EUROPEAN COMMISSION
European Research Area
SEVENTH FRAMEWORK PROGRAMME
Funded under Socio-economic Sciences & Humanities

Priv-War Recommendations for EU Regulatory Action in the Field of Private Military and Security Companies and their Services

March 2011

Preamble

The Priv-War Consortium members[1]:

Considering that the European Union (EU) and its Member States are bound by international law, including human rights law (HRL) and international humanitarian law (IHL) and that respect for human rights is one of the core values on which the European Union is founded[2];

Also considering that the EU and its Member States recognize the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted on 12 December 2007, which, according to Article 6(1) of the Treaty on European Union, shall have the same legal value as the Treaties;

Taking into account that the main purposes of the Priv-War research project, funded by the European Commission under the Seventh Framework Programme, are to assess the impact of private military and security companies (PMSCs) on the respect of human rights and IHL; to analyse existing regulatory frameworks at the national, international and EU levels; to explore ways in which the EU could contribute to ensuring compliance

[1] European University Institute (Florence, Prof. Francesco Francioni); LUISS 'Guido Carli' (Rome, Prof. Natalino Ronzitti); Justus-Liebig Universität (Giessen, Prof. Thilo Marauhn); Université Panthéon-Assas, Paris II, Centre Thucydide (Prof. Serge Sur and Prof. Nicolas Haupais); University of Sheffield/University of Nottingham (Prof. Nigel White); Riga Graduate School of Law (Prof. Ineta Ziemele), and Utrecht University (Prof. Eric Myjer).

[2] Article 2, TEU.

with these international legal norms, and to present concrete options for possible regulatory measures, based on the project's output;

Noting that, in pursuing these objectives, the Priv-War consortium has carried out substantial research on the manner in which HRL and IHL are impacting upon the establishment and operations of PMSCs in EU Member States and third states;[3]

Noting also that the Priv-War research has revealed substantial differences among EU Member States in regulatory approaches and legislative measures;

Also noting that several regulatory initiatives have been launched at the international level with a view to improving monitoring and oversight of the private military and security sector, including the *Montreux Document*,[4] which is a set of guidelines based on existing international law; the *Draft of a Possible Convention on Private Military and Security Companies*, being elaborated in the framework of the United Nations Human Rights Council[5] and which is still at a tentative stage; and the *International Code of Conduct for Private Security Service Providers*,[6] which is a manifestation of self-regulation;

Mindful that, in the spirit of these Recommendations, EU Member States should refrain from outsourcing to PMSCs, tasks amounting to a direct participation in hostilities and should prohibit registration or licencing of companies which perform services amounting to a direct participation in hostilities[7];

---

[3] The research results have been published in various ways. An academic volume has been published by Oxford University Press in January 2011:F. Francioni and N. Ronzitti (eds.), *War by Contract: Human Rights, Humanitarian Law and Private Contractors.* Moreover, several articles have been published in international legal journals, including six contributions presented at the Symposium on Private Military Contractors and International Law (*European Journal of International Law*, Vol. 19 (2008) No.5); some articles in the *Journal of Conflict and Security Law* (Vol. 13 (2008) 3 and Vol. 15 (2010) 3), as well as in the *Italian Yearbook of International Law* (Vol. XVIII (2008) the *Annuaire français de droit international* (LV-2009) and the *Human Rights Law Review* (Vol. 11, 2011). Finally, a series of reports on the existing regulation regarding PMSCs at the national level in EU Member States and third States is available on the project website, http://www.priv-war.eu, as well as several analytical papers (EUI Working Papers) addressing various aspects of the applicability of HRL and IHL to PMSCs, and the accountability of these companies and their employees (also available at http://cadmus.eui.eu/handle/1814/11397).

[4] The *Montreux Document on Pertinent Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict*, adopted on 17 September 2008, at the initiative of the Swiss Government and the International Committee of the Red Cross; available at http://www.eda.admin.ch/psc.

[5] The Human Rights Council has decided in its Res.A/HRC/15/L.22 of 27 September 2010, to establish an open-ended intergovernmental working group on the elaboration of a legally binding instrument on the regulation, monitoring and oversight of the impact of the activities of private military and security companies on the enjoyment of human rights.

