



Geneva Centre for the Democratic Control of
Armed Forces (DCAF)
Policy Paper - №20

Regulating Private Security in Europe: Status and Prospects

Hans Born, Marina Caparini, and Eden Cole

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*Hans Born, Marina Caparini, and Eden Cole
with assistance of Vincenza Scherrer*

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Table of Contents

1. Introduction	1
2. Objectives, Scope and Limitations	2
3. Need for Regulation	4
4. Regulation: The European Level	7
4.1. European Union	7
4.2. Council of Europe	8
5. Regulation: The National Level	17
5.1. Possible roles and tasks of private security companies.....	17
5.2. Links between private security companies and public police	19
5.3. Control and accountability of private security companies	21
5.4. Entrance requirements.....	23
5.5. Selection and recruitment of private security personnel	23
5.6. Training of private security personnel	25
5.7. Identification of private security personnel	26
5.8. Use of firearms by private security personnel	27
5.9. Search and seizure powers of private security firms.....	28
6. Self-Regulation	29
6.1. European level	30
6.2. National level.....	30
7. Recommendations	33
8. Conclusions and the Way Forward	38

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Hans Born, Marina Caparini, and Eden Cole

with assistance of Vincenza Scherrer

1. Introduction¹

Private Security Companies (PSCs) are a rapidly expanding industry. Recent estimates suggest that in 2003 the total revenue of PSCs worldwide – including military and policing services in domestic and international markets – was over USD \$100 billion and is likely to grow to (at least) USD \$202 billion in 2010.² Research carried out in European states also demonstrates the increasing importance of PSCs. In 2004, PSC staff outnumbered members of public police forces in most EU states and, on average, one out of every 500 European citizens was a private security employee.³ PSCs are not only expanding in numbers, but also in the types of services they provide. The range of services varies from those provided by private detectives, to guarding the transport of valuables, from private intelligence services to being in charge of the security in shopping and business centres, airports, as well as nuclear and military facilities. Increasingly they provide security in areas which were previously considered the reserved domain of the public police.

Having received a mandate from the Council of Europe (CoE), and also benefiting from their support,⁴ research for this study focused on the rapidly expanding field of private security in CoE member States. The primary rationale behind this study is that although private security services make a useful contribution in ensuring security, the broad scope of their activities, combined with the lack of common minimal standards across the sector, the sometimes unprofessional conduct of private security staff, and inadequate oversight and public control over these services, pose potential risks to the protection of human rights and fundamental freedoms.⁵

¹ This DCAF policy paper has been prepared as a report for the Council for Police Matters (PC-PM) of the European Committee on Crime Problems of the Council of Europe, nr. PC-PM (2006) 01, Strasbourg, 11 September 2006. The authors are grateful to the Council of Europe for giving permission to use the text as a DCAF Policy Paper.

² Deborah Avant, *The Market for Force: The Consequence of Privatizing Security*, Cambridge University Press, New York, 2005, p. 9.

³ Panoramic Overview of Security Industry in the 25 Member States of the European Union, *CoESS and UNI-Europa*, 2004, Chapter Conclusions, p. 1. Available at: www.coess.org

⁴ 'Ad hoc terms of reference for the Council for Police Matters (PC-PM) relating to the regulation of private security services'

CM 924th Meeting of Deputies (21-22 April 2005).

⁵ 'Ad hoc terms of reference for the Council for Police Matters (PC-PM) relating to the regulation of private security services' CM 924th Meeting of Deputies, Council of Europe, Strasbourg, 21-22 April 2005.

2. Objectives, Scope and Limitations

As mentioned in the CoE mandate, the objective of the policy paper is to identify 'recent developments in [the field of private security companies in CoE member States] including examples of good practices and ways and means to enable an exchange of the practices in question.'⁶ In addition, the study analyses existing regulation at the European level, i.e. among member states of the EU and the CoE, aiming to identify strengths and weaknesses at both the European and national level. Self-regulation will also be discussed. In particular, the study addresses the following aspects of the functioning of PSCs:

- Regulation at the European level – among members of the EU and CoE;
- Existing roles and tasks of private security companies;
- Links between private security companies and public police;
- Control and accountability of private security companies;
- Entrance requirements (licensing of PSC personnel);
- Selection and recruitment of private security personnel;
- Training of private security personnel;
- Identification of private security personnel;
- Use of force and firearms by private security personnel; and,
- Search and seizure powers of employees of private security firms.⁷

The study covers these issues for each of the 46 member States of the CoE, but does not deal with observer states.⁸ The abundance of literature in this field has led to the decision to base this analysis on existing available research.⁹ It is necessary to underline, however, that the data on which this study is based varies in terms of its quality. The 'Panoramic Overview' for instance, represents a formal picture of the state of the legislation in several CoE countries; however, it does not contribute to clarifying the understanding of the conduct of PSCs in practice. Therefore, although it provides an idea of the numerous regulations that are in place in each country, it does not tell us whether the rules are strictly implemented and enforced in practice. The Confederation of European Security Services (CoESS) report on a 'Comparative Overview of Legislation' attempts to provide some guidance as to how strictly countries adhere to the regulations. The South

⁶ 'Ad hoc terms of reference for the Council for Police Matters (PC-PM) relating to the regulation of private security companies,' 2005, pnt. 4, p. 2.

⁷ 'Ad hoc terms of reference for the Council for Police Matters (PC-PM) relating to the regulation of private security companies,' 2005, pnt. 4, pp. 1-2.

⁸ The list of the 46 CoE member States is available at http://www.coe.int/T/E/Com/About_Coe/Member_states/default.asp

⁹ In particular, the study is based on the publications mentioned in the 'Summary Report of the 3rd Meeting' of the Council for Police Matters, *Council of Europe*, Strasbourg, 17-19 October 2005, p. 6. These publications include the 'panoramic overview of private security industry in the 25 Member States of the European Union', *CoESS and UNI-Europa*, 2004; Tina Weber, *A comparative overview of legislation governing the private security industry in the European Union*, ECOTEC Research and Consulting, Birmingham, UK, 2002; 'Contribution by PC-PM members on private security firms in their respective countries', *Council for Police Matters*, PC-PM(2005) 1, CoE, Strasbourg, 4 February 2005; Michael Page, Simon Rynn, Zack Taylor and David Wood, *SALW and private security companies in South East Europe: A cause or effect of insecurity?*, SEESAC and UNDP, Belgrade, 2005. Available at www.seesac.org. In addition, the study will be based on research previously carried out by DCAF, in particular Fred Schreier and Marina Caparini, *Privatising Security: Law, practice and governance of private military and security companies*, DCAF Occasional paper nr. 6, DCAF Geneva, 2005. The authors' reliance on previous research implies that this policy paper depends on the accuracy of the data presented in existing research.

Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) study presents an interesting survey of the legislation of PSCs in South Eastern Europe (SEE) and attempts to clarify the relationship between the conduct of PSCs and different aspects of human rights.

Council of Europe member States which have not been exhaustively covered by previous research reports include Russia, Ukraine, Georgia, Azerbaijan and Armenia. In order that these countries not be excluded from this study, general academic research as well as existing DCAF research, as far as it exists on PSCs in these five Council of Europe member States were surveyed. Of these five countries, some detailed research was available on Russia, Ukraine and Georgia;¹⁰ however, considerably less was available on the function and regulation of PSCs in Azerbaijan and Armenia.

The study focuses on PSCs based and operating in the CoE member States; private military and security companies operating outside the CoE region fall outside the scope of this study. It is important to note that 'military versus security' private companies is a problematic dichotomy with many overlaps, an example being the fact that some private security companies might use military training methods and, vice versa, military companies might perform policing functions in conflict and post-conflict zones. Nevertheless, the focus here remains on private security companies with a non-public police function. The following private security functions can be distinguished, among others:¹¹

- Prevention or detection of intrusion, unauthorized entry or activity, vandalism or trespassing on private property. This group of activities includes patrolling, guarding of private property, guarding of (nuclear) power plants, military installations and airport security;
- Prevention or detection of theft, loss, embezzlement, misappropriation or concealment of merchandise, money, bonds, stocks, notes, valuable documents or papers, for example, protection of cash in transit;
- Protection of individuals from bodily harm, e.g. bodyguards;
- Adherence to, and enforcement of, established company rules, regulations, measures, policies and practices related to crime reduction;
- Maintaining public order at events (concerts, football matches);
- Reporting and apprehension of violators;

¹⁰ Vadim Volkov, 'Violent Entrepreneurship in Post-Communist Russia', *Europe-Asia Studies*, Vol. 51, No. 5, July 1999, pp. 741-754; Vadim Volkov, 'Between Economy and the State: Private security and rule enforcement in Russia', *Politics and Society*, vol. 28, no. 4, December 2000, pp. 483-501; Duncan Hiscock, 'Post-Soviet private security: the commercialisation of security', Marina Caparini and Alan Bryden, *Private actors and security governance*, Berlin: LIT-Verlag, 2006.

¹¹ 'European Training Manual: Preventing occupational hazards in the private security sector (manned guarding and surveillance services)', *UNI-Europa and CoESS*, Brussels, 2004, p.5. Available at: http://www.coess.org/documents/gardiennage_gb.pdf

- Transporting prisoners and guarding prisons; and,
- Reporting on and responding to incidents and calls, including the conception, installation and maintenance of alarm systems and alarm centres.

A final challenge in the study of PSCs is the fact that the literature does not provide a homogenous definition, but, instead refers to several different definitions. The definitions tend to reflect the policing aspect of the services;¹² however the activities that they list as making up part of these services embrace areas which can be considered to form part of a wider definition of PSCs, such as surveillance or private detective activities. Other definitions stress that the main objective of PSCs is to make profit (as opposed to the public police objective of serving the public interest).¹³ Some definitions outline the specific type of services which PSCs deliver, such as guarding services, electronic security, sensor and surveillance services, and intelligence and risk management services.¹⁴ Other researchers maintain that PSCs deal with internal security and protection only,¹⁵ as opposed to external security which is the domain of the state military and private military companies. In view of these variations in definitions, we define a PSC as a commercial entity which provides security services for governmental and private clients.

3. Need for Regulation

As mentioned above, the private security sector on the whole has reached maturity in terms of volume and variety of services delivered. Even if it were considered desirable to outlaw PSCs, both demand for and supply of such services have reached the point that it would not be possible to do so. PSCs are omnipresent in many areas of justice and home affairs, as well as in the protection of energy, transportation, communications, internal security, health and emergency response. While it is neither desirable nor feasible to outlaw them, it is at least important to ensure that minimum standards are identified and are integrated into relevant regulations within the CoE area.¹⁶

Indeed, international regulation is necessary as PSCs, just like PMCs, can become rather 'nomadic in order to evade national legislation which they regard as inappropriate or excessive.'¹⁷ Legislation is necessary to make PSCs and their individual members accountable for their actions, particularly since a major difference between PSCs and state public security providers is that the latter are

¹² Shapland 1999 (reference in : Mr Amadeu Recasens i Brunet, European Committee on Crime Problems, *Reflection paper on private security firms*, February 2005, p. 2.)

¹³ SEESAC Report, 2005, p. xi.

¹⁴ C.J. van Bergen Thirion, *The privatization of security: A blessing or a menace?*, Pretoria, South African Defence College, 1998; F. Schreier and M. Caparini, 2005, p. 27.

¹⁵ F. Schreier and M. Caparini, 2005, p. 26.

¹⁶ Alyson Bailes and Caroline Holmqvist, 'EU must regulate private security firms', *European Voice*, 22-28 September 2005, p. 8.

