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## Background report: Commodities

# **Third status report on the implementation of the recommendations**

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2 December 2016

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# 1 Introduction

## 1.1 Instructions

On 19 August 2015, the Federal Council approved the second status report on the implementation of the recommendations of the background report on commodities of 27 March 2013.<sup>1</sup> It expressed satisfaction with the progress achieved and emphasised that the approach adopted for the ongoing work had proven to be effective. It also reiterated the major importance it attached to the continued targeted implementation of the recommendations. Accordingly, the Federal Council instructed the interdepartmental platform on commodities to report again on the status of implementation of the recommendations by the end of 2016.

As was the case with the first and second status reports, the present report provides an overview of the status of implementation and the most important intermediary stages and objectives for each of the 17 recommendations. It focuses on developments since the publication of the second report of 19 August 2015. Numerous measures are incorporated in ongoing projects and do not exclusively concern the issue of commodities.

The interdepartmental platform on commodities will remain in place under the rotating leadership of the Federal Department of Economic Affairs, Education and Research (EAER), the Federal Department of Finance (FDF) and the Federal Department of Foreign Affairs (FDFA) and has been instructed by the Federal Council to carry out by November 2018 an evaluation of the situation in the Swiss commodities sector, including any possible need for state action with regard to competitiveness, integrity, environmental and other aspects.

## 1.2 Current status and progress made

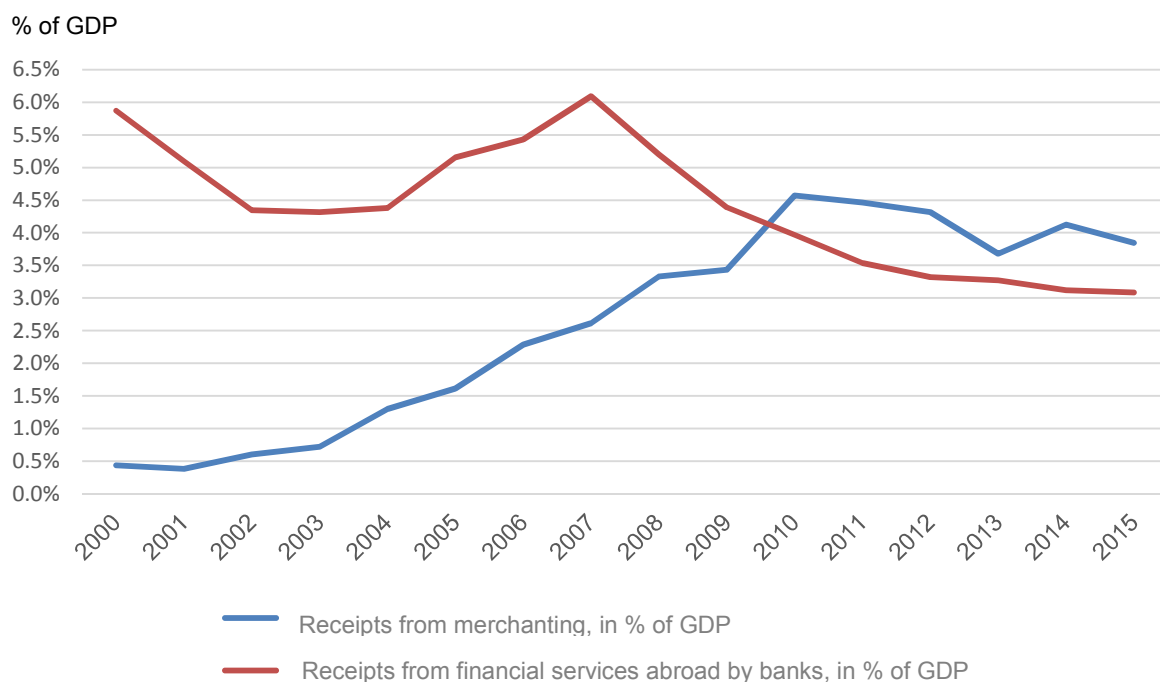
The commodities industry and especially commodities trading continue to be important for Switzerland's economy. This is reflected in part in the net receipts from merchanting – largely in commodities trading – which can be used as an approximation for the national economic importance of the commodities trading cluster (trading, shipping, transaction financing and inspection services). The world economic situation, specifically foreign demand for commodities and the prices of traded goods associated with this, is the main driver of revenues from merchanting. Receipts from merchanting in 2015 fell somewhat against 2014 and, according to a Swiss National Bank (SNB) survey, amount to CHF 24.84 billion (2014: CHF 26.55 billion).

Thus, in comparison with the high points between 2010 and 2012, receipts from merchanting in the last three years have been slightly lower but still make up approximately 3.8% of Swiss GDP (see figure 1). Figure 1 also shows that since 2010 receipts from merchanting have exceeded receipts from the cross-border commission and services business of the banks in Switzerland.

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<sup>1</sup> See press release of 19 August 2015: <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-58384.html>

**Figure 1: Receipts from merchanting and financial services abroad by banks, in % of GDP**



Source: SNB, own calculation

While at the international level, interest in the issue of commodities has subsided somewhat, for example in the G20<sup>2</sup> and in the international press (see recommendation 15), the commodities sector nevertheless remains at the focus of national attention, as can be seen, for example, in the interest shown by Parliament, the media and the launches of various people's initiatives that concern the commodities sector.<sup>3</sup>

In the view of the Federal Council, the thrust of the ongoing work – safeguarding or improving conditions and reducing risks, including reputational risks – has proven its worth. The Federal Council believes that it continues to make sense for Switzerland to participate actively in the further elaboration of multilateral standards in the commodities sector and to implement these standards – but to do so in an internationally coordinated way so that Swiss companies are not put at a disadvantage in the tight competition between locations. Against this backdrop, Switzerland should continue to work towards a level playing field at the international level, including fair tax competition and consistent implementation of regulatory standards.