[6] Available at http://www.dcaf.ch/News/International-Code-of-Conduct-for-Private-Security-Providers-Officially-Signed

[7] The research of the Priv-War consortium has found that in France, Germany, Italy, Portugal, Finland and the Netherlands military activities as such are considered to be the exclusive competence of the State. As a tendency, private military services are tolerated only in post-conflict situations for purposes of stabilization. However, in other Member States, including the United Kingdom, such restrictions do not apply.

Convinced that regulatory action at the EU level is appropriate, on its own merit and in support of existing initiatives for the following reasons:

- With the entry into force of the Lisbon Treaty, entailing the legal upgrade of the EU Charter of Fundamental Rights and the obligation upon the EU to accede to the European Convention of Human Rights and Fundamental Freedoms, EU institutions and EU Member States, when acting within the scope of EU law, have confirmed and consolidated their significant role as guarantors of fundamental rights, and their willingness to be bound by them;
- In addition to their obligations under the EU Charter of Fundamental Rights, EU Member States are bound by regional and international human rights conventions and by IHL instruments to prevent and redress violations of the rights enshrined therein within their juridiction;
- The disparity in national legislation and regulatory approaches within the EU regarding PMSCs may lead to strategic relocation of private contractors to Member States with the most lenient regulatory regimes, which may result in distortions within the internal market and failure to ensure the required minimum safeguards for the protection of human rights and IHL. Differences in levels of protection of fundamental rights may have a negative effect on the freedom of movement of private security companies and on the observance of the required minimum safeguards.." (similarly, directive 95/46 rec. 7);
- The export of PMS services to third states –either during an armed conflict or in crisis or post-conflict situations- has proved to entail a particularly high risk of violations of human rights or IHL;
- The lack of minimum standards and requirements for regulation and supervision potentially means that PMSCs may operate inconsistently with EU and Member States' policies;
- There is still a substantial lack of information about the nature and scope of the operation of PMSCs; their relationships with governments, and the methods by which they are made accountable in the event of harm;
- The European Commission has stated that it would assess, by 28 December 2010, the possibility of presenting proposals for additional harmonizing instruments for the Internal Market in the framework of the General Services Directive 2006/123/EC; thereby recognizing a possible role for the EU in this field;
- The European Court of Justice has confirmed that private security services fall in principle within the scope of application of internal market law in several cases involving Spain, Italy and the Netherlands;[8];

Therefore, the EU regulatory measure should *encourage* all EU Member States to refrain from outsourcing tasks amounting to a direct participation in hostilities to PMSCs.

[8]. See *Commission v Spain*, Case C-114/97, judgment of 29 October 1998; *Commission v Belgium*, Case C-355/98, judgment of 9 March 2000; *Commission v Italy*, Case C-283/99, judgment of 31 May 2001; *Commission v Portugal*, case C-171/02, judgment of 29 April 2004; *Commission v Netherlands*, Case C-189/03, judgment of 5 May 2003; *Commission v Spain*, Case C-514/03, judgment of 26 January 2006; *Commission v Italy*, Case C-465/05, judgment of 13 December 2007.

- The Council adopted Recommendation 2002/C 153/01 of 13 June 2002 regarding cooperation between the competent national authorities of Member States responsible for the private security sector;
- Regulation already exists at the EU level regarding the regulation of export of dual-use goods by means of an EU-origin Regulation (common commercial policy) and by means of the CFSP initiatives on a Code of Conduct for Arms Exports, in the form of a Common Position; Therefore the Member States should adopt rules in conformity to the objectives set out in these texts, in order to ensure coherence with these instruments;
- The European Parliament has commissioned an expert study, which identifies possible paths for EU action in this field;[9]
- In the context of the EU's external action, prospective regulation within the EU may have an impact on other States involved in outsourcing private military and security services; in particular if the regulation of PMSCs is included in the political dialogue with third States;
- A regulatory initiative in this field may enhance cooperation and partnerships with regional organisations and with other States that are involved in contracting out their defence and security tasks.

Have decided to adopt the following Recommendations, with explanatory comments, as a joint effort of the Priv-War project consortium:

[9] *The Increasing Role of Private Military and Security Companies*, by Alyson J. K. Bailes and Caroline Holmqvist EP/EXPO/B/SEDE/FWC/2006-10/Lot4/09, PE 385.521 of 2 October 2007

1. EU regulatory measures related to PMS companies and their services are necessary in order to ensure better compliance with human rights law (HRL) and international humanitarian law (IHL).

