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THE REGULATION OF PRIVATE MILITARY AND SECURITY SERVICES IN THE EUROPEAN UNION:
CURRENT POLICIES AND FUTURE OPTIONS

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Abstract

This paper aims to address two questions at the centre of the PRIV-WAR project. Firstly, what legislation and regulative frameworks for the regulation of private military and security companies (PMCs/PSCs) providing services in combat zones exist in the European Union today? Secondly, what options are there for improving these regulations in order to ensure the responsibility and accountability of these companies and their compliance with international humanitarian and human rights law? The EU has been one of the key promoters of improved regulation. However, current controls within the EU apply only to a small range of services provided by PMCs/PSCs. The main gaps in the existing regulatory framework at the national and EU levels concern the registration and licensing of PMCs and the export of private military and security services outside the EU. To address these gaps this paper outlines nine policy options which would singly or in combination improve the transparency, accountability and control of PMCs/PSCs.

The Regulation of Private Military and Security Services in the European Union: Current Policies and Future Options

ELKE KRAHMANN AND AIDA ABZHAPAROVA*

1. Introduction

The aim of this report is to address two questions at the centre of the PRIV-WAR project. Firstly, what legislation and regulative frameworks for the regulation of private military and security companies (PMCs/PSCs) providing services in combat zones exist in the European Union today? Secondly, what options are there for improving these regulations in order to ensure the responsibility and accountability of these companies and their compliance with international humanitarian and human rights law? Before this report can do so, it is necessary to clarify the main concerns with regards to PMCs/PSCs and the difference between legislative and regulative approaches.

The proliferation of PMCs/PSCs in the post-Cold War era has raised major concerns about their accountability, control and legality. These issues first emerged with regard to ‘mercenary’ companies such as Sandline International and Executive Outcomes which intervened militarily on behalf of failing governments in national conflicts such as in Sierra Leone, Angola and Equatorial Guinea.¹ However, the interventions in Afghanistan (2001) and Iraq (2003) have illustrated that also PMCs/PSCs based in and hired by industrialized democracies have been affected by controversy.²

A key issue has been the perceived lack of political and legal accountability of PMCs/PSCs operating in conflict regions. The main cause of this problem is the primary accountability of PMCs/PSCs to their clients and shareholders, and not the general public. In the European Union this has resulted in a lack of transparency and public accountability when governments have hired PMCs/PSCs for international military interventions. The details of these contracts are rarely made public for reasons of corporate confidentiality. Moreover, most governments are unable to tell their publics and parliaments exactly how many private military and security contractors they employ nationally and abroad.³ For the populations of conflict regions, the difficulties of holding PMCs/PSCs accountable are exacerbated when the contracting parties are not based or living in the country. Moreover, many foreign forces have Status of Armed Forces Agreements (SOFAs) which exempt private contractors accompanying them from local prosecution. In some countries, such as Afghanistan, this has created the impression that private military and security contractors who commit crimes are “whisked away” to their Western home states, leaving the victims “with no means of pursuing justice”.⁴

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¹ David J. Francis (1999) ‘Mercenary Intervention in Sierra Leone: Providing National Security or International Exploitation?’ *Third World Quarterly*, Vol. 20, No. 2 (1999): 319-338; Greg Mills and John Strelau, *The Privatisation of Security in Africa* (Johannesburg: SAIIA, 1999); Guy Arnold, *Mercenaries: The Scourge of the Third World* (Basingstoke: Macmillan 1999); Herbert M. Howe, ‘Private Security Forces and African Stability: The Case of Executive Outcomes’, *Journal of Modern African Studies*, Vol. 36, No. 2 (1998): 307-331.

² Deborah D. Avant, *The Market for Force. The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005); David Isenberg, *Shadow Force: Private Security Contractors in Iraq* (Westport, CT: Praeger Security International, 2008); Elke Krahmenn, *States, Citizens and the Privatization of Security* (Cambridge: Cambridge University Press, 2010).

³ The US Department of Defense has now established a contractor count which can be accessed at: http://www.acq.osd.mil/log/PS/hot_topics.html.

⁴ Afghan TV Program Debates Role, Operations of Foreign Private Security Companies Excerpts from the "De Owonay Bahs (Weekly Discussion)" program, National TV Afghanistan, Thursday, 9 July 2009, 19:14;

A second problem has been the control over PMCs/PSCs, including their business structure, recruitment, training, equipment and services.⁵ Most European and some developing countries, such as Afghanistan and Iraq, regulate PMCs/PSCs operating on their national territories. However, only the United States and South Africa have specific legislations controlling services exported abroad.⁶ Combined with the inapplicability and weakness of international regulations, such as the United Nations (UN) Convention on Mercenarism, the African Union Convention and the Montreux Document, this has permitted PMCs/PSCs to locate their businesses where legislation is particularly lax. The limited ability of failed, weak or developing states engaged in conflict to monitor and enforce national regulations of PMCs/PSCs has resulted in a free-for-all in some interventions. In Iraq, for example, the Ministry of Interior which is formally responsible for the registration and licensing of PMCs/PSCs has not been able to do so effectively. As late as 2007, it was observed that many PMCs/PSCs had not complied with the official licensing requirement.⁷ In its withdrawal agreement with the US, the Iraqi government therefore insisted on lifting the immunity of foreign contractors working for the coalition forces from January 2009 in order to increase its ability to control PMCs/PSCs working in the country.⁸

Finally, the operations of some PMCs/PSCs have been a major cause of concern. The crimes attributed to PMCs/PSCs range from the sale or brokering of small arms and light weapons (SALW) to the shooting of innocent civilians. The Sandline Affair has been one of the most controversial illustrations of the role of PMCs/PSCs in the SALW trade. In this case, the London-based company Sandline International circumvented the UN arms embargo and exported weapons to Sierra Leone, allegedly with the knowledge of officials in the British Foreign and Commonwealth Office.⁹ More often, PMCs/PSCs obtain SALW illegally to support their own missions. In Afghanistan, for instance, only the government, foreign militaries and embassies are permitted to import weapons. This has created a major dilemma for PMCs/PSCs which either hire local staff and “turn a blind eye to the source of their weapons” or buy arms on the black market.¹⁰

Even more serious have been accusations against PMCs/PSCs over the killing of civilians. The American company Blackwater (now Xe) has made it repeatedly into the headlines by engaging in reckless shootouts, including one that led to the deaths of 17 civilians in Baghdad in September 2007. Other PMCs/PSCs such as Unity Resource Group, Custer Battles and Triple Canopy have also been

Aunohita Mojumdar, ‘Afghanistan: Private Security Contractors Become a Source of Public Scorn’, 7 August 2009, at: <http://www.unhcr.org/refworld/docid/4a8414f52d.html>.

