



---

## Background Report: Commodities

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

---

19 August 2015

## Table of contents

|          |                                                                                     |          |
|----------|-------------------------------------------------------------------------------------|----------|
| <b>1</b> | <b>Introduction.....</b>                                                            | <b>3</b> |
| 1.1      | Instructions .....                                                                  | 3        |
| 1.2      | Current status and progress made .....                                              | 3        |
| <b>2</b> | <b>Implementation of the recommendations .....</b>                                  | <b>4</b> |
| 2.1      | Attractiveness as a business location.....                                          | 4        |
|          | Recommendations 1 and 2 .....                                                       | 4        |
| 2.2      | Transparency.....                                                                   | 6        |
|          | Recommendation 3 .....                                                              | 6        |
|          | Recommendation 4 .....                                                              | 7        |
|          | Recommendation 5 .....                                                              | 8        |
|          | Recommendation 6 .....                                                              | 9        |
|          | Recommendation 7 .....                                                              | 9        |
|          | Recommendation 8 .....                                                              | 10       |
|          | Recommendation 9 .....                                                              | 11       |
| 2.3      | Corporate responsibility and government responsibility .....                        | 12       |
|          | Recommendation 10 .....                                                             | 12       |
|          | Recommendation 11 .....                                                             | 14       |
|          | Recommendation 12 .....                                                             | 15       |
| 2.4      | Development policy .....                                                            | 16       |
|          | Recommendation 13 .....                                                             | 16       |
| 2.5      | Double taxation agreements and transfer pricing.....                                | 18       |
|          | Recommendation 14 .....                                                             | 18       |
| 2.6      | Reputational risks .....                                                            | 19       |
|          | Recommendation 15 .....                                                             | 19       |
| 2.7      | Dialogue with actors outside the Confederation and interdepartmental platform ..... | 20       |
|          | Recommendations 16 and 17 .....                                                     | 20       |

# 1 Introduction

## 1.1 Instructions

On 26 March 2014, the Federal Council took note of the first status report on the implementation of the recommendations contained in the background report on commodities of 27 March 2013.<sup>1</sup> The Federal Council expressed its satisfaction with the progress made, and it emphasised that it attaches great importance to further targeted implementation of the recommendations. For this purpose, it instructed the interdepartmental platform on commodities to prepare another report by the end of August 2015.

As was the case for the first report, the present report provides an overview of the status of implementation and the most important intermediary stages and objectives achieved for each of the 17 recommendations. The focus is on the developments since the publication of the first report of 26 March 2014. The interdepartmental platform on commodities will remain in force under the rotating leadership of the Federal Department of Finance (FDF), the Federal Department of Economic Affairs, Education and Research (EAER) and the Federal Department of Foreign Affairs (FDFA) and has been instructed by the Federal Council to report again on the status of implementation of the recommendations by the end of 2016.

## 1.2 Current status and progress made

In light of lower commodity prices, interest in the subject of commodities has in general subsided somewhat at the international level, particularly in the G20.<sup>2</sup> At the national level, however, there continues to be a focus on the commodity sector, as the interest on the part of Parliament and the media shows, as well as pending or launched popular initiatives concerning the commodities sector.<sup>3</sup>

The commodity industry based in Switzerland continues to be of great importance to the Swiss national economy as well as to global commodity trading. While, due to general developments, the international competition among business locations tends to be getting tougher, Switzerland is doing comparatively well internationally in its efforts to ensure a location for commodity companies that is both competitive and strong on integrity – as Chapter 2 on the status of implementation of the recommendations shows.

With legislative projects that are still ongoing or that have recently been completed, Switzerland is implementing international standards – such as in regard to off-exchange traded derivatives or combating money laundering. It participates actively in the work of the OECD against base erosion and profit shifting by international companies, it supports international initiatives to combat corruption and increase transparency in the commodities sector, and it is engaged in development cooperation and the elaboration of new goals for the 2030 Agenda for Sustainable Development (previously referred to as the post-2015 agenda). With the launch of individual sector-specific measures such as the introduction of transparency provisions for resource extraction companies as part of the revision of the law on companies limited by shares – which will require the disclosure of payments to governments – Switzerland is one of the leading countries worldwide. Beyond this, additional work is under way to apply

---

<sup>1</sup> See press release of 26 March 2014: <https://www.news.admin.ch/message/index.html?lang=en&msg-id=52429>.

<sup>2</sup> For instance, the communiqué of the heads of state and government of the G20 countries at the Brisbane summit in November 2014 – which is considered an indicator of global political priorities – was limited to efficiency and cooperation in the field of energy.

<sup>3</sup> The popular initiative "No speculation on food commodities", which is currently being considered by Parliament, is being recommended by the Federal Council for rejection without a counterproposal. Additionally, signature gathering began on 21 April 2015 for the popular initiative "For responsible business – for the protection of people and the environment" (Responsible Business Initiative).

voluntary social responsibility standards to commodity trading companies, and the dialogue among the industry, the NGOs and the cantons has been further improved.

Meanwhile, the uncertainties about the further development of the economic conditions in Switzerland persist, which are of great importance not only, but also to the commodities sector. Of particular note are the implementation of the initiative on large-scale immigration as well as the third series of corporate tax reforms (see below). The conditions have also been aggravated by the stronger Swiss franc after the Swiss National Bank (SNB) abolished the exchange rate floor against the euro. Moreover, competition with other locations is still considerable. The Federal Council will continue to work to ensure attractive and reliable conditions in Switzerland.