1a. Military and security services are increasingly outsourced to private contractors. This reality has raised serious concerns, in particular since it involves a risk of violations of human rights and, where applicable, international humanitarian law, as evidenced by several incidents.[10]

1b. Human Rights are fundamental and mandatory requirements within the EU legal order and Member States are bound by them. Article 6(3) TEU reaffirms that fundamental rights as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States are general principles of EU law. As outlined in the Communication from the Commission COM(2010) 573 of 19 October 2010 (Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union), the Charter, which in accordance with Article 6(1) of the Treaty on European Union has become legally binding, concerns in particular the legislative and decision-making work of the Commission, Parliament and the Council, *the legal acts of which must be in full conformity with the Charter* (Article 51(1) of the Charter[11]). According to this same article, the institutions, bodies, offices and agencies of the EU shall therefore respect fundamental rights, and promote the application thereof in accordance with their respective powers. In addition, Member States are bound by the general principles of EU law and by the Charter when implementing EU law, including when they participate in EU military and civilian missions on behalf of the Union.

2. For the purpose of these Recommendations, private military and security companies can be defined as business corporations offering security, defence and/or military services to States, international organizations, non-governmental organizations, private companies and/or armed groups. These services include but are not limited to armed guarding and protection of persons, objects, buildings or merchant vessels; maintenance and operation of weapons systems; prisoner detention and interrogation; intelligence; as well as advice to or training of local forces and security personnel. [12]

---

[10] Well-know examples include the Nisour Square incident, whereby 17 civilians were killed by private security contractors (Blackwater; USA) in Iraq in 2007; the involvement of private contractors (CACI, Titan; USA) in the abuse and torture of prisoners at Abu Ghraib in 2003. For details on other incidents see http://www.priv-war.eu, National Reports Series, in particular the reports concerning the USA, South Africa and Colombia, see also http://www.humanrightsfirst.org/wp-content/uploads/pdf/08115-usls-psc-final.pdf**.**

[11] Emphasis added.

[12] Definitions used in other regulatory initiatives: **Montreux Document (2008):** "PMSCs are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons

2a.Effective regulation requires targeting both services and entities providing services because the structure of human rights obligations entails the need to oversee the relevant actors even before they engage in actual services from which harm may arise.

2b.Regulatory measures should apply to all legal and natural persons offering or providing PMS services in or from any of the EU Member States and operating within States outside the EU. This includes persons from third States offering these services in the EU (e.g. through subsidiary companies), as well as sub-contractors.

3. Options for EU regulatory measures are the following:

a) A Directive (Internal Market), harmonizing national measures regulating Private Military and Security (PMS) services, including service providers and the procurement of services; *or*

b) A non-legally binding instrument, such as a Council Recommendation, containing guidelines for the Member States on the domestic regulation of PMS services, including services delivered in third States;

and

c) A Decision (CFSP), regulating the export from Member States of PMS services to third States and the use of such services by the EU; *or*

d) A non-legally binding instrument, such as a Council Strategy Document, defining guidelines for the export from Member States of PMS services to third States and the use of such services by the EU.

---

and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel."(Preface, para 9);

Draft of a Possible Convention on PMSCs (UN HRC): Article 2 (a) **Private Military and/or Security Company (PMSC)**: refers to a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities. (b) **Military services**: refers to specialized services related to military actions including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities. (c) **Security services**: refers to armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities.

3a. These options can either be adopted separately, or in combination, *i.e*. a Directive (a) and a Decision (c); or a Council Recommendation (b) and a Council Strategy Document (d). In the case of a Directive and a CFSP Decision, their implementation should be effected in compliance with Art 40 TEU.

3b. An appropriate legal basis for a harmonizing Directive setting minimum standards **(option a)** is Article 114 TFEU (ex-Art 95 EC)[13], which allows the EU to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. As long as the conditions for recourse to Art 114 TFEU are fulfilled, the EU legislator is not prevented from pursuing other non-market values including fundamental rights protection, as a decisive factor for the choices to be made in the regulation.[14]

.

3c.According to consistent case-law of the ECJ, as outlined in its judgment in Case C-58/08, Vodafone, para 32, the conditions for using Article 114 as a legal basis are the following: 'While a mere finding of disparities between national rules and the abstract risk of infringement of fundamental freedoms or distortion of competition is not sufficient to justify the choice of Article 95 EC as a legal basis, the Community legislature may have recourse to it in particular where there are differences between national rules which are such as to obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market.' 'Recourse to that provision is also possible if the aim is to prevent the emergence of such obstacles to trade resulting from the divergent development of national laws.'(Case C-58/08, para 33).