The present report shows that since the last reporting period, further important progress has been achieved in the areas of location promotion, transparency, the responsibilities of companies and states, development policy, double taxation agreements and transfer pricing, as well as reputational risk, and that the dialogue on commodities with actors outside the Federal Administration and within the interdepartmental platform has advanced. Overall it can be stated that the status of implementation of many of the recommendations has progressed significantly, while in some individual cases the recommendations can already be considered

<sup>2</sup> See G20 Leaders' Communique Hangzhou Summit of 4–5 September 2016 [http://www.g20.org/English/Dynamic/201609/t20160906\\_3396.html](http://www.g20.org/English/Dynamic/201609/t20160906_3396.html).

<sup>3</sup> For example, the process of collecting signatures for the people's initiative 'For responsible business – for the protection of people and the environment' (Responsible Business Initiative) started on 21 April 2015. The initiative was submitted on 10 October 2016.

to be fulfilled. Other recommendations are more of a permanent nature and their degree of implementation is more difficult to measure. Some other topics, for instance in relation to the environment, require more specific development and will be able to build on the progress achieved. The Federal Council is confident that the recommendations will largely be implemented within the next one to two years.

## 2 Implementation of the recommendations

### 2.1 Attractiveness as a business location

**Recommendation 1:** *Switzerland should continue in its efforts to ensure that overall political, economic and legal conditions make it an attractive and reliable location for doing business in all sectors, including the commodities industry. The objective is to maintain Switzerland's prominent position as a competitive, transparent, and socially responsible merchandising centre and to sustainably secure the significant contributions in added value that the commodity companies make to Switzerland's overall economy. In the dialogue with the EU on corporate taxation, a solution should be found that preserves Switzerland's tax competitiveness as a business location, maintains budgetary balance in the cantons and the Confederation, and, at the same time, attains to a higher degree of international acceptance.*

**Recommendation 2:** *Switzerland should, as a matter of principle, implement existing multi-lateral standards for the commodities industry. When introducing its own regulatory provisions, care should be taken to make certain that the measures have been agreed upon multilaterally so that they do not negatively influence overall conditions for companies based in Switzerland, as compared with those in competing business locations. At the international level, Switzerland should work actively both in the drafting and in the implementation of regulatory standards to make certain that they create the conditions for a level playing field worldwide.*

#### Overall conditions

The Federal Council actively promotes attractive and reliable political, economic and legal conditions in Switzerland without preference for or prejudice against any sector. In this context, in June 2016, it approved the 'New growth policy for 2016–2019'<sup>4</sup> which contains 14 measures to improve the overall conditions for ensuring sustainable economic growth and accords special importance to maintaining and further developing Switzerland's bilateral relations with the EU. Other key areas of action include the development of suitable framework conditions and conditions for competition in the IT sector, easing the administrative burden, facilitating imports and maintaining a brake on debt through the 2017-2019 Stabilisation Programme.

#### Third series of corporate tax reforms

Parliament adopted the law on the reform of corporate taxation (CTR III) in the 2016 summer session.<sup>5</sup> Certain tax regimes (domiciliary, mixed, holding and principal companies and Swiss finance branches) that are not in keeping with international standards are to be abolished as part of the CTR III. Moreover, a standard-compliant patent box, for instance, is to be introduced at cantonal level. The cantons are additionally to be able to make provision for higher deductions for research and development expenditure. An interest-adjusted profit tax

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<sup>4</sup> See press release <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-62351.html> (de, fr, it).

<sup>5</sup> See press release <https://www.efd.admin.ch/efd/en/home/themen/steuern/steuern-national/third-series-of-corporate-tax-reforms--ctr-iii-.html>.

on above-average levels of equity capital is to be introduced at federal level, and the cantons are to have the option of introducing such a tax too provided they also regulate the amount and method for the partial taxation of distributed profits. The cantons can additionally envisage general profit tax reductions. A referendum will be held on the CTR III on 12 February 2017. The earliest the reform could enter into force is 1 January 2019.

The measures introduced with the CTR III reform would also affect companies operating in the international commodities sector, which often have a cantonal tax status.

## 2.2 Transparency

### Recommendation 3

**Recommendation 3:** *With regard to the IOSCO Principles for the Regulation and Supervision of Commodity Derivatives Markets, the FDF, working together with the FINMA, should conduct an analysis as to whether any action is required. Their findings should be taken into account, insofar as possible, as part of the revision of the regime governing off-exchange traded derivatives (OTC derivatives) currently being undertaken. In implementing the reforms of the OTC derivative markets, care should be taken to ensure, insofar as possible, that hedging transactions by commodity traders are not rendered more difficult and that Swiss commodity companies are not prejudiced in their economic interests to any greater extent than their counterparts in the EU or the USA.*

The Financial Market Infrastructure Act (FinMIA)<sup>6</sup> and the Financial Market Infrastructure Ordinance (FinMIO) came into effect on 1 January 2016.<sup>7</sup> The date of application of the various duties (e.g. clearing and reporting duties) depends on the transitional periods defined as well as on FINMA decisions (e.g. recognition of corresponding financial market infrastructures).

In the FINMA Guidance 01/2016 issued at the start of July 2016, FINMA extended the deadline for the application of the exchange of collateral rules to the date from which the corresponding future duty in the EU enters into force. FINMA is thereby seeking to align the deadlines with those of the EU and thus with the international standards in this regard. It is still unclear when this duty will enter into force in the EU. All counterparties, including commodities companies, can make use of this deadline extension.