In summary, further concrete steps were taken in regard to many of the recommendations, while other recommendations are of a permanent nature, making their degree of implementation more difficult to measure. In the view of the Federal Council, the thrust of the ongoing work – preservation and improvement of the conditions and reduction of the risks, including reputation risks – has proven its worth. The Federal Council believes 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 do not suffer from disadvantageous conditions in the context of intense competition among locations. Against this backdrop, Switzerland should continue to work toward a level playing field at the international level, including fair tax competition and consistent implementation of regulatory standards.

Current developments and progress will be discussed in detail below.

## 2 Implementation of the recommendations

### 2.1 Attractiveness as a business location

#### Recommendations 1 and 2

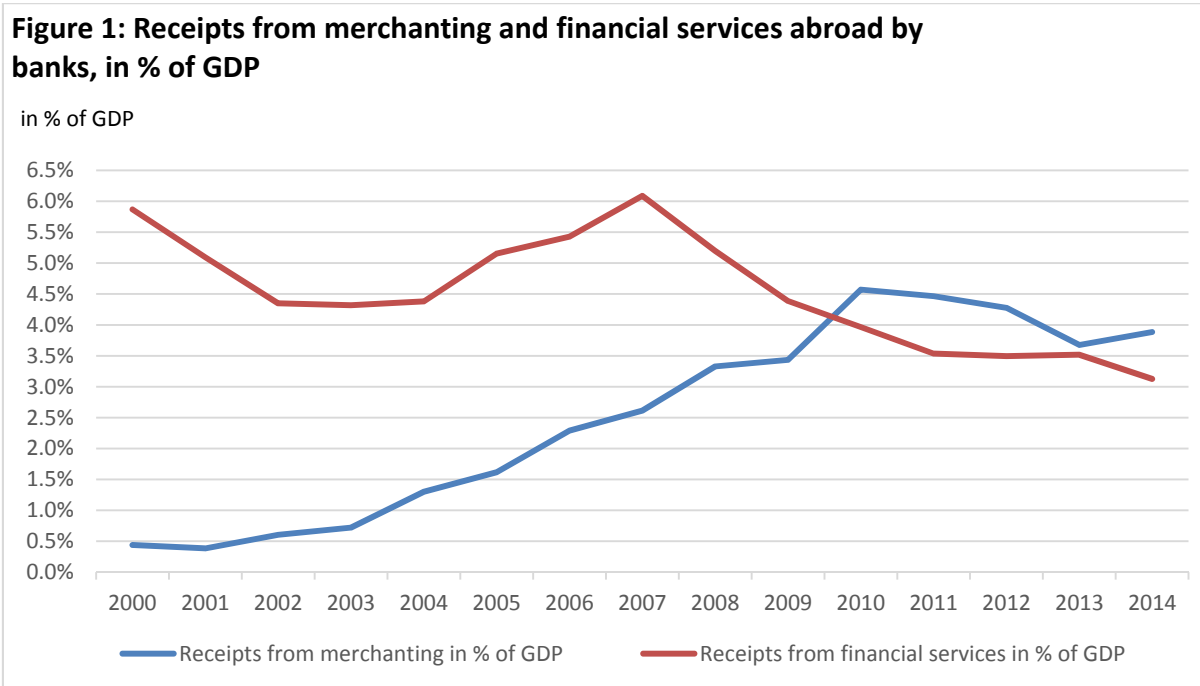
**Recommendation 1:** *Switzerland should continue in its efforts to ensure that overall political, economic and legal conditions make it an attractive and reliable location for doing business in all sectors, including the commodities industry. The objective is to maintain Switzerland's prominent position as a competitive, transparent, and socially responsible merchanting 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 multilateral 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.*

#### Development of the commodities sector and general conditions

The commodities sector continues to play an unabatedly important role for the national economy and financial centre in Switzerland. This is reflected in part in the net receipts from merchanting – largely in the commodities trade – which can be used as an approximation for the national economic importance of the commodity trading cluster (trading, but also ship-

ping, transaction financing and inspection services). According to statistics collected by the SNB, the receipts from merchanting were slightly lower in 2014 than in the record years between 2010 and 2012, but they still amount to CHF 25.2 billion, which corresponds to 3.9% of Swiss GDP (see figure 1). Due to the expanded data gathering method used by the SNB, receipts from merchanting are significantly higher than the estimates in earlier publications and in the background report on commodities. Figure 1 also shows that in 2010, merchanting replaced receipts from the cross-border commission and services business of Switzerland's banks as the top service exports category.



Source: SNB, Monthly Statistical Bulletin (April 2015), own calculation.

### Third series of corporate tax reforms (Corporate Tax Reform III)

On 22 September 2014, the Federal Council launched the consultation on the Corporate Tax Reform Act III (CTR III). The thrust of the proposal, namely to strengthen Switzerland as a business location while increasing its international acceptance, met with broad support.

Based on the result of the consultation, the Federal Council on 2 April 2015 defined the benchmarks for the dispatch, which was submitted to Parliament for consideration on 5 June 2015<sup>4</sup>: In it, the Federal Council proposes the abolition of existing tax regimes (domiciliary companies, mixed companies, holding and principal companies, finance branch structures) that are no longer in line with international standards. This also affects companies working in the international commodities sector, because they often enjoy a cantonal tax status. The proposal is to introduce new measures at the cantonal level, including a patent box and the optional possibility of a higher deduction for research and development expenses. The introduction of a tonnage tax was rejected, because this measure would not have been compatible with the requirements of constitutional law. On a supplementary basis, the cantons can make use of the instrument of profit tax rate reductions, if they believe doing so is necessary to preserve their tax competitiveness. The work on these reforms will continue to take account of international developments.

<sup>4</sup> See <https://www.news.admin.ch/message/index.html?lang=en&msg-id=57551>.

