



Strasbourg, 17 March 2025

CDL-AD(2025)017

Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**SECRETARIAT MEMORANDUM**

**COMMENTS**  
**ON PACE RECOMMENDATION 2289 (2025)**  
**ON “ADDRESSING RISKS TO HUMAN RIGHTS**  
**AND THE RULE OF LAW POSED BY MERCENARIES**  
**AND PRIVATE MILITARY AND SECURITY COMPANIES:**  
**A CALL FOR COMPREHENSIVE REGULATION”**

**in view of the preparation of the Committee of Ministers’ reply**

**Endorsed by the Venice Commission**  
**at its 142nd Plenary Session**  
**(Venice, 14-15 March 2025)**

1. On 28 January 2025, the Parliamentary Assembly of the Council of Europe (PACE) adopted Recommendation 2289(2025) on “Addressing risks to human rights and the rule of law posed by mercenaries and private military and security companies: a call for comprehensive regulation”.<sup>1</sup> PACE reiterated its deep concern over the risks to human rights and the rule of law posed by the increasing use of private military and security companies (“PMSCs”). Accordingly, it called for comprehensive regulation to ensure accountability and victim redress and:

- a) invited the Committee of Ministers to examine the feasibility of drawing up a Council of Europe convention governing the use of PMSCs; and
- b) recommended that the Committee of Ministers:
  - (i) endorse, on behalf of the Council of Europe, the Montreux Document on pertinent international legal obligations and good practices for States related to operations of PMSCs during armed conflicts;
  - (ii) pending the adoption of a convention, draw up a draft recommendation to member States, focused on mitigating risks to human rights, democracy and the rule of law posed by private military and security companies; and
  - (iii) intensify political dialogue with the United Nations, in line with the Reykjavik Declaration, by ensuring that the Council of Europe contributes to the open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies.

2. The Commission had addressed these matters in its 2009 Report on private military and security firms and erosion of the State monopoly on the use of force,<sup>2</sup> which followed PACE Recommendation 1858(2009) on “Private military and security firms and the erosion of the state monopoly on the use of force”<sup>3</sup> and its proposal to draw up a Council of Europe treaty aimed at regulating the relations of the Council of Europe member states with PMSCs and laying down minimum standards for the activity of these private companies. The Commission shared PACE’s view that scarcely regulated operation of PMSCs poses grave risks to democracy, the rule of law and the protection of human rights. While expressing some concerns about the feasibility of the preparation of a Council of Europe treaty, it identified certain subjects which could be the object of a Committee of Ministers recommendation: (i) the endorsement of the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict;<sup>4</sup> (ii) the review of national laws of CoE member states dealing with registration/licensing of PMSCs, to examine whether these provide a proper degree of regulation of the extraterritorial activities of PMSCs; (iii) the review of national laws of CoE member states, to determine whether there was criminal jurisdiction over serious offences committed by personnel of PMSCs, at least where these personnel were nationals of the State in question; and (iv) the review of the civil law systems of CoE member states to determine whether it was possible to make claims for damages for extraterritorial civil wrongdoing against PMSCs incorporated in the State, and possibly even their foreign-incorporated subsidiaries, and if not, to consider enacting appropriate legislation on the issue.

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<sup>1</sup> PACE, [Recommendation 2289\(2025\)](#), *Addressing risks to human rights and the rule of law posed by mercenaries and private military and security companies: a call for comprehensive regulation*.

<sup>2</sup> Venice Commission, [CDL-AD\(2009\)038](#), *Report on private military and security firms and erosion of the State monopoly on the use of force* (“2009 Report”).

<sup>3</sup> PACE, [Recommendation 1858\(2009\)](#), *Private military and security firms and erosion of the state monopoly on the use of force*.

<sup>4</sup> The [Montreux Document](#) is a non-binding document resulting from a joint initiative launched by Switzerland and the International Committee of the Red Cross that seeks to provide guidance to governments to effectively regulate PMSCs.

3. The Venice Commission has been increasingly drawing attention to the issue of the scarcity of international regulation in governing the impact of private powers on human rights, democracy and the rule of law.<sup>5</sup> In particular, in its Rule of Law Checklist<sup>6</sup> the Venice Commission has indicated that the law should “guarantee that non-State entities which, fully or in part, have taken on traditionally public tasks, and whose actions and decisions have a similar impact on ordinary people as those of public authorities, are subject to the requirements of the Rule of Law and accountable in a manner comparable to those of public authorities”.<sup>7</sup> The Commission further warned against the risks of lack of accountability when outsourcing “core” State functions to private companies whose primary interest is making a profit.<sup>8</sup> In that regard, the Venice Commission believes that public authorities’ use of PMSCs to carry out State functions shall not reduce these authorities’ political accountability.

4. The Venice Commission expresses the following views on the proposals made by PACE in its Recommendation 2289(2025):

- a) It is in principle feasible to draw up a regional convention governing the use of PMSCs., even though the Venice Commission believes that the challenges it had identified in its 2009 Report are exacerbated by the current security situation in Europe.
- b)
  - i. The Commission supports the endorsement of the Montreux Document, which can be seen as a programme for future legislative action by States, with identifiable goals that can be followed-up on;<sup>9</sup>
  - ii. It agrees with PACE recommendation to draw up in priority a draft recommendation to member States focused on mitigating risks to human rights, democracy and the rule of law posed by private military and security companies. As underlined in its Report, such recommendation could address the need for review of national legislation dealing with: (i) registration/licensing of PMSCs, in particular insofar as the extraterritorial activities of these companies are concerned; (ii) the criminal jurisdiction for serious offences committed by personnel of PMSCs, at least where these personnel are nationals of the state in question; and (iii) civil-law claims for damages for extraterritorial civil wrongdoing committed by PMSCs incorporated in the state and possibly even their foreign-incorporated subsidiaries. In addition, such a recommendation could include a general obligation of visibility, transparency and public (non-judicial) accountability of PMSCs;
  - iii. It considers that the Council of Europe expertise in the field of human rights, democracy, and the rule of law can certainly assist the efforts of the United Nations in finding a global consensus on an international regulatory framework on the regulation, monitoring and oversight of the activities of PMSCs. In light of the multinational character of PMSCs, the Commission considers that a global instrument devoted to the issue under consideration would ensure comprehensive and uniform regulation of PMSCs, preventing jurisdiction shopping and establishing stronger accountability.<sup>10</sup>

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<sup>5</sup> In November 2024, an [international seminar on “Private Powers and the Rule of Law”](#) was organised in Madrid, in co-operation with the Spanish Centre for Constitutional and Political Studies (CEPC).

<sup>6</sup> Venice Commission, [CDL-AD\(2016\)007](#), *Rule of Law Checklist*.

<sup>7</sup> CDL-AD(2016)007, cited above, Section II.A.8; see also, [CDL-AD\(2011\)003rev](#), *Report on the Rule of Law*, § 66.

<sup>8</sup> Venice Commission, [CDL-AD\(2024\)043](#), *Report on a rule of law and human rights compliant regulation of spyware*, § 130.

<sup>9</sup> 2009 Report, § 65.

<sup>10</sup> 2009 Report, §§ 37, 51 and 59.

5. The Venice Commission remains at the disposal of the Committee of Ministers and the Parliamentary Assembly for possible further assistance on this matter.