In line with developments in the EU, the Federal Council likewise decided at the end of June 2016 to extend the transitional periods for financial market infrastructures to fulfil various new duties by one year, bringing it to 1 January 2018.<sup>8</sup> These transitional periods were based on the date on which the corresponding provisions in the EU were to become effective according to the original schedule for the EU's revised Markets in Financial Instruments Directive (MiFID II). This will prevent disadvantages from arising for Swiss companies because of different regulations. In addition, the deadline extension will enable FINMA to take appropriate account of the EU specifications when preparing its implementing regulations. Moreover, market participants will be given more time to adjust their systems and processes to the new rules.

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<sup>6</sup> Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (SR 958.1)

<sup>7</sup> See press release [https://www.efd.admin.ch/efd/en/home/dokumentation/nsb-news\\_list.msg-id-59647.html](https://www.efd.admin.ch/efd/en/home/dokumentation/nsb-news_list.msg-id-59647.html).

<sup>8</sup> See press release [https://www.efd.admin.ch/efd/en/home/dokumentation/nsb-news\\_list.msg-id-62434.html](https://www.efd.admin.ch/efd/en/home/dokumentation/nsb-news_list.msg-id-62434.html).

## Recommendation 4

**Recommendation 4:** *The regime for combating illegal financial flows should be reviewed on a regular basis and, where called for in the face of new risks that may also arise as a result of unlawful gains from commodity dealing, be adapted accordingly. As part of the revision now underway for implementation of the revised FATF recommendations, measures are proposed to further strengthen the regime in place for combating money laundering so that money-laundering abuses within the commodities industry can also be prevented.*

### Combating money laundering

The last component of the measures that were introduced with the Federal Act of 12 December 2014 for implementing the Revised Financial Action Task Force (FATF) Recommendations of 2012 entered into force on 1 January 2016. The Act boosts the effectiveness of Switzerland's anti-money laundering system.

Switzerland's compliance with the FATF standards was assessed from the end of 2015 within the framework of a regular peer review process. This was the fourth FATF mutual evaluation. Particularly the revised standards from 2012 formed the basis for this assessment. Unlike the third review round, the focus was no longer on technical compliance, but rather on the effectiveness of the measures taken. The evaluation report contains in particular an opinion on the Swiss authorities' understanding of the risks of money laundering and terrorist financing in Switzerland, as well as on the measures taken to deal with the risks identified.

The report also gives an overall assessment of the implementation of the preventive measures in the financial sector and other sectors, the transparency of legal entities and beneficial owners, and Switzerland's international cooperation. During their visits to Switzerland in February and March 2016, the assessors held extensive talks with local authorities and representatives of the private sector. The evaluation report on Switzerland was discussed and adopted at the FATF plenary meeting on 17 to 21 October 2016. It will be published at the end of 2016.

### Report on illicit financial flows from developing countries

The Federal Council published a report on illicit financial flows (IFF) from developing countries on 12 October 2016.<sup>9</sup> The report provides an overview of measures that counter the cross-border movement of capital in connection with illegal and unfair activities such as money laundering, corruption, tax evasion and tax avoidance in the latest sense (aggressive tax planning). With regard to the commodities sector, it is worth noting in particular the more stringent transparency provisions. The scale of illicit financial flows is significant and constitutes an impediment to sustainable development. The international community has recognised that illicit financial flows can be curbed only with an internationally coordinated approach and has responded with a number of measures such as the issuance of standards and recommendations. Switzerland supports the international measures, is aware of the challenges and is willing to remain actively involved in devising solutions.

### Combating corruption

An Anti-Corruption Summit was held in London on 12 May 2016 which was convened and led personally by the then prime minister David Cameron. In addition to the G20 members, countries with proven expertise in and/or the political will to fight corruption were invited, including Switzerland, which was represented by Federal Councillor Didier Burkhalter. The joint communiqué, which was adopted by all the participating states at the summit, sees in-

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<sup>9</sup> See press release <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-64112.html>.

creased transparency as one of the key factors for combating corruption, primarily with regard to beneficial owners of legal persons and other legal constructs, including trusts. More transparency, however, was also called for in tax matters, public procurement, sport, and commodities extraction. With regard to commodities trading, which was not explicitly mentioned in the summit communiqué, Switzerland undertook in the country statement it made in its individual commitment to look into possibilities for global transparency and reporting standards together with other actors at the international level. To this end, the UK conducted initial informal exploratory talks with interested countries, including Switzerland, in the follow-up to the summit. Major countries in international commodities trading, such as the US and Singapore, did not make any declaration of intent in their country statements with regard to global transparency and reporting standards in commodities trading.

#### Freezing and restitution of illicitly obtained assets of foreign politically exposed persons

The Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (FAA) was adopted by Parliament in December 2015.<sup>10</sup> It is designed to be applied in cases where leading figures enrich themselves through corruption or other criminal means and deposit these illicitly acquired assets in financial centres abroad. The act governs the freezing, confiscation and restitution of the assets of foreign politically exposed persons in those cases that cannot be resolved on the basis of the Federal Act on International Mutual Assistance in Criminal Matters.

It also provides for targeted measures to support countries of origin in their efforts to recover illicitly obtained assets, especially through legal counselling and the secondment of experts. The solution chosen allows the preventive freezing of assets to support any efforts to pursue mutual legal assistance. In cases where all legal assistance procedures have been exhausted without success, the Federal Council can initiate the confiscation and restitution procedures provided for in the FAA. The Federal Council set the date for the FAA and its corresponding ordinances to come into effect on 1 July 2016. With this Switzerland has strengthened the domestic legal framework to ensure the comprehensive regulation of illicitly acquired assets up to the point of their restitution.

#### **Recommendation 5**

***Recommendation 5: Switzerland should actively support the discussion in the OECD on possible ways of curbing tax avoidance and review implementation of the results in Switzerland. In that context, it is also important that fundamental legal principles be respected and that a level playing field in competition in the domains of taxation and subsidies be assured.***

The Federal Council agreed to the acceptance of all BEPS project final reports on 11 September 2015. With the Federal Council's acceptance, Switzerland undertook to implement the BEPS outcomes in the form of minimum standards (e.g. spontaneous exchange of information on rulings, automatic exchange of country-by-country reports, preferential taxation for revenue from intellectual property, etc.).

