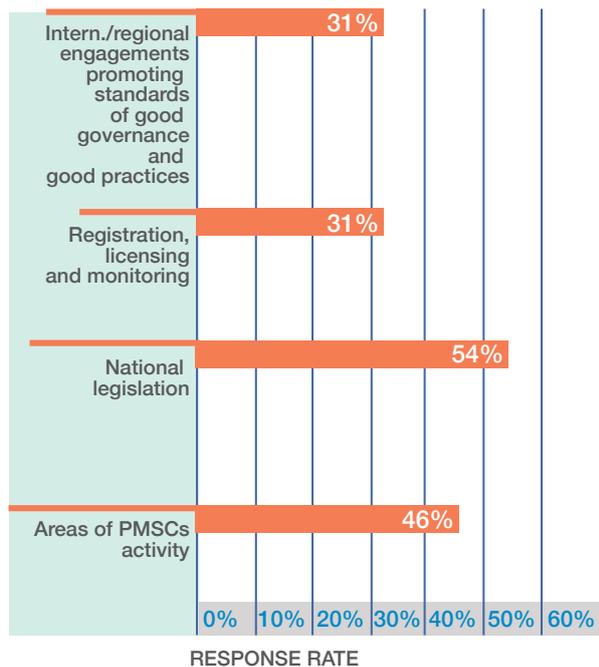
Chart 2, Source: OSCE participating States responses to the Information Exchange

■ pS responses' rate on PMSCs to the Information Exchange (2009 | 2017)



Chart 1, Source: OSCE participating States responses to the Information Exchange

■ pS responses per thematic (2009 | 2017)



As mentioned, only 3 pS provided information in the first three years since FSC decision 2/09 which does not allow for a comprehensive analysis of the PMSCs industry in the OSCE regions. Therefore, the following sub-sections will further examine the pS' reports during the more active time period- from 2013 until 2017. For this purpose, the assessment will refer to the following categories based on the Food-For-Thought paper: 1) States responses providing information on areas of PMSC activity; 2) Information on legislation relevant for PMSCs that operate domestically and internationally; 3) Registration, licensing and monitoring of PMSCs; 4) States' international and regional engagements promoting standards of good governance and good practices for PMSCs.

3.1 STATE REPORTING ON THE CHARACTERISTICS OF THE INDUSTRY

The services provided and the types of clients are all important elements in order to capture particular developments in a national private security sector. With the industry growing, there is an increasing tendency for OSCE participating States to allow many of the State's traditional security functions to be taken on or taken over by private security operators. Almost half of the respondents (6 pS) provided information about PMSC services on domestic territory. This includes, among others, providing security surveillance and control of persons in public places, protection of property and persons,

transport of valuables, maritime security, training and operational or logistical support for armed or security forces (see Annex C). Few States (3 pS) provided information on private security companies' activities abroad, including in complex environments.

3.2 REPORTING ON THE LEGISLATION RELEVANT FOR PMSCS THAT OPERATE DOMESTICALLY AND INTERNATIONALLY

Analysis of the national legal and policy frameworks regulating the PMSC sector adopted by OSCE participating States is crucial to understand their role in ensuring accountability and professionalism of PMSCs. In particular, 2 respondents provided detailed and comprehensive information with some examples of adopted legislations that States implemented in order to address previous legislative gaps. 1 pS, for example, shared the experience of updating legislation to include provisions for security companies operating abroad. The new legislation, based on Montreux Document good practices, provides for a system of prohibitions that can be issued ad hoc by the competent authority in specific cases. The law also regulates the conditions for contracting such as adequate training for the performance of protection tasks.

Another notable example is the response of a pS whose penal code provides for the jurisdiction of national courts over certain crimes committed extraterritorially even if the act is not subject to prosecution in the country concerned (e.g. extortive abduction, slave trade, trafficking in human beings, organised crime, drug-related crimes, air piracy, terrorism related crimes, genocide, war crimes, crimes against humanity, enforced disappearance and torture).

In addition, 1 pS referred to its efforts to regulate the private maritime security industry independently of the place where the company's head office is based. PMSCs who wish to perform security functions to counter piracy on board vessels sailing under a national flag need a licence issued by the Office for Economic Affairs and Export Control. Similarly, the security companies also have to apply for a licence if they wish to offer security services on vessels sailing under other flags in international waters.

3.3 REPORTING ON REGISTRATION, LICENSING AND MONITORING OF PMSCS

Licensing and registration regimes should be implemented by States, requiring specific criteria to be fulfilled by companies, such as responsible

management and storage of firearms and other weapons, training of personnel etc.

Among the 13 pS, only 4 submitted information dealing with licensing, registration, and monitoring. This amounts to 31% of the respondents. 1 pS, for instance, reported that it expressed support for the introduction of professional standards for private security working on land or at sea in complex or high-risk environments and accredited certification. Other pS reported on the existence of a national independent certification body that certify private security companies to the professional standards ISO 18788 for land-based PSCs,³⁷ and ISO 28007 for maritime PSCs.³⁸

3.4 REPORTING ON INTERNATIONAL AND REGIONAL ENGAGEMENTS AIMED AT PROMOTING STANDARDS OF GOOD GOVERNANCE AND GOOD PRACTICES FOR PMSCS

Participating States were further asked to provide information on engagement with voluntary initiatives aimed at promoting more effective regulation of PMSCs such as the Montreux Document and the ICoC as well as to share their State's position on joining the Document and the ICoC Association.