¹⁷ Sandline International, *Private Military Companies - Independent or Regulated?*, 28 March 1998, <http://www.sandline.com/white/regulation.doc>

directly accountable to parliament, government and the public, whilst PSCs only have to respond to shareholders and clients.¹⁸ Regulation is also essential in view of the potential harm that corruption could produce in the extremely sensitive field of security. Regulation could also help to better ensure that private security employees do not play a part in crime.¹⁹ In short, regulation can be interpreted as the usually formal mechanisms of control which are established in order to guide conduct and to ensure the universal application of the law. In general, we maintain that greater regulation can lead to enhanced accountability.²⁰

It has been widely acknowledged by the private security industry itself that the field is in need of regulation. Improved regulation would help to distinguish between honest and disreputable private security companies, and eventually to remove the latter.²¹ Likewise, regulation could contribute to improving the professionalism of the sector and to boosting public confidence in the private security industry. This would explain why multiple efforts have been made by PSCs in self-regulation and why codes of conduct have been drawn up by some firms and organisations (see Chapter Six).

There have been a number of problematic instances of abusive, corrupt and incompetent behaviour, and in some instances even outright public scandals, involving private security personnel in countries of the CoE during the past years, clearly demonstrating the pressing need for serious regulation. This is not intended as a 'name and shame' exercise which is the reason why individual countries have not been specified.²² It is, rather, an illustration of what can go wrong in the realm of private security and therefore is intended to illustrate the need to provide more effective and responsive security for clients, the state, and its citizens.

- Employees of a private security company responsible for the security in certain train stations brutalised a homeless person in the basement of the train station whilst filming the scene. The managers of the PSC did not investigate this case until the local media revealed the scandal. (2004)
- A private security firm responsible for escorting inmates between courts and jails, mistakenly allowed three prisoners to escape. This same PSC blamed bad weather for the delay of the start of a murder trial. (2006)
- Two baggage security guards on duty at an international airport were discovered drunk and asleep during their working hours. The widespread

¹⁸ SEESAC Report, p. 5.

¹⁹ Home Office and Security Industry Authority, *Private Security Industry: Further consultation on proposals to regulate the industry*, July 2003, <http://www.homeoffice.gov.uk/documents/2003-cons-private-security-indus/riafinal.pdf?view=Binary>

²⁰ O'Connor, Lippert, Greenfield & Boyle, 'After the "Quiet Revolution": The Self-Regulation of Ontario Contract Security Agencies', *Policing & Society*, Vol. 14, No. 2, June 2004, p. 153.

²¹ Return to an Address of the Honourable the House of Commons dated 12th February 2002 for a paper, entitled: *Private Military Companies: Options for Regulation*, available at: <http://www.fco.gov.uk/Files/kfile/mercenaries,0.pdf>

²² The authors have chosen not to divulge the names of the countries where the scandals took place, however the list can be made available upon request.

use of PSCs in airport security is worrying also in view of reports of inadequate screening of employees, such as a report that a journalist was able to obtain a job loading baggage onto jets by providing fake references. (2005-2006)

- An employer hired private investigators to investigate whether an employee of the company had written a number of anonymous letters. Following a two and a half hour 'interview' with the PSC, the employee jumped to his death from a window. The incident was dismissed as a suicide, but doubts remain concerning the methods used by the PSC employees. (2004)
- Private security guards beat up and removed a man from the premises of a major city sporting event, accusing him of serious misbehaviour. The suspect subsequently went into a coma, was hospitalised, and died of serious head injuries, the following morning. (2006)
- Private security guards shot dead a young man who was attempting to commit a theft. Other similar cases were reported in the same year, clearly demonstrating the problems involving the possession and use of firearms by PSC employees in this area. (2002)
- Police arrested a director (a former major in the state security services) of a PSC. He was accused of threatening and beating up one of the directors of an oil company, and of demanding shares and cash from him as a payment for an alleged debt – a practice known as 'informal debt recovery'. After these and other incidents, the state security authorities issued warnings, intensified controls and published blacklists of companies involved in informal debt recovery, but so far without tangible effect on the practice. (2000)
- Whilst collecting scrap metal at a mine, four Romani men were severely beaten by security guards. All four men had to be hospitalised and one of them died of his injuries. (2005)
- While on duty, private security guards working at the ministry of health raped a woman who was visiting the ministry. The Minister asserted that the ministry was not at fault, and advised security companies to select their personnel more carefully. (2006)

4. Regulation: the European Level

4.1. European Union

No harmonisation of legislation concerning the private security industry at the European level has yet taken place. UNI-Europa and the Confederation of European Security Services (CoESS) promote minimum requirements at the European level, and have achieved the signature of several joint opinions on aspects such as licensing and vocational training. A code of conduct for the private security sector has also been signed, with the objective of raising standards and guaranteeing a high level of professional ethics in this sector across the European Union.²³ Nevertheless, at present national regulations differ from one country to another and reflect the different cultural environments.

It is, however, important to stress that the lack of standardised European legislation on private security companies does not necessarily denote a vacuum of relevant rules at the European level. Indeed, European case law provides several examples whereby the Commission of the European Communities has questioned the regulation of PSCs by individual countries on the basis of the principles of freedom of establishment, freedom to provide services and the free movement of persons. In 2003 it was argued in the European Court of Justice that Spanish legislation on private security did not comply with the principles of freedom of establishment and the free movement of services as set out in Articles 43 and 49 of the Treaty.²⁴ In another case, the constraints that the Netherlands places on the private security companies that wish to provide services on its territory were considered unjustified by the Commission, and it was claimed that these constraints breached Directives 89/48/EEC and 92/51/EEC on a general system of professional recognition of qualifications.²⁵ Therefore, in these rulings, the European Court of Justice has established its competence over matters related to the private security industry, as it is considered an economic sector of the EU and therefore falls under the regulation of the internal market.²⁶

Whilst it is true that no harmonised legislation yet exists on PSCs at the European level, some areas of the private security industry are more regulated than others. For instance, the providers of airport security fall under the EC regulation establishing common rules in the field of civil aviation security, which therefore contains some rules that directly affect private security personnel. Indeed, the regulation states that all staff requiring access to security-restricted areas will be

²³ http://europa.eu.int/comm/employment_social/news/2003/jul/security_en.html

²⁴ Action brought on 8 December 2003 by the Commission of the European Communities against the Kingdom of Spain, *Official Journal of the European Union*, C 47/18, at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/c_047/c_04720040221en00180019.pdf

²⁵ Action brought on 5 May 2003 by the Commission of the European Communities against the Kingdom of the Netherlands, *Official Journal of the European Union*, C 158/11, at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_158/c_15820030705en00110012.pdf

²⁶ Elke Krahnemann, 'Regulating Private Military Companies: What Role for the EU?', *Contemporary Security Policy*, Vol.26, No.1 (April 2005), p. 115.

subjected to a minimum 5-year background check, and will also receive regular training in aviation security.²⁷

Finally, it is interesting to note that private security companies were excluded from the recent EU Directive for services in internal market. CoESS argued that the specific nature of private security services, in particular its close links to the issue of public security, and the necessity for strict conditions for entering the market (for example the screening of private security employees) necessitates specific exceptions that could not be sufficiently taken into account in the general directive.²⁸ CoESS has, however, stressed the necessity of achieving a common ground for the regulation of the private security industry. In particular, CoESS has highlighted the fact that an overview of EU member states demonstrated that 'the level of effective security is positively correlated to the level of regulation.'²⁹ This underlines the importance of achieving a harmonisation of the regulation on private security companies at the European level, and in particular the need for high standards at this level. The European dialogue that has taken place in recent years is encouraging, as is for example the recognition by the European Council of the need for greater cooperation between the competent national authorities of member States responsible for the private security sector.³⁰

In terms of the EU external policy, the EU acknowledges that private security companies constitute a part of a state's security system. Therefore, policies which target PSCs can be included in EU enlargement, integration and external assistance policies. Nevertheless, the EU's most recent communication on security sector reform does not elaborate on how PSCs can be fruitfully targeted.³¹

4.2. Council of Europe

Although the Council of Europe has hardly adopted any regulation specifically on private security companies, it has adopted a wide array of conventions and recommendations which have relevance for the functioning of PSCs in CoE member States. For the most part these conventions and recommendations are related to the protection of human rights and the preservation of the rule of law in CoE member States. In this section these conventions and recommendations will be briefly discussed. It is important to mention that a CoE convention has a binding force for those member States which have ratified the convention. Recommendations, on the other hand, only have an advisory effect.

²⁷ 'Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security', *Official Journal of the European Communities*, L 355/1, 30.12.2002, at: <http://www.coess.org/documents/regulation2320-2002.pdf>

²⁸ Joint Declaration by CoESS and UNI-Europa, *Towards a European Model of Private Security*, Madrid, 14 & 15 October 2004, p. 3.

²⁹ 'Joint CoESS/ESTA position paper on the Draft Directive on Services in the Internal Market', CoESS, Brussels, September 2005, available at : <http://www.coess.org/documents/CoESS-ESTA-final-en.pdf>

³⁰ 'Council Recommendation of 13 June 2002 regarding cooperation between the competent national authorities of Member States responsible for the private security sector', *Official Journal of the European Communities*, C 153/01, 27.6.2002, at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c_153/c_15320020627en00010001.pdf

³¹ 'Communication from the Commission to the Council and the European Parliament: A concept for European Community Support for Security Sector Reform', *Commission of the European Communities*, Brussels, 24 May 2006, COM (2006), 253 final.

4.2.1. European Convention on Human Rights (ECHR)

The European Convention on Human Rights (ECHR) is the bedrock of Council of Europe institutions. Of particular importance are articles 3 (prohibition of torture, inhuman and degrading treatment); 5 (right to liberty and security); 8 (right to privacy); 11 (assembly); and 14 (anti-discrimination). Each of these articles is briefly discussed below, in relationship to private security companies.

Concerning the prohibition of torture and degrading treatment (Art. 3 ECHR),³² clearly, private security companies are not allowed to subject citizens to this type of treatment. Degrading treatment or punishment can be described as treatment 'which humiliates or debases a person, showing a lack of respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, and causes sufficiently severe physical or mental suffering.'³³ The acts of non-state actors can also be taken into account under this article as is reflected in recent jurisprudence. For instance, in *A v UK* (1998, 27 EHRR) the Court held that 'The Court considers that the obligations on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.'³⁴ There are risks that in the exercise of their functions private security employees may inflict degrading treatment on other civilians. On the basis of visits of the CoE Committee for the Prevention of Torture (CPT) to CoE member States, the CPT has expressed concerns on several occasions pertaining to whether PSC personnel are properly dealing with residents of prisons, asylum seekers centres as well as psychiatric hospitals.³⁵ Some worrying incidents have taken place, an example being in a member State where local authorities are said to have engaged private security guards to beat and intimidate Roma families in order to compel them to move to another community.³⁶ However, the ECHR sets out a legal framework to help prevent these risks from materialising.

The right to liberty (ECHR Art. 5)³⁷ can be interpreted in relation to the principle of presumption of innocence until proven guilty (which is important in the case of

³² ECHR Art. 3: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'.

³³ Association for the Prevention of Torture, *Guide to Jurisprudence on Torture and Ill Treatment*, June 2002, p. 27, at: http://www.ap.t.ch/pub/library/Article3_en.pdf

³⁴ Association for the Prevention of Torture, *op. cit.*, p. 22.