It is important for Switzerland that a level playing field be ensured and that all countries that have undertaken to do so implement the BEPS outcomes (minimum standards) uniformly and comprehensively. Switzerland is also committed to ensuring that countries that are not members of the OECD or G20 participate in the inclusive framework. Concerning the BEPS project outcomes that are not in the form of minimum standards, the Federal Council has instructed the FDF to analyse the amendment of Swiss corporate tax law in the light of international developments.

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<sup>10</sup> BBI 2015 9557



## Recommendation 6

**Recommendation 6:** *The G20 initiatives to increase transparency with regard to prices and quantities in the physical commodities markets should be supported in multilateral forums.*

In 2016, for the second time, Switzerland attended the meetings of G20 finance ministers and central bank governors (Finance Track) at the invitation of the Chinese presidency. The first time was in 2013. The Finance Track concentrates on economic, monetary and financial issues. Switzerland also participated actively in the corresponding working groups and preparatory meetings. In the process, it was found that topics regarding commodities sector regulation or transparency play no role in the G20 at present. Although energy issues, among other things, were also discussed outside the Finance Track, e.g. at a meeting of G20 energy ministers in June 2016, to which Switzerland was not invited, the focus was mainly on topics such as the role of renewable energy sources on the road to a cleaner energy future, access to energy, energy efficiency and energy security. With regard to market transparency, reference was made solely to existing initiatives and guiding principles such as the Joint Organisations Data Initiative (JODI) and the principles for price reporting agencies (PRAs) issued by the International Organization of Securities Commissions (IOSCO).

## Recommendation 7

**Recommendation 7:** *Switzerland should strengthen its commitment to the Extractive Industries Transparency Initiative (EITI), and actively work to enhance the influence of the EITI. In particular, Switzerland should express its support, in principle, for the proposals for reforming the EITI that are currently being discussed. These relate, among other things, to reporting requirements on financial flows on a project-specific basis and on sales by national oil companies to commodity trading companies (including those domiciled in Switzerland). At the same time, the proposals aim, while taking into account the potential sensitivity of certain business information, to promote the transparency of government contacts through the disclosure of extraction agreements between governments and commodity companies.*

The 30th Board Meeting of the Extractive Industry Transparency Initiative (EITI) took place in Bern on 21 and 22 October 2015 at Switzerland's invitation. At this event Switzerland and the EITI organised a symposium for governments, commodities companies and civil society organisations with the aim of taking the discussion on the issue of transparency in commodities trading to a deeper level. While all the interest groups agreed on the need for more transparency in commodities trading, opinions diverged on how it can be achieved in concrete terms. The EITI decided to set up a mixed working group to carry out an in-depth study on the subject and by means of pilot projects to test how transparency in commodities trading can be promoted within the EITI. Switzerland takes an active part in this working group and provides financial support for the pilot projects.

A meeting of EITI members took place in Lima in February 2016 at which the members elected a new chairperson, the former Swedish Prime Minister Fredrik Reinfeldt, and a new board. In addition, the standard was amended to make disclosure of the beneficial owners of active commodities companies in countries implementing EITI compulsory as from 2020.

Fifty-one commodities-extracting countries are currently implementing the EITI standard on a voluntary basis. Three new countries, including Germany, have joined since the last report. Australia and the Netherlands have also announced that they will implement the standard. Swiss foreign policy has actively supported the EITI's efforts to mobilise other countries to implement the standard. The EITI question has thus been systematically addressed in meetings with governments of developing countries with commodities-extraction industries.

Switzerland is planning to renew its financial support for the 2017–2020 period in the coming months. As from July 2017, Switzerland will represent a voting group with the European Commission, France, Germany, the Netherlands and Italy on the EITI board for one year.

## Recommendation 8

**Recommendation 8:** *The consequences of a potential introduction of transparency requirements – similar to those of the USA and the EU – for the Swiss commodity sector should be examined – and the drafting of a consultation draft should be considered. Switzerland should, moreover, advocate internationally a global standard that foresees transparency requirements that are clearly understandable and as similar as possible for all companies active in the extraction of resources.*

On 4 December 2015, the Federal Council took note of the findings of the consultation procedure on the revision of Swiss company law, in which provisions are to be introduced to improve transparency with regard to payments by commodities companies to government agencies. It also fixed the main points of the dispatch to Parliament.<sup>11</sup> The proposal draws on EU law and is not intended to go further. The provisions have been systematically integrated into accounting law. The regulation is to apply exclusively to companies that are subject by law to regular audits and are active in commodities extraction, i.e. of minerals, crude oil, natural gas, and the exploitation or felling of timber in primary forests. This only affects large companies and those listed on stock exchanges.

These companies will be required to disclose payments of CHF 100,000 and above that they make to government agencies in any one fiscal year in a report to be published electronically. In addition, criminal provisions will sanction any violation of the regulations on reporting payments to government agencies. On 23 November 2016, the Federal Council adopted the dispatch for Parliament regarding the revision of Swiss company law.<sup>12</sup> Parliament will start discussion of the revision of the law in the first half of 2017.

At the international level Switzerland is working to ensure the broadest possible implementation especially on its competitors' markets. In the US the corresponding implementation provisions to the Dodd-Frank Act were published on 27 June 2016, which obligate commodities-extracting companies to disclose payments made to government agencies as from September 2017. The regulation is the equivalent of the disclosure obligation in the EU accounting guidelines of 2013 and to the Extractive Sector Transparency Measures Act in Canada of 2014.