In particular, 4 pS highlighted their support for the Montreux Document and highlighted the Montreux Document Forum's added value in strengthening dialogue on lessons learned, good practices, and challenges related to the regulation of PMSCs. In addition, 3 of those 4 participating States mentioned their support to the ICoC. 1 pS, for example, has shared its efforts with other States, industry and civil society organisations, at both national and international level, to raise standards across the private security industry globally and to put in place a system to independently monitor adherence to the International ICoC.

With regard to other international initiatives on PMSC regulation, 1 pS reported on its participation in each session of the Open-ended intergovernmental working group and support for the Voluntary Principles on Security and Human Rights (VPs) initiative and the United Nations Global Compact (UNGC).

4 IDENTIFIED CHALLENGES AND GOOD PRACTICES IN STATES' RESPONSES

Building on the information provided by the respondents, this section aims to inform OSCE participating States and OSCE institutions on good practices as well as key challenges on regulation across the OSCE region. It is important to note that the majority of the detailed answers in the questionnaire responses were found among pS from Western Europe. This indicates that a global overview of State practices in the OSCE is missing. Information provided by participating States from the Eastern Europe region has been limited whereas no pS from Central Asia, the South Caucasus, and Northern Europe reported on the PMSC questions. The following section identifies challenges based on the analysis of responses as well as further research that was conducted to supplement the information.

These key challenges are not intended to be exhaustive or limiting but seek to identify main gaps in pS regulation of the PMSC industry. The section seeks to provide food for thought on the role of the OSCE and how OSCE institutions could support pS to overcome these challenges. Moreover, the selected examples of good practices reported by OSCE pS intend to showcase States' roles and responsibilities, procedures, systems and processes, and monitoring and accountability approaches that conform to international law.

4.1 CHALLENGES IN THE PROCESS OF PARTICIPATING STATES REPORTING

a) Low Incentives for OSCE Participating States to Report on PMSC Activities

Since only 13 out of 57 participating States provided overall information, of which only 6 pS provided comprehensive information, this demonstrates that the PMSC issue has limited prominence among security-related priorities. Perhaps PMSCs are not considered key actors in the security sector. As one author notes "perhaps the greatest concern is that private security governance does not appear to be regarded as an important issue."³⁹ When complete information has been shared by pS, it mainly concerns experiences from Western, Central and Southeast Europe. In order to more fully inform the OSCE discussion on the privatisation of security, it is important to compare this information with experiences from Northern Europe, South Caucasus, and Central Asia States.

These countries have different security needs and dynamics behind the emergence of private security companies.⁴⁰

With the low response rate and missing information on the PMSC industry from a large number of OSCE pS, it is impossible to have a clear and complete picture of PMSC-related challenges in the OSCE region. Nevertheless, research shows that issues identified in pockets of the region persist, such as ineffective implementation of national laws, a growing grey market, and inadequate standards of training and vetting of personnel or weapons, with a significant impact on both state and human security. It is therefore important for States to articulate whether these are indeed challenges and concerns for regulation in order to inform support activities.

b) Discrepancies and Unclear in the Terminology Used in Reporting on PMSCs

Based on the information provided, one particular challenge is the lack of a common understanding of the services provided by PMSCs, as well as the scope and characteristics of the industry. Three out of the 13 pS have simply informed that "there were no private military and security companies on their territory to undertake tasks during operations." This information is confusing and requires clarification whether the pS mean that they do not employ PMSCs as defence contractors or there are no PMSCs existing in their territory. In fact, supplementary research does indicate an active domestic PMSC industry in those three countries.

Additionally, it seems unclear to a number of pS how domestic security companies fit within the scope of the Information Exchange on PMSCs. Feedbacks from States in other fora have suggested that there are negative implications with the term "military services;" this terminology may carry negative connotations with mercenarism or operations in armed conflicts situations.⁴¹ Despite the overarching definition of PMSCs as outlined in the Montreux Document, some pS do not see private security companies operating domestically as conforming to this definition, and as such, consider this irrelevant to reporting.

c) Quality of Responses Indicates a Lack of Knowledge on PMSCs

The answers to the questionnaires provided by participating States in the last reporting year, 2017, have shown no qualitative improvement as compared

with the four previous years.⁴² Therefore, more effort is needed to increase the quality of the responses.