⁵ Juan Carlos Zarate, ‘The Emergence of a New Dog of War: Private International Security Companies, International Law and the New World Disorder’, *Stanford Journal of International Law*, Vol. 34, No.1 (1998): 75-162.

⁶ Kim R. Nossal, ‘Global Governance and National Interests: Regulating Transnational Security Corporations in the Post-Cold War Era’, *Melbourne Journal of International Law*, Vol. 2, No. (2001): 459-476; Marina Caparini, ‘Domestic Regulation: Licensing Regimes for the Export of Military Goods and Services’, in: Simon Chesterman and Chia Lehnhardt (eds.) *From Mercenaries to Market. The Rise and Regulation of Private Military Companies* (New York: Oxford University Press, 2007).

⁷ Renée de Nevers, ‘(Self)-Regulating War?: Voluntary Regulation and the Private Security’, *Security Studies*, Vol. 18, No. 3 (2009): 489.

⁸ Alissa J. Rubin, ‘Iraq Cabinet Votes to End Security Firms’ Immunity’, *New York Times*, 31 October 2007; Sabrina Tavernise, ‘U.S. Agrees to Lift Immunity for Contractors in Iraq’, *New York Times*, 2 July 2008;

⁹ Christopher Kinsey, *Corporate Soldiers and International Security. The Rise of Private Military Companies* (London: Routledge, 2006), pp. 72-89.

¹⁰ Ulrike Joras and Adrian Schuster (eds.) *Private Security Companies and Local Populations: An Exploratory Study of Afghanistan and Angola* (Bern: Swisspeace, 2008), p. 14.

accused of shooting at or killing innocent bystanders in Iraq.¹¹ In 2005, a “trophy video” was published on the internet which showed four clips of security guards targeting other drivers from a car on “route Irish” leading up to Baghdad airport.¹² In Afghanistan, President Hamid Karzai accused private security guards working for the coalition forces of killing a provincial police chief and several of his officers.¹³

Moreover, the operations of PMCs/PSCs can have a negative impact on national and international security and human rights in regions of conflict. In some cases where PMCs/PSCs have supported government forces in combat missions, such as in Sierra Leone and Angola, conflict resolution has been short term because the underlying weaknesses of the government and national security agencies have not been addressed. In others there have been doubts about the training provided by PMCs/PSCs such as in Croatia where MPRI supplied advice under the Democracy Transition Assistance Program in 1995. While allegations that MPRI was involved in combat operation ‘Storm’ have not been confirmed conclusively, it has been noted that the company did not suspend their training when the Croatian armed forces engaged in large scale ethnic cleansing.¹⁴ In short, the consequences of PMC/PSC operations for security in areas of war are often mixed. While they arguably contribute to enhancing the capacities of weak national armed forces in zones of conflict and protect the civilians and businesses which hire them, local populations do not necessarily benefit from these measures. In Afghanistan, focus groups told Swisspeace that PMCs/PSCs had at best little positive impact on public security, at worst decreased it because they “are armed, block the road, are badly behaved and seem to attract trouble”.¹⁵

There are two complementary ways of addressing these problems: legislation and regulation. For the purposes of this report, the first refers to national and international criminal, human rights and humanitarian laws. The main objective of legislation is to punish crimes, including those committed by private military and security contractors. The second refers here to the national or international registration and licensing of PMCs/PSCs. It seeks to establish organizational and behavioural standards for these companies and their employees, and to facilitate public control and accountability. While overlapping in purpose, the rationales of both approaches are distinct. The former is focused on punishment, the latter on prevention. Moreover, current national and international legislation includes a rather narrow set of crimes and do not involve concerns about political and public accountability and oversight.

International legislation and regulation plays an important role in managing PMCs/PSCs because weak states or countries engaged in conflict are often unable to enforce national laws. International criminal, human rights and humanitarian laws, however, only apply to a small number of cases in which PMCs/PSCs are engaged. International criminal and human rights law focus primarily on crimes of genocide, crimes against humanity and war crimes. International humanitarian law includes detailed stipulations for ‘contractors accompanying the armed forces’ and for non-state combatants, but for three reasons it is rarely applicable to PMCs/PSCs. Firstly, PMCs/PSCs operate typically in areas of conflict where there is no declared war. Secondly, many PMCs/PSCs work for private organizations, businesses or individuals and not for national armed forces. Thirdly, most PMCs/PSCs do not engage, or at least claim not to engage, in offensive military action. It is therefore difficult to determine whether they are ‘combatants’ who ‘take part in hostilities’ as stipulated in the Geneva Conventions. It is for these reasons that the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during*

¹¹ Isenberg, *Shadow Force*, pp. 80, 90, 103.

¹² Sean Rayment, “‘Trophy’ Video Exposes Private Security Contractors Shooting Up Iraqi Drivers’, *The Telegraph*, 27 November 2005.

¹³ *Guardian*, ‘Afghan President Accuses US-Trained Guards of Killing Police Chief,’ 29 June 2009.

¹⁴ Avant, *The Market for Force*, pp.102-106

¹⁵ Joras and Schuster, *Private Security Companies and Local Populations*, p. 27.

Armed Conflict signed in 2008 by Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, Ukraine, the United Kingdom and the United States, can be considered insufficient. Despite its objective to investigate the possibility of strengthening international regulations, the document did not go beyond a reaffirmation of existing international humanitarian and human rights law and an endorsement of voluntary good practices.¹⁶

The regulation of PMCs/PSCs is presently and potentially more effective than international legislation. As will be discussed in greater detail in the following sections, both the EU and its member states have already a variety of regulatory and licensing mechanisms in place which apply at least partially to PMCs/PSCs. Moreover, regulation typically addresses a broad range of concerns such as political and public accountability and control over the organization of and types of services provided by PMCs/PSCs nationally and abroad.