## Recommendation 9

**Recommendation 9:** *Switzerland should continue to actively promote international initiatives for increasing the transparency of product flows – such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas – and should implement the standards adopted. In addition, Switzerland should launch this year, as planned, the “Better Gold Initiative” for the creation of a value chain for the fair and sustainable extraction and trading of gold. Switzerland’s foreign gold trade statistics should be broken down on a country-by-country basis in order to increase transparency in this domain. Concrete proposals for the publication of statistics should be worked out by the working group appointed by the FDF.*

### OECD Due Diligence Guidance for Responsible Supply Chains

Switzerland continues to provide financial support for the implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. As a result it is represented in the multi-stakeholder group that steers this

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<sup>11</sup> See [https://www.bj.admin.ch/bj/en/home/aktuell/news/2015/ref\\_2015-12-04.html](https://www.bj.admin.ch/bj/en/home/aktuell/news/2015/ref_2015-12-04.html). The consultation lasted from 28 November 2014 until 15 March 2015 (see <http://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2014/2014-11-28.html>).

<sup>12</sup> See press release <http://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2016/2016-11-232.html>.

OECD process and it brings its concerns to this forum for discussion. At the 10th Forum on Responsible Mineral Supply Chains in May 2016 in Paris, the guidance was confirmed as the most important international instrument for ensuring a responsible mineral-supply chain from conflict and high-risk zones. It was also pointed out that the guidance is applicable to all minerals throughout the world. It provides a starting point for the draft regulations on the compulsory certification of imports of certain minerals from conflict zones that were adopted by the EU in June 2016 in a political declaration.<sup>13</sup> The guidance is also gaining traction in non-OECD states such as China, India and Colombia. The OECD is planning to develop a manual on risks in connection with the production and trade in natural resources to support companies' implementation of the guidance. SECO has informed companies at meetings and events and in bilateral contacts about the guidance, and in this way promotes its implementation.

### Better Gold Initiative

A value chain for gold produced by small Peruvian mining operations using responsible methods has been created thanks to the Better Gold Initiative, which was launched in 2013. The Better Gold Initiative is a public-private partnership between SECO and the Swiss Better Gold Association, which brings together the main actors of the Swiss gold market, including refiners, goldsmiths, the watch and clock industry, and financial institutions. Since 2013, more than one tonne of gold from certified Peruvian mines has been imported into Switzerland and sold at a fair price. Switzerland is also indirectly supporting the activities of the Better Gold Initiative with the ratification and national implementation of the Minamata Convention on Mercury.

The current phase ends in 2016. The second phase is currently in preparation and the implementation is expected to start in early 2017. During the second phase, the initiative is expected to be expanded to include Colombia and Bolivia and to substantially increase the trading volume in gold produced by responsible small-scale mining operations.

### Gold trading statistics

The recommendation concerning gold-trading statistics can be considered to be fulfilled.<sup>14</sup> By publishing imports and exports of gold, silver and coins by country it has been possible to harmonise the publication of foreign trade statistics with current international standards in addition to enhancing transparency. As a result the asymmetries between Swiss trade statistics and those of our trading partners have been significantly reduced at least for imports.

### International Resource Panel

This year the UNEP International Resource Panel<sup>15</sup> started work in the area of commodities governance. Switzerland is closely monitoring the work because it is committed to strengthening ecological responsibility in the commodities sector, as set out in the 2013 Green Economy Action Plan and its further development in the period from 2016 to 2019.<sup>16</sup> Furthermore, in a resolution of the United Nations Environment Assembly (UNEA), the panel has been invited to draft reports by 2019 on the status, trends and prospects regarding the use of natural resources.

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<sup>13</sup> In June 2016, the EU adopted, on the basis of a political declaration, a draft of regulation on the compulsory certification of imports of tin, tantalum, wolfram and gold from conflict zones and on a reporting obligation for companies that process minerals (see: [http://europa.eu/rapid/press-release\\_IP-16-2231\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2231_en.htm)).

<sup>14</sup> See the Second status report on the implementation of the recommendations of the Background Report: Commodities, p. 12 (find at <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-58384.html>.)

<sup>15</sup> See [www.unep.org/resourcepanel/](http://www.unep.org/resourcepanel/).

<sup>16</sup> See <http://www.bafu.admin.ch/wirtschaft/15556/15557/15562/index.html?lang=en>.

## 2.3 Corporate responsibility and government responsibility

### Recommendation 10

**Recommendation 10:** *Switzerland should continue in its commitment to promote corporate social responsibility and intensify the multi-stakeholder dialogue being conducted by the FDFA and the EAER on the UN Guiding Principles on Business and Human Rights. In conformity with Postulate 12.3503, "A Ruggie Strategy for Switzerland"<sup>17</sup>, as submitted by von Graffenried, a review of the existing regime should be conducted, the gaps identified, and measures needed for implementation of the UN Guiding Principles defined. Swiss companies should, in keeping with the principles of corporate social responsibility, exercise due diligence with regard to human rights and the environment – particularly when operating in fragile states – and institute measures to minimise risks, contributing thus to the positive image of the companies themselves and of Switzerland as a business location. Switzerland should focus its efforts to implement its state duties and promote corporate responsibilities within both resource extraction and merchanting.*

Since July 2015, the National Action Plan for Business and Human Rights and the reply to Postulate 12.3503 'A Ruggie Strategy for Switzerland' have been completely reworked and resubmitted for consultation with actors both within and outside the Federal Administration. In particular, priority has been accorded to ensuring that the action plan meets as closely as possible the recommendations of the UN Working Group for Business and Human Rights and that it addresses the challenges for SMEs in implementing the UN Guiding Principles on Business and Human Rights. The National Action Plan is expected to be approved by the Federal Council by the end of this year.