With the signing of the joint statement on business taxation on 14 October 2014,<sup>5</sup> Switzerland has for now been able to put an end to a controversy which had strained relations between Switzerland and the EU for almost ten years. The joint statement does not contain any international treaty obligations and is limited to the enumeration of principles and mutual intent. In the joint statement, the Federal Council reaffirmed its intention to abolish the tax regimes enumerated in the joint declaration within the framework of CTR III (domiciliary companies, mixed companies, holding and principal companies, finance branch structures) and to base new tax measures on international standards. In return, the EU member states confirmed that they would lift any countermeasures as soon as the regimes have been abolished. No timeframe was defined.

## 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.*

On 3 September 2014, the Federal Council adopted the dispatch on the new Financial Market Infrastructure Act (FMIA), which will implement the reforms of the OTC derivative markets. The FMIA was adopted by Parliament in the summer session 2015.<sup>6</sup> The FMIA also covers commodity traders who fall within the definition of a non-financial counterparty. In accordance with the relevant international standards, no exemptions are provided when reporting derivative transactions to a transaction register – unless the business is conducted between two small non-financial counterparties that do not represent a stability risk. In contrast, non-financial counterparties are not subject to the clearing requirement as long as they use OTC derivatives only to manage risks directly relating to their commercial activity or treasury financing activity. This means a commodity trader is covered by the clearing requirement only if the trader carries out derivative transactions for other purposes and those transactions exceed a defined threshold. The FMIA also contains a delegation provision authorising the Federal Council to introduce limits on positions if doing so is necessary for orderly pricing and clearing as well as for ensuring convergence between the prices on the derivatives market and the underlying market. In doing so, the Federal Council must take account of recognised international standards and foreign legal developments.

On 18 February 2015, the Federal Council also adopted the dispatch on the popular initiative "No speculation on food commodities".<sup>7</sup> The initiative was launched in response to the strong price fluctuations for many agricultural goods in recent years. In several developing countries, these price fluctuations caused problems for the food situation. The initiators assume that these price fluctuations are significantly due to speculative transactions on the financial markets linked to the physical agricultural markets (commodity futures markets), and they demand that the trade in certain financial instruments relating to agricultural commodities or

<sup>5</sup> See <https://www.news.admin.ch/message/index.html?lang=en&msg-id=54818>.

<sup>6</sup> BBI 2015 4931: <https://www.admin.ch/opc/de/federal-gazette/2015/4931.pdf> (German); FF 2015 4485: <https://www.admin.ch/opc/fr/federal-gazette/2015/4485.pdf> (French).

<sup>7</sup> See <http://www.seco.admin.ch/aktuell/00277/01164/01980/index.html?lang=de&msg-id=56258> (German); <http://www.seco.admin.ch/aktuell/00277/01164/01980/index.html?lang=fr&msg-id=56258> (French).

food be prohibited in Switzerland. The Federal Council shares the concern of the initiative to improve the food supply of the population in developing countries and to combat poverty. But it does not believe the approach taken by the initiative to be appropriate, it doubts the effectiveness of the proposed measures, and it fears harmful side effects for the Swiss national economy. It therefore recommends rejecting the initiative without a counterproposal.

## 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

On 12 December 2014, Parliament adopted the Federal Act for Implementing the Revised Financial Action Task Force (FATF) Recommendations of 2012.<sup>8</sup> The law aims to strengthen the effectiveness of the Swiss system for combating money laundering by implementing international standards in Switzerland. The provisions on the transparency of legal entities and bearer shares entered into force on 1 July 2015. The Federal Council decided that the other provisions would enter into force on 1 January 2016.<sup>9</sup>

The revision of the FATF recommendations in 2012 has affected the international regulatory regime on combating financial crime in a number of areas. In accordance with the first FATF recommendation, countries must systematically assess their risks of money laundering and terrorist financing and use this assessment to put a system in place that effectively reduces these risks. The implementation of international standards must therefore be accompanied by a periodic assessment of all risks at a national level. To this end, the Federal Council strengthened coordination within the Federal Administration in the area of combating money laundering and terrorist financing by setting up an interdepartmental working group under the leadership of the Federal Department of Finance. This working group's operational work got under way in 2014.

On 19 June 2015, the interdepartmental coordinating group on combating money laundering and the financing of terrorism (CGMT) published its first report on the national risks associated with money laundering and the financing of terrorism.<sup>10</sup> The report also contains an analysis of the threat and the risk vulnerability in the commodities sector. In regard to the proposals made in the preliminary draft on the revision of the Code of Obligations (stock corporation law) concerning the accounting rules applicable to resource extraction companies, the CGMT recommends including them in the draft law and dispatch to Parliament for the purpose of increasing transparency. The CGMT also recommends expanding these provisions within the framework of an internationally coordinated approach to cover companies trading in commodities (see also Recommendation 8).

In addition, the revision of the FATF standards specified requirements concerning the transparency of legal entities and legal structures, due diligence of financial intermediaries (in particular, rules on identifying politically exposed persons or beneficial owners) and international cooperation. As a result, the law of 12 December 2014 defines due diligence requirements

---

<sup>8</sup> BBI 2014 9689: <https://www.admin.ch/opc/de/federal-gazette/2014/9689.pdf> (German); FF 2014 9465: <https://www.admin.ch/opc/fr/federal-gazette/2014/9465.pdf> (French).

<sup>9</sup> See <https://www.sif.admin.ch/sif/en/home/dokumentation/medienmitteilungen/medienmitteilungen.msg-id-57064.html>.

<sup>10</sup> See <https://www.news.admin.ch/message/index.html?lang=en&msg-id=57750>.



for financial intermediaries more precisely and introduces transparency measures for companies which contribute to more effectively combating the abuse also in the area of natural resources and commodities trading.