3d. As evidenced by the research undertaken in the context of the Priv-War project (see National Reports Series, available at http://www.priv-war.eu), there are significant disparities between national regulatory regimes among the EU Member States.[15] The regulatory approaches range from the outright prohibition of PMSCs in some States; to a specific regulatory regime in other States, while some Member States have adopted a system of 'laissez-faire.' Differing regulatory requirements in Member States may restrict access of a PMSC legally operating in one Member State to the market of another Member State. An obstruction of the free movement of services, and therefore of the functioning of the internal market, may occur when one Member State requires a PMSC established in another Member State to abide by its own domestic higher standards in order to protect human rights and IHL (e.g. providing adequate training of its personnel; ensuring strict supervision of compliance with international norms during their operations; requiring adequate

[13] An example is Directive 95/46/EC of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

[14] As confirmed by the ECJ in Case C-58/08, at para 36. In Case C-58/08, at para 36, the ECJ recognizes that consumer protection may be a decisive factor in this regard. The same applies to health protection as confirmed in *Germany v Parliament and Council (para 88); British American Tobacco (Investments) and Imperial tobacco (para 62) and* Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-6451 *(para 30)*, cited by the ECJ in the same paragraph.

[15] The evaluation of distortions of the internal market justifying the adoption of a Directive will be the object of an impact assessment by the Commission.

insurance for harm inflicted by its personnel), since this results in *substantially higher costs* for the company, compared to registering or obtaining a license in an EU Member State which has less stringent requirements. Insofar as those regulations are compatible with the Treaty (see case C-465/05 and others cited above) harmonization of regulatory standards will facilitate the exercise of the right of establishment and freedom to provide services.
Besides Article 114 TFEU, also Articles 53(1) and 62 could provide a legal basis for the regulation of procurement of PMSCs; here a parallel may be drawn with Directive 2009/81 on defence procurement.

3e. The legal basis for a Council Recommendation to the Member States (**option b**) is Article 288 TFEU (ex Article 249 TEC). A Recommendation might be considered a suitable initial measure enabling a subsequent assessment of whether a binding measure is necessary.

3f. A decision in the context of the CFSP based on Articles 25 and 28 or 29 of the Treaty on European Union (**option c**), would address the provision of private military and security services outside the EU.

The CFSP could be used as an alternative legal basis for regulating EU service providers. However, a CFSP decision could only cover services provided *outside the EU*. Alternatively, a CFSP measure could be used alongside an internal market based measure, to cover the promotion of the EU's standards within third countries.

Such a decision may be based on Articles 25 and 28 or 29 TEU, since the EU competence in matters of foreign and security policy covers all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy (Article 24(1) of the Treaty on the European Union). A parallel can be drawn in this regard with Common Position 2008/944/CFSP on common criteria for the national export, brokering and licensing of military goods and Common Position 2003/468/CFSP on arms brokering. An example of a Council Joint Action is 2008/230/CFSP on support for EU activities in order to promote the control of arms exports and the principles and criteria of the EU Code of Conduct on Arms Exports among third countries.

3g. A non-legally binding instrument such as a Council Strategy Document (**option d**) can be based on Article 25(a) and Article 26(1) or (2) TEU. The *Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL)*, 2009/C 303/06 of 15 December 2009 is an example in this regard.

3h. The use of PMSCs by the EU itself in the context of its CSDP operations will be further addressed in Recommendation No.8.

4. The object and scope of EU regulatory measures should include a normative system for the establishment, registration, licensing and monitoring of PMSCs located within the jurisdiction of EU Member States or hired by these States or other entities and organizations for the delivery of services, including in third States, and for reporting to competent authorities on violations of applicable law by such companies and their personnel and sub-contractors.

EU regulatory measures should indicate that the Member States shall make the provision of licenses conditional on the fulfillment of certain standards. These should include: compliance with HRL and IHL; training in HRL and IHL, including on women's and children's rights and the specific protective measures that are required; vetting of PMSC personnel; technical training for example on gun use and policies; specific conditions according to the situation in which the services will be provided; compliance with EU policies in the areas of security and foreign policy; satisfactory reporting requirements; adequate insurance and remedial provision.