In order to discuss the options for the regulation of PMCs/PSCs in the EU, this report is structured into four main sections. The next section discusses the definition of PMCs/PSCs and private military and security services for the purposes of regulation. The third section analyses the form and content of existing EU policies and regulations which affect PMCs/PSCs. The fourth section examines how these policies and regulations have been translated into national law among the member states and what additional national controls can provide examples of ‘best practice’ for the regulation of PMCs/PSCs. Finally, the fifth section discusses several options for improving the regulation of PMCs/PSCs in the EU.

2. Definition of Private Military and Security Companies and Services

Since efforts to regulate the private military and security industry focus typically either on controlling the companies or their services their definition has caused a lot of discussion. Early studies differentiated between two types of firms which still inform the prevailing terminology: ‘private military companies’ (PMCs) and ‘private security companies’ (PSCs).¹⁷ According to this distinction, PMCs denote incorporated firms offering military capabilities and support services, while PSCs are businesses supplying private protection and risk management.¹⁸ Since many companies oppose being conflated with PMCs such as Sandline International, there have been various attempts to redefine these terms. Most companies insist on labelling themselves PSCs even if they provide military services, and the generic term ‘private contractor’ has become pervasive in Iraq and Afghanistan.

In order to overcome the vagueness of these definitions, several academic studies have proposed slightly variant typologies of private military and security businesses.¹⁹ P.W. Singer’s tip-of-the-spear typology differentiates between three categories of firms according their proximity to frontline combat.²⁰ In his terminology, ‘military provider firms’ supply implementation and command, ‘military

¹⁶ James Cockayne, ‘Regulating Private Military and Security Companies: The Context, Negotiations, Weaknesses and Promise of the Montreux Document,’ *Journal of Conflict and Security Law*, Vol. 13, No. 3 (2009): 401-428.

¹⁷ Doug Brooks, ‘Messiahs or Mercenaries? The Future of International Military Services’, *International Peacekeeping*, Vol. 7, No. 4 (2000): 129; Damian Lilly, *The Privatization of Security and Peacebuilding: A Framework for Action* (London: International Alert, 2000), p. 8.

¹⁸ David Shearer (1998) *Private Armies and Military Intervention*, Adelphi Paper (Oxford: Oxford University Press for IISS, 1998), pp. 23-24.

¹⁹ For a review see Carlos Ortiz, ‘The Private Military Company: An Entity at the Center of Overlapping Spheres of Commercial Activity and Responsibility’, in Thomas Jäger and Gerhard Kümmel (eds.) *Private Military and Security Companies. Chances, Problems, Pitfalls and Prospects* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2006), pp.55-68.

²⁰ P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University

consultant firms' offer advisory and training services and 'military support firms' provide non-lethal aid and assistance. Christopher Kinsey proposes that private military and security firms can be differentiated along two axes: the means they use to secure their objective, ranging from lethal to non-lethal, and the object of their protection, ranging from private to public.²¹ According to Kinsey, 'private combat companies' combine lethal force and private protection, while 'private military companies' use non-lethal force to defend their public and private clients. 'Private security companies' are distinguished from the latter in terms of their range of services which are "generally concerned with crime prevention and public order".²²

Today, most authors and practitioners agree that, in practice, these categories merge into one another. The same firms supply a variety of functions, work for both public and private clients, and adapt their services in response to changing customer demands. The services of the Singer's exemplary 'military consultant firm', DynCorp, for instance, subsume such varied functions as aviation maintenance, logistics, IT support and military training. Even management, consulting and defence procurement companies have expanded their provision of military and security services.²³ The British self-proclaimed "support services company" Babcock International oversees the management, maintenance and repair of the UK's four nuclear weapons carrying submarines. Finally, individual companies can transform their character as a result of national and international mergers.

As can be noted from the above, most definitions of PMCs/PSCs are not based on any inherent characteristics of these companies, but on the types of services that they provide. Several authors have therefore abandoned attempts to categorize private security and military firms and instead proposed focusing entirely on services. Robert Mandel suggests a taxonomy of 'privatized security' according to the scope, source, form and function of private security services.²⁴ Deborah Avant favours using contracts rather than firms as units of analysis and distinguishes between internal and external security services, the former relating to domestic and the latter to international security.²⁵ I have argued similarly that 'private military services' can be defined as services directly related to the provision of national defence and international interventions as distinct from 'private security services' which concern domestic security and policing.²⁶ Table 1 presents a non-exhaustive list of what kinds of services might be included under each category.

For the purpose of this report the distinction between these two types of services is important not as a guide for future legislation and regulation, but because it helps to understand the gaps in contemporary national and international controls. It shows that regulations in the EU and its member states have so far pertained primarily to the licensing of firms and personnel supplying internal 'security services', while companies that sell 'military services' have remained unregulated. These distinctions also demonstrate that the limited efforts to licence service exports abroad have focused, conversely, on military assistance and neglected security service. The reasons for these omissions are not obvious. As the examples outlined in the introduction to this report illustrate, concerns about accountability, structure and operation are not related to the distinction between PMCs and PSCs or between military and security services, but to the potential impact that these companies and their services can have on the provision and control of public security in areas of conflict. A deterioration of public security can

Press, 2003), p. 93.

²¹ Kinsey, *Corporate Warriors and International Security*, p. 10.

²² Ibid, p. 16.

²³ Singer, *Corporate Warriors*, p. 93.

²⁴ Robert Mandel, *Armies without States: The Privatization of Security* (Boulder, CO: Lynne Rienner, 2002), pp. 99-106.

²⁵ Avant, *The Market for Force*, p. 17.

²⁶ Elke Krahnmann, 'Regulating Private Military Companies: What Role for the EU?' *Contemporary Security Policy*, Vol. 26, No. 1 (2005): 1-23.

result equally from military training, like in Croatia, as it can be caused by armed guards, like in Iraq and Afghanistan.

The next section examines in detail what types of companies and services are subject to EU policies and regulations today.