SECO continues to support the initiative of the International Monetary Fund (IMF) to combat money laundering and the financing of terrorism in developing countries. In addition to technical assistance for more than 30 countries in the field of prevention, this initiative also included a handbook that specifically discusses the money laundering risks relating to precious metals and makes recommendations on how the various involved parties can minimise these risks.

### Fighting corruption

Corruption plays a substantial role, also in the commodities industry, as a driver of illicit financial flows. Switzerland is actively involved in international efforts to contain it. The most comprehensive of the three main international anti-corruption treaties, in terms both of geographic scope and of substance, is the United Nations Convention against Corruption (UNCAC).<sup>11</sup> Within the framework of that agreement, Switzerland works to promote comprehensive implementation of UNCAC obligations by Member States, including the many commodity-producing countries among them. In advance of the upcoming Conference of the States Parties to the UNCAC in November 2015, Switzerland is seeking to reinforce the procedures for following up on the individual country evaluations. This would contribute significantly to improving implementation discipline.

In addition, Switzerland has undertaken a wide range of efforts to raise awareness of corruption risks in foreign countries among Swiss companies doing business internationally, including companies from the commodities industry. One of the most recent prevention initiatives calls for the preparation of a comprehensive list of reporting offices in other countries, which Swiss companies can turn to if they are being pressured by foreign officials to pay bribes. The list will be published on the FDFA internet site.

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

The draft version of a formal statutory basis for the preventive freezing of assets held by politically exposed persons abroad is currently before Parliament (Federal Act on Illicitly Acquired Assets).<sup>12</sup> The draft text incorporates the existing statutory provisions and the norms of current practice. It establishes a comprehensive legal regime for all matters linked to the freezing, confiscation, and restitution of illicitly acquired assets held by foreign potentates. The draft bill further establishes procedures for issuing administrative orders for the confiscation and return of potentate funds. Lastly, the bill also contains provisions authorising targeted measures for assisting countries of origin in their efforts to obtain international mutual legal assistance for the restitution of assets that derive from criminal acts and that have been transferred to offshore accounts.

## **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 final results of the OECD and G20 project on BEPS (base erosion and profit shifting) are expected in the last quarter of 2015. The results of the BEPS plan, which comprises 15 ac-

<sup>11</sup> The other two are the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Council of Europe's Criminal Law Convention on Corruption.

<sup>12</sup> Cf. <https://www.news.admin.ch/message/index.html?lang=en&msg-id=53048>.



tions, are to ensure that profits are taxed in the jurisdiction where the actual economic activity takes place. The new rules will thus benefit countries opting for economic substance and value creation.

The first BEPS results were published in September 2014. These were interim results. The details concerning their implementation are not yet known. New requirements have been defined for transfer pricing documentation with a view to more transparency. Multinational companies must in future present a country-by-country report worldwide with information on the distribution of their profits and taxes among the individual countries. These new rules are not sector-specific, but rather apply for now to all internationally operating companies with a consolidated annual group income of at least EUR 750 million or the equivalent in the national currency. The new requirements facilitate risk analyses and verification whether the transfer prices are applied correctly within the multinational group. Automatic exchange of the country-by-country reports among the competent tax authorities is envisaged. Switzerland will begin implementing the OECD recommendations once they are finalised.

## 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 2014 and 2015, Switzerland was not invited by the G20 presidencies to take part in the meetings of the G20 Finance Track. This meant it was unable to contribute directly to the G20 discussions, but it did speak out in favour of increased transparency in its bilateral contacts with G20 countries and in multilateral forums, and it will continue to do so. The multilateral initiative in this regard that is the farthest advanced is the Joint Organisations Data Initiative Oil (JODI Oil). But there is room for improvement there as well, because many countries are not supplying complete data. Much of the data is also supplied late. JODI Oil ranks Switzerland as "good" (best category) in terms of timeliness and completeness of the data deliveries.

## 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 focus in 2014 and 2015 has been and remains fully on the implementation of the new EITI Standard that was approved in 2013. To date, 25 countries have published reports in accordance with the new Standard. In this context, many of the countries which are implementing the EITI have used the new requirements to produce more in-depth reports and provide consistent analysis and more transparency of issues such as the reforms in the commodities sector, the disclosure of the financial flows on a project-by-project basis, the beneficial ownership of licensees or the sales by national companies to commodity trading companies.

Swiss foreign policy has actively supported the efforts of the EITI to persuade other countries to also implement the Standard. For example, the theme of the EITI was systematically addressed in meetings with governments of developing countries engaged in natural resource extraction. As at the end of May 2015, 48 countries were implementing EITI, 31 of which were compliant countries and 17 of which were candidate countries. The key changes last

year were the recognition of the United Kingdom, Colombia, Myanmar and the Seychelles as EITI candidates and the recognition of the Democratic Republic of the Congo, Guinea, Indonesia, Sierra Leone, Trinidad and Tobago and Chad as EITI compliant countries. The downgrading of Azerbaijan to candidate status demonstrates that EITI compliance entails permanent efforts to improve transparency and dialogue between the various stakeholders. The EITI reports which the implementing countries have made public to date, cover 240 fiscal years and payments/revenues in excess of 1'568 billion U.S. dollars.

Following on from the Steering Committee of April 2015 in Brazzaville, the attention has shifted to the preparation of the next EITI Board Meeting which will be held in October 2015 in Berne at the invitation of the Swiss Government. At the meeting, in addition to the day-to-day business the Steering Committee will discuss the role of commodity trading in detail. Switzerland supports the voluntary participation of trading companies in the EITI and has addressed this subject accordingly in various discussions with trade representatives. In this context, Trafigura, a trading company whose headquarters are based in Switzerland, announced in November 2014 that it would be voluntarily disclosing its payments to commodity-extracting countries in accordance with EITI. Trafigura is therefore actively supporting the inclusion of commodity trading in the EITI.