4a. The implementation of such measures is primarily the responsibility of the Member States. However, in its role as guardian of the Treaties, the European Commission would need to monitor the proper implementation of the agreed EU measures, also in the light of the now legally binding EU Fundamental Rights Charter (COM (2010) 573).

4b. In order to enable domestic courts to oversee the responsibility of companies and personnel, *inter alia* on the basis of tort or breach of contract, it is important not to leave compliance with public policies, including HRL and IHL, entirely to contractual arrangement. Through the use of conditions for the establishment, registration, licensing, monitoring and reporting on violations of applicable law by PMSCs, governmental control can to some extent be exercised over contracts, including compliance with the regulatory measures. Moreover, the definition of such standards would also be useful in the event that the ECJ becomes involved, when an issue of interpretation of the EU measures arises.

4c. Licensing conditions should also serve as yardsticks to assess compliance by the parties concerned with the relevant (international) legal standards and would play a role in decision-making regarding hiring and renewal of contracts.

5. EU regulatory measures should address the due diligence obligations under HRL and IHL of EU Member States in their capacity as hiring States and home States of PMSCs. As a minimum they should warrant that only registered and properly licensed companies are hired.

EU regulatory measures should stipulate that PMSCs ensure that their personnel, sub-contractors and those in their supply chains adhere to HRL and IHL standards.

5a.The hiring entities (e.g. State organs, private companies, NGOs) of PMS services should check if the company is duly registered and has a proper license, and if it has a poor record of performance. Such a screening should be carried out before the conclusion or continuation of a contract. The hiring entities should also check if the PMSC has taken adequate measures to ensure adherence to HRL and IHL standards by its personnel, sub-contractors and those in their supply chains.

5b. This Recommendation aims at ensuring that the Member States on whose territory PMSCs are registered, and the States which hire such companies, comply with their due diligence obligations under international law, including HRL and IHL. These include the obligation to prevent violations of human rights; and when violations occur as a result of conduct of PMSCs or their personnel, these States also have a duty to investigate such violations and to ensure that remedies are available to victims and their families. Member States should be encouraged to enact penal legislation in order to prosecute, try and if found guilty, punish those responsible, and assist the authorities of the host State in prosecuting those responsible.

5c. In this context, also due regard should be paid to the due diligence obligations of the host State, on whose territory PMSCs operate, with regard to compliance with HRL and IHL.

6. EU regulatory measures should set minimum standards for monitoring and sanctions to be applied at the level of Member States. Such standards may include requirements for administrative or civil procedures, and when appropriate, the use of criminal sanctions if this is consistent with the domestic law of the Member States. The regulatory measures may also set standards for self-regulation as complementary means for ensuring accountability of PMSCs and their personnel.

6a. Hiring States or home States, members of the EU, should establish monitoring processes and compliance mechanisms to ensure that PMSCs comply with HRL and IHL standards

6b. When EU Member-States hire a PMSC they should insert appropriate clauses in the contract for monitoring and enforcing compliance with the regulatory measures..

6c The EU regulatory measures should provide that the Member States require a commitment from the industry to ensure that these standards are also complied with by subcontractors and/or those in their supply chains.

6d. Self-regulation of PMSCs should be consistent with the ongoing process towards a renewed EU strategy on Corporate Social Responsibility as a follow-up to the European Commission's 2006 Communication on CSR (COM 2006 (136) Final) and the new initiatives that are being developed by the Commission in this context. As was announced at the European Multistakeholder Forum on CSR, Plenary Meeting in November 2010, a new Communication from the Commission on CSR may be adopted in the course of 2011.

7. The EU should ensure coordination of the monitoring practices at the national level and of self-regulation of PMSC entities, with a right of data access for national authorities.

Such coordination may include a register of poor performance, claims of poor performance, criminal investigations and civil suits, and other elements such as remedies granted that may offer an objective record of performances by PMSC companies.

7a. It is common for implementation of EU instruments to be periodically monitored and evaluated at EU level. EU measures laying down the requirements of national level monitoring and sanctioning in the field of PMSCs would equally benefit from such mechanisms.

7b. Considering the legal bases of the EU measures foreseen, and the intimate link with EU internal and external fundamental rights protection, Council involvement in different configurations would seem appropriate. Apart from working groups dealing with the internal market and external affairs, also COHOM (external human rights policy) and FREMP (internal human rights policy) would need to be included in coordination of national level monitoring practice and self-regulation to ensure coherence and effectiveness.