Table 1. Military and Security Services

Military services	Security services
Armed combat	Armed protection (close protection, property guarding, border guarding)
Military base guarding	Unarmed protection (door supervision, property guarding, border control)
Technical support for military or dual-use equipment (installation, maintenance, repair, use)	Technical support for security equipment (installation, maintenance, repair, use)
Procurement of military goods and services	Procurement of security equipment and services
Trafficking of military goods	Trafficking of security equipment
Brokering of military and dual-use goods	Brokering of security equipment
Explosive ordnance disposal	Cash and valuables in transit
Demobilization and disarmament	Surveillance (CCTV)
Military logistics	Management of prisons
Management of military bases	Crowd management (event security)
Management of military contractors	Security training
Military training	Security sector reform (police, judiciary)
Security sector reform (armed forces)	Security intelligence collection and analysis (risk assessment)
Military intelligence collection and analysis (risk assessment)	Counter-terrorism services
Interrogation of military prisoners	Anti-piracy services
Military consulting	Hijack/Kidnap services
	Crisis management
	Security consulting
	Investigative services

3. Current EU Policies and Regulations

Despite the absence of a common regulatory framework for PMCs/PSCs, the EU has played a critical role in promoting national and regional controls over the provision and export of various military and security services.²⁷ Its policies and regulations fall into three categories. The first category includes Council ‘Regulations’, such as the *Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items*, which is directly applicable to member states. The second category pertains to Council ‘Common Positions’, i.e. binding legal acts which have to be implemented into national laws or practices. It includes the *Council Common Position 2008/944/CFSP*, which replaced the EU Code of Conduct on Arms Exports, *Council Common Position 2003/468/CFSP on the control of arms brokering*, and numerous Common Positions establishing embargoes on the provision of technical assistance and military services to select countries or individuals. The third category refers to Council ‘Joint Actions’, i.e. legal acts defining common actions such as the Common Foreign and Security Policies (CFSP) on

²⁷ An overview of security related export controls by the EU can be found at: <http://www.consilium.europa.eu/showPage.aspx?id=1484&lang=en> and <http://www.consilium.europa.eu/showPage.aspx?id=408&lang=en>.

technical assistance related to weapons of mass destruction (WMDs) and to embargoed destinations, and the export of small arms and light weapons. In addition to these policies the EU Court of Justice has affirmed EU competence over the regulation of internal security services under the first pillar.²⁸ The following examines each policy in turn before the next section discusses national regulations in the member states.

A. Dual-Use Items

In 2000, the EU first set up a Community regime for the export control of dual-use items and technology, i.e. goods with civilian and military applications. Since then, the regime has been amended several times. The latest *Council Regulation (EC) No. 428/2009* extends the Community regime from the control of exports and transfers to the brokering and transit of dual-use items listed in the Annex.²⁹ In rare circumstances the latter may be relevant for PMCs/PSCs because the regime incorporates the export, transfer and brokering of dual-use goods listed in categories 1 to 9 of the Annex, such as telecommunications and information security, sensors and lasers, navigation and avionics, marine technology, and aerospace and propulsion systems, including dual-use items that might be sold by PMCs/PSCs as part of their services such as jamming equipment, radio direction finding equipment, cryptographic software and radar systems.³⁰

B. Armaments Exports

More directly relevant to PMCs/PSCs is the development of common controls on armaments exports. On 8 December 2008, the EU member states adopted *Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment* and thereby made legally binding the criteria for the export licensing of military equipment and services included on the EU Common Military List which had previously been part of the *EU Code of Conduct for Armaments Exports*.³¹ Both documents include several stipulations which are of interest to this report. Firstly, the Code of Conduct obligated the EU to produce a consolidated annual report on the arms exports of its member states, contributing to increasing the transparency and accountability of weapons and related service exports from the EU. The first report was published in November 1999.³² It was only four pages long and observed the initial efforts to establish institutional channels of communication on arms transfers among the member states. Since then the details contained in each report has increased progressively.³³ While the fifth report of 2003 was 42 pages long and included lists of arms export volumes by destinations and exporting member states,³⁴ the eleventh report of 2008 contained no less than 422 pages, specifying national exports by country, destination, type of

²⁸ Court of Justice of the EU, Case Law, Rulings C-114/97 (vs. Spain), C-355/98 (vs. Belgium), C-283/99 (vs. Italy), and C-189/03 (vs. Netherlands).

²⁹ Council Regulation (EC) No. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, *Official Journal*, L 134 (29.5.2009).

³⁰ Annex I, List of Dual-use items and technology, at: http://trade.ec.europa.eu/doclib/docs/2008/september/tradoc_140595.pdf.

³¹ EU, The Council, EU Code of Conduct on Armaments Exports, Brussels, 5 June 1998, 8675/2/98 Rev 2.

³² Annual Report in Conformity with Operative Provision 8 of the EU Code of Conduct on Arms Exports, *Official Journal*, C315 (3.11.1999).

³³ Second Annual Report According to Operative Provision 8 of the EU Code of Conduct on Arms Exports, *Official Journal*, C379 (29.12.2000); Third Annual Report According to Operative Provision 8 of the EU Code of Conduct on Arms Exports, *Official Journal*, C351 (11.12.2001).

³⁴ Fifth Annual Report According to Operative Provision 8 of the EU Code of Conduct on Arms Exports, *Official Journal*, C320 (31.12.2003).

equipment and value.³⁵ Since all member states are required to produce national reports as the basis for the consolidated EU report, most members have decided to make their national data on armaments exports public. As of 2010, all but two of the twenty-seven EU member states, namely Cyprus and Greece, publish their national reports online.³⁶

Secondly, the criteria set out in *Council Common Position 2008/944/CFSP* control not only the export of military equipment, but also of services such as brokering, transshipment, intangible transfers of software and technology, and technology required for the development, production, operation, installation, maintenance, repair, overhaul and refurbishing of some items specified in the EU Common Military List. The criteria concern, among others, the likelihood of military equipment and services being used for internal repression, international human rights violations, the provocation of armed conflict and the aggravation of existing conflicts or if they have the potential of adversely affecting regional stability, promoting international terrorism and crime, or being re-exported to undesirable destinations.

Thirdly, the Conventional Arms Exports Working Group (COARM) which was set up in order to implement the Code has played an important role in identifying additional areas for regulation. With regard to private military and security services, COARM has specifically contributed to EU regulation on the brokering of arms, analysed next.