³⁵ For example, these concerns are related to allegations of PSC personnel expressing racist remarks against residents of detention centres to house foreigners (see CPT report on the visit to the Netherlands in 1997, available at <http://www.cpt.coe.int/documents/nld/1998-15-inf-eng.pdf>); questions concerning the training of PSC personnel for dealing with residents of Alien holding centres (see CPT report on the visit to Norway in 2005, available at <http://www.cpt.coe.int/documents/nor/2006-14-inf-eng.pdf>); proper treatment of prisoners during transport between police stations, prisons and courts (see CPT report to the United Kingdom in 2001, available at <http://www.cpt.coe.int/documents/gbr/2002-06-inf-eng.pdf>); private security guards giving kicks and punches against residents of psychiatric hospital of a prison (CPT report on the visit to Estonia in 1997, available at <http://www.cpt.coe.int/documents/est/2002-26-inf-eng.pdf>).

³⁶ <http://web.amnesty.org/report2005/svk-summary-eng>

³⁷ ECHR Art. 5: 'Everyone has the right to liberty and security of person. Except in cases such as lawful detention of a person after conviction, or the lawful arrest of a person (...).'

racial profiling) and in the case of freedom of movement. Indeed, research carried out on the working practices of CCTV operators demonstrates that individuals are often selected for observation according to their physical appearance or behaviour, which brings into question 'the ethics of methods' whereby people are targeted before an offence has even been committed.³⁸ This is related to the fact that CCTV enables 'a pre-emptive approach to security in contrast with the reactive style of state police agencies.'³⁹ This can contribute to 'restrictions on freedom of movement',⁴⁰ for instance, in situations when PSC operators forbid a person from entering a shopping centre, based on their belief (which they are unable to prove) that the said person is a recidivist offender.

When reflecting upon the relevance of PSCs to human rights, it is the right to privacy (ECHR Art 8)⁴¹ which is most often affected as the surveillance activities of private security companies can potentially infringe on the right to privacy. An example is the risk that data collected from CCTV cameras be transferred to third parties. However, there are numerous checks in place, including Article 5 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which sets out basic standards of rights for data subjects (see next section). In this respect, research was carried out in the Netherlands to establish whether surveillance operators are able to ensure that the data collected by CCTV respects the criteria set out in Article 5. The research concluded that their approaches appear to 'be in-line with several principles of fair information processing that have been laid down in national and international legislation in Europe since the 1970s.'⁴² For instance, the technical design of authorisation levels ensures that operators cannot make copies of tapes, and images are automatically deleted after seven days, reflecting the application of Article 5 paragraph E in which it is stated that personal data undergoing automatic processing shall be preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.⁴³

The right to freedom of assembly (ECHR Art 11)⁴⁴ could be at stake when it comes to the role of PSCs in keeping law and order at public events or major demonstrations. PSCs might limit this right, depending on their specific role and 'rules of engagement'.

³⁸ Alison Wakefield, 'The Public Surveillance Functions of Private Security', *Surveillance and Society*, 2(4), 2005, p. 533.

³⁹ Alison Wakefield, 2005, p. 532.

⁴⁰ Alison Wakefield, 2005, p. 544.

⁴¹ ECHR, Art. 8, par. 1: 'Everyone has the right to respect for his private and family life, his home and his correspondence.'

⁴² Lynsey Dubbeld, 'Protecting the Personal Data in Camera Surveillance Practices', *Surveillance and Society*, 2 :4, December 2004, p. 558.

⁴³ Lynsey, Dubbeld, 2004, p. 556.

⁴⁴ ECHR Art. 11, par. 1: 'Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.'

Last but not least, the prohibition of discrimination (ECHR Art. 14)⁴⁵ is also relevant to the functioning of PSCs. The very nature of private security may be considered to be discriminatory. Private security companies are profit oriented and therefore naturally discriminate against those who cannot afford their services. However, it is even more worrying to note the fact that employees of private security companies may use their status to discriminate openly against those who, in their judgement, are not worth protecting. In some cases, this has gone as far as inflicting harm on those they discriminate against. There have been several publicised examples of such practice, where agents of a private security firm reportedly attacked and even killed some members of the Roma community.⁴⁶ Another way that discrimination may be linked to the activities of private security companies is the racial profiling that some private security companies carried out based on race, colour, religion or place of origin. This type of discrimination is also linked to the aforementioned working practices of CCTV operators.

4.2.2. Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data

The above-mentioned convention is of particular importance to the governance of private security activities. This is because it attempts to provide minimum standards on the automatic processing of personal data, which is one of the main concerns in relation to the infringement of the right to privacy. In particular, the convention sets out five criteria for the automatic processing of information (Art. 5). Personal data undergoing automatic processing shall be:

- a) obtained and processed fairly and lawfully;
- b) stored for specified and legitimate purposes and not used in a way that is incompatible with those purposes;
- c) adequate, relevant and not excessive in relation to the purposes for which they are stored;
- d) accurate and, where necessary, kept up to date; and,
- e) preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.⁴⁷

Moreover, the Convention stipulates that any person should be able to verify whether information is stored about him or her, as well as the purpose and the identity of the person in charge of their file (Art. 8). It also stipulates that the

⁴⁵ ECHR, *Art. 14: Prohibition of discrimination*.

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

⁴⁶ 'Romania Country Report 2005', *Amnesty International*, available at: <http://web.amnesty.org/report2005/rom-summary-eng>

⁴⁷ Article 5.

person can request information at regular intervals without excessive delays, and demand the erasure or rectification of information if the latter is processed contra domestic law. These are fundamental principles which a PSC must respect when undergoing its routine surveillance activities. Also, the fact that appropriate security measures must be taken for the protection of personal data (Art. 7), implies that PSCs must be held responsible for taking such measures for the protection of the security of stored data. Additionally, the convention also contains a clause on discrimination, as 'personal data' revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.⁴⁸ This is point is interesting in relation to the racial profiling that certain PSCs carry out, as it signifies that as long as domestic law provides appropriate safeguards, profiling may be carried out according to race, colour, religion or place of origin. Lastly, the Convention allows for some crucial exemptions to articles 5, 6 and 8 as set out to protect the rights of individuals. It stipulates that data collected in pertaining to state security, public security, monetary interests of the state as well as the suppression of offences, can be exempted from the protection of citizens rights, if necessary in a democratic society (Art. 9). The extent to which the actions of PSCs would fall under this article and thus be exempt from respecting the former important provisions is questionable.

4.2.3. Convention on the Control of the Acquisition and Possession of Firearms by Individuals

This convention mainly deals with firearms transfers between states and does not contain any specific references to the possession of firearms. However, is the convention is interesting as it provides a general framework for the transfer of firearms from country to country, which may be relevant when PSCs operate on trans-national boundaries. Thus, it is clear from this convention, that if a PSC sells, transfers or otherwise provides firearms to a person in the territory of another state, the host-state where the PSC is situated, must notify the other state about the arms transfer (Art. 5). The convention also applies to international PSCs which transfer firearms from one country to another, without change of possession, thus applying to PSCs with branches in several countries, such as Securitas for instance (Art. 6). Moreover, where arms transfers occur, the convention stipulates that the state must notify the other state of the identity, address and passport details of the person concerned as well as the characteristics and number of the firearm (Art. 8). Finally, Art. 10.1 stipulates that no arms can be transferred to a non-resident who does not have prior authorisation, and thus includes international PSCs who take foreign PSC employees to another country. In brief, although this convention leaves member states free to prescribe their own laws and regulations concerning firearms (Art. 3), it is clear that PSCs cannot operate in a legal vacuum when it comes to the acquisition and transfer of firearms.

⁴⁸ Article 6.

4.2.4. Convention on Laundering, Search, Seizure and confiscation of the Proceeds from Crime

This convention prescribes the adoption of measures and instruments to fight against serious crime. It is of interest because it does not exclude PSCs from being instrumental in the implementation of the Convention. Indeed, it prescribes that each party adopt the measures deemed necessary in order to identify and trace property which is liable to confiscation (Art. 3). Thus, this work may be outsourced to private security companies, which often operate using the investigative techniques that are suggested in Art. 4 par.2, such as the interception of telecommunications.

4.2.5. Recommendations of the Committee of Ministers of the Council of Europe

Recommendation No. R (87) 15 regulating the use of personal data in the police sector

The relevant section of this recommendation is on the communication of data from the police to private parties, which would mean that communication to PSCs would only be permissible if, in a particular case, a clear legal obligation or authorisation exists, or the authorisation of the supervisory authority has been given (principle 5.3).⁴⁹ Also, communication to private parties is exceptionally permissible if a.) the communication is undoubtedly in the interest of the data subject and either the data subject has consented or circumstances are such as to allow a clear presumption of such consent, or if b.) the communication is necessary so as to prevent a serious and imminent danger.⁵⁰

Recommendation No. R (84) 10 - on the criminal record and rehabilitation of convicted persons

This recommendation is important as it suggests that only authorities responsible for the criminal justice system should have access to the full list of entries of criminal records (rec. 2). It follows that PSCs should only have access to parts of criminal records, thus constitutes a step forward in relation to protecting the privacy of individuals.

Recommendation No. R (91) 10 - on communication to third parties of personal data held by public bodies

This recommendation contributes to the set of provisions concerning the protection of personal data. In particular, it states that the communication 'of personal data or personal data files by public bodies to third parties should be accompanied by safeguards and guarantees designed to ensure that the privacy of the data subject is not unduly prejudiced.'⁵¹ Once again, it could be interpreted as applying to PSCs and therefore would mean that they can receive information so long as there are safeguards in place.

⁴⁹ Rec N° R(87)15, Principle 5.3.

⁵⁰ Rec N° R(87)15, Principle 5.3.

⁵¹ Rec N° R(91)10, Principle 2.1.

Recommendation No. R (84) 23 - on the harmonisation of national legislations relating to firearms

This recommendation provides a basis for the harmonisation of national regulations relating to firearms. In particular, it suggests the adoption in national law, of a classification of firearms establishing criteria for listing arms prohibited to private persons, arms subject to authorisation and arms subject to declaration (rec. 2). If adopted by national authorities, this would have an impact on the types of weapons that PSC personnel would be authorised to carry. Moreover, it sets a list of principles to be applied when issuing licences to private persons, which include a minimum age of 18, no mental disorder, and the ability to demonstrate that he or she has a good reason to acquire, possess or carry a firearm (rec. 6).

Recommendation No. R (82) 15 - on the role of criminal law in consumer protection

This recommendation is relevant to the private security sector, however the only concern is whether the consumers to protect should be interpreted as the paying consumers (narrow approach) or the wider public 'enjoying' security as delivered by PSCs (broad approach). For example, in the case of a PSC operating in a shopping mall, consumers in a narrow sense would be the shopping mall owners; consumers in a wider sense would be the customers visiting the shopping mall. If the business of private security is to provide and increase the security of society, then it would be preferable to interpret consumer protection in the broad sense. This is of particular importance when considering that those who do not have the means of purchasing increased security should not be discriminated against. A particularly important section is recommendation 6, which provides the notion that PSCs are not only responsible for the services delivered, but also criminally liable for their actions. Finally, recommendation 3 encourages the drawing up of codes of business ethics for the protection of consumers, which could be an important step forward in PSC self-regulation.

Recommendation No. R (88) 18 - on the liability of enterprises having legal personality for offences committed in the exercise of their activities

This recommendation can be interpreted as another important step forward in ensuring that PSCs are held responsible and answerable for their actions. In particular, it states that 'enterprises should be able to be made liable for offences committed in the exercise of their activities, even where the offence is alien to the purposes of the enterprise'(rec. 1). It also recommends the provision of appropriate sanctions and lists possible sanctions, ranging from a warning to a fine or the annulment of licences (rec. 6 and 7). The latter would also provide an efficient way of penalising private security companies.

