



TEXTS ADOPTED

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Private Security Companies

European Parliament resolution of 4 July 2017 on private security companies (2016/2238(INI))

The European Parliament,

- having regard to the Montreux document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict,
- having regard to resolutions 15/26, 22/33, 28/7 and 30/6 of the UN Human Rights Council,
- having regard to the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination, which was established in July 2005,
- having regard to the reports of the 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,
- having regard to the UN Guidelines on the Use of Armed Security Services from Private Security Companies, which have recently been extended to unarmed security services,
- having regard to the UN Code of Conduct for Law Enforcement Officials,
- having regard to the draft of a possible Convention on Private Military and Security Companies (PMSCs) for consideration and action by the Human Rights Council,
- having regard to the International Code of Conduct for Private Security Providers (ICoC) established by the International Code of Conduct Association, which is an industry self-regulation mechanism whose standards are voluntary,
- having regard to the International Stability Operations Association Code of Conduct, which is an industry-owned self-regulatory mechanism,

- having regard to the Code of Conduct and Ethics for the Private Security Sector of the Confederation of European Security Services and UNI Europa,
 - having regard to the ISO 18788 Management System for Private Security Operations, which sets parameters for the management of private security companies,
 - having regard to the Council Recommendation of 13 June 2002 on cooperation between the competent national authorities of Member States responsible for the private security sector,
 - having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC¹,
 - having regard to Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC²,
 - having regard to the EU Concept for Logistic Support for EU-led Military Operations and the EU Concept for Contractor Support to EU-led Military Operations,
 - having regard to the Priv-War Recommendations for EU Regulatory Action in the Field of Private Military and Security Companies and their Services,
 - having regard to its resolution of 8 October 2013 on corruption in the public and private sectors: the impact on human rights in third countries³ and its resolution of 6 February 2013 on Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery⁴,
 - having regard to the many different risks, challenges and threats within and outside the European Union,
 - having regard to the Interim Guidance of the International Maritime Organisation (IMO) in May 2012 relating to armed security personnel on board ships,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Foreign Affairs (A8-0191/2017),
- A. whereas security and defence are public goods managed by public authorities on the basis of the criteria of efficiency, effectiveness, accountability and the rule of law, which do not depend solely on the provision of sufficient financial resources, but also on knowledge; whereas in certain areas public authorities may lack the necessary capacities and capabilities;
- B. whereas security and defence should be primarily provided by the public authorities;

¹ OJ L 94, 28.3.2014, p. 65.

² OJ L 216, 20.8.2009, p. 76.

³ OJ C 181, 19.5.2016, p. 2.

⁴ OJ C 24, 22.1.2016, p. 33.

- C. whereas Eurobarometer polls show that the EU's citizens want the EU to be more active in the field of security and defence;
- D. whereas more than 1,5 million private security contractors were employed in around 40 000 private security companies (PSCs) in Europe in 2013; whereas these figures are continuing to increase; whereas the turnover of these companies in that year amounted to around EUR 35 billion; whereas globally the private security industry was valued up to USD 200 billion in 2016 with around 100 000 PSCs and 3,5 million employees;
- E. whereas, over the last few decades, PSCs, a term which for the purposes of this resolution will also include private military companies, have been increasingly employed by national governments as well as militaries and civilian agencies, both for the domestic provision of services and support for overseas deployment;
- F. whereas the array of services provided by PSCs is extremely broad, ranging from logistical services to actual combat support, the provision of military technology and participation in post-conflict reconstruction; whereas PSCs also provide vital services inside Member States such as running prisons and providing patrol guards at infrastructure sites; whereas PSCs have been used in both civilian and military Common Security and Defence Policy (CSDP) missions, to guard EU delegations, for the construction of field camps, training, air lift and to support humanitarian aid activities;
- G. whereas, in the context of the EU, Member State practices on the use of PSCs, the procedures for contracting them and the quality of regulatory systems vary widely, with many using them to support their contingents in multilateral operations;
- H. whereas the outsourcing of military activities, formerly an integral part of the activities of armed forces, is taking place, among other things, to provide services in a more cost-efficient manner, but also to compensate for a shortfall in capabilities in shrinking armed forces in the context of an increasing number of multilateral missions abroad and shrinking budgets, the result of an unwillingness of decision-makers to commit appropriate resources; whereas this should be an exception; whereas there is a need to address shortfalls; whereas PSCs can also provide capabilities that are entirely lacking in national armed forces, often at short notice and in a complementary manner; whereas PSCs have also been used for reasons of political convenience to avoid limitations on the use of troops, notably to overcome a possible lack of public support for the engagement of armed forces; whereas the use of PSCs as a foreign policy tool needs to be subject to effective parliamentary control;
- I. whereas PSCs have been accused of engaging in a number of human rights violations and incidents resulting in loss of life; whereas such incidents vary across time and country, and amount in some cases to serious violations of international humanitarian law, including war crimes; whereas some of these cases have been prosecuted; whereas this, together with their lack of transparency, has had repercussions on the efforts of the international community in the countries in question and has revealed considerable gaps in accountability structures due, among other things, to the creation of numerous layers of subsidiaries or subcontracts in diverse countries, in particular local ones which leads, in some cases, to an inability to guarantee the basic security of the civilian population in host countries;
- J. whereas the EU and its Member States should aim to avoid such situations in the future,