C. Armaments Brokering

COARM first identified the issue of brokering as a problem in the annual report on the implementation of the Code in 2000, i.e. one year after the Sandline Affair.³⁷ By 2001, member states had agreed on a set of guidelines for controlling brokering as the basis for national legislation.³⁸ The result was the *Council Common Position 2003/468/CFSP on the control of arms brokering*, passed in June 2003, which has made binding the national regulation of arms brokering among the member states.³⁹ The Common Position mandates that “member states will take all necessary measures to control brokering activities taking place within their territory”, but it also encourages member states “to consider controlling brokering activities outside their territory carried out by brokers of their nationality resident or established in their territory”.⁴⁰

D. EU Embargoes on Technical Assistance and Military Services

Also legally binding have been EU Common Positions imposing embargoes on the export of technical assistance and services related to military activities to certain countries. As of January 2010, eight countries were subject to such embargoes: the Democratic Republic of Congo, Côte d’Ivoire, Republic of Guinea (Conakry), Lebanon, Liberia, Somalia, Sudan and Zimbabwe.⁴¹ They increasingly subsume

³⁵ Eleventh Annual Report According to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, *Official Journal*, C265 (6.11.2009).

³⁶ Links to national reports can be found at: <http://www.consilium.europa.eu/showPage.aspx?id=1484&lang=en>.

³⁷ Second Annual Report According to Operative Provision 8 of the EU Code of Conduct on Arms Exports, *Official Journal*, C379 (29.12.2000), p. 3.

³⁸ Third Annual Report According to Operative Provision 8 of the EU Code of Conduct on Arms Exports, *Official Journal*, C351 (11.12.2001), pp. 3-4.

³⁹ Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, *Official Journal*, L156 (25.6.2003).

⁴⁰ *Ibid.*

⁴¹ European Commission – External Relations, *Restrictive Measures (Sanctions) in Force*, 2 March 2010, at: http://ec.europa.eu/external_relations/cfsp/sanctions/docs/measures_en.pdf.

military and security services commonly supplied by PMCs/PSCs, including to “grant, sell, supply or transfer technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned” or “the provision of any assistance, advice or training related to military activities”. Unlike other terms, however, ‘military activities’ are not defined clearly in EU embargoes, leaving considerable scope for interpretation by national authorities.⁴²

E. Technical Assistance Related to WMDs and Embargoed Destinations

Similarly, *EU Council Joint Action 2000/401 of 22 June 2000* regulates technical assistance related to WMD, missiles for the delivery of WMD and embargoed destinations.⁴³ Technical assistance as defined by the EU Joint Action covers a wide spectrum of services, albeit only with regard to WMDs, including “technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, training, transmission of working knowledge or skills or consulting services.”⁴⁴ More importantly for PMCs/PSCs, the Joint Action also “encourages” member states to “consider the application of such controls also in cases where the technical assistance relates to military end-uses other than those referred to in Article 2 ... and is provided in countries of destination subject to an arms embargo.”⁴⁵

F. Small Arms and Light Weapons

In addition, the EU has adopted common policies regarding the transfer of small arms and light weapons, which can be facilitated by the operations of PMCs/PSCs in developing countries.⁴⁶ In 1998, the Council adopted *Joint Action 1999/34/CFSP on the EU contribution to combating the destabilizing accumulation and spread of small arms and light weapons*.⁴⁷ Amongst others, the Joint Action envisaged that the EU shall enhance efforts to build a consensus in international organizations such as the UN and the OSCE for restrictive arms export criteria as provided, at the time, in the EU Code of Conduct. Moreover, the Joint Action proposed that member states “shall seek to increase the effectiveness of their national actions in the field of small arms.”⁴⁸ In 2002, it was replaced by *Joint Action 2002/589/CFSP* which also included the export of ammunition for small arms and light weapons and expanded the list of measures sought to counter the spread of small arms.⁴⁹ In direct application of the Joint Actions, the Council passed two Decisions which offered the government of Cambodia assistance in the development of appropriate legislation for the possession, use and sale of

⁴² The UN, however, includes in its definition of “technical advice, assistance or training related to military activities”, also those that relate to terrorist activities, suggesting that ‘military activities’ are not exclusive to national armed forces. See

http://www.un.org/sc/committees/1267/pdf/EOT%20Arms%20embargo_ENGLISH.pdf.

⁴³ Council Joint Action 2000/401/CFSP of 22 June 2000 concerning the control of technical assistance related to certain military end-uses, *Official Journal*, L159 (30.6.2000).

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Sami Makki, Sarah Meek, Abdel Fatau Musah, Michael Crowley, and Damian Lilly, *Private Military Companies and the Proliferation of Small Arms: Regulating the Actors* (London: International Alert, 2001).

⁴⁷ Joint Action 1999/34/CFSP of 17 December 1998 adopted by the Council on the basis of Article J.3 of the Treaty on EU on the EU's contribution to combating the destabilising accumulation and spread of small arms and light weapons, *Official Journal*, L9 (15.1.1999).

⁴⁸ *Ibid.*

⁴⁹ Council Joint Action 2002/589/CFSP of 12 July 2002 on the EU's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, *Official Journal*, L191 (19.7.2002).

small arms and ammunitions and for general disarmament measures.⁵⁰ Other projects directed at the finding, collection and destruction of small arms were agreed on with regard to Georgia/South Ossetia⁵¹ and Mozambique (Operation Rachel).⁵²

G. Private Security Services

Finally, the European Court of Justice has established the competence of the EU Commission over PSCs in several rulings which identify private security services as an “economic sector”, included under first pillar.⁵³ However, the movement towards common European regulations on PSCs has been slow. The European Parliament has been in favour of harmonizing member states’ regulations of the private security sector, and the Council adopted on 13 June 2002 a recommendation regarding cooperation between the competent national authorities of member states responsible for the private security sector.⁵⁴ However, the EU Council decided to exclude private security services from the Commission’s directive on services in the internal market. Instead it tasked the Commission with assessing the possibility of presenting a separate proposal for the harmonization of regulations concerning private security services by 28 December 2010.⁵⁵

4. Regulations in the Member States

National regulations in the EU member states apply currently to six types of military and security services: technical assistance related to dual-use items, WMDs and embargoed countries; brokering of dual-use goods and military equipment; technical services related to controlled military goods; military training; and internal security services [see Appendix]. While the first three implement the EU policies outlined above, the latter are the result of national policy priorities and export control traditions. Since a detailed examination of the legislation in all twenty-five member states is beyond the scope of this report, the following sections discuss the scope and variance of regulation in each of these six areas.