Recommendation No. R (87) 19 - on the organisation of crime prevention

This is one of the few recommendations of the CoE which explicitly mentions the private security industry. In its preamble it states that although surveillance and

security companies perform a crime-prevention role, measures should be taken in order to ensure that their activities do not encroach upon the functions of the police and do not jeopardise individual freedom and public order.⁵² It therefore attempts to regulate the fundamental relations between private and public policing. It includes some important provisions, including the recommendation that governments:

- a) enact, revise and if necessary, complete regulations governing initial authorisation, periodical licensing and regular inspection, by public authorities at the appropriate level, of security or surveillance companies, or encourage the profession to adopt its own regulations;
- b) in cases where such companies supply staff, lay down minimum standards, providing in particular that this staff shall wear a uniform different from that of the police, carry identification documents and have adequate training, including a basic understanding of criminal law, knowledge of surveillance and security techniques and of the rights, obligations and responsibilities of such staff, as well as of the norms of appropriate behaviour, in particular *vis-à-vis* the public; and,
- c) encourage positive relations between the police and surveillance and security companies in order that, within the limits of their activities, the latter may assist the former in preventing crime.⁵³

Recommendation Rec (2003) 21 - on partnership in crime prevention

Again, this recommendation encroaches on the idea of private-public policing. In particular, it recognises the idea that 'responsibility for crime prevention should be widely shared in society, and that partnership approaches are a practical means to sharing this responsibility and pooling diverse resources' (rec. 1). Moreover, it calls for the exploration of the scope and limits of private sector involvement in local and national partnerships (rec. 7). It also warns of the dangers of not clarifying what consists of appropriate vs. inappropriate collective initiatives, in order to avert vigilantism and social exclusion (rec. 8).

Recommendation No. R (2000) 10 - on codes of conduct for public personnel

This recommendation commends the adoption of national codes of conduct for public officials based on the model code of conduct for public officials which is annexed to the recommendation. The provisions of the code are relevant to the conduct of private security employees, as it the code addresses, confidentiality of information, conflicting private interests, and corruption, among other things. Moreover, the code states that it may also be applied to persons employed by private organisations performing public duties (Art.1, par.3), which may be interpreted as being addressed to private security companies as well.

⁵² Rec N° R(87)19 preamble.

⁵³ Rec N° R(87)19 Principle V.

Recommendation Rec (2001) 10 - European Code of Police Ethics

The recommendation on the European Code of Police Ethics is of particular importance in relation to the self-regulation of private security companies, as it addresses relevant issues of recruitment, training, uniforms, data protection, corruption and the use of force. Although it applies to the police, several of its provisions could be applied as a basis of what an effective code of conduct for the private security industry should be.

4.2.6 Conclusion

The different texts examined in this paper have highlighted the fact that several norms and human rights may be affected by the activities of private security companies. It also demonstrates that several CoE conventions and recommendations may apply to the private security industry, however, that explicit regulation governing the sector is lacking. The following is a list of the relevant groups of norms or guidelines (and their sources) applicable to the private security industry which have emerged from this brief examination.

Privacy:

- European Convention on Human Rights (Art. 8)
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
- Recommendation No. R (84) 10 – criminal record and rehabilitation of convicted persons
- Recommendation No. R (87) 15 – regulating the use of personal data in the police sector
- Recommendation No. R (91) 10 – communication to third parties of personal data held by public bodies

Discrimination:

- European Convention on Human rights (Art. 14)
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Art. 6)

Liberty:

- European Convention on Human Rights
- Freedom of movement (Art. 5)
- Presumption of innocence (Art. 5)
- Freedom of association (Art. 11)

Liability and consumer protection:

- Recommendation No. R (82) 15 – on the role of criminal law in consumer protection
- Recommendation No. R (88) 18 – on the liability of enterprises having legal personality for offences committed in the exercise of their activities

Ethics for Public Officials:

- Recommendation No. R (2001) 10 – on the European Code of Police Ethics
- Recommendation No. R (2000) 10 – on codes of conduct for public officials
- Recommendation No. R (87) 15 – regulating the use of personal data in the police sector
- Recommendation No. R (87) 19 – on the organisation of crime prevention
- Recommendation No. R (91) 10 – on communication to third parties of personal data held by public bodies

5. Regulation: the National Level

The following is an account of the state of regulation at the national level in the CoE member States, according to the nine themes identified in the introduction.

5.1. Possible roles and tasks of private security companies

PSCs offer a great variety of services in CoE member States, which can be divided into the following six categories. In nearly all states, PSCs offer the protection of sites and buildings, including nuclear plants (e.g., in Germany and Romania), military installations (e.g., Austria, Estonia and Germany), airports (e.g., Austria, Germany, Romania, the United Kingdom, Sweden, the Netherlands, Greece, France, and Albania), ports (e.g., Albania, Bulgaria, and the Netherlands) and Parliaments (e.g., Bulgaria and Romania). This category also includes setting up and maintaining alarm response services and video surveillance (CCTV). Second, PSCs in CoE member States offer protection services for valuables and cash in transit. Third, PSCs offer close protection services, such as bodyguards.⁵⁴

The exact role played by PSCs in CoE member States is dependent on a variety of factors. A first factor is the recent widespread adoption of neo-liberal models for public sector organisation, including the construction of quasi-markets, the introduction of business management techniques, price-competitive tendering as well as – of particular importance for this study – the contracting out to private companies of what were formerly public services. This advent of neo-liberal government is an important factor accounting for the increase of PSCs. A second factor is the level of democratization and rule of law in transition states. Indeed, many post-communist European states are in the process of implementing painful political and economic reforms. In particular, straight after the change of regime, both state institutions and the legal framework were being fundamentally reformed and were rather weak. In such circumstances, the general public has tended not to believe that the police and other state security services can deal effectively with crime problems which increased visibly during the transition

⁵⁴ Panoramic Overview and SEESAC studies (see footnote 8).

period, leading to a high demand for the services offered by PSCs. Additionally, the role PSCs play also depends on the type of threats and risks facing society. For example, in Serbia, due to a number of recent high profile assassinations, high demand for close protection services can be observed.

The role of PSCs in Russia and other post-Soviet countries must be understood in the context of the dramatic changes that took place in the security situation and security sector reform in those countries in the 1990s. As was the case in their Western counterparts, the maintenance of security can no longer be perceived as the sole preserve of the state in the post-Soviet region. In Russia and in other post-Soviet states, the privatisation of security was not an evolutionary process, but started with a big bang in the early 1990s as an unintended consequence of the collapse of the Soviet Union and the 'wild' capitalism that followed. In the absence of an effective system for protecting properties and enforcing contracts, the private sector was in desperate need of non-state security providers.⁵⁵ Estimates indicate that about 70% of contracts in Russia in the early post-Soviet years, were enforced without recourse to the state, but by private security companies.⁵⁶ According to Duncan Hiscock, the role of private security companies in Russia differed from their counterparts in Western Europe. Weak state institutions were not able to preserve the state monopoly of force and PSCs were able to fill the gap quickly by taking over personnel of the downsized state police, intelligence and military. Additionally, widespread corruption resulted in not only individuals in the private sector, but also in the public sector, seeing the opportunity to charge money for providing security. Security became a commodity like any other, almost regardless of who was offering it.⁵⁷

Nevertheless, in many post-Soviet states, private security laws were enacted early on in the 1990s. In Russia, for example, according to 1991 legislation, PSCs are allowed to fulfil more or less the same roles as their counterparts in other CoE states. More specifically, roles covered by Russian legislation are private investigation; protection of persons (bodyguards); guarding of goods including guarding of transport and valuables; planning, installation and maintenance of security alarm installations; and, maintaining order at major public events. These laws were more strictly enforced and amended after Putins' ascension to power in 2000.⁵⁸ Although Ukraine has a substantial private security sector comprising around 3000 licensed companies, employing 33'000 people, this sector is relatively small compared with its governmental counterpart, the State Protection Service (DSO). This is a department of 51'000 people, accountable to the Minister of the Interior and offering the same range of services as PSCs do. The DSO is a hybrid private-public organisation as it is clearly a government organisation, but is financed on the basis of delivered services on a contractual basis. In this sense, it

⁵⁵ Duncan Hiscock, 2006.

⁵⁶ Vadim Volkov, 2000, p. 492.

⁵⁷ Duncan Hiscock, 2006.

⁵⁸ Law of 11.01.1991 on private detective and guarding activities in the Russian Federation (amended by Federal laws of 21.03.2002, 10.01.2003 and 06.06.2005); Law on licensing particular types of activities (08.08.2001 no. 128-fz.), Governmental decree on licensing non-governmental (private) guarding and detective activities (14.08.2002, no. 600), order of the Ministry of the Interior regulating the use of fire arms (13.04.2005, no. 275) as well as on training (31.12.1999).

is a direct competitor of PSCs.⁵⁹ In Georgia, it is difficult to assess the role of private security because of the lack of a clear structure of the private security sector and the non-existence of regulatory government bodies. There are no special legal provisions governing PSCs and no statistical data are kept. It has been estimated that around 250 to 300 PSCs are active in Georgia, but only 10 of them are major players. PSCs in Georgia deal primarily with guarding property. Like in Ukraine, the ministry of the interior has one department (Private Property Department), which provides security to other government institutions as well as to private clients on a contractual basis.⁶⁰ International police advisors working for the European Commission Delegation in Georgia, have strongly recommended that the governmental Private Property Department be abolished, as it would be in contradiction with principles of modern policing. A major obstacle in abolishing the department is that the ministry of the interior would lose a substantial share of its annual revenues.⁶¹

In various post-Soviet states, for example in Azerbaijan and Georgia, PSCs play an important role in protecting energy assets, e.g. oil pipelines, petrol pump stations and work camps where oil workers are accommodated.⁶²

5.2. Links between private security companies and public police

Links between PSCs and public police can be problematic for various reasons. A first reason for is the conflict of interests that can be found in the accumulation of public-private jobs by PSC and police employees. In an attempt to avoid this type of conflict, various EU states have adopted legislation restricting the undue accumulation of activities. For example, in Belgium, Greece and Portugal, PSCs are not permitted to be involved in arms production and distribution or other activities that may endanger public safety. PSC employees may not, during the last 5 years, have been a member of the police or secret services (e.g., Belgium⁶³, France⁶⁴ and Portugal⁶⁵), or may not currently be a member of the police (e.g in Sweden⁶⁶) or criminal investigation officers (e.g., in the Netherlands⁶⁷) or any public service position (e.g., Spain,⁶⁸ Lithuania⁶⁹ and Malta⁷⁰). In some states, PSC employees are not allowed to be an advocate or a notary, an example being Lithuania.⁷¹ In France, PSCs may not be active in any other economic activity.⁷²

⁵⁹ Hiscock, 2006.

⁶⁰ Hiscock, 2006.

⁶¹ Hiscock, 2006.

⁶² Gare A. Smith, *Human rights and security monitoring assessment of AGT pipeline projects in Azerbaijan: BTC and SCP pipeline projects*. Foley Hoag LLP Attorneys at law, study commissioned by the BP Exploration Caspian Sea LTD. 2006. Available at :

http://www.bp.com/liveassets/bp_internet/bp_caspian/bp_caspian_en/STAGING/local_assets/downloads_pdfs/FH_Az_Vol_Princ_Assess_Final_en.pdf#search=%22%22private%20security%22%20azerbaijan%22

⁶³ Weber, 2002, p. 18.

⁶⁴ Panoramic Overview, Chapter France.