Switzerland has continued its efforts to strengthen and publicise the Voluntary Principles on Security and Human Rights (VPs) in the host countries of commodities companies. The aim is to promote implementation of the VPs locally and prompt these states to join the initiative. In the Democratic Republic of the Congo (DRC) and Peru especially, Switzerland has assumed a leading role in disseminating the VPs, and is promoting dialogue between mining companies, authorities, and civil society on human rights and security. Switzerland has familiarised local and national governments, security forces and civil society with the VPs through various conferences, workshops and training programmes.

Since Glencore joined the VP initiative, Switzerland has monitored and supported its implementation through this company in various ways, including through visits to mining projects and by promoting dialogue between companies and civil society. In addition, Switzerland is facilitating the development of tools for use by companies in the implementation of the VPs in their activities. As a member of the VP steering committee, Switzerland has taken an active part in the initiative's discussions on reforming governance with the aim of enhancing transparency and the accountability of companies in the initiative and promoting the VPs' concrete implementation.

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<sup>17</sup> See the Federal Council's response to Postulate 12.3503 submitted by von Graffenried: [http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch\\_id=20123503](http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20123503) (German); [http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?esch\\_id=20123503](http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?esch_id=20123503) (French).

## Recommendation 11

**Recommendation 11:** *A working group, in cooperation with representatives of the stakeholders involved (specifically, the cantons, as well as companies and NGOs) should prepare proposals for corporate social responsibility standards (including implementation mechanisms) for the commodity merchanting industry. Based on those proposals, consideration should be given to the submission of initiatives and international guidelines – designed, specifically, also to deal with ecological effects – before the appropriate international bodies.*

The various parties have agreed to develop a guidance on implementing the UN Guiding Principles on Business and Human Rights in the commodities sector as a first step. An advisory committee made up of representatives of NGOs, the private sector, the FDFA and SECO has been established to assist in the various phases of developing the guidance. The Institute for Business and Human Rights, which is based in London, has almost finished the task of mapping the sector and the specific challenges it faces in terms of respect for human rights.

The guidance for commodities companies has been developed on the basis of this, and is expected to contain, among other things, recommendations on human rights due diligence and reporting. Publication of the guidance is planned for the first half of 2017.

## Recommendation 12

**Recommendation 12:** *Based on the results of the comparative study of other legal regimes (Foreign Affairs Committee of the National Council, Postulate 12.3980), a review should be conducted to determine whether the international legal environment is such that there is a need for Switzerland to take legislative action.*

On 28 May 2014, the Federal Council approved the report drafted in response to Parliamentary Postulate 12.3980 entitled 'Comparative Law Report. Human Rights and Environmental Due Diligence in connection with International Activities of Swiss Corporations'<sup>18</sup>.

In its position on Motion 14.3671<sup>19</sup> entitled 'Implementation of the Comparative Law Report by the Federal Council on the Human Rights and Environmental Responsibility of Corporations' the Federal Council recommended that the motion be rejected because it went further than the recently enacted EU regulation on the issue.<sup>20</sup> The Federal Council stated that it was prepared to draft a consultation proposal on the obligation to report on non-financial information.

This should be based on the corresponding EU regulation in order to prevent any disadvantages to Switzerland as a business location. This consultation proposal should, however, be studied at a later point in time and with better knowledge of the implementation work in the EU member states. The National Council rejected Motion 14.3671 on 11 March 2015.

In this context reference should also be made to the people's initiative "For responsible business – for the protection of people and the environment" (Responsible Business Initiative) of 30 March 2015. Collection of signatures began on 21 April 2015. The initiative was submitted on 10 October 2016.

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<sup>18</sup> See also the Federal Council's reply to Postulate 12.3980 of the FAC-N: [http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch\\_id=20123980](http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20123980).(de,fr, it)

<sup>19</sup> See [http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch\\_id=20143671](http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20143671) (de, fr, it)

<sup>20</sup> Directive 2014/95/EU (<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0095&from=DE>)

## 2.4 Development policy

### Recommendation 13

**Recommendation 13:** *Switzerland should continue in its existing bilateral and global commitment to development cooperation and cooperation with Eastern Europe for the promotion of good governance and should intensify its efforts in specific areas, such as those of democratic monitoring mechanisms, government capacity building, and efficient management of resource extraction revenues. This will fundamentally strengthen the abilities of resource-producing countries to reduce such risks as money-laundering, corruption, the flight of capital, and tax avoidance.*

#### Global initiatives and thematic priorities

Given the positive results achieved to date, in 2016 Switzerland renewed its support for the Managing Natural Resource Wealth programme of the International Monetary Fund for a second phase. Switzerland contributes CHF 7 million to a total budget of USD 30 million. The programme assists developing countries with substantial commodities reserves in meeting the specific macroeconomic challenges that arise in connection with commodities mining. The questions dealt with include tax regimes, monetary policy and public finance.

SECO has been supporting the Responsible Mining Index since September 2015. The index carries out regular independent assessments of the world's largest mining companies with regard to their economic, social and ecological responsibilities. Publishing evaluations and models on best practices creates incentives to pursue efforts to improve the business practices of mining companies. The Responsible Mining Index will be published for the first time in the second half of 2017.

At the multilateral level the SDC is working to ensure that good practices for the return of dictators' illicitly acquired assets are developed and established internationally as far as possible in accordance with the instructions of the Addis Ababa Action Agenda (AAAA) and the UN Convention against Corruption (UNCAC). The SDC also supports its partner countries in setting up the necessary capacities for recovering stolen assets. To this end it continues to contribute to the International Center for Asset Recovery (ICAR), and in December 2015 renewed its collaboration for a further three years with the Stolen Asset Recovery (StAR) Initiative. It has also continued partnerships with the international organisations specialised in fighting corruption, Transparency International and U4 – Anti Corruption Resource Center.