A. Technical Assistance Related to WMDs and Embargoed Destinations

As of 2009, *Joint Action 2000/401/CFSP* on the export of technical assistance related to WMDs has been implemented by twenty-three member states, the exceptions being Belgium, Cyprus, Greece and Luxemburg. Since the form of regulation is left to the individual member states national legislations

⁵⁰ Council Decision 1999/730/CFSP of 15 November 1999 implementing Joint Action 1999/34/CFSP with a view to a EU contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia, *Official Journal*, L294 (16.11.1999); Council Decision 2002/904/CFSP of 11 November 2002 extending and amending Decision 1999/730/CFSP concerning a EU contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia, *Official Journal*, L313 (16.11.2002).

⁵¹ Council Decision 2000/803/CFSP of 14 December 2000 implementing Joint Action 1999/34/CFSP with a view to a EU contribution to combating the destabilising accumulation and spread of small arms and light weapons in South Ossetia, *Official Journal*, L326 (22.12.2000).

⁵² Council Decision 1999/845/CFSP of 17 December 1999 implementing Joint Action 1999/34/CFSP with a view to a EU contribution to combating the destabilising accumulation and spread of small arms and light weapons in Mozambique, *Official Journal*, L326 (18.12.1999).

⁵³ See Court of Justice of the EU, Case Law, Rulings C-114/97 (vs. Spain), C-355/98 (vs. Belgium), C-283/99 (vs. Italy), and C-189/03 (vs. Netherlands).

⁵⁴ Council Recommendation of 13 June 2002 regarding cooperation between the competent national authorities of Member States responsible for the private security sector, *Official Journal*, C 153 (27.6.2002).

⁵⁵ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, *Official Journal*, L 376 (27.12.2006).

within the EU vary considerably. Some countries have prohibited the export of related technological assistance, whereas others require a licence [Appendix]. The variation is even greater with regard to technical assistance for embargoed destinations because Joint Action 2000/401/CFSP “encourages”, but does not require national legislation on the issue. Whereas Austria, Belgium and Hungary prohibit the export of certain types of technical assistance to countries subject to an arms embargo, others such as the Czech Republic, Bulgaria, Estonia, Germany, Italy, Lithuania, Poland, Slovakia and Spain demand a licence. Finally, Cyprus, Denmark, Finland, France, Greece, Luxembourg, Portugal, the United Kingdom and Sweden do not have specific national regulations for the export of technical assistance to embargoed countries.

B. Brokering

Council Common Position 2003/468/CFSP on the brokering of arms has been implemented more widely among the member states, although not more consistently than the above. Twenty-one member states have so far implemented the Common Position whereas relevant legislation is still in preparation in Cyprus, France, Greece, Ireland, Italy and Luxembourg.⁵⁶ Again, the scope of the controls differs considerably. Some countries such as Austria and Denmark regulate brokering activities only when conducted from within their national territories; other countries such as Finland, Hungary and Slovakia control brokering also if citizens, permanent residents or registered businesses engage in brokering activities abroad. Some national laws are very complex and detailed; others are very general leaving much to interpretation. Several countries, including Bulgaria, Hungary, Latvia, Lithuania, Malta, the Netherlands, Slovenia and Spain, have set up national registers for armaments brokers in which individuals or businesses planning to engage in future brokering activities have to be registered prior to applying for a licence, whereas most states require only individual export licences.

C. Technical Services Related to controlled Military Goods

As a consequence of historically strict export controls and the necessity to revise national export legislation in compliance with EU accession, most Central and Eastern European countries have more extensive licensing requirements than the older EU member states. In particular accession has encouraged the new members to draft legislation which subjects the export of all types of military equipment and related services to licensing. The Czech Republic, Estonia, Hungary, Lithuania, Poland, Slovenia and Slovakia thus have comprehensive regulations which typically include technical services provided in connection with controlled military equipment, such as development, design, production, adjustment, repair, maintenance and use.

D. Military Training

Due to the explicit linkage of services to controlled military equipment in *EU Joint Action 2000/401/CFSP*, few member states regulate the export of military training other than for the use of military technology. Thus, the Czech Republic, Hungary and Italy demand licences for the export of all training related to the “use” or “handling” of controlled military equipment; and Estonia and Poland regulate the export of training and consulting services related to military goods including “technical support related to the development, manufacture, assembly, testing, repairs, transport or

⁵⁶ Eleventh Annual Report According to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, *Official Journal*, C265 (6.11.2009), Table C.

maintenance of military goods, or any other relevant service.”⁵⁷ Only Sweden requires a license for the export of all “training with a military purpose.”⁵⁸

E. Security Services

In contrast to export controls, most EU member states have extensive regulations for the provision of internal security services. The prime mechanisms regulating private security and military services in the EU member states are the national registration and licensing of security companies and their personnel.⁵⁹ The conditions for a licence, which on average needs to be renewed every five years, vary among the member states. However, all member states require a clear criminal record among management and personnel. Additional conditions include sufficient liability insurance, identification cards with name and photo, and approved uniforms which are not easily confused with those of the police or armed forces. About 60 percent of the EU member states mandate specific training of private security personnel and the passing of an examination.⁶⁰ Training can range from instruction of between 32 (France) and 300 hours (Poland) to complementary and follow-up training, including for the protection of persons, the transport of valuables and the use of firearms.⁶¹ With the exception of Denmark, France, the Netherlands and the UK, most member states allow for the carrying of firearms by security personnel with a special permit. Nevertheless, many states limit and request registration of the type and number of weapons concerned, and most mandate after-hour storage in special facilities.

5. Options for Improved Regulation

The preceding analysis has illustrated the range of regulative measures which control the domestic provision and international export of private military and security services in the EU. It demonstrates that EU member states are recognizing the importance of regulating not only the export of military equipment, but also of services. However, so far only a limited selection of companies and services are subject to controls. There are two main gaps.