⁶⁵ Weber, 2002, p. 20.

⁶⁶ Weber, 2002, p. 21.

⁶⁷ Weber, 2002, p. 20.

⁶⁸ Weber, 2002, pp. 20-21.

⁶⁹ Panoramic Overview, Chapter Lithuania.

⁷⁰ Panoramic Overview, Chapter Malta.

⁷¹ Panoramic Overview, Chapter Lithuania.

⁷² Weber, 2002, p. 19.

In Russia, the law allows that 'military personnel of the organs of the Federal Security Service (FSB), while remaining in service, can be assigned to work at enterprises and organisations with the consent of their directors and irrespective of the nature of the property'.⁷³ This provision allowed thousands of FSB officers to have jobs in private companies and banks as 'law consultants'. According to Vadim Volkov, in the mid 1990s up to 20% of FSB staff had a double function in both the FSB and the private sector.⁷⁴ Recent amendments to laws covering private security companies have made being a PSC manager incompatible with any public position.⁷⁵ As previously mentioned, in Ukraine, the DSO has a monopoly in providing armed protection. Banks, as well as the Ukrainian Federation of Non-State Security Services, have complained about this position of monopoly which, by preventing banks from turning to competitors leads to overcharged services.⁷⁶

Another area of possible conflict between public police and PSCs exists if they are in competition for the same contract, or if they are working in the same area or during the same event. In Croatia, Kosovo and Bulgaria, for example, concerns exist that PSCs are clearly in competition with the public police.⁷⁷ For example, in Kosovo, during public events (football matches, concerts etc.) PSCs are responsible for site security and the police for controlling possible riots.⁷⁸ In Croatia and Bulgaria, PSCs and police are allowed to compete side-by-side for the same contract, leading to the danger of PSCs offering policing on the cheap.⁷⁹ In Albania, on the contrary, competition is ruled out in favour of public police because of a law that prescribes that the total PSCs workforce cannot exceed 5% of the size of the local police.⁸⁰ The problem of competition and conflict between police and PSCs is aggravated if the police is the oversight institution which issues licences to PSC operators and which controls whether PSCs comply with the law (see next section). This may lead to conflicts of interest in instances where the police and PSCs are competitors.

A third area of conflict arises when many former police or military personnel work for PSCs. Provided that PSCs are well managed and functioning on the basis of a clear legal framework, this is not necessarily a problem. Indeed, in those countries involved in post-conflict demobilisation and security sector reform, PSCs are an interesting and – due to high unemployment rates – sometimes the only job opportunity available to former military and police men. However, if the PSC sector is not strongly regulated or if laws are not enforced, there is a risk that the high incidence of former police and military personnel working for PSCs may lead to undue influence, favours and obligations between current policemen and their former colleagues working for PSCs.

⁷³ Article 15 of the Federal law of the Russian Federation 'On organs of the Federal Security Service'.

⁷⁴ Vadim Volkov, 2000, p. 486 (see note 9).

⁷⁵ See note 58.

⁷⁶ Hiscock, 2006.

⁷⁷ SEESAC, p. ii.

⁷⁸ SEESAC, p. 88.

⁷⁹ SEESAC, p. 114.

⁸⁰ SEESAC, p. 114.

5.3. Control and accountability of private security companies

The degree of control and accountability of PSCs depends on a clear legal framework, effective oversight institutions and the type of oversight exercised by those institutions.

Control and accountability is weakened or rendered ineffective if it is not based on a clear and uniform regulatory framework. In this context, specific PSC laws are lacking in Cyprus; Malta has a legal framework governing the industry, but the specific regulation of control and accountability has been omitted from its laws. In other states, PSC regulation is a matter of devolved government leading to different pieces of legislation in different parts of the country, as is the case in Switzerland and Italy. In some countries, e.g., Germany and Austria, the regulatory framework is based on general commercial laws instead of specific PSC laws. One might question the extent to which these commercial legal frameworks are fully applicable to the private security sector, which has its own dynamics and specific concerns related to maintaining law and order and upholding human rights. A last group consists of states which have adopted specific private security laws, such as France,⁸¹ the United Kingdom or the Netherlands.⁸²

In different EU states, a great variety of oversight institutions exercise oversight of PSCs. In some states, PSCs come under the control of (local) police (e.g., in Greece, Denmark, Slovakia and Hungary); in other states, local civil authorities are responsible for controlling the sector (e.g., Germany, Italy and Sweden); the ministry of the interior controls the PSC sector in Slovenia, Italy,⁸³ Poland and the Netherlands; the ministry of justice is responsible for oversight in Luxembourg; and, in Ireland and the U.K., a special security authority was established to oversee the PSC sector.⁸⁴ As mentioned previously, in the event that the PSC is a competitor of the police, a conflict of interest may arise when the police is tasked with the oversight of the PSC sector.

Another issue is how oversight is exercised. Is the oversight limited to 'paper' control only, i.e., requesting that the PSCs submit yearly reports? Or does oversight include inspection visits, both announced and unannounced? Another option is that oversight is complaint-based, in case citizens or companies file complaints against illegally operating PSCs. In this latter context, it is curious that the EU-wide research into PSCs carried out by CoESS does not take into account the role of parliamentary inquiry committees and the ombudsman, who essentially have far-reaching powers to conduct independent research into complaints and scandals. A last aspect of control is the availability of sanctions if wrongdoing is detected. Across EU member States different sanction regimes are in place, varying from fines, temporary or permanent withdrawal of licences to imprisonment.

⁸¹ 'Loi réglementant les activités privées de sécurité', *Le journal officiel de la République Française*, 10 mars 2004 (modified law from 12 July 1983).

⁸² Panoramic Overview, Chapters on United Kingdom and the Netherlands.

⁸³ Both the Ministry of the Interior and the Provincial Prefect are responsible for controlling private security companies in Italy, see Panoramic Overview, Chapter on Italy.

⁸⁴ Data derived from Panoramic Overview.

In most South East European countries, the ministry of the interior exercises oversight over PSC activities. The ministry of the interiors' oversight in these countries is, however, mostly weak or unclear. In Albania, the police itself is tasked with the oversight of PSCs. In all SEE countries, parliamentary powers to oversee this area are not exercised and the functioning of the ombudsman is either unclear or weak. Self regulation in terms of PSC codes of conduct do not exist in Albania, Bosnia and Herzegovina, Croatia and Moldova. In other countries, only some PSCs possess a code of conduct, while other PSCs have a secret code of conduct, unknown to the public.⁸⁵

The lack of a coherent national regulatory framework hampers oversight in various SEE states. No specific legislation exists in Serbia.⁸⁶ In BiH, no national (federal) legislation exists, with legislation only on the entities-level,⁸⁷ leading to differences between the entities and, unfortunately, contributing to PSCs developing along ethnic lines. In the Former Yugoslav Republic of Macedonia (FYROM), concerns exist about the inadequate enforcement of the law,⁸⁸ while in Moldova, the legal framework is excessively complex and sanctions are not sufficient to deter illegal PSC behaviour.⁸⁹ In Romania, the law is open to misinterpretation and the police does not have sufficient power to close down illegal or poorly performing PSCs.⁹⁰ Kosovo presents an interesting case as the regulatory framework is mainly based on regulations of the international community (UNMIK) as opposed to nationally enacted laws.

In Russia, control over PSCs is exercised by the ministry of the interior and the prosecutor general's office.⁹¹ In Ukraine, the ministry of the interior is responsible for regulating the private security sector, including issuing or withdrawing licenses. In this sense, the double role of the ministry of the interior as sector regulator and as private service provider is highly problematic (see section 5.1). In Georgia, the private security sector is weakly governed, primarily because of the lack of specific PSC legislation. There is virtually no possibility of ensuring that standards are maintained throughout the sector in Georgia.⁹² PSCs involved in protecting the oil pipeline project (undertaken by a British Petroleum led consortium) in Azerbaijan, Georgia and Turkey, are currently subjected to human rights and security monitoring assessments. It is a form of self-assessment carried out by a third party, commissioned by the oil industry as a client of the PSC. This third-party assesses whether public and private security firms involved in protecting oil assets are committed to the 'voluntary principles of human rights and security' (see also Chapter Six on Self Regulation).⁹³

⁸⁵ SEESAC, p. 112.

⁸⁶ SEESAC, p. 116.

⁸⁷ SEESAC, p. 21.

⁸⁸ SEESAC, p. 54.

⁸⁹ SEESAC, p. 65.

⁹⁰ SEESAC, p. 73.

⁹¹ See note 58.

⁹² Hiscock, 2006.

⁹³ Huge Smith, 2006; see also <http://www.voluntaryprinciples.org/principles/index.php>

5.4. Entrance requirements

Licensing systems for PSCs determine which type of services can be provided for by PSCs and which requirements apply to PSCs. These requirements can include a great variety of criteria, both at the company and personal level.

In most if not all EU states, PSCs need a license to become operational. Different national regulations exist concerning which oversight institution issues the license (see the previous section on oversight and accountability) and the duration of the license (e.g., these are limited to 5 years in Denmark).

Regarding the SEE region, most countries have a licensing system in place allowing PSCs to operate (except for Serbia which has no regulatory framework). Nevertheless, loopholes exist in the laws of the various SEE countries. For example, in Bulgaria, although PSCs have to be licensed, the law allows for private companies to have in-house guards/security departments for their own protection. This exception in the licensing system has been subject to misuse and is a loophole in the law which enables PSCs to avoid being registered.⁹⁴ In Romania (as is the case in Bulgaria), a license is granted for a period of 3 years, which relatively long period and thus lowers the probability that poor conduct will lead to the withdrawal of a license.⁹⁵ In Serbia, legislation is lacking, thus PSCs are not subject to special entrance requirements.⁹⁶ In Montenegro, it is estimated that about 500 unlicensed PSCs are active.⁹⁷ In Russia, entrance requirements exist on the company and employee level. Companies need to acquire a mandatory operating license, the director needs to possess a higher education degree, and the law states the incompatibility of the manager's position with any public function.⁹⁸

5.5. Selection and recruitment of private security personnel

The regulation of the selection and recruitment of private security personnel is vital to the professionalism and moral integrity of the sector. It is, in fact, considered to be in the best interest of PSCs to self-regulate according to the minimum standards for the recruitment of personnel, in particular to avoid potential cases of liability. However, the very fact that it is difficult to establish at what age or after achieving what level of education the optimum performance of security personnel can be ensured, is a reason for the need to achieve a standardization of the minimum requirements for recruitment at the national or international level. In particular, the very nature of private security work carries the danger of the unnecessary use of force by employees who may not have received adequate background screening. The legislation on the selection and recruitment of private security personnel varies greatly across the Council of Europe member States as is described in the following section. It is important to

⁹⁴ SEESAC, p. 33.

⁹⁵ SEESAC, p. 72.

⁹⁶ SEESAC, p. 95.

⁹⁷ SEESAC, p. 109.

⁹⁸ See note 58.

establish that this paper does not attempt to examine the requirements for the owners of PSCs, but rather for the employees of the PSCs as they are those that have most interaction with the public.

Most countries in the EU have established a minimum criterion for the selection of private security personnel, which is the requirement that there is no record of any criminal offences having been committed to date. This appears to be a fairly standardized aspect of regulation in the EU states, although there are a few exceptions to the norm, such as Germany and the Czech Republic, where no such minimum requirement is imposed.⁹⁹ However, amongst the majority of the EU countries where the criminal background check is imposed, there are still great variations between the level of regulation in the countries, with some states imposing varied criteria such as minimum age (18 or 21), good character traits, citizenship, work experience and no participation in incompatible activities (i.e., holding a position as a public servant). A related issue concerns which institution is entitled to carry out the background checks (e.g., the company itself as in the Netherlands) and the criminal background checks (e.g., the Criminal Records Bureau in the UK) as well as the frequency with which these background checks are carried out (e.g., this is done on an annual basis in Sweden).