## 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 25 June 2014, the Federal Council adopted the report in fulfilment of Recommendation 8 and Postulate 13.3365 "More transparency in the Swiss commodities sector".<sup>13</sup> The Foreign Affairs Committee of the National Council concluded its consideration of the report on 24 March 2015.

With its adoption of the report, the Federal Council also decided on the next steps: Based on the report, the Federal Council prepared a consultation draft for transparency provisions governing payments to governments analogous to the EU directives<sup>14</sup> as part of the revision of the stock corporation law.<sup>15</sup> According to the preliminary draft, the rules are to apply to listed companies as well as to large companies working in resource extraction. For now, the rules are not being extended to commodity trading with governments. However, a delegation provision is envisaged to authorise the Federal Council to extend the rules to commodity trading companies and associated payments to governments within the framework of an internationally coordinated approach. The consultation draft prepared as part of the revision of the stock corporation law was adopted on 28 November 2014. The consultation period ended

---

<sup>13</sup> See <http://www.parlament.ch/sites/doc/CuriaFolgeseite/2013/20133365/Bericht%20BR%20D.pdf> (German); <http://www.parlament.ch/sites/doc/CuriaFolgeseite/2013/20133365/Bericht%20BR%20F.pdf> (French). See also the Federal Council's response to Postulate 13.3365 submitted by the FAC-N: [http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch\\_id=20133365](http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20133365) (German); [http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch\\_id=20133365](http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20133365) (French).

<sup>14</sup> Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (Transparency Directive), Fourth Accounting Directive (78/660/EEC) and Seventh Accounting Directive on Consolidated Accounts (83/349/EEC).

<sup>15</sup> See <http://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2014/2014-11-28.html> (German); <http://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2014/2014-11-28.html> (French).

on 15 March 2015. The various comments are currently being evaluated. The evaluation will be published in autumn 2015.

Additionally, Motion 13.3422 by Maja Ingold, "Action plan for transparency in commodities trading", called upon the Federal Council to prepare and implement a package of measures to quickly increase transparency in international commodity trading.<sup>16</sup> In its response of 28 August 2013 and on 5 May 2015 in the National Council, the Federal Council requested that the motion be rejected, with reference to the report and consultation draft mentioned above. The motion was consequently withdrawn.

At the international level, Switzerland advocates for implementation that is as widespread as possible. The transparency of payments to governments has, for instance, been brought up in the financial dialogues with the United States, Canada and Singapore. In the US, implementation continues to be pending, however, while Singapore is not planning any such transparency provisions according to the authorities.

## 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

Together with the EU and Canada, Switzerland continues to support and finance the implementation of the *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance)*. Switzerland consequently also has a presence in the multi-stakeholder group steering the OECD process and voices concerns and contributes expertise at the semi-annual stakeholder meetings. At the two recent meetings in Kinshasa (November 2014) and Paris (May 2015) progress was achieved in the global implementation of the *OECD Guidance*: the framework of the *OECD Guidance* is arousing a great deal of interest both in member states as well as among non-members such as China, Colombia and Dubai. It serves as a starting point for the implementation of national and regional programmes, including for a proposal from the EU Commission for self-certification by importers. This multi-stakeholder process is used as a model by the OECD for several other sector-specific projects for the implementation of the duty of care (e.g. in the textile and agriculture sectors). The Federal Administration is raising awareness of the *OECD Guidance* among Swiss companies by focussing on companies operating in conflict zones or fragile situations. As such, last year the SECO provided guidance for a number of companies on the steps required for the implementation of the *OECD Guidance*.

### Better Gold Initiative

Thanks to the *Better Gold Initiative* launched in 2013, a market for gold from small Peruvian mines, produced in compliance with recognized criteria of social and environmental responsibility was created. Overall, more than half a ton of gold was imported into Switzerland and sold at a fair price, which includes an additional premium for promoting good corporate gov-

---

<sup>16</sup> See [http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch\\_id=20133422](http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20133422) (German); [http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch\\_id=20133422%20](http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20133422%20) (French).

ernance in mines. According to the *Swiss Better Gold Association* which brings together the main players in the gold market (e.g. refineries, jewellers, the watch and clock industry, financial institutions), the amount of gold produced in this way does not yet meet the existing demand.

An evaluation, which was conducted in mid-2015 after two years of implementation, confirms the relevance, impact and sustainability of the initiative. On this basis and with the help of the experience gained to date, the intention is to prepare a new phase in order to continue the initiative in Peru and from 2016 to expand its geographic scope, most probably to Bolivia and Colombia.

### Gold trade statistics

On 18 February 2015, based on the second report of the working group on statistics relating to the import and export of gold, the Federal Council approved the publication of historical data on a country-by-country basis and commissioned the Federal Department of Finance (FDF) to publish this data in an appropriate form. This also provided for a marked improvement in transparency with regard to the past.

The statistics on the import and export of gold, silver and coins covering the years 1982 to 2013 have been available for downloading from the website of the Federal Customs Administration (FCA)<sup>17</sup> since February 2015. The website also contains information on the interpretation of the results and links to reports as well as notifications associated with this topic. The number of downloads of the statistics (3640 since February) and the number of visitors to the website on gold trade statistics (16'550) demonstrates just how much interest there is in this subject.

The statistics for the years from 2012 have been available in the FCA foreign trade database (Swiss-Impex) since May 2015.