During interviews, representatives of OSCE field operations and a CSO discussed a practice by government officials whereby information is cut-and-pasted year after year, rather than updated and reported thoughtfully. According to the interviewees, this flawed methodology has been a persistent challenge impacting the quality of the information provided. On one hand, this is due to governmental capacity limitations in terms of human resources and insufficient expertise to effectively report on the characteristics of the PMSCs industry and on implementation of oversight mechanisms. This has been exacerbated, on the other hand, by the lack of knowledge continuity and institutional memory as a result of employee turnover. The threat of knowledge loss was in particular highlighted by the OSCE field operations interviewees who had been conducting training for government personnel on how to fill out the CoC questionnaire, including the question on PMSCs.

4.2 CHALLENGES IN THE CONTENT OF PROVIDED INFORMATION - NATIONAL FRAMEWORKS ON PMSCS

An analysis of the pS responses suggests that the limited and incomplete feedback may be due to weak and ineffective regulatory frameworks, legislative oversight and accountability mechanisms. These findings were corroborated by supplementary desk research and interviews that indeed indicated that States are struggling with how to answer the questionnaire, having not successfully devised or implemented national regulatory frameworks that address the challenges posed by PMSCs.

a) Unclear Roles and Responsibilities of PMSCs in National Legislation

To begin with, the analysis has found that States are not adequately defining the activities, services and roles of PMSC personnel. It is important that national legislation specifically outlines the distinction between what constitutes public security duties and what services PMSCs personnel can perform. A blurring of this distinction could lead to serious human rights abuses and unclear lines of accountability. For example, PMSCs are increasingly present in detention centers across Western and Eastern Europe, especially with the demand for ensuring security of borders or in refugee and asylum seeker centers. States should restrict these duties to national armed forces or law enforcement since

they require effective monitoring and oversight to be carried out in relation to vulnerable populations.⁴³

National legislation should define the permitted and the prohibited activities of PMSC personnel. The Montreux Document, for instance, contains good practices for Contracting States (countries that hire PMSCs), Territorial States (countries on whose territory PMSCs operate), and Home States (countries in which PMSCs are headquartered or based). Contracting States have an obligation not to contract PMSCs to carry out activities that international humanitarian law explicitly assigns to a State agent or authority, such as exercising the power of the responsible officer over prisoner-of-war camps.⁴⁴ To determine which services may or may not be exported, Territorial States take into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.⁴⁵ Home States respectively take into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.⁴⁶

Good Practice Example 1:

Reporting on determination of services

One OSCE Participating State's national legislation prohibits direct participation in hostilities and in human rights violations. Contracting of PMSCs is limited to protection of persons and goods. The State's competent authority reviews the information provided by the companies on a case by case basis and initiates a review procedure whenever there are indications suggesting that the envisaged activity could be in conflict with the law. All companies that fall within the law's scope of application have a duty to declare their intended activities.

b) Inadequate Oversight and Accountability of PMSCs' Activities

The existence of laws that specifically outline the monitoring and accountability of PMSCs is fundamental as the industry has significant potential to impact the human rights of local populations and/or to violate IHL obligations. States should define obligations and limitations for private security in their legal and regulatory frameworks in order to hold PMSCs accountable for their actions through

the application of these laws and the oversight mechanisms they provide. However, as the Vice-President of the OSCE Parliamentary Assembly has noted during the OSCE-wide conference on the Code of Conduct, there is hardly any participating State across the OSCE region with comprehensive, fully effective oversight over private and public security sectors.⁴⁷

Complementary research has determined that oversight bodies in some of the OSCE pS have shown insufficient capacity in overseeing the private security sector.⁴⁸ In fact, PMSCs are often not seen as an integral part of the security sector, and hence are not considered under the usual oversight structures that ensure good security sector governance (such as ombuds institutions, mediation, etc.).⁴⁹ As of 2012 research, only one pS in Central Asia had legislation defining how private security companies function on its territory.⁵⁰

Much work on amending existing legislation or developing new national laws on PMSCs has to be carried out in certain OSCE sub-regions; critical issues remain as observed from pS responses, such as insufficient emphasis on human rights and international IHL principles. Equally important, legislative frameworks should include provisions for weapons and firearms licensing as well as technical equipment registration regimes. Through the firearms licensing regime for companies and their employees, the State will be able to ensure a level of control over the use of weapons.

Good Practice Example 2: Reporting on use of weapons

One pS' Weapons Act recognises that private security companies may carry weapons if they credibly show their necessity for performing protection services. According to the law, the acquisition and possession of firearms and ammunition must be authorised by the relevant authorities and the company. Authorisation criteria comprise "reliability," expert knowledge, and the minimum age of 18. PSCs need to acquire approval by the competent authorities for every single contract that includes armed security services. The parliament checks regularly, also with regard to current developments, whether the existing regulatory framework is sufficient.

c) Lack of Recognition on the Role of PMSCs within National Strategic Priorities on Emerging Security Threats