The Balkan countries of the CoE also appear to have a rather standardised approach to a minimum requirement of a background check on the criminal background for PSC employees. Indeed, this is the case in Albania, Bosnia and Herzegovina, Moldova and Romania. However, in Albania for instance, background checks on employees are insufficient and unlicensed PSC employees are widely active.¹⁰⁰ The only country which has no legal requirements for background checks is Bulgaria.¹⁰¹ Montenegro is a different case altogether as it is unclear from the SEESAC report whether the draft Law on Protection of Property and Individuals contains a reference to the requirements for the recruitment of private security personnel.¹⁰² It is interesting to note, however, that the requirements for employment in the private security sector in these Balkan countries appear to be fairly demanding, for instance requiring the ability to write in Latin script (Croatia), providing proof that the prospective employee does use narcotics (Moldova), and be medically fit (Bosnia and Herzegovina). Furthermore, in the Former Yugoslav Republic of Macedonia, PSC employees must be national citizens, and the law prohibits international/foreign PSCs from being active in the country.¹⁰³ Interestingly, in the former Yugoslav Republic of Macedonia a ceiling exists on the number of PSC employees who can be licensed, the maximum number being 6000.¹⁰⁴

In Russia, private security employees need to possess Russian nationality, be of the minimum age of 18 years for guards and 21 years for detectives, have no

⁹⁹ Panoramic Overview.

¹⁰⁰ SEESAC, p. vi.

¹⁰¹ SEESAC, p. 33.

¹⁰² SEESAC, p. 83.

¹⁰³ SEESAC, p. 54.

¹⁰⁴ SEESAC, p. 55.

mental deficiencies (as stated by a court), not suffer from an illness as specified by government regulation, and not have been convicted for committing a crime or currently charged with a crime. Additionally, former employees who have been dismissed from public service, courts, prosecutor's office or other law enforcement bodies on the basis of compromising those bodies, are not permitted to work as a PSC employee. In general, former personnel of law enforcement bodies cannot work as a detective for at least one year after leaving their position.¹⁰⁵ In Ukraine, according to government licensing conditions, managers of PSCs must either have completed further education, have three years middle or senior management level experience in the ministry of the interior or the Ukrainian security service SBU, or have served at least five years in the armed forces. These conditions appear to be a fruitful ground for illegitimate cooperation between PSCs and state security institutions, since most of the PSC staff will have worked in those state institutions previously.¹⁰⁶

5.6. Training of private security personnel

Personnel of PSCs require adequate training in order to ensure a satisfactory level of professionalism in the sector, and to guarantee that the rules and regulations on what constitutes proper conduct in respect to firearms or search and seizure are understood and thus respected. Once again, it is difficult to establish what constitutes sufficient training. Adequate training could be delivered by an independent institution and possibly by an accredited institution rather than by the company, which would contribute to ensuring a certain level of control over the quality and duration of training. Training that is administered purely by the company and is not regulated in terms of length or substance may be insufficient, for instance amounting to a period of just one hour in some cases, if it was so decided by the company; this has allegedly been the case in Serbia for instance.¹⁰⁷ The need for a regulated minimum standard on training is apparent, although unfortunately this is not the case in the CoE.

Indeed, in the EU member States of the CoE there is no standardisation on the level of training required in order to become a private security employee. Whilst some countries require the training to be regulated by the ministry of home affairs (such as is the case in Spain) others suggest that voluntary in-house company training is sufficient (Italy). Moreover, the minimum number of hours of training varies greatly with some countries such as Denmark or Spain imposing between 111 to 240 hours of training, whilst France for instance requires only 32 hours.¹⁰⁸ There are also differences in the number of training sessions employees must take as a follow-up every year. Austria is an example of a state with particularly weak regulations on training for PSC employees; indeed, the duration and content is

¹⁰⁵ See note 58.

¹⁰⁶ The governmental decree on regulatory policy and entrepreneurship - Ministry of the Interior of Ukraine, no. 145/1501, 14 December 2004 on 'Confirmation of licensing conditions for economic activity relating to services concerning the protection of the state and other forms of property and the protection of citizens', as mentioned and translated by Hiscock, *Commercialisation of security*, 2006.

¹⁰⁷ SEESAC, p. 94.

¹⁰⁸ Weber, 2002, pp. 32-36.

organised on the company level and there are no legal provisions for follow-up training. In Germany, on the other hand, operational staff are obliged to complete a mandatory training of at least 40 hours, which is provided for by the Chamber of Commerce.¹⁰⁹

Training in the Balkan states also varies, although overall it appears to be stricter than in the countries of the European Union. Indeed, all of the South Eastern European CoE states, with the exception of Serbia and Montenegro,¹¹⁰ require a minimum amount of training. In Albania, for instance, the regulations require a training session of 15 days,¹¹¹ which is longer than in the majority of the EU countries. However, since the training is administered by the company, the amount of state control over the quality of the training is minimal. Some countries require training to be provided by an independent entity, such as the faculty of criminal sciences in BiH. In Croatia, PSC personnel must also undertake training and pass an exam in an authorised institution. However, those prospective PSC personnel who have worked for the police in the past for a minimum period of three years are exempt from the exam.

The panoramic overview does not always specify the modalities and requirements for training, thus with countries such as Malta for instance, there is no more specific information available other than 'training required'. There is no indication therefore of whether this training is to be conducted through an independent institution or through the company, and for how long it is to last. Disparity in the data does not always permit the authors therefore to decipher patterns of regulation.

Moreover, there is no mention of the quality of the training that is to be provided, and whether the PSC personnel is actually taught something that will enable them to make better judgements for instance in relation to the use of force. The issue of the quality of the training in different states is an interesting aspect and should be further elaborated.

5.7. Identification of private security personnel

It is important that private security personnel wear uniforms and carry identification at all times in order to differentiate themselves from ordinary citizens. Some private security personnel have special rights in relation to search and seizure for instance, and so it is necessary for the public to have the ability to clearly identify who possesses such rights and who does not. However, the necessity of differentiating private security personnel from others also relates to the need to distinguish them from public order officials, as the latter have much wider powers than private security employees. Without a clear system of identification for private security personnel, the risk of abuse is clear.

¹⁰⁹ Panoramic Overview.

¹¹⁰ SEESAC Report, p. 85.

¹¹¹ SEESAC Report, p. 15.

Unfortunately, there are still great variations amongst the EU member States concerning legislation on this topic at the national level, although perhaps less variation than for some of the other aspects of private security regulation, such as training. Indeed, it appears that every country of the EU members of the CoE, uses at least one form of identification, whether this be a uniform or an identity card. For instance, both uniforms and identity cards are mandatory in the Netherlands, whereas in Hungary uniforms are optional and identity cards are mandatory.¹¹² In some countries, such as Portugal, there is even a requirement that the uniforms of PSC employees not resemble those of public order officials.¹¹³

According to the SEESAC report, there is often no legislation governing this aspect of private security in SEE. Thus, in countries such as Bosnia and Herzegovina, there have been cases where the employees of a PSC wear the official police uniforms appertaining to the police of the former republic of 'Herzog-Bosnia'.¹¹⁴ This is clearly counter to the objective of differentiating private security personnel from state public order personnel.

5.8. Use of firearms by private security personnel

The importance of securing strict regulation concerning the possession and use of firearms is evident. Indeed, firearms are 'tools of violence' which, in the wrong hands, may have severe consequences. It is important therefore to encourage the registration of the weapons at the company level, but also to the individual responsible, so as to maintain a trace of who each weapon belongs to. Moreover, there should be adequate regulations in place to ensure that firearms are stored in secure places and that they are well controlled by the company.

The possession and use of firearms by PSC personnel in the EU varies greatly. Indeed, whilst in the UK, Ireland, Denmark, France and Netherlands firearms are prohibited for private security personnel, they are permitted by all other EU countries. However, even in those countries where the possession of firearms is permitted, the level of control or criteria needed to legally possess these weapons differ greatly. Generally speaking there are limitations on the circumstances required for the possession and on the type of weapon that can be carried.

The possession of firearms is permitted in all of the SEE States which are members of the Council of Europe. What differs is the extent of control that is exerted over the weapons. For instance, in Albania, the weapons must be registered both to the company and to the individual employee, thus ensuring accountability of the weapon at all times. This is not the case in Bosnia and Herzegovina for instance, where the weapon only has to be registered to the company. In Bulgaria, the employees of the PSC must be licensed to be able to

¹¹² Panoramic Overview.

¹¹³ Weber, 2002, p. 38.

¹¹⁴ SEESAC, p. 21.

own and carry a firearm. Croatia differentiates between lower ranking PSC personnel, for example security guards, and higher ranking PSC personnel, such as private security agents. Only the higher ranking personnel is authorised to carry weapons, and even so, the weapons must belong to the company and not be the private property of the guard. In Serbia, private security personnel are not distinguished from ordinary citizens with respect to the use or possession of firearms. However, Article 17 of the general ' Law on Weapons and Ammunition' is applicable to PSCs, and stipulates that the PSC personnel entitled to possess firearms must be medically fit, trained in firearms handling and not have a criminal record.

In Russia, the law prescribes that the use of firearms is limited to self-defence, to prevent group or armed attack on guarded goods, as well as to signal or to warn suspects.¹¹⁵ In Georgia, PSCs and the governmental private property department within the ministry of the interior, do not have the right to carry firearms, however, some PSCs do offer such services.¹¹⁶

5.9. Search and seizure powers of private security firms

Depending on the state where they operate, PSCs have various powers to conduct search or to seize individuals and property, producing a mixed picture of the situation across EU member States. In some states, the Panoramic Overview study mentions that PSCs have powers to conduct limited search and seizure, e.g., in Poland, Slovakia, Slovenia, Greece (only in airports) and Austria (only with the consent of the person concerned). In other states, PSC employees have no other powers than any civilian to seize and search individuals, e.g., the Netherlands, Cyprus, UK, Germany, Czech Republic, Luxembourg, Finland and Spain. In other states, PSCs have special powers, for example in:¹¹⁷

- Lithuania: to detain a suspected offender caught in the act or right after that and transfer him to the police; check the object under surveillance, that the person shows the items they are carrying, with the consent of the person concerned;
- Latvia: to arrest persons who violate the law or who have illegally entered a guarded object, as well as to check passes or other IDs;
- Estonia: to apprehend any person illegally entering a guarded object and, when apprehended, to carry out a security check on the suspected person.

In conclusion, one can state that in some EU states PSC employees have the same power as any other citizen to search and seize individuals whereas in other states PSC employees have extra powers (e.g., in Latvia, the power to arrest persons).

¹¹⁵ See note 58.

¹¹⁶ Hiscock, 2006.

¹¹⁷ Panoramic Overview.