and refrain from outsourcing military operations that involve the use of force and weaponry, participating in hostilities and otherwise engaging in combat or combat areas, beyond legitimate self-defence; whereas operations and activities outsourced to PSCs in conflict areas should be restricted to providing logistical support and the protection of installations, without an actual presence of PSCs in the areas where combat activities exist; whereas under no circumstances can the use of PSCs be a substitute for national armed forces personnel; whereas the highest priority should be accorded, when implementing defence policies, to ensuring that the armed forces of the Member States have sufficient resources, instruments, training, knowledge and means with which to perform their tasks fully;

- K. whereas, for states to benefit from the advantages offered by PSCs, and to ensure that they can be held accountable, a legal framework with binding regulatory and monitoring mechanisms should be put in place at international level to regulate their use and provide sufficient control over their activities; whereas PSCs are part of an industry which is highly transnational in nature and is intertwined with governmental and intergovernmental actors and as such requires a global approach to regulation; whereas the current regulatory situation in this sector comprises a series of inconsistent rules which vary enormously between the Member States; whereas the non-homogenous national legislation and self-regulation adopted by some PSCs provide a weak deterrent to prevent abuse, given the lack of penalties, and can have a major impact on how PSCs operate in multilateral interventions and conflict regions;
- L. whereas there is a lack of agreed definitions of PSCs, PMCs and of their services; whereas, as suggested by the definition included in the draft convention prepared by the UN Working Group on Mercenaries, a PSC can be defined as a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities; whereas military services in this context can be defined as specialised services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance and intelligence, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities; whereas security services can be defined as armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities;
- M. whereas the Montreux document is the first major document defining how international law applies to PSCs; whereas the International Code of Conduct for Private Security Service Providers (ICoC) defines industry standards and is increasingly proving to be a tool for ensuring common basic standards across a global industry; whereas the International Code of Conduct for Private Security Providers' Association (ICoCA) has the aim of promoting, managing and supervising the implementation of the ICoC and encouraging the responsible provision of security services and respect for human rights and national and international law; whereas affiliation to ICoCA is brought about by a voluntary act, accompanied by a payment, and the high membership charges do not permit all private security companies to become members;
- N. whereas the work on regulating PSCs is ongoing in many international fora, including the Montreux Document Forum, where the EU was elected into the Group of Friends of the Chair, the 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 the International Code of Conduct Association;