The PMSC industry has been steadily expanding into sectors that were previously occupied by distinct government functions. However, there is a lack of knowledge regarding these new roles for PMSCs and a lack of recognition by States that PMSCs are active in relation to a number of emerging security threats deemed urgent “priorities” by States. The conducted interviews show that pS do not recognise the roles of PMSCs as cutting across the security sector. Meanwhile, States are currently preoccupied by a number of emerging security threats. In particular, many States are struggling with the influx of refugees and asylum seekers who may be victims of armed conflict, persecution, and civil unrest throughout the world. In a number of pS, for instance, reports indicate that public security forces are straining under the current challenges, and registration of new refugees and asylum seeker arrivals is operationally supported by PMSCs.⁵¹ The role of PMSCs in counterterrorism is also a cross-cutting issue, linking to the increased use of private security in domestic guarding of people and premises (such as banks and hotels), critical infrastructure protection, as well as humanitarian organisations and diplomatic representations. In a number of contexts, the increased reliance on private security for these vulnerable sites stems significantly from the threat of terrorism. Yet, the role of PMSCs in counterterrorism has developed and grown below the radar of many governments. Critical infrastructure protection is a further political priority of a number of States. In particular, nuclear energy facilities are drawing more attention in the security sector because of the sensitive nature of these technologies. With renewed awareness of the danger that an unsecured nuclear facility can pose to its surrounding population, the power companies that operate these civilian energy facilities are increasing perimeter security and hiring additional guarding staff.⁵²

d) Lack of Extraterritorial Applicability of National Legislation

A further challenge relates to the difficulties of ensuring accountability and transparency in the PMSC industry when services are being performed across international borders. With emerging trends related to migration flow, terrorist threats and the intensification of violence and armed conflicts worldwide, an increasing number of PMSCs are contracted to fill personnel shortages and to provide security, military services, or logistical support

to peace operations, humanitarian efforts and development activities.

The analysis of the participating States' responses has shown a gap in the information reported on extraterritorial applicability of national legislation pertaining to PMSCs. It is difficult to hold PMSCs accountable through existing national laws and regulations if they do not contain provisions with regards to extraterritorial services. According to one pS, until now there has been no international system that can effectively raise standards, including on human rights, in the PMSC sector working in complex environments. These environments bear certain risks of undermining good security sector governance and the human rights of local populations. This can be further complicated if PMSCs are recruited to carry out functions in situations of armed conflict which may increase the likelihood that their personnel become involved in direct participation in hostilities.⁵³

Good Practice Example 3: Reporting on extraterritorial applicability of legislation

One OSCE pS has closely supported the introduction of professional standards for private security companies working on land or at sea in complex or high risk environments and enforcement through effective monitoring and sanctions. The State accredits independent certification bodies that will certify PSCs to the professional standards ISO 18788 for land-based PSCs, and ISO 28007 for maritime PSCs. PSCs can gain accredited certification from these certification bodies to demonstrate they are meeting the standards. The registered companies involved in providing security services in overseas territories or maritime areas are currently listed as members of the ICoCA.

e) PMSC Regulation has a Low Profile within OSCE SSG/R Activities/ Approaches

SSG/R is increasingly recognised as playing an essential role in democratisation peace-building, conflict prevention, early warning and crisis management. The OSCE is one of the pioneer organisations to recognise this nexus by having the CoC as a nascent SSG/R policy. The OSCE

Secretariat, institutions, and field operations have also increasingly promoted dialogue on the roles of private companies in SSG/R in regional events.

Despite the OSCE's aforementioned contributions, challenges and good practices in regulating PMSCs are issues that have not yet been fully mainstreamed in the OSCE's SSG/R work as well as in many participating States. *The Guidelines for the OSCE Staff on SSG/R*⁵⁴ launched in 2016, for instance, do not include PMSCs when referring to independent oversight and reform of security providers as a key component in any needs assessment in the area of SSG/R.

This is of particular concern given that the role of PMSC personnel as agents in SSR and peace-building efforts is increasing. Training of public security forces, protection of national critical infrastructure, mine action support, and refugee camps are all roles being contracted to PMSCs. Their activities are likely to expand as more traditional public security retreats from high-risk areas. Therefore, their functions as part of the OSCE SSG/R activities should be reflected in the Organization's current efforts towards the development of a coherent and coordinated approach to SSG/R.

5 KEY RECOMMENDATIONS FOR OSCE PARTICIPATING STATES AND INSTITUTIONS

The following concrete and targeted recommendations are based on the gaps and good practices identified both in the analysis of the responses from pS and additional supplementary research. As the OSCE Executive Structures and decision making bodies draw their mandates from participating States, the recommendations proposed here are intended to be a departure point for discussion on how the OSCE (both Executive Structures and pS) could ultimately support pS in their efforts to better regulate the PMSC industry.

a) Foster Dialogue among OSCE participating States and Increase Engagement on regulation of PMSCs as part of the OSCE Code of Conduct Implementation:

In order to raise the profile of PMSC regulation as part of CoC implementation and within SSG/R approaches, OSCE pS should strengthen internal, bilateral and multilateral dialogues on the topic. On a broader political level, different OSCE fora could

be used as a platform for discussion on PMSCs and their impacts. This engagement could create a greater openness and better understanding of mutual challenges relating to States' policies, legislation and regulations of governing PMSCs. At the same time, this will provide OSCE field operations with strengthened legitimacy to support host countries in developing their capacities on good private security governance. In addition, OSCE Executive Structures, in particular the field operations and the Conflict Prevention Centre, could provide, upon request of the respective host countries and their agreed mandates, guidance and direction to all participating States concerning monitoring and oversight of PMSCs activities.