The first gap concerns the registration and licensing of PMCs/PSCs based in the EU. Existing regulations only apply to PSCs operating nationally. Moreover, in the absence of common regulations, the EU Court of Justice has ruled that member states have to recognize the national standards of other EU countries even if these are lower than their national licensing requirements. The situation is even worse with regards to companies incorporated in the EU that supply military and security services abroad. Although Finland, Hungary and Slovakia have set precedents for the extraneous application of national regulations in the case of arms brokering, most EU member states are reluctant to take responsibility for the foreign operations of national companies or citizens.

A second gap regards the export of services that are not related to controlled military or dual-use equipment. As indicated in Table 2, these services make up a major segment of the industry and include controversial functions such as armed combat, personnel and site protection, transport security, strategic and tactical training, military interrogation and contingency planning. As the

⁵⁷ Estonia, Strategic Goods Act, passed 17 December 2003, (RT I 2004, 2, 7), entered into force 5 February 2004, amended by the following Act: 09.06.2004 entered into force 18.07.2004 - RT I 2004, 53, 366, at: http://www.vm.ee/eng/kat_153/894.html; Poland, Law of 29 November 2000 on Foreign Trade in Goods, Technologies and Services of Strategic Importance to the Security of the State and to Maintaining International Peace and Security, as amended by the Law of 2 July 2004, at: <http://www.mg.gov.pl/Gospodarka/DKE/English/Laws/ExportControl/>.

⁵⁸ See Section 10, available from <<http://projects.sipri.se/expcon/natexpcon/Sweden/krigmlag.htm>>.

⁵⁹ CoESS, Panoramic Overview of Private Security Industry in the 25 Member States of the European Union (CoESS, 2004), at: <http://www.coess.org/studies.htm>.

⁶⁰ Ibid.

⁶¹ Ibid.

experience from Africa, the Balkans, Afghanistan and Iraq has demonstrated, these services can be as decisive for the outcome of a war and for public security in conflict regions as the export of missiles and tanks.

Table 2. EU Export Regulations

Military Service Exports	Security Service Exports
Regulated Technical support for military equipment (installation, maintenance, repair, use) Export of military and dual-use goods Trafficking of military and dual-use goods Brokering of military and dual-use goods	Regulated -
Unregulated Armed combat Military base guarding Explosive ordnance disposal Demobilization and disarmament Military logistics Management of military bases Management of military contractors Military training Security sector reform (armed forces) Military intelligence collection and analysis (risk assessment) Interrogation of military prisoners Military consulting	Unregulated Armed protection (close protection, property guarding, border guarding) Unarmed protection (door supervision, property guarding, border control) Technical support for security and dual-use equipment (installation, maintenance, repair, use) Trafficking of security equipment Brokering of security equipment Cash and valuables in transit Surveillance (CCTV) Management of prisons Crowd management (event security) Security training Security sector reform (police, judiciary) Security intelligence collection and analysis (risk assessment) Counter-terrorism services Anti-piracy services Hijack/Kidnap services Crisis management Security consulting Investigative services

The following examines both problem areas in turn and discusses the advantages and disadvantages of various policies and regulations in terms of their contribution to improving the transparency, accountability and control of PMCs/PSCs. It should be noted that some of these policy options are not mutually exclusive, but could be part of an overlapping network of regulations.

A. Registration and Licensing of PMCs/PSCs

Policy Option 1: Inclusion of private security services into *Directive 2006/123/EC*

Since the EU Court of Justice has recognized the competence of the Commission over the supply of private security services within the European Economic Community, one option would be their inclusion into *Directive 2006/123/EC*.⁶² The main advantages of the policy would be the establishment of common standards and, accordingly, reduced administrative burdens for companies and member states. However, the scope of harmonization and the level of standards would play a critical role in

⁶² Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, *Official Journal*, L376 (27.12.2006).

determining whether this policy would facilitate the transparency, accountability and control of PSCs. Minimum common standards would not ensure full harmonization and permit PSCs to move to EU member states with the least restrictive licensing laws. More extensive standards, such as suggested in the area of aviation security by the *Opinion of the European Economic and Social Committee on Aviation security for passengers (2009/C 100/07)*, would be more advantageous.⁶³ Extensive registration and licensing criteria, which include the vetting of management and personnel, proof of insurance, weapons storage guidelines, identification requirements and compulsory training for all security staff, would increase the harmonization of national regulations as well as public control. The main disadvantage of the policy would be the limitation of the Directive to private security services supplied in the EU. Since military services are not part of the internal market, the Directive would by definition exclude the registration and licensing of PMCs.

Policy Option 2: Council Common Position on the registration and licensing of private military and security providers

Another option would be a Council Common Position requiring the national registration and licensing of PMCs and PSCs in the member states. As outlined above, many member states already have such legislation with regards to PSCs. The main purpose of option 2 would be to extend these laws to companies providing military services and to EU countries so far lacking regulation. Following common practice, the registration and licensing would be based on a specification of services rather than a definition of companies. The benefits of this option would to increase the transparency and accountability of PMCs/PSCs by providing governments with basic data on businesses that sell military and security services. Moreover, depending on the content of the Common Position, it could improve the average level of national controls by specifying additional common licensing criteria such as the vetting of managers and personnel; training in conflict de-escalation, and national and international law; and the handling and storage of weapons. Option 2 would not challenge existing registration and licensing laws among the member states and leave considerable room for national differences, thus, making it more easily acceptable than option 1. The disadvantages of this option would be that it would address only partially the issue of harmonization. PMCs/PSCs would still be able to avoid the tightest regulations by relocating to member states that have adopted the minimum common registration and licensing standards.

B. Export of Military and Security Services

Policy Option 3: Council Common Position on the export control of military and security service included in the EU Common Military List

The most effective option for controlling the export of military and security services outside the EU would be a Council Common Position requiring national export authorizations for specific services, which are to be included in the Common Military List. Since the Common Military List is agreed among the member states and since it is under constant review, this option would ensure both political support from the member states and the relevance of the regulation with regards to key concerns and new developments in military and security services. Services which might be included at a minimum are those which threaten directly public security if abused such as armed combat, interrogation, military and security training, counter-terrorism and crisis management. A more extensive list could also incorporate tasks that have primarily long term implications such as security sector reform and risk analysis. The advantages of this policy would be an extensive harmonization of military and security service export controls within the EU. The inclusion of services into the Common Military

⁶³ Opinion of the European Economic and Social Committee on Aviation security for passengers, *Official Journal*, C 100 (30.4.2009).