- O. whereas the EU and 23 Member States have joined the Montreux document and whereas the EU is a member of the Working Group on the International Code of Conduct Association; whereas the EU contributes in the context of the Human Rights Council to the possible development of an international regulatory framework; whereas the EU plays a critical role in promoting national and regional control over the provision and export of various military and security services;
- P. whereas the European Union does not have a regulatory framework of its own, despite the large number of PSCs of European origin and/or involved in missions and operations under the CSDP or EU delegations; whereas the existing regulatory frameworks are almost exclusively based on the American model, established during the Iraq war, which served the interests of military companies engaged in combat missions; whereas these references correspond neither to the format nor to the missions of European PSCs;
- Q. whereas it is of vital importance to prioritise the establishment of clear rules for interaction, cooperation and assistance between law enforcement and private security companies;
- R. whereas PSCs could play a more important role in the fight against piracy and in improving maritime security, in missions involving dogs, cyber defence, research and development of security tools, mixed surveillance missions and training in cooperation with, and under the supervision of, public authorities; whereas the use of armed PSCs has created specific challenges for the maritime sector and has resulted in numerous incidents which have led to the loss of life and diplomatic conflicts;

The use of PSCs in support of the military abroad

1. Notes that PSCs play an important complementary role in aiding the state's military and civilian agencies by closing capability gaps created by increasing demand for the use of forces abroad, while also occasionally, if circumstances allow, providing surge capacity; stresses that, in exceptional cases, PSCs' services fill existing capacity gaps, which, however, Member States should first try to fill with national armed forces or police; stresses that PSCs are used as an instrument for the implementation of the foreign policy of those countries;
2. Underscores the need for PSCs, when operating in host countries and particularly those that significantly differ in terms of culture and religion, to be mindful of local customs and habits in order not to jeopardise the effectiveness of their mission and alienate the local population;
3. Notes that, compared to national troops, PSCs – particularly those based in host countries – can provide valuable local knowledge and, frequently, cost savings, although it must be ensured that quality is not undermined; stresses, however, that the use of services provided by local private security companies in fragile countries and crisis-prone regions can have negative implications for the EU's foreign policy objectives if such use strengthens certain local armed actors who could become party to

the conflict; notes the importance of drawing clear legal distinctions between the operations of private security companies and private actors directly engaged in military activities;

4. Stresses that no activities should be outsourced to PSCs that would imply the use of force and/or active participation in hostilities, except for self-defence, and under no circumstances should PSCs be allowed to take part in, or conduct interrogations; stresses that, in the field of EU security and defence, the priority should be to strengthen national armed forces, to which PSC can only be a complement without any authority over strategic decisions; highlights the fact that any participation by private security companies in military operations must be justified, with clearly-defined objectives that can be verified using tangible indicators, have a fully-detailed budget and a specific start and end date, and be governed by a strict code of ethics; points out that the work of the armed forces and security forces abroad is of fundamental value in peace-keeping and conflict prevention, as well as in the social reconstruction and national reconciliation that follows;
5. Underlines that the cost-effectiveness principle of PSC employment mainly offers benefits in the short-term, especially if a number of socioeconomic variables are not taken into consideration, and should therefore not become the main criterion when dealing with security issues; recalls that accountability and oversight mechanisms are crucial in order to ensure that the legitimacy and potential benefits of PSCs are fully obtained;
6. Underlines the importance of parliamentary oversight over the state use of PSCs by Member States;

Use of PSCs by the EU

7. Notes that the EU makes use of PSCs abroad to guard its delegations and staff and to support its civilian and military CSDP missions; notes that their use thus directly contributes to the EU's reputation and perception by third parties, which makes them important facets of the EU's local presence and impacts on the level of trust in the EU; demands that the Commission and the Council produce an overview of where, when and for what reason PSCs have been employed in support of EU missions; considers that it would not be illogical if, in its calls for tender concerning the security of its delegations, the European Union favoured the use of PSCs genuinely based in Europe, complying with European Union regulations and subject to European Union taxation;
8. Emphasises, however, that, particularly in conflict-prone environments, employing a PSC for certain duties can have negative side-effects for the EU, especially for its legitimacy, by accidentally associating it with armed actors in a conflict area, with negative repercussions in the case of armed incidents, or by possibly compromising Disarmament, Demobilisation and Reintegration (DDR) and Security Sector Reform (SSR) efforts through the inadvertent strengthening of local actors; notes in particular the risks posed by uncontrolled sub-contracting, such as to local PSCs;
9. Points to the various and serious legal and political problems associated with the current practice of subcontracting in the field of military and security services, especially services provided by local subcontractors in third countries; believes that the Member States, the EEAS and the Commission should agree to follow the example of NATO by

only contracting PSCs based in EU Member States;