Recommended avenues for high-level political engagement on PMSC regulation led by the OSCE decision-making bodies are the following:

- The OSCE FSC as the main body dealing with the Code of Conduct could use its convening power to support comprehensive and co-operative approaches on PMSCs regulation for example through exchange of good practices or coordinating advisory support to pS. The FSC could also establish an informal network for more regular exchange of experiences among the participating States. The format, roles and responsibilities of this network could be discussed by the FSC.
- Participating States, in their capacity of chairing the OSCE FSC, could take the lead in enshrining the question of democratic control of the private military and security industry in the annual Information Exchange and as a topic addressed at the Annual Implementation Meetings.
- The FSC could engage in dialogues with other fora and multi-stakeholder initiatives. For example, the FSC could more closely engage with the Montreux Document Forum, through sharing of experiences and good practices.
- Participating States are encouraged to focus on the challenges posed by the private military and security industry during their OSCE Chairmanship and to include the issue when setting their Chairmanship priorities.
- The OSCE Parliamentary Assembly should continue facilitating dialogue and capacity building for parliamentarians on PMSC legislation and oversight. In addition, it could further encourage national parliaments and

authorities to implement the Assemblies' declarations specifically related to the challenges concerning effective legal frameworks but also monitoring and oversight.

- Participating States, as well as the OSCE Secretariat (through the FSC Support Section), and different OSCE Institutions (particularly ODIHR) could further engage with OSCE field operations to support the integration of private security regulation into broader country-specific SSG/R programmes of work. Strong support is needed, as awareness and understanding in the field offices is not always developed fully.

b) Encourage Comprehensive, Thoughtful and Regular Reporting on the PMSC Industry in the Annual Information Exchange:

The Information Exchange to the CoC represents a valuable opportunity for pS to share experiences and discuss challenges in terms of PMSC activities as well as on national regulatory efforts and oversight mechanisms. Therefore, pS should ensure that responses on their national PMSC industries are as comprehensive as possible. This will help create a clear picture of the PMSC industry on domestic and regional levels as well as related to gaps in regulation, monitoring and accountability. Other pS could then use these shared experiences as good practices in the development of their own regulations and oversight of PMSCs.

In order to implement this recommendation, specific activities led by the OSCE Executive structures in conjunction with pS as well as bilateral or international partners such as the Co-Chairs of the Montreux Document Forum, or DCAF could include:

- Disseminating the updated Food- for-Thought paper as widely as possible as a 'checklist' for reporting amongst pS and highlighting its relevance. Additionally, a guidance tool with regard to the format of reporting could be developed– for example, a template on reporting.
- The OSCE executive structures should continue to support interested pS, at their request, in improving their CoC Annual reporting, in particular with regards to PMSCs.

- Organising OSCE-wide and sub-regional workshops or awareness-raising events amongst national regulatory authorities responsible for PMSC regulation in order to make the link to the OSCE CoC information exchange.
- Updating the database of the questionnaires. The Conflict Prevention Centre is mandated by the OSCE pS to collect and store the information exchanged by the pS based on their commitments under the OSCE Code of Conduct. Improvement of the collected information on pS responses on PMSCs in greater detail and in a structured way would benefit the discussions on regulation of the private security industry.

c) Promote Best Practices in Overcoming Identified Challenges in Regulating PMSCs:

While some pS may already have relatively comprehensive regulations on PMSCs, this may be a longer process for other pS with inadequate or non-existent national legal/oversight/regulatory frameworks. Given the effect of the private security industry on SSG/R and the potential impact on human rights, a higher level of accountability and oversight is required. Furthermore, the effective democratic control over the private security sector would contribute to the holistic implementation of the Code of Conduct. This is especially important given the fact that private security personnel significantly outnumber police officers in the majority of the OSCE pS.

Specialised knowledge of private security operations within regulatory authorities is necessary to fully understand how PMSCs can be regulated. Expertise in the development of laws and licensing systems is needed to understand what criteria PMSCs should comply with. Furthermore, new services and technologies in the PMSCs industry should be covered by regulation. Laws should be updated to correspond to the latest developments in the industry.

This recommendation could be implemented through a number of awareness-raising, outreach and implementation support activities carried out by the OSCE Executive Structures:

- Mapping of the PMSC industry in OSCE sub-regions together with international experts and partner organisations to ensure a comprehensive understanding and

awareness of the specific challenges. In addition to creating a body of knowledge on the industry in OSCE pS, this mapping could foster specialised expertise on good practices in regulating PMSCs among regulatory authorities. This mapping could therefore include specific good practices related to regulatory challenges: determination of services, oversight and accountability mechanisms, and extraterritoriality.