In collaboration with the Swiss National Science Foundation, the SDC also launched a call for proposals for a research programme entitled Natural resource governance for sustainable development to study questions on commodities trading, investments in natural resources and on illegal and unethical financial flows (expected available funding: CHF 3-4 million)<sup>21</sup>. Lastly, as part of ongoing SDC partnerships, such as the Natural Resource Governance Institute, individual issues concerning commodities have been studied in depth.

#### Regional and bilateral initiatives

SECO has renewed the tax reform project in **Ghana** for the period from 2016 to 2022. The project also contains a component on building capacities for the taxation of the commodities industry.

In **Peru**, SECO has renewed its programme on strengthening finance administration which focuses in particular on reforms to strengthen budgetary and revenues planning. Volatility in commodities prices creates special challenges for Peru.

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<sup>21</sup> Call for proposals of the Swiss National Science Foundation of January 2016: Swiss Programme for Research on Global Issues for Development [http://www.r4d.ch/SiteCollectionDocuments/r4d\\_Call\\_AddThematicCall.pdf](http://www.r4d.ch/SiteCollectionDocuments/r4d_Call_AddThematicCall.pdf)

The Eurasia hub of the NGO Natural Resource Governance Institute, which is supported by SECO, has begun its work in Istanbul. A number of training courses have been given to raise the level of expertise of governments and civil society organisations in the area of commodities governance.

A partnership between SECO and the Collaborative Africa Budget Reform Initiative (CABRI) held a seminar on policy dialogue with regard to managing revenues in the commodities sector in Africa. CABRI published a position paper on this subject as part of the preparations for the seminar. In addition, CABRI carried out a finance-modelling course to test tax regimes using different parameters in order to select optimal tax regimes. The course is based on a model that the International Monetary Fund developed and published as part of the Managing Natural Wealth Programme.

The Sustainable Artisanal Mining Project in **Mongolia** is one of the SDC's oldest and most successful programmes in this sector. It made a decisive contribution to formalising and legalising artisanal mining in Mongolia – which provides more than 35,000 people living in rural areas with a livelihood. Today, more than 7,600 workers in artisanal mining have joined forces in 45 self-administered interest associations. There is also increasing international demand for this wealth of experience. The International Knowledge Hub and the Mongolian Knowledge Hub for non-industrial Artisanal and Small Scale Mining operations were developed and founded in 2015/16.

In **Mozambique**, the SDC supports non-governmental actors that enhance transparency in the mining sector by means of studies, analyses and debates. Priorities for the 2016–2017 period are: studies on the political, social and economic costs of corruption; training programmes for parliamentarians in connection with issues concerning the natural gas industry; and supporting rural populations in defending their land rights against big investors and negotiating fair agreements with foreign investors in connection with both agricultural projects and projects for crude oil and natural gas production.

In **Bolivia**, the SDC has strengthened its mining-related activities by consolidating its cooperation with SENARECOM, the authority responsible for the entire registration and supervision of mining companies. Geographical priorities have been set in a project on sustainable water resource management in mining areas, and work has started on setting up institutions.

In those **regions of West Africa where the SDC is active** (the four priority countries Niger, Mali, Burkina Faso and Chad, as well as the West African Economic and Monetary Union [UEMOA]), a key decision has been taken on the basis of relevant background studies to set up a long-term regional programme entitled Governance of the Use of Mineral and Fossil Commodities.

## 2.5 Double taxation agreements and transfer pricing

### Recommendation 14

**Recommendation 14:** *In keeping with the current policy of the Federal Council, the conclusion of TIEAs with developing countries should be taken into consideration, whereby, however, in the presence of economic interests, and for the prevention of double taxation, the conclusion of DTAs is to be given preference. DTAs and TIEAs are fully effective only where the partner country possesses the requisite government capacities.*

To date, Switzerland has signed tax information exchange agreements (TIEAs) with ten states and territories. Following the first three agreements with Jersey, Guernsey and the Isle of Man, four further TIEAs – with Andorra, Greenland, San Marino and the Seychelles – have

come into force<sup>22</sup> and have been applicable since 1 January 2016. Aside from the Seychelles, Switzerland signed a TIEA with two other developing countries, Grenada and Belize. Parliament approved both of those TIEAs on 17 June 2016. Moreover, Switzerland signed a TIEA with Brazil on 23 November 2015. The Federal Council adopted the dispatch on that TIEA on 23 March 2016 and submitted it to Parliament for approval.

Switzerland has expanded its network of agreements with emerging economies and developing countries also with regard to double taxation agreements (DTAs) containing an exchange of information clause in compliance with the OECD standard. For example, a DTA or protocol of amendment to the existing DTA with a standard-compliant form of exchange of information has been initialled with Bahrain, Ecuador, Kosovo, Kuwait, Zambia, Saudi Arabia and South Africa. The signing will follow as soon as possible. Furthermore, the DTAs with Argentina and Uzbekistan have entered into force and have been applicable since 1 January 2016.

The Federal Assembly approved the OECD/Council of Europe multilateral administrative assistance convention (Administrative Assistance Convention) in December 2015. Switzerland ratified the convention on 26 September 2016. It will enter into force on 1 January 2017. With the exchange of information upon request and the spontaneous exchange of information, the Administrative Assistance Convention makes two instruments available for implementing recommendation 14. The exchange of information upon request between the convention signatory states forms an additional legal basis for the exchange of information in accordance with the OECD standard, thereby considerably increasing the group of states with which tax-related information can be exchanged upon request.<sup>23</sup> The spontaneous exchange of information could likewise prove to be an effective means of procuring information. This means of forwarding information presupposes that the tax authorities themselves have to be active if they come across information that is likely to be of interest for another state. Particularly tax rulings should be exchanged with the spontaneous exchange of information.