10. Recommends, therefore, that the Commission propose common PSC contracting guidelines for the hire, use and management of military and security contractors which clearly spell out the requirements for PSCs to qualify for EU contracts, with the goal of replacing the current patchwork of approaches; urges the Commission and the EEAS to use the same guidelines for the hire, use and management of military and security contractors in all external actions, missions and operations, for EU Delegations across all countries and regions and for all services of a revised Common Military List of the European Union; considers that these guidelines should be based both on international best practices in relation to PSC conduct and management, in particular the Montreux document and the ICoC, and take into account the need for particular care to be taken when selecting PSCs in a complex post-crisis context; urges the Commission and the EEAS to only use ICoC-certified providers, as is already done by the UN for whom ICoC is a requirement; points to the approach taken by US authorities which include detailed standards and requirements in each individual contract, and calls on the EU to follow this example; underlines that contracts with the PSCs should include *inter alia* clauses on the possession of licences and authorisations, personnel and property records, training, the lawful acquisition and use of weapons, and internal organisation;
11. Calls for an EU security supervisor of an EU security company to be present at EU-funded sites and EU delegations with the tasks of ensuring the quality of the security services provided, vetting and training the locally hired security personnel, establishing and keeping up good relations with local security forces, providing risk assessments and being the first point of contact in security-related matters for the delegation;
12. Recommends that the Commission establish an open list of contractors who comply with EU standards on matters such as clean criminal records, financial and economic capacity, possession of licences and authorisations, and the vetting of personnel; notes that standards across the EU regarding PSCs vary greatly and believes that Member States should strive to achieve similar standards; considers that this list should be updated at intervals not exceeding two years;
13. Stresses that when the EU relies on PSCs in third countries with which it has concluded a status of forces agreement (SOFA), such agreements must always include the PSCs employed and specifically clarify that the companies will be held accountable under EU law;
14. Stresses that the EU Concept for Contractors Support should be strengthened and made binding for Member States and EU institutions; believes that it should, in particular, specify stricter standards for inclusion in contracts, based for example on US standards, and that it should also require that no local PSC should be employed or subcontracted in conflict regions; stresses that international PSCs should have the possibility to hire local staff, but only individually and directly in order to ensure effective vetting and to prevent the creation of local security industries in conflict regions;

The regulation of PSCs

15. Recommends that the Commission draw up a Green Paper with the objective of involving all stakeholders from the public and private security sectors in a broad consultation and discussion of processes to identify opportunities for direct

collaboration more efficiently and to establish a basic set of rules of engagement and good practices; recommends the creation of sector-specific EU quality standards; recommends, therefore, that the definition of PSCs be clarified before effective regulation of their activities is introduced, as the lack of such a definition can create legislative loopholes;

16. Believes that, as a first step, the EU should define relevant military and security services in a precise way; urges the Council, in this respect, to add military and security services by PSCs to the Common Military List of the European Union without delay;
17. Urges the Commission to develop an effective European regulatory model which will:
 - help to harmonise legal differences between Member States by means of a directive;
 - re-evaluate, and thus redefine, contemporary public-private collaboration strategies;
 - map companies with a single or multiple end use;
 - contextualise the precise nature and role of private military and security companies;
 - set high-level standards for private security service providers within the EU or operating abroad, including appropriate levels of security screening of staff and equitable remuneration;
 - ensure reporting of PSCs' irregularities and illegalities and make it possible to hold them accountable for violations, including human rights violations, during their activities abroad;
 - integrate a specific maritime perspective, taking into account the leading role of the International Maritime Organisation (IMO);
18. Notes that nascent global regulatory frameworks, such as the Montreux document, the ICoC and other regulatory initiatives in the UN framework, constitute clear progress compared to the lack of meaningful regulation that prevailed only ten years ago;
19. Commends also the efforts made by many EU Member States, following the good practice outlined in the Montreux document, to introduce effective national regulation of PSCs;
20. Notes, however, that the evaluation of the performance of PSCs is hampered by the lack of consistent reporting about their use by both the EU institutions and Member State governments; encourages Member States and the EU institutions to provide this information more consistently and in a transparent manner to allow for a proper assessment of the use of PSCs by their respective budgetary authorities and independent auditors; recommends that parliaments and NGOs should be actively engaged in the necessary evaluation processes that are crucial for the regulation and oversight of this industry;
21. Recommends that the Commission and the Council establish a legal framework