- Promoting the sharing of existing soft law tools, lessons learned, and good practices sharing on PMSC regulation: Since the OSCE region comprises Contracting States, Territorial States, and Home States, the OSCE Executive Structures could promote and share more targeted good practices for the demands of pS. This is particularly important taking into account the transnational nature of PMSCs which constitutes a major complexity regarding the applicability of national legislation and could create accountability vacuums, particularly when operating in complex and fragile environments. In particular, the OSCE Secretariat could encourage the use of the Legislative and Contract Guidance Tools developed within the Montreux Document Forum which could be disseminated by the OSCE Secretariat and the respective field operations.
- Making available to pS the International Code of Conduct for Private Security Service Providers and discuss with pS on how to integrate the Code into their procurement and contracting procedures.

d) Enable the OSCE Field Offices to Address National Implementation of Good Private Security Governance:

OSCE field operations are increasingly active in promoting and raising awareness about the CoC. As good governance of the private security sector is linked to broader SSG/R challenges, OSCE field operations could integrate the issue throughout their programmes of work, and, where relevant, match support activities to national actors' demands, for example, in broader discussion around business and human rights, or police reform.

Together with international experts and partner organisations, the OSCE Secretariat, through the Conflict Prevention Centre, could provide capacity building support for OSCE field operations to assist

in-country staff in understanding the issue of PMSCs as well as making available practical knowledge on more effective regulation. As a result, the OSCE field operations would be better equipped to carry out the following activities:

- Developing capacity-building programs intended for parliaments, national human rights institutions, civil society, and other stakeholders to support more effective oversight of the PMSC industry.
- Training of national actors through translating international good practices into specific implementation support programmes for national contexts. Activities could include supporting national legislative reform processes, and informing governments on strengthening protection of human rights.

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33 FSC.DEL/2/15/Rev.1, 9 June 2015, Food for Thought Paper, Voluntary additional information sharing on private military and security companies (PMSC) as part of the Code of Conduct Annual Information Exchange

34 FSC.DEL/2/15/Rev.2, 14 June 2017,

Germany, Austria, Switzerland, Food for Thought Paper Voluntary additional information sharing on private military and security companies (PMSC) as part of the Code of Conduct Annual Information Exchange

35 PMSCs are private businesses that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, the provision of armed guards and the protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to, or training of, local forces and security personnel.

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Annexes

ANNEX A

FSC.DEL/2/15/Rev.1

9 June 2015

RESTRICTED

ENGLISH only

Germany, Austria, Switzerland

Voluntary additional information sharing on private military and security companies (PMSC) as part of the Code of Conduct Annual Information Exchange

BACKGROUND

The Code of Conduct on Politico-Military Aspects of Security

The Code of Conduct (henceforth “the Code”) is a normative, politically binding document which was adopted during the CSCE summit in Budapest in 1994. With this paramount document in the area of the democratic control of armed and security forces, the participating States agree to reform their domestic politico-military sector and to use internationally recognized principles of democracy and rule of law in their security policies and doctrines. While the Code contains principles to regulate relationships between states, it also requires the participating States to guarantee the political neutrality of their armed forces and respect for human rights by and for its personnel. The corresponding annual information exchange is a strong confidence- and security-building measure between the participating States.

Private Military and Security Companies

PMSCs play an increasing role in the provision of security services within the OSCE. Numerous participating States either host headquarters of PMSCs or rely on their services, domestic and abroad. Globally, there is a strong push to regulate and control PMSCs, as is manifested in several diplomatic initiatives, such as the Montreux Document or the Voluntary principles.

According to the Montreux Document on Private Military and Security Companies, the term describes “private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel” (page 9). While this is a comprehensive definition, it includes different actors in the security sector that might not fall under the provisions of the Code of Conduct.

Since PMSCs are not mentioned in the Code of Conduct, and since the definition of PMSCs concern actors in the security sector that are not explicitly included in the Code of Conduct, it is proposed not to opt for a too wide definition and hence to only include information on PMSCs that provide services in the domains described in Chapter VII, Article 20, of the Code of Conduct. They pertain to military, paramilitary and internal security forces as well as intelligence services and the police.

Annual Information Exchange on the Code of Conduct: Information on PMSCs

In view of this development and since PMSCs may provide services that fall under the provisions of the Code of Conduct, several States have called for voluntary information exchanges on PMSC in order to strengthen confidence- and security building in this area.

The annual information exchange on the Code offers an excellent opportunity for this. Thus far, several States have used this possibility. In 2014, eight States have made information on this topic available (Germany, Austria, Belgium, Bosnia and Herzegovina, United Kingdom, the former Yugoslav Republic of Macedonia, Slovenia, and Switzerland). A review of this information revealed three areas of commonality.

The first area has an external focus. It concerns the States' position in the international framework on the regulation of PMSCs and the initiatives launched, joined, or promoted by each State. Questions in this area will allow getting an impression on the activities of the participating States and their position towards different international initiatives, bodies, and treaties.

The second area has a more internal focus. States are asked to provide information on the legal and political framework surrounding the regulation of PMSCs that operate domestically or are headquartered in the respective State. The aim of questions in this area is to gain an overview of the different national legal and political frameworks for the regulation of PMSCs in the OSCE area.