## **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>18</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.*

On 17 March 2014, the results of stakeholder consultations conducted by Swisspeace with regard to priorities and expectations for the "Ruggie Strategy" (hereinafter, National Action Plan, NAP) were presented and discussed in a multi-party dialogue.

---

<sup>17</sup> <http://www.ezv.admin.ch/themen/04096/04101/05233/05672/index.html?lang=en>.

<sup>18</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?gesch\\_id=20123503](http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20123503) (French).

This served as the basis for a first draft of the NAP. The main objective of the NAP is the implementation of the UN Guiding Principles and the formulation of the Swiss government's position with regard thereto. The focus is on ensuring the protection of and respect for human rights in the conduct of business, in particular, when companies are operating in foreign countries.

In the spring of 2015, consultations on a draft of the NAP were held with the government offices concerned and with non-governmental stakeholders. These consultations showed that the positions of the various stakeholders are, in part, widely divergent. Giving proper consideration to these different positions is a painstaking, but nevertheless indispensable process if this innovative project is to receive the support it needs. For this reason, it was decided that a new version of the NAP was to be drafted by the end of 2015, which would also be in line with international best practice principles.

Parliamentary Postulate 14.3663, submitted by the Foreign Affairs Committee of the Council of States under the title "Access to Reparations", instructs the Federal Council to prepare a report analysing the judicial and non-judicial measures that have been implemented in other countries to enable persons whose human rights have been infringed by a company operating in a host country to obtain effective access to reparations in the company's home country. The subject matter of the report called for by that Postulate, which has since been adopted by the Council of States, is closely related to that of the NAP currently in preparation. In order to ensure a maximum degree of coordination and consistency, and to avoid redundancies, the conclusions of the analysis requested by Parliament are to be incorporated into the NAP.

In order to promote a comprehensive understanding of corporate responsibility, which would cover, in addition to such human rights concerns as working conditions, environmental protection, the prevention of corruption, and fair competition, the Federal Council adopted on 1 April 2015 a position paper on corporate social responsibility (CSR), which included an action plan for the period 2015-2019.<sup>19</sup> The CSR Position Paper defines four strategic thrusts for the Confederation's efforts in this area. The Swiss government will work at the international level for the formulation of CSR standards; it will strive to raise awareness among Swiss companies of CSR measures and assist them in the implementation thereof; it will contribute to the strengthening of CSR in developing and transition countries; and it will promote greater transparency in CSR activities. The cross-sectoral CSR position paper also applies to the commodities industry.

The CSR Position Paper and the National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights are mutually referential. They are to be seen as complementary, with neither being accorded precedence over the other. The CSR Position Paper does not pre-empt any of the decisions concerning procedures or subject matter to be covered by the NAP.

Since October 2013, Switzerland has been a member of the Drafting Group on Human Rights and Business (CDDH-CORP). The group was responsible for drafting a political declaration in support of the UN Guiding Principles, which was adopted by the Committee of Ministers on 16 April 2014. Work on a set of recommendations for implementing the Guiding Principles is currently under way and is expected to be completed before the end of 2015.<sup>20</sup>

In March 2014, at the close of its one-year term as chair of the Voluntary Principles on Security and Human Rights Initiative, Switzerland hosted the Annual Plenary Meeting of the initiative's participants. As chair, Switzerland launched the process of formulating a strategy for the 2013-2016 period and was also able to welcome Ghana as the first African country to join

---

<sup>19</sup> See <http://www.news.admin.ch/NSBSubscriber/message/attachments/38880.pdf> (German); <http://www.news.admin.ch/NSBSubscriber/message/attachments/38882.pdf> (French).

<sup>20</sup> Cf. [http://www.coe.int/t/dghl/standardsetting/hrpolicy/other\\_committees/hr\\_and\\_business/default\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/hr_and_business/default_EN.asp).



the initiative. The commodities conglomerate Glencore, which is headquartered in Switzerland, applied to join the initiative in 2014, and was accepted as a participant at the Annual Plenary Meeting held in March 2015 under the chairmanship of the United Kingdom. As a member of the steering committee of the Voluntary Principles Initiative, Switzerland is also involved in the efforts to implement the initiative's strategy, in particular, the introduction of monitoring mechanisms and harmonisation with the UN Guiding Principles on Business and Human Rights.

Switzerland has further pursued efforts to strengthen the Voluntary Principles Initiative in the countries where commodity companies operate – including Peru, the Democratic Republic of the Congo (DRC) and Nigeria – with the aim of convincing them to join the initiative.

The United Nations Environment Programme's International Resource Panel (IRP),<sup>21</sup> acting on the suggestion of various countries, including Switzerland, prepares scientific reports to serve as a basis for policy decisions on natural resource governance, which also concerns the commodities industry. In connection therewith, a workshop supported by Switzerland will be held in Davos, in October 2015, following the 17th regular meeting of the IRP and its Steering Committee. Switzerland's commitment in this area is also in keeping with the Federal Council's Green Economy Action Plan 2013, which calls, among other things, for greater environmental responsibility within the commodities industry.<sup>22</sup>

Also in implementation of the Green Economy Action Plan, the Federal Office for the Environment, with the assistance of external experts, has prepared background reports on various raw materials used in Switzerland. For commodities of particular relevance to the environment – such as soy beans, cocoa, coffee, fish, palm oil, peat, sunflower oil, cotton and cotton textiles – a market analysis, a market coverage analysis for the major sustainability standards, and a relevance analysis, were carried out. In addition, testing was conducted of a new method for comparing and assessing sustainability standards.

## 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.*

Since March 2014, informal consultations with NGOs, representatives of commodity trading companies, and interested cantonal authorities have been held on a number of occasions under the direction of the FDFA and the SECO. The various parties arrived at a consensus that, as a first step, a guidance for the implementation of the UN Guiding Principles on Business and Human Rights in the commodities industry should be prepared.