In the SEESAC study on PSCs in South Eastern European states, only sporadic attention is given to the power of PSC employees to search and seize suspected individuals. In Kosovo, PSC employees can make a citizen's arrest and the law enforcement agencies have to be immediately informed.¹¹⁸ In one South Eastern European State, reports are made of arrests carried out by masked PSC personnel, in vehicles with no license plate(s).¹¹⁹

6. Self-Regulation

Self-regulation exists in different forms and may occur at the industry or agency level; it often takes the form of codes of conduct or codes of ethics, setting out minimum standards of behaviour for PSC personnel. Self-regulation aims to achieve much the same objective as state regulation does, and thus attempts to impose a certain level of control over specific activities. Despite this similarity with state forms of regulation, it is interesting to note that self-regulation is generally perceived as a lesser form of regulation, and lacks credibility in the eyes of the general public.¹²⁰ This is most likely linked to the voluntary nature of self-regulation, and thus to the perception that the industry or agency will not self-regulate on issues that are not in their interest. Nevertheless, self-regulation remains an important mechanism for assuring accountability on the agency and industry level. Thus, the development of whistle blowing mechanisms or codes of conduct for instance, not only contributes to the professionalism of the sector, but to its democratic governance as well.

With the purpose of assessing the quality of existing self-regulation, a set of criteria that should cover the essential aspects of an instrument of self-regulation is presented. In particular, self-regulation should pass a completeness test and an enforcement test. The former aims at examining whether all aspects relating to the democratic governance of private security are covered, including respect for human rights and the rule of law. Thus, an instrument of self-regulation is only comprehensive if it covers minimum standards on selection and recruitment requirements, on training, identification, possession and use of firearms and search and seizure powers. One should also mention how adequate relations with the police should be governed, and what measures should be taken against corruption. The second test is that of monitoring implementation and enforcement. Ideally, the instrument should contain specific provisions on how employees should be informed of the contents of the code, methods to monitor the implementation of the instrument, and specific information on what action can be taken if the terms are not respected. In particular, there should be clear procedures for reporting allegations, detailed measures for investigations, and specific sanctions in place to ensure that all employees have an interest in knowing and respecting the code. This is also in the interest of the owners of the PSCs, in order to avoid any potential liability issues. With this in mind, the possible

¹¹⁸ SEESAC, p. 105.

¹¹⁹ SEESAC, p. 53.

¹²⁰ See O'Connor, Lippert, Greenfield & Boyle, 'After the "Quiet Revolution": The Self-Regulation of Ontario Contract Security Agencies', *Policing & Society*, Vol. 14, No. 2, June 2004, p. 142.

methods of self-regulation at a regional and national level are discussed and whether the following illustrative examples of self-regulation are sufficient according to the criteria the authors have established are now considered.

6.1. European level

At a regional level, self-regulation has taken place in the form of the European code of conduct signed by both CoESS (representing the employers in the industry) and UNI-Europa (representing the trade unions).¹²¹ This code of conduct covers a wide array of topics, ranging from the selection, recruitment and training of workers to the relations with the police and other PSCs. In this sense, it serves as a template of a rather comprehensive instrument of self-regulation, as it addresses most issues related to private security, as well as containing a section on implementation and follow up of the code. However, the code is very much geared towards increasing the professionalism of the sector, but it is less effective in covering fundamental aspects related to human rights, and some key issues such as the possession and use of firearms are lacking. Moreover, the code remains weak in the sense that the provisions are very vague and do not set minimum standards on what should constitute the minimum level of training. However, this vagueness can also be attributed to the challenge mentioned in the code, which is that regulations differ to such an extent from country to country that it is not possible to stipulate a minimum guideline. However, COESS and UNI-Europa perceive this code as a first step towards the harmonisation of the sector in the region. Another example is the European Vocational Training Manual for Basic Guarding which has been agreed upon by CoESS and UNI-Europa.¹²² Although it remains a training manual, it is an important piece of self-regulation as it introduces the standards which should be considered as a minimum basis for the training of security guards.

6.2. National level

At national level, self-regulation may take place at the industry level or at the agency level. It is difficult to evaluate the extent of self-regulation that occurs at the level of the agency. Indeed, a majority of PSCs have no information regarding a code of conduct on their website, thus leading to the impression that such a code does not exist. It would be interesting to conduct research through questionnaires addressed to the PSCs on whether the fact that the code of conduct is not public is deliberate, or simply due to the fact that none exists. It is only a minority of PSCs that clearly possess such a code of conduct, a notable example being Securitas.¹²³ Although the latter's code of conduct is an important step forward, as it addresses the respect of fundamental human rights, it does not,

¹²¹ European code of conduct signed in private security sector, *European industrial relations observatory on-line*, available at: <http://www.eiro.eurofound.eu.int/2003/08/feature/eu0308203f.html>

¹²² 'European Vocational Training Manual for Basic Guarding', *CoESS*, December 1999, available at: http://www.coess.org/documents/training_manual_en.pdf

¹²³ 'Securitas Code of Conduct', *Securitas*, available at: <http://www.securitasgroup.com/upload/pdf/Financial/Code%20of%20Conduct%20eng.pdf>

however, fit the requirements of a comprehensive code of conduct as set out earlier. In particular, it lacks specific provisions on training standards, the use of special powers of search and seizure, or the possession and use of firearms. It does however, address other important issues such as corruption or the need to avoid conflict of interest with the private activities of employees. As for the enforcement test, it does state that an employee is requested to report violations of the code to his/her manager and that if necessary an investigation will ensue followed by relevant corrective measures. It appears therefore to pass the enforcement test, however, explicit mention of who will carry out the investigation and what sanctions are available would be desirable. Another example at the national level is that of the code of ethics of GGA, a private security company located in Turkey. This code of ethics is much shorter than that of Securitas, however it also addresses certain key issues. In particular, it contains the respect of 'the law of the land', the observation of the rights of others, and the respect for privacy and the safeguard of confidential information. It does not, however, address minimum standards of training, or the methods of monitoring the implementation of the code. Thus, it falls short of passing the completeness and enforcement test set out at the beginning of the paper. A final remark concerning self-regulation at the agency level is that it appears that PSCs often confer their self-regulatory functions to industry level; a list of all the associations that PSCs are members of often features on the websites of the PSCs, implying that they respect the values of the associations.¹²⁴

An example of self-regulation at the industry-level is provided by the British Security Industry Association (BSIA), which has taken measures to encourage minimum standards in the industry. The BSIA develops standards which it then passes on to the British Standards Institution (BSI) for development as a British Standard.¹²⁵ An example of this is the code of practice for the management and operation of CCTV.¹²⁶ Moreover, the BSIA has taken the lead in establishing a code of ethics for recruitment organisations supplying security personnel.¹²⁷ The code of ethics aims to eliminate bad practice in recruitment, and stipulates that pre-employment screening will be carried out and that annual awareness training on compliance with the Conduct regulations will be given to the employees. However, even with the existence of such codes, it remains doubtful to what extent these codes are respected, and how effective implementation and monitoring actually takes place. The former BSIA code for instance remains voluntary, and even those who have adhered to it run at worst the risk of being fined or expelled from the BSIA if they breach it.¹²⁸ Prenzler has also highlighted this problem, whereby in the majority of cases the most severe sanction imposed is the revocation of membership of a private security association.¹²⁹ However, it is important to note that in the case of the UK, the Security Industry Authority

¹²⁴ For example a list of five associations they belong to features on the GGAs' website of GGA. See: <http://www.ggasecurity.com/about.htm>

¹²⁵ 'The Standards Development Process', *British Security Industry Association*, available at: <http://www.bsia.co.uk/process.html>

¹²⁶ Available at: <http://www.bsia.co.uk/cgi-bin/WebObjects/BSIA.woa/wo/10.0.12.5.0.1>

¹²⁷ 'Code of Ethics for Recruitment Organisations Supplying Security Personnel', *BSIA*, April 2005.

¹²⁸ 'Code of Ethics for Recruitment Organisations Supplying Security Personnel', *BSIA*, April 2005, p. 6.

¹²⁹ Prenzler, 1995, cited in O'Connor, Lippert, Greenfield & Boyle, 2004, p. 142.

(SIA) is mandated to enforce the actual law on private security, and is able to take action in the form of verbal or written warnings or through the initiation of prosecutions.¹³⁰

As mentioned in 5.1 and 5.3, certain private security companies are responsible for the protection of the oil pipeline project of British Petroleum (BP) which runs from Azerbaijan through Georgia to Turkey. The PSCs protecting the pipeline works are subject to third party human rights and security monitoring. These monitoring assessments are commissioned by BP as a means of promoting respect for human rights, and managing security in a manner that minimises the risk of prosecution and loss of reputation. The monitor (a third party, in this case a Western-based law firm) conducts on-site/in-country monitoring visits and has access to all company documents related to the oil project, company executives, government officials, public and private security personnel, diplomats at Western embassies as well as representatives of NGOs and multinational institutions. The fact that monitoring assessments are used to check whether private security companies adhere to the so-called 'Voluntary Principles' on security and human rights, is relevant for this study. The 'Voluntary Principles' is an initiative of the governments of the United Kingdom, the Netherlands and Norway, as well as major oil companies (e.g., BP) and NGOs (e.g., Amnesty International and International Alert). With regard to private security companies, the monitoring assessment report covered the following issues: whether sufficient efforts are made to train PSC personnel in the Voluntary Principles, including the UN principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials; prohibition on human rights abusers by appropriate screening of PSC employees; the inclusion of the Voluntary Principles in contractual agreements between the BP subsidiary and the PSC; monitoring of compliance; investigations of alleged human rights abuses; and adequate consultation between the BP subsidiary with other companies, host government and civil society about possible human rights abuses.¹³¹ Amnesty International, however, conducted a critical assessment of the human rights situation concerning the pipeline project and expressed various concerns, among others, that the legal regime of the pipeline project limits citizens right to effective remedy: 'By shrinking the state's and individuals' room for action at a domestic level, the [BP led] consortium is able to manage human rights problems through its own voluntary standards, in the knowledge that these are not legally binding. There is a local arbitration process that the company's operational documents provide for, but in its present form, it will necessarily have limited power to shape remedies for people who have suffered damage.'¹³² This concern of Amnesty International underlines the fact that self regulation should not limit or replace domestic legislation nor international human rights commitments, notably the ECHR.

¹³⁰ 'Enforcement policy - code of practice', *SIA*, available at: http://www.the-sia.org.uk/NR/rdonlyres/92C8C9DF-6C2E-41EF-B511-891ECDD85A6C/0/sia_enforcement_cop.pdf

¹³¹ See Smith 2006 and www.voluntaryprinciples.org

¹³² 'Human rights on the line: the Baku-Tblisi-Ceyhan pipeline project', *Amnesty International*, London, May 2003, p. 5.

7. Recommendations

Based on the findings of this policy paper, and to ensure, at a minimum, improved governance of the private security sector in Europe and the reinforcement of existing legal frameworks and Council of Europe guidance, the policy paper makes the following recommendations:

I. Regulation of entities providing private security services

The harmonisation of PSC-specific regulation should be justified not only in terms of human rights protection, but in the interest of making security measures more effective and promoting the professionalism of the industry. Relevant Council of Europe norms should be rigorously applied (pp. 11-19).

II. Vetting of PSC personnel

After having verified the identity of job-applicants, background checks of prospective employees (pre-employment screening) should be conducted, including checks for a criminal record, as well as professional and personal reference checks (past employment verification, driver's license check). This process assumes a written application for employment. In line with Recommendation R (84) 10 on criminal record and rehabilitation of convicted persons, the responsible parties within the criminal justice system are best placed to do this.

III. Entrance requirements for PSC employees

A minimum age, the absence of serious criminal offences on his or her record, identifiable insignia for personnel – a uniform and an identity badge/card – should be enforced as basic requirements for any entry level PSC staff. Special conditions, such as training and instruction use of armed force and its legal requirements, should apply for those employees who are armed. Some particularly sensitive sectors (e.g., health care) may stipulate drug screening and/or psychological profiling to the same standard as the company's or facility's regular workforce. This may also be governed under a separate body of regulations, such as those governing health care facilities and standards. Concerning the issue of criminal records of job applicants, Recommendation R (84) 10 on criminal record and rehabilitation of convicted persons, should be taken into account.