Thirdly, States reported on the existence and the services of PMSCs that are headquartered and active within their territories. By answering questions in this area, States will be able to gain an understanding of the number and kind of PMSCs active in the OSCE area and what services they offer and provide.

In this light, the questions below are suggested to guide the voluntary additional information exchange.

PROPOSED QUESTIONS FOR VOLUNTARY REPORTING AND INDICATIVE LISTS OF INFORMATION

1. What are your States' international engagements that seek to promote standards of good governance and good practices for PMSCs?

Indicative list of information pertaining to PMSCs:

- Information on engagement with voluntary initiatives that seek to promote more effective regulation of PMSCs, such as the Montreux Document and the International Code of Conduct for Private Security Providers (ICoC).
- Information on your State's position on joining the Montreux Document and the ICoC Association (ICoCA).
- Information on participation in the consultations of the United Nations Open-ended Intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies and information on your State's position on this international regulatory framework.
- Information on engagement with other voluntary initiatives such as the Voluntary Principles on Security and Human Rights (VPs), the United Nations Global Compact, the United Nations Guiding Principles on Business and Human Rights.
- Other initiatives launched/supported by your State related to private security governance.

2. Information on the policy, legislation, and regulations relevant for PMSCs that operate domestically and internationally, and how PMSCs are registered, licensed and monitored.

Indicative list of information pertaining to PMSCs:

- Specific laws, regulations, policies and other provisions relevant for PMSCs (as set out in the good practices of the Montreux Document):
 - Determination of services;
 - Establishment of an authorisation/licensing system and procedures for the selection / contracting / authorization / licensing to provide military and security services;

- Criteria for the selection of and/or granting authorisation/license to PMSCs;
 - Terms of contract, authorisation and rules on the provision of services by PMSCs and their personnel;
 - Mechanisms monitoring compliance, including criminal and civil accountability, with terms of contract / license / authorisation; and
 - Other administrative mechanisms for monitoring compliance.
- Legislation pertaining to the export and import of PMSC services.
 - Information on institutions/organisations monitoring compliance.

3. How many PMSCs are registered in your State and what services do they deliver, both domestically and internationally?

Indicative list of information pertaining to PMSCs:

- List number of PMSCs headquartered or based in your State.
- List number of foreign-based PMSCs providing services in your State.
- Provide information on the types of services they provide, e.g. transport, logistics, surveillance, protection of persons, goods and property, maintenance of weapons systems, operation of detention centres,
- Provide information on what services your State outsources to PMSCs.
- Provide information on geographical concentration of PMSCs activity when services are being delivered abroad.

ANNEX B

FSC.DEL/2/15/Rev.2

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RESTRICTED

ENGLISH only

Germany, Austria, Switzerland

Food for Thought Paper

Voluntary additional information sharing on private military and security companies (PMSC) as part of the Code of Conduct Annual Information Exchange

BACKGROUND

The Code of Conduct on Politico-Military Aspects of Security

The Code of Conduct (henceforth “the Code”) is a normative, politically binding document which was adopted during the CSCE summit in Budapest in 1994. With this paramount document in the area of the democratic control of armed and security forces, the participating States agree to reform their domestic politico-military sector and to use internationally recognized principles of democracy and rule of law in their security policies and doctrines. While the Code contains principles to regulate relationships between States, it also requires the participating States to guarantee the political neutrality of their armed forces and respect for human rights by and for its personnel. The corresponding annual information exchange is a strong confidence- and security-building measure between the participating States that offers an important opportunity to provide an update and share best practices vis – à – vis implementing the Code.

Private Military and Security Companies

PMSCs play an increasing role in the provision of security services within the OSCE. Numerous participating States either host headquarters of PMSCs or rely on their services, domestically and abroad. Globally, there is a strong push to regulate and control PMSCs, as is manifested in several diplomatic initiatives, such as the Montreux Document on Private Military and Security Companies. The Montreux Document is mainly directed to States in their relations with PMSCs and their operation during armed conflict, however, the existing obligations and its good practises may also be instructive in other contexts.

According to the Montreux Document, the term PMSC describes “private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel” (page 9). While this is a comprehensive definition, it includes different actors in the security sector that might not fall under the provisions of the Code of Conduct.

Since PMSCs are not mentioned in the Code of Conduct, and since the definition of PMSCs concerns actors in the security sector that are not explicitly included in the Code of Conduct, it is proposed not to opt for a too wide definition and hence to only include information on PMSCs that provide services in the domains described in Chapter VII, Article 20, of the Code of Conduct. They pertain to military, paramilitary and internal security forces as well as intelligence services and the police.

In this context, PMSCs should be understood as private business entities under contract to or assuming functions of the military, paramilitary, and internal security forces; intelligence services; or police of an OSCE participating State that provide services, such as, armed guarding and protection of persons and objects; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.