requiring national legislation to control the export of military and security services, and report in the EU Annual Report on armaments exports on military and security service export licences granted by the Member States, so as to increase public transparency and accountability;

22. Stresses that the transnational nature of PSCs and, in particular, their activities in regions of the world affected by crisis can sometimes lead to jurisdictional gaps, particularly where the local legal structure is weak, that could make it difficult to hold the companies or their employees to account for their actions; notes that the national regulation of PSCs often does not have extraterritorial application; highlights the fact that PSCs must always be governed by laws and be subject to effective oversight by both the host state and the contracting state; observes that a legal vacuum frequently exists in the event of disputes or incidents involving PSCs and agents of the European Union, which may occur in high-risk areas; recommends therefore the establishment of uniform and clear rules for the European institutions which use PSCs to protect EU staff, assigning clear responsibility to avoid a protection gap and impunity and taking into account the host state's legal framework; also urges the EEAS, the Commission and Member States to only contract EU-based PSCs in combination with the obligation to execute services directly without recourse to local subcontractors in often fragile third countries;
23. Urges, therefore, that the EU and its Member States use their status in the Montreux Document Forum to insist upon regular reviews of the state of implementation of the Montreux Document's recommendations for good practice by its participants; urges the Member States that have not yet done so to join the Montreux document as soon as possible; encourages Member States to engage in sharing best practices;
24. Urges the EU and its Member States to push for an international legally binding instrument that goes further than the Montreux document, by regulating the activities of PSCs, establishing a level playing field to ensure that host states have the authority to regulate PSCs and contracting states are able to use their power to protect human rights and prevent corruption; emphasises that such a framework must include dissuasive sanctions for violations, the accountability of those responsible for violations and effective access to remedies for victims, in addition to a licensing and monitoring system requiring all PSCs to submit to independent audits and their personnel to participate in mandatory human rights training;
25. Urges the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the Member States, the EEAS and the Commission to strongly support the creation of an international convention aimed at establishing an international legal regime to regulate relevant services provided by PSCs;
26. Commends the efforts of the International Maritime Organisation (IMO) in providing guidelines for the use of private armed security teams; encourages the Commission and the Member States to continue to work with the IMO towards the global application of this guidance;
27. Stresses that one of the most effective ways of influencing PSCs is through public procurement decisions; emphasises, therefore, the importance of making the award of contracts to PSCs conditional on the adoption of best practices, such as transparency, and their participation in the ICoC, which some Member States have already

implemented; notes, however, that the ICoC compliance mechanism needs to be strengthened and its full independence assured to make it a credible incentive for compliance; notes that the only Member States to have signed up to the ICoC are Sweden and the UK and believes that the EU should focus on ensuring that other Member States sign up as a first step;

28. Notes that PSCs should have a liability insurance as this would make the security market more stable and reliable, bringing in also smaller and medium-sized PSCs;
29. Stresses that the award of contracts to PSCs should take into account and be evaluated on the basis of the PSC's experience and period of working in hostile environments, rather than by turnover of a similar contract;
30. Draws attention to the fact that PSCs, besides offering security services, also conduct intelligence activities that, due to their potential implications, require efficient regulation and control;
31. Notes the considerable influence the EU and its Member States enjoy over the global security industry as a result of many major players having their headquarters in the EU; places particular emphasis, therefore, on the upcoming revision of the Common Military List as an opportunity to include certain services provided by PSCs, which would make them subject to export regulations and apply basic standards to their activities abroad;
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32. Instructs its President to forward this resolution to the European Council, the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, and the national parliaments of the Member States.