In November 2014, the NGOs and the commodity traders joined in a discussion round, held under the auspices of the FDFA and the SECO, concerning the drafting of the guidance. As part of that event, the *Institute for Human Rights and Business* was asked to give a presentation on a similar undertaking, which had been carried out within the framework of a European Commission project for implementation of the UN Guiding Principles in the oil and gas industry. The discussion, in which all concerned stakeholders took part, provided a basis for drafting the terms of reference for preparation of the guidance on implementation of the UN Guiding Principles for the commodities industry. The terms of reference were drafted by the

---

<sup>21</sup> See [www.unep.org/resourcepanel/](http://www.unep.org/resourcepanel/).

<sup>22</sup> See <https://www.news.admin.ch/message/index.html?lang=de&msg-id=48071> (German); <https://www.news.admin.ch/message/index.html?lang=fr&msg-id=48071> (French).

Federal Administration in consultation with the NGOs and commodity trading companies between February and April 2015. In May 2015, a call for proposals was issued and, in June 2015, the mandate was awarded to the *Institute for Human Rights and Business*.

The mandate calls for the preparation, by the end of 2015, of a mapping of the sector and of the specific challenges it faces in terms of respect for human rights. Building on that, in 2016, the guidance for commodities trading companies will be drafted, which, under the terms of the mandate, will include, among other things, concrete recommendations for the performance of human rights due diligence and reporting. Work on the project formally began on 22 June 2015 with a meeting of all interested partners.

## 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, in response to Parliamentary Postulate 12.3980, approved the report entitled "Comparative Law Report. Human Rights and Environmental Due Diligence in connection with International Activities of Swiss Corporations"<sup>23</sup> (along with recommendation 12), including the expert opinion on the comparative legal situation that was prepared by the Swiss Institute of Comparative Law.<sup>24</sup>

In the follow-up to deliberations on the Federal Council report, on 1 September 2014, Motion 14.3671, entitled "Implementation of the Comparative Law Report by the Federal Council on the Human Rights and Environmental Responsibility of Corporations" was submitted by the Foreign Affairs Committee of the National Council. That motion instructed the Federal Council to prepare a proposal, as part of the planned revision of the corporate law regime (or, alternatively, as a separate project) for imposing a duty on corporations to perform human rights and environmental due diligence (in accordance with the UN Guiding Principles).<sup>25</sup> In its response of 17 December 2014, the Federal Council recommended that the motion be rejected. The recommendation was based on the argument that the motion went further than the recently enacted EU regulation on the issue, in the sense that the motion required the imposition of an express duty to perform due diligence, without the possibility of waiving the reporting requirement as foreseen in the EU regulation.

The Federal Council stated that it was nevertheless prepared to draft a consultation proposal modelled on the EU regulation, which would thus not be prejudicial to Switzerland's standing as a competitive business location. Work on the consultation draft with regard to the reporting duty on non-financial information is to be deferred until a later point in time, when more knowledge is available on the implementation efforts being undertaken in the EU member states. Motion 14.3671 was rejected by the National Council on 11 March 2015.

---

<sup>23</sup> See also the response of the Federal Council to Postulate 12.3980 by the Foreign Affairs Committee of the National Council: [http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch\\_id=20123980](http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20123980) (German); [http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch\\_id=20123980](http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20123980) (French).

<sup>24</sup> See the press release at: <http://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2014/2014-05-28.html> (German); <http://www.ejpd.admin.ch/ejpd/fr/home/aktuell/news/2014/2014-05-28.html> (French); (Report: <http://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2014/2014-05-28/ber-apk-nr-d.pdf> [German], <http://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2014/2014-05-28/ber-apk-nr-f.pdf> [French] ; expert opinion by the Swiss Institute of Comparative Law: <http://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2014/2014-05-28/gutachten-sir-d.pdf> [available only in German]).

<sup>25</sup> [http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch\\_id=20143671](http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20143671) (German); [http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch\\_id=20143671](http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20143671) (French).



## 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

The SDC has entered into a partnership with the *Natural Resource Governance Institute*. The objectives of the partnership include the strengthening of a global normative framework for promoting transparency in the extractive industries and greater disclosure of information concerning the contacts and business operations of state-affiliated companies in resource-rich countries. The partnership's activities will include both generalised efforts in these areas and bilateral projects in SDC priority countries.

Since March 2014, the SDC has, in addition, developed a programme aimed at improving the effectiveness of efforts to prevent and combat corruption at the local level; the idea is to achieve more widespread and more firmly anchored adherence to standards by supporting actors that operate locally, but nevertheless maintain an international outlook. A number of existing global initiatives, such as the long-standing cooperation with *Transparency International (TI)* or the *International Centre for Asset Recovery (ICAR)* have been renewed, others have undergone an evaluation (among others, the Stolen Asset Recovery Initiative, StAR). Further, a new partnership with the Norwegian *U4 Anti-Corruption Resource Centre* has been developed, which is designed to promote training and research capacity-building in developing countries. All of these initiatives have a clear relationship with commodity industry issues.

The SECO – in coordination with other donors – contributes to the financing of a fund administered by the World Bank to support countries that implement the standard issued by the *Extractive Industry Transparency Initiative (EITI)*.<sup>26</sup> That fund is to be replaced at the end of 2015 by a new initiative designed to advance reforms in the extractive industry of developing countries along the entire value chain.<sup>27</sup> Support for the implementation of the EITI will, however, remain a central priority. SECO is planning to support the new initiative and is in close dialogue with the World Bank on the details of the programme.