Annual Information Exchange on the Code of Conduct: Information on PMSCs

To the degree that PMSCs are employed by States to perform functions normally carried out by military, paramilitary, and internal security forces, intelligence services or the police, there is a legitimate concern among participating States that these private business entities may not be subject to the controls, accountability, and oversight described in Section VII of the Code of Conduct. Several States have called for voluntary information exchanges on PMSCs in order to strengthen confidence- and security building in this area.

The annual information exchange on the Code offers an excellent opportunity for this. Information sharing about the role, accountability and oversight of PMSCs can provide assurance that State use of these entities is consistent with the Code of Conduct. This information can also be used by other States in the development of their own regulations and oversight of PMSCs. Thus far, several States have taken the opportunity to exchange such information. In 2014, eight States have made information on this topic available (Germany, Austria, Belgium, Bosnia and Herzegovina, United Kingdom, Macedonia, Slovenia, and Switzerland). Since then, other states have followed the example. A review of the information revealed two main areas of commonality.

The first area is pertaining to internal regulations with regards to PMSCs. States are asked to provide information on the legal and political framework surrounding the regulation of PMSCs that operate domestically or are headquartered in the respective State. In addition, they are asked to provide information regarding the contracting of PMSCs by the State. The aim of questions in this area is to gain an overview of the different national legal and political frameworks for the regulation of PMSCs in the OSCE area and beyond.

The second area has an external focus. It concerns the States' position in the international framework on the regulation of PMSCs and the initiatives launched, joined, or promoted by each State. The answers to questions in this area will facilitate States' ability to gain an understanding of the participating States' activities and their position towards different international initiatives, bodies, and treaties.

This information can and should be linked to specific requirements and concerns of the Code and specifically how a State is implementing the commitments of Part VII of the Code with regard to its use of PMSCs. In this light, the questions below are suggested to guide the voluntary additional information exchange.

PROPOSED QUESTIONS FOR VOLUNTARY REPORTING AND INDICATIVE LISTS OF INFORMATION

1. What are your State's policies, legislations, and regulations relevant for PMSCs that operate domestically and internationally and how are PMSCs contracted, registered, licensed and monitored?

Indicative list of information pertaining to PMSCs:

- Definition of PMSCs and the types of services they may provide under national law;
- Information on authorisation / licensing systems of PMSCs and the corresponding procedures;
- Information on mechanisms monitoring compliance, including criminal and civil accountability, with license / authorisation;
- Information on institutions/organisations monitoring compliance;
- Information on legislation pertaining to the export and import of PMSC services;
- Information on procedures for the selection / contracting of PMSCs by your State;
- The military and security services your State may or may not contract for;
- Information on the terms of contract, authorisation and rules on the provision of services by PMSCs and their personnel;
- Information on mechanisms monitoring compliance, including criminal and civil accountability, with terms of contract;

- Information about command and control arrangements governing the actions of PMSCs contracted by your State;
- Information on your State's application of the training requirements in the OSCE Code of Conduct to PMSCs contracted by your State; and
- Information on other administrative mechanisms for monitoring compliance of PMSCs, in particular with regards to safeguarding the human rights of the population in their areas of operations as well as the human rights of their employees.

2. How does your State ensure that your use of PMSCs is consistent with obligations under international law?

Indicative list of information pertaining to PMSCs:

- Information on your State's engagement with initiatives that seek to promote more effective regulation of PMSCs, such as the Montreux Document;
- Information on your State's engagement with industry codes or multi-stakeholder initiatives such as the International Code of Conduct for Private Security Providers' Association (ICoCA), or other organizations of a national or international character;
- Information on participation in the consultations of the United Nations Open-ended Intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies and information on your State's position on this regulatory framework;
- Information on your State's engagement to implement the United Nations Guiding Principles on Business and Human and its engagement with other voluntary initiatives such as the Voluntary Principles on Security and Human Rights (VPs) and the United Nations Global Compact; and
- Other initiatives launched/supported by your State related to private security governance such as national or international performance standards for private security operations and management.

ANNEX C

Services provided by PMSCs in OSCE participating States answers to the Questionnaire

Table 1 below lists the different categories of PMSCs activities as stipulated in pS answers.

	Domestic activities	Activities in foreign territory
pS1	Guard activities	Logistics sphere, including guard duties, as well as in the technical sphere (e.g. Supplies, transport, maintenance)
pS2	Security surveillance and control of persons in public places, protection of property and persons, transport of valuables, maritime security	Non-military logistical assistance and maritime security
pS3	Security and protection of physical installations, premises and buildings; protection of VIPs; escort of convoys transferring valuable goods; security of events; electronic surveillance of physical installations, premises and buildings	N/A
pS4	Protection of persons and the guarding or surveillance of goods and properties in complex environments, security services at events, the checking, detention, or searching of persons, searching of premises or containers, and seizure of objects, the guarding, caring for, and transporting prisoners, operating prison facilities, and assisting in operating camps for prisoners of war or civilian detainees, the advising, training and operational or logistical support for armed or security forces, the operating and maintaining of weapons systems and Intelligence activities.	
pS5	Perform protection (close body protection or other physical protection) of persons and property	No
pS6	Logistics and support requirements	N/A

***N/A= not specifically indicated

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