List would also reduce administrative requirements by utilizing existing organizational structures in the EU and relieving member states of having to draw up their own service lists. More important are the potential benefits for the control of PMCs/PSCs and their operations in weak or failing states and conflict regions. Through the issuing of individual export licences, EU member states have maximum transparency, accountability and control over the provision of military and security services abroad. If such export information were to be included into the annual arms export reports of the member states and the EU it would also significantly enhance public accountability.

Policy Option 4: Council Common Position on the control of military and security service exports

Less effective than the above would be a Common Position that requires national authorization of military and security service exports, but leaves the specification of controlled services to the individual member states. Its advantages and disadvantages would be similar to option 3 with two main exceptions. Firstly, without a common list of services there would be a greater administrative burden on companies and member states. Secondly, without the harmonizing effect of a common list, PMCs/PSCs could try to evade strict controls by relocating.

Policy Option 5: Council Common Position on the control of military and security service exports to embargoed destinations or individuals

A Common Position demanding the national authorization of military and security services destined for embargoed countries would target directly areas of prime concern. As noted in the preceding sections, some Common Positions on military sanctions already include regulations or prohibitions on “the provision of any assistance, advice or training related to military activities”. The main objective of policy option 5 would be to expand or clarify the range of sanctioned services and to apply their control to all embargoed destinations and individuals. One of the benefits of option 5 would be the improved control of military and security service exports to countries or individuals engaged in violent conflict or human rights violations. In addition, the Common Position would simplify and harmonize EU sanctions policy. The disadvantages of option 5 would be its restricted applicability and its reliance on EU or UN embargoes. It would limit export controls to countries or individuals that have already been identified as problematic and neglect the role that export controls can play in the prevention of future conflicts.

Policy Option 6: Amendment of *Council Common Position 2008/944/CFSP* to incorporate military and security services included in the EU Common Military List

An alternative to policy option 3 would be an amendment of *Council Common Position 2008/944/CFSP* to apply its export control criteria to military and security services included in the Common Military List. It would have similar advantages with regards to the inclusion of military and security services on the Common Military List, such as wide scope, maximum control through individual licences, harmonization across the EU, low administrative burdens and adjustability. In addition, the amendment would facilitate transparency and accountability because military and security service export statistics would be published in the annual EU arms export report. Nevertheless, including military and security services into *Common Position 2008/944/CFSP* is unlikely to be as effective as option 3 because of the considerable room for national interpretations of its export criteria. Although a new *User's Guide to Council Common Position 2008/944/CFSP*

summarises agreed guidance for the interpretation of its criteria, the guide is not legally binding but merely identifies 'best practice' among the member states.⁶⁴

Policy Option 7: Amendment of *Council Common Position 2008/944/CFSP* to incorporate military and security services

Another possible amendment of *Council Common Position 2008/944/CFSP* would apply common EU arms export criteria to military and security services, but not specify them in the Common Military List. The benefits of such an amendment would be the increased control of military and security service exports through national licensing and greater transparency and accountability through the collection and publication of export data. Its disadvantages would be its failure to harmonize service controls through a common list and the flexible interpretation of the common arms export criteria.

Policy Option 8: Amendment of *Council Regulation (EC) No. 428/2009* to include technical assistance related to dual-use items and technologies

Following the extension of the EU's common regulations on the export of dual-use equipment to the brokering and transit of dual-use items and technologies, a further step would be to also include technical assistance for dual-use goods provided in person abroad. Technical assistance in this case would be defined as 'technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, training, transmission of working knowledge or skills or consulting services, similar to *EU Council Joint Action 2000/401 of 22 June 2000*. The benefits of this policy would be to bring the regulation of dual-use exports fully in line with standards applied to military items.

Policy Option 9: Inclusion of military and security services into an International Arms Treaty

A final policy option would be to promote the incorporation of military and security services into the International Arms Treaty suggested in *Council Decision 2009/42/CFSP*.⁶⁵ The key benefit of this policy would be the expansion of military and security service controls beyond the EU. Option 9 would help constrict the ability of PMCs/PSCs to circumvent EU regulations by registering abroad. It would also reduce the disadvantages of increased regulation for European PMCs/PSCs operating in the international market place. The main limitation of this policy is that an International Arms Treaty is unlikely to specify what kinds of military and security services are to be controlled. Major differences between national interpretations and regulations can be expected, thus, curtailing some of the benefits of the policy.

⁶⁴ Council of the European Union, *User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment*, DGE WMD, 9241/09, Brussels, 29 April 2009.

⁶⁵ Council Decision 2009/42/CFSP of 19 January 2009 on support for EU activities in order to promote among third countries the process leading towards an Arms Trade Treaty, in the framework of the European Security Strategy, *Official Journal*, L17 (22.1.2009).

Conclusion

The proliferation of PMCs/PSCs in the post-Cold War era has caused major concerns about their actions and impact on regions of armed conflict. As a consequence there has been a growing demand for increased transparency, accountability and control of the industry. The EU has been one of the key promoters of improved regulation. However, current controls within the EU apply only to a small range of services provided by PMCs/PSCs. Too often the EU and its member states have drawn up new legislation in reaction to particular scandals or strategic imperatives such as the Sandline Affair and the 'war on terror'. The consequence has been a patchwork of national and international regulations that is neither comprehensive nor consistent. The main gaps in the existing regulatory framework concern the registration and licensing of PMCs and the export of private military and security services outside the EU. To address these gaps this report has outlined nine policy options which would singly or in combination improve the transparency, accountability and control of PMCs/PSCs. The benefits and disadvantages of these policy options vary considerably. However, most of them can build on existing regulations, suggesting that increased controls would not involve a major departure from current policies. Instead, this report suggests that the EU has already gone a long way towards the regulation of PMCs/PSCs and that it is now the time to consolidate and expand these controls.