8. A Decision based on Article 29 TEU, or a non-legally binding instrument, such as a Code of Conduct, should also define standards for the hiring of PMSCs by the EU itself in the context of its CSDP operations.

This Decision or non-legally binding instrument should also define standards for monitoring and sanctions at the level of the EU in relation to PMSC entities that are hired at the level of the EU.

8a. Both the European Union and its Member States need to ensure compliance with Fundamental Rights by the personnel engaged in EU CSDP missions in third countries.

8b. EU regulatory measure adopted at the EU level should be explicitly referred to in the relevant CSDP instruments setting up the legal framework for EU civilian missions and military operations. Such instruments include, inter alia, OPLANs, Council decisions approving and launching the missions/operations, SOFAs and SOMAs (as they currently stand, the latter do not regulate the conduct of local and international contractors, but a reference to the CFSP instruments governing their conduct may nevertheless be included), and contracts concluded by EU Heads of Mission/Operation Commanders with international and local contracted staff.

8c. A regulatory measure in the CSDP area could build on existing non-binding instruments, such as the Generic Standards of Behavior for ESDP Operations, which already apply to internationally and locally contracted civilian personnel.

8d. EU regulatory measures should also apply to PMSCs engaged in EU missions as part of a contribution offered by a third State. This might be done by inserting a clause in the agreement that is concluded between the EU and the third State for such a contribution.

9. EU regulatory measures should also include guidelines on the use of PMSCs in its humanitarian aid operations. As a general rule, they should not be employed unless certain conditions are met.

9a. Major humanitarian actors, including UN agencies and NGOs, increasingly rely on private firms to provide security in crisis situations. The European Commission's Humanitarian and Civil Protection department (ECHO) itself may employ private companies in its operations.

9b. Within the framework of the initiatives for security of humanitarian aid workers, the EU should develop guidelines for the use of private security companies in ECHO humanitarian aid operations. The ongoing review of the "Standards and practices for

the security of humanitarian personnel and advocacy for humanitarian space" to be made available for ECHO partners and other NGOs, should introduce clear standards for the recourse to private companies, in particular as regards recruitment, training, use of weapons and accountability, in order to ensure compliance with human rights.

10. EU regulatory measures should stipulate that the EU and its Member States should ensure that effective access to justice and appropriate remedies are available to victims for injuries suffered as a result of the wrongful conduct of PMSC personnel.

10a. The EU and its Member States are bound by human rights conventions, including the ECHR and the Charter of Fundamental Rights of the EU, to provide access to justice and effective remedies to victims of human rights abuses. Remedies should be available either from the home or hiring State itself in recognition of its due diligence obligations, or directly from the responsible PMSC in accordance with the companies' due diligence obligations recognized in international frameworks for corporate social responsibility.[16]

10b. This Recommendation is also in line with Article 81(1) TFEU (ex Article 65 TEC), on judicial cooperation in civil matters and with Article 81(2e), which aims at ensuring effective access to justice.

11. The EU should take into consideration the need for regulation and accountability of PMSCs in its external relations including, as appropriate, inserting a specific clause on PMSCs in its international agreements with third States.

11a. In the context of its political dialogue with third States, including the US, the EU should address the risks posed by the use of PMSCs and have consultations on regulatory measures.

11b. EU involvement in international initiatives, such as the Draft of a Possible Convention on Private Military and Security Companies as is being developed in the context of the UN Human Rights Council, should be considered.

11c. The EU should address the issue of satisfactory regulation in the area of PMS services by third countries, within the framework of the human rights conditionality clauses included in its international trade and cooperation agreements.

[16] Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Business and Human Rights: Further steps toward the operationalization of the "protect, respect and remedy" framework, A/HRC/14/27, 9 April 2010.

11d. A PMSC clause in international agreements with third States should include the commitment to cooperate and to enhance compliance by PMSCs with HRL and IHL.

12. EU regulatory measures should apply in the event that PMSCs are employed to protect merchant shipping in countering piracy, in self-defence and in conformity with HRL, IHL, and the international law of the sea.

13. The EU regulatory measures should be without prejudice to more stringent measures that Member States may adopt or maintain, consistently with international law and EU law, for the regulation and supervision of PMSCs and their services.