With the entry into force of the Administrative Assistance Convention, numerous countries that export commodities will be able to exchange information in a standard-compliant manner with Switzerland upon request in the future or will be able to acquire tax-related information within the framework of the spontaneous exchange of information.

Finally, the Federal Council conducted a consultation on the proposed Federal Act on the Unilateral Application of the OECD Standard on the Exchange of Information (EoISA bill) from 22 October 2014 to 5 February 2015. This bill should supplement the measures already taken by the Federal Council to expand Switzerland's network of agreements that make provision for the standard-compliant exchange of information upon request. The significance of the introduction of a measure such as the EoISA bill is currently being reassessed based on the latest developments in the area of the exchange of information in tax matters, e.g. the imminent entry into force of the Administrative Assistance Convention.

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<sup>22</sup> The TIEAs entered into force on the following dates: 27.7.2015 (Andorra), 22.7.2015 (Greenland), 20.7.2015 (San Marino) and 10.8.2015 (Seychelles).

<sup>23</sup> With the entry into force of the Administrative Assistance Convention, Switzerland will be able to exchange information in a standard-compliant manner with 37 additional states and territories from 1 January 2017. The Administrative Assistance Convention supplements the existing DTAs in the case of 19 states. There is no bilateral tax agreement in the case of 18 states, which is why the Administrative Assistance Convention will create the legal basis for the first time. Overall, Switzerland will have a legal basis for the standard-compliant exchange of information in tax matters with 91 states from 1 January 2017 (47 existing standard-compliant DTAs, 7 existing standard-compliant TIEAs and 37 additional states with which the standard-compliant exchange of information in tax matters will be possible based on the Administrative Assistance Convention).



## 2.6 Reputational risks

### Recommendation 15

**Recommendation 15:** *Developments both in the political debate and in the public debate in the media, in Switzerland and abroad, should continue to be monitored so that potential risks to Switzerland's reputation or to its attractiveness as a business location can be recognised early. Specifically, Swiss representations abroad should devote greater attention to the issue in their reports and contribute to the gathering of more detailed information. In addition, measures should be taken to strengthen efforts to inform the public on Switzerland's commitment to preserving the integrity and the competitiveness of the commodities industry here.*

Since 2012, Presence Switzerland has carried out a media analysis each year to monitor reporting in Switzerland and abroad on commodities trading. The report has covered gold trading since 2013.

In 2015, there were fewer articles in the international press than in previous years both on commodities trading in general and with respect to Switzerland in particular. The main issues in 2015 were falling commodities prices and the resulting difficulties for commodities companies. The focus of media attention was on Glencore in particular. The proportion of articles on commodities trading in connection with human rights and environmental issues and on those featuring illegal activities has significantly fallen, amounting in 2015 to less than 2% of all reports on the subject.

In national media, reporting on commodities trading declined for the first time in 2011. The share of articles on illegal activities or human rights and environmental issues, however, has remained unchanged. Gold trading featured less in the leading international media outlets this year than last year, and references to Switzerland and to illegal activities were less frequent. In the Swiss media too there was less reporting on gold trading than in previous years.

Communication has been continued with the embassies on the question of corporate responsibility in relation to human rights, environmental issues and commodities-related issues. In several countries with active commodities industries, Swiss embassies have organised public events such as conferences and workshops on human rights issues in the commodities sector and publicised multi-stakeholder initiatives in this area where Switzerland is active.

For example, in Myanmar the Myanmar Centre for Responsible Business, which Switzerland supports, has carried out sector-wide impact assessments on the mining industry, the oil and gas sector, IT and tourism.

In addition, Switzerland is supporting two projects, the Myanmar Foreign Investment Tracking Project and the Iran Foreign Investment Tracking Project, of the Business and Human Rights Resource Centre, which publishes information on the investments of foreign companies in these two countries and their human rights commitment.

Switzerland is in regular contact with Swiss commodities companies and foreign NGOs, and observes how companies fulfil their human rights and environmental responsibilities, including by making field visits to mines in high-risk zones. Furthermore, Switzerland communicates its expectations regarding companies' human rights and environmental responsibilities as well as its activities in this field at public events in Switzerland, such as film festivals, panel discussions, training courses and seminars.

## 2.7 Dialogue with actors outside the Federal Administration and the interdepartmental platform on commodities

### Recommendations 16 and 17

**Recommendation 16:** *Contacts between the Departments, in their respective domains of responsibility, with the cantons as well as the industry (companies and industry associations) and NGOs, should continue, and be intensified, with the objective of identifying opportunities and risks and discussing common approaches to addressing these issues.*

**Recommendation 17:** *The interdepartmental platform on commodities should remain in function in order to assure the proper flow of and concentration of information within the Federal Administration, to monitor and provide early recognition of international and national developments, and to coordinate dialogue with the cantons, the industry, and NGOs. It ensures reporting.*

The dialogue between the Federal Administration and representatives of various groups has been further consolidated and, according to estimates, has significantly improved since the publication of the background report on commodities. This was made clear at the third and fourth 'Commodities Round Table', which took place at the invitation of the FDFA State Secretariat, the SIF and SECO in February and November 2016. At this year's Commodities Round Table, at which representatives of the cantons, companies, associations and NGOs took part, the discussions focused on regulation, transparency and human rights. Further round tables are planned on these and other topics, such as the environment.

An association of Swiss institutes of tertiary education supported by the SDC under the auspices of the Swiss Academy of Sciences has drafted two discussion papers and organised a seminar to raise the level of knowledge on the conditions and impact of commodities mining and trading.

The interdepartmental platform on commodities will be continued. The federal agencies concerned with the commodities issue – including FOEN, SFOE, FOJ, SDC, FCA, fedpol, FINMA, SECO, SIF, FDFA State Secretariat/Directorate of Political Affairs – meet under the rotating chairmanship of the SIF, SECO and the FDFA State Secretariat several times a year to share information and assess the current situation.