IV. Licensing of private security investigators

More rigorous entry conditions should be required for specialised private security personnel, such as private security investigators. In addition to not having a criminal record, passing background checks, establishing proof of citizenship, confirmation of training or past work as police investigator or other investigator, and passing an oral or written exam, should all be compulsory. These are common features for a licensing process. The licensing process must also include a

decertification procedure – i.e. when a license is removed or revoked from an individual or firm deemed unfit for its purpose (e.g., has committed a serious crime, betrayed the public trust, failed to exercise minimum competencies).

V. 'Moonlighting'

Countries should address the issue of moonlighting by police officers in part-time private security jobs. Some businesses see past or present police experience as an advantage in providing private security personnel with needed skills and experience, and this is a common pool of potential employees for PSCs. However, criticisms of moonlighting include the argument that moonlighting police personnel bring their police-work attitudes and assumptions with them when working in a private security capacity, including being able to arrest persons and apply the necessary level of force.

VI. Training of private security personnel

Standardisation of pre-assignment training, certification requirements, and in-service training, is necessary. Industry minimum standards in terms of selection, training, and supervision of security personnel should be identified and enforced in order to increase the professionalism of the sector generally.

Topics that may be addressed in basic training include, the role of security officers and their legal powers and limitations, communications and report writing, public and client relations and customer service, diversity, and ethics and conduct. Other issues may include, emergency and disaster management, access control, safety and hazardous materials and other topics specific to certain sectors.

Further in-house training and refresher courses should be encouraged, as well as special training for private security supervisors.

A record of the training, reflecting when an employee received training, what that training consisted of, and the form of testing and its results, should appear in the employee's personnel file. In the event of a subsequent critical incident, this documentation enables the company to demonstrate how employees were trained to follow policies and procedures. In addition to helping to raise minimum standards, this practice could also help to limit the company's liability for any misconduct by an employee.

Ethics training is especially important here, since security workers often have access to confidential information and have opportunities to commit unethical behaviour (theft). One way to do this could be through a system of 'formalised peer sanctions' – i.e. internal scrutiny.

An industry code of ethics, standards of professional conduct, identification of criteria for admission of new members, establishment of mechanisms to hear, investigate and clear/sanction complaints against members for sub-standard

performance or misconduct should be established. There should be a code of ethics for private security employees, and a similar but separate code for private security management.

VII. Limitations on what private security officers are entitled to do

The limitations of PSCs' ability to intervene and interfere in the public sphere should be clearly delineated, with three key issues addressed:

- a) Search, and seizure (searching a person's property without consent, searching a suspect's person without his or her consent);
- b) Use of necessary force to restrain an individual until police are called; and,
- c) Types of weapons and firearms PSCs can carry (if any) and how they may be used.

PSCs are automatically subject to the European Convention on Human Rights, but confusion regarding their powers can lead private individuals to assume – in a Pavlovian response to uniforms or other visible markers of similarities to public police – that PSCs are police or other law enforcement agents. Clear limitations on the supposed powers of PSCs should be outlined in order to inform the public as much as to regulate the industry itself.

VIII. Relations with police

Consensus should be sought on which functions of the public police can be contracted out, and which should not. For example, there is generally a public preference for police to focus on crime control, but usually this accounts for less than 20 percent of their time. Very often, use of the public police for transporting prisoners, court security, traffic control and serving summonses is viewed as too expensive an option for public security budgets. These support roles can be and often are filled by private security personnel. But their roles must be clearly defined and regulated. It is important to have public debate on how PSCs can be complimentary to the police in terms of working together, sharing of information and engaging in a dialogue, as well as setting up partnerships in crime prevention.

IX. Security against terrorism, catastrophes

Critical infrastructure protection is now a growing concern. While much attention has focused on cooperation among state agencies, the private security industry also plays an important role because of its involvement in providing the day-to-day security of many public and private facilities. Increasing emphasis and attention should be conferred on the sharing of information, and developing effective emergency responses and network relationships.

X. Privacy

In line with Article 8 of ECHR, the 'Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data', and mindful of Recommendation No. R (87) 15 regulating the use of personal data in the police sector, and Recommendation No. R (91) 10 on communication to third parties of personal data held by public bodies, PSCs involved in providing proprietary and investigative services must be bound to respect appropriate privacy guarantees.

Those private security personnel involved with internal loss prevention may employ technologies or techniques that affect the privacy of individuals and other employees of the firm. To help ensure that a company will meet its privacy obligations, security professionals or designated privacy officers first need to know what the laws require. They then need to be able to convey to senior management some sense of the risks of non-compliance. From a regulatory aspect, this includes the requirement that the firm respects laws regarding privacy and ensures that security measures do not infringe on privacy rights of clients or employees. Safeguards and guarantees should be in place to ensure that the privacy of data subject is not unduly prejudiced (Recommendation N° R (91) 10).

XI. Self Regulation

The fact that legislation differs greatly from country to country makes it difficult to propose a harmonised legal framework for the private security industry. Nevertheless, self-regulation at the agency and industry level may be the most practical way forward and a first step towards the harmonisation of the legislation at a regional level. It appears important, therefore, to encourage voluntary self regulation, and to advocate that PSCs with a minimum number of employees adopt a mandatory code of conduct. Furthermore, codes of conduct should be included in the job contract as the terms of employment, as well as mechanisms that would help to ensure that if the code is not respected, disciplinary action can be legally taken. This is what is suggested for instance in the model code of conduct for public officials of the CoE. The aforementioned model code, as well as the CoE European Code of Police Ethics could serve as a model for what a code of conduct for private security should entail. They contain several relevant provisions, which are elaborated in the section on the Council of Europe legal instruments. Self regulation cannot replace or limit human rights of CoE citizens as stipulated in domestic legislation as well as CoE Conventions, notably the ECHR.

XII. Transnational PSCs

Wherever PSCs are legally based, those that operate transnationally are required to respect the rule of law of the state where they operate as well as CoE norms and regulations. It is important that the issue of accountability (see below) of transnational PSCs and their employees is adequately addressed.

XIII. Corporate Accountability

As citizens, PSC staff are already accountable in law for any of their actions which result in a criminal offence. PSCs may, as a corporate entity, undertake actions which render the organisation liable for a breach of the law. In this regard, Recommendation No. R (88) 18 on the liability of enterprises having legal personality for offences committed in the exercise of their activities, and Recommendation No. R (82) 15 on the role of criminal law in consumer protection, both help stress the necessity of enforcing the corporate accountability of PSCs for their actions.

XIV. Establish clear legal frameworks and a national regulator

Overall, PSCs should ideally be regulated by a regulatory framework such as the Private Security Industry Act (UK), identifying clear standards and binding legal frameworks. As a component, a Statutory National Regulator should be established as a security industry authority, ensuring transparency and accountability across the sector. Licensing, monitoring, scrutiny of annual reports, public complaints mechanisms, relationship with public police and the interaction with other democratic institutions (ombudsmen and the judiciary), wherever they are located, should be the core functions of such an agency. The agency should also interact with relevant parliamentary committees, community policing boards, police standards authorities, and hold public briefings. The outcomes of vetting processes should also be recorded on a statutory basis by this agency.

Recommendation No. R (87) 19 on the organisation of crime prevention already explicitly mentions the private security industry, and could serve as the basis for common regulatory standards, recommending that governments:

- a) enact, revise and if necessary, complete regulations governing initial authorisation, periodical licensing and regular inspection, by public authorities at the appropriate level, of security or surveillance companies, or encourage the profession to adopt its own regulations;
- b) in cases where such companies supply staff, lay down minimum standards, providing in particular that the staff shall wear a uniform different from that of the police, carry identification documents and have adequate training, including a basic understanding of criminal law, knowledge of surveillance and security techniques and of the rights, obligations and responsibilities of such staff, as well as of the norms of appropriate behaviour, in particular *vis-à-vis* the public; and,
- c) encourage positive relations between the police and surveillance and security companies in order that, within the limits of their activities, the latter may assist the former in preventing crime.¹³³

¹³³ Rec.N° R (87)19, Principle V.

8. Conclusions and the Way Forward

Despite the fact that it is often stated that PSCs are not accountable to the law, it appears on the contrary that there are numerous pieces of legislation at the European level which contribute to their regulation, both in matters of corporate law and in aspects of human rights. It appears therefore that where PSCs are in the most desperate need for regulation, is on the minimum standards to be adopted in respect to training, recruitment, possession of firearms and so forth.

This policy paper has shown that variations exist in the extent to which different countries regulate these aspects. Some countries do not have specific legislation in place, e.g. Serbia, Cyprus and France. Other countries apply their general commercial framework to PSCs, e.g. Germany and Austria. One may question whether a general commercial regulatory framework can fully apply to PSCs because of the sector's dynamics, and special concerns related to public security and the protection of human rights. Another group of countries does not possess a national regulatory framework, but leaves the regulation to cantonal, provincial or local authorities, e.g. in Switzerland, Italy and Bosnia and Herzegovina. This leads to a situation in which rules for PSCs vary across the country, or, like in Bosnia and Herzegovina, that PSCs develop along regional lines within the country.

What is interesting to note, however, is that it is difficult to identify one country that has strong regulation in all of these aspects, the only examples being perhaps the Netherlands and Spain. Several countries may have very strong regulation in one aspect of private security, but very weak in another. An example of this being Austria, which imposes fairly strong requirements for the recruitment of private security personnel, but leaves training as an optional feature at the discretion of the companies.¹³⁴

This policy paper has identified numerous weaknesses in the data available on the study of private security companies. Nevertheless, it hopes to have demonstrated the desirability of regulating the private security industry in the member States of the Council of Europe on the basis of common norms. The examination of the different areas that are regulated and the analysis of those that are lacking, are sufficient to establish the pressing need for regulation in this sector.

Recommendations have also been made to ensure improved governance of the private security sector in Europe. Acknowledging the great differences in legislation between Council of Europe member States – varying from very strict legislation to no legislation at all – the following next steps are suggested:

- 1) As far as best practices and legal standards are directly related to existing CoE Conventions – in particular the European Convention on Human Rights – they should be treated as minimum standards.

¹³⁴ Weber, 2002, p. 32.

- 2) These best practices of regulation should be laid down in a Recommendation or specific CoE Guidelines dedicated to the private security industry.
- 3) Best practices and legal standards for regulating PSCs should be disseminated through the publication of guidelines in various languages of the CoE member States.
- 4) Not only should states be encouraged to use these best standards and legal practices in domestic legislation, but also to promote adherence or compliance to these standards through self-regulation across the industry.
- 5) In order to create further awareness and norms fostering, it is recommended that seminars on the feasibility and necessity of good governance and regulation of PSCs be organised. These seminars could be on the national level, as well as on the European level, and should target policy-makers and decision-makers, parliamentarians and their staff, representatives of the private security industry as well as civil society.

In conclusion, the authors perceive strategies of awareness raising, capacity building and the dissemination of best practices, as the preferred way of norms transfer, given the great disparity in legislation and practice in the CoE member States.



Geneva Centre for the Democratic Control of Armed Forces (DCAF)

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) promotes good governance and reform of the security sector. The Centre conducts research on good practices, encourages the development of appropriate norms at the national and international levels, makes policy recommendations and provides in-country advice and assistance programmes. DCAF's partners include governments, parliaments, civil society, international organisations and the range of security sector actors such as police, judiciary, intelligence agencies, border security services and the military.

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