The International Monetary Fund (IMF) has made good progress with its *Topical Trust Fund on Managing Natural Resource Wealth*, to which Switzerland also contributes financial support. In Mozambique, for example, the legislation on the extraction of natural resources has been entirely revised, with a tightening of the rules; the tax regime has been reorganised, including higher taxation of commodity extraction companies; and, finally, support has been provided for financial administration, in order to enable better revenue forecasting and early identification of fiscal risks. Within the framework of the initiative, the IMF is working with the EITI on an internationally accepted classification system for the collection of data on revenue streams from the commodity extraction industry. This is intended for use, in future, both in EITI reports and in the IMF's *Government Finance Statistics Manual 2014*, which serves as the international standard for public finance statistics. This contributes both to transparency and to the avoidance of redundancies in reporting on revenues from the extractive industry.

---

<sup>26</sup> EITI Multi-donor trust fund (MDTF).

<sup>27</sup> Extractive Global Programmatic Support (EGPS) Facility.

An evaluation carried out in the first half of 2015, reviewing the activities financed by the fund, showed that this initiative is capable of meeting the demand for specialised expertise in commodity-producing developing countries.

In February 2015, SECO reviewed the possibility of providing support for the *Responsible Mining Index*. The Index plans to publish regular, independent evaluations of mining companies based on agreed criteria of social and environmental responsibility. Provided that further donors can be found, and that the results of a due diligence review are satisfactory, SECO will contribute funding to the Index, for the 2015-2017 period, in the amount of EUR 2 million.

Commodities and the extractive industries, including the issue of illegal and unethical financial flows, are also an important element in the current international debate on the 2030 Agenda for Sustainable Development (previously referred to as the post-2015 agenda). In addition, Switzerland contributed actively to negotiations at the successful Third International Conference on Financing for Development, which was held in Addis Ababa in July 2015, and was able to secure the inclusion of several of its concerns in the final document. These include the strengthening of local capacity, institutional reform in connection with tax collection, and measures to support asset recovery.

#### Regional and bilateral initiatives

The funding already budgeted by SECO for the *Eurasia Knowledge Hub of the Natural Resource Governance Institute (NRGI)*, which focuses on technical support and awareness-raising at the regional and local levels, has been delayed as a result of difficulties in the cooperation between the NRGI and the host country, Azerbaijan. The planned activities will now be carried out in 2015/2016 from another location.

The new partnership between SECO and the *Collaborative Africa Budget Reform Initiative (CABRI)*, and the ongoing cooperation with the *African Tax Administration Forum (ATAF)*, support capacity-building in public financing in order to make better use of revenues from the commodity extraction sectors in African countries; they also promote knowledge exchange and dialogue between tax authorities in Africa. This contributes to an improvement in the tax collection methods employed throughout the continent and thus also to the fight against tax fraud and tax evasion. During the current reporting period, the primary focus of the *ATAF* has been on combating "transfer mispricing" in general, and in the commodities industry, in particular, as well as on the analysis and evaluation of tax incentives that can potentially lead to an erosion of the tax base.

SECO has expanded its bilateral commitment in **Ghana**. In addition to awareness-raising among legislators, new efforts are being made to support reporting by journalists on commodity-related subjects. Both measures are intended to reinforce the government of Ghana's duty of accountability with regard to revenues from the commodities sector.

In **Peru**, SECO has approved a new bilateral programme designed to support reforms in public financial administration in selected regions and municipalities. Many of the programme beneficiaries who have been selected intend to use the support for improvements in the budgeting and utilisation of revenues from the commodities sector.

In **Mongolia**, the SDC has already been providing support for an improvement in the legal position of artisanal small-scale miners since 2005. In future, SDC projects in the mining sector will focus on measures for guaranteeing job security and ensuring better access to adequate health care, both for adults and for the children of miners.

In **Mozambique**, the long-standing cooperation with existing centres working for the responsible and transparent management of public goods was expanded, in March 2014, to include the NGOs *Centro Terra Viva* and *Observatorio do Meio Rural, OMR* (rural environment observatory). Both are actively involved in the search for solutions to land ownership questions in mining regions.

In **Bolivia**, as of June 2015, funding has now been made available to support the creation of a conflict division in the mining ministry and for a project promoting sustainable water resource management in mining regions.

## 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.*

According to the decision of the Federal Council in April 2012,<sup>28</sup> Switzerland concludes tax information exchange agreements (TIEAs) if, among other reasons, Switzerland is interested in such an agreement for tax policy or development policy reasons. For developing countries, such agreements are an important instrument for increasing tax revenue. These agreements therefore also help strengthen Swiss development cooperation. The first three TIEAs (Jersey, Guernsey and the Isle of Man) entered into force on 14 October 2014 and have been applicable since 1 January 2015. The TIEAs with Andorra, Greenland, San Marino and the Seychelles were approved by Parliament on 20 March 2015. The referendum period ended on 9 July 2015 without a referendum being called. These agreements are therefore likely to enter into force in summer 2015 already. In addition to the Seychelles, Switzerland has also negotiated TIEAs with two other developing countries, Grenada and Belize. The TIEA with Grenada was signed on 19 May 2015, the TIEA with Belize on 10 August 2015. Switzerland is conducting additional TIEA negotiations, also with developing countries. In regard to the conclusion of an instrument governing exchange of information in tax matters that is in compliance with the standard, some developing countries prefer the Multilateral Convention of Mutual Legal Assistance in Tax Matters of the OECD and the Council of Europe instead of a TIEA. For that reason, they are not willing to negotiate an additional TIEA. Switzerland signed this Multilateral Convention on 15 October 2013.

Also in regard to double taxation agreements (DTAs) containing an exchange of information clause in compliance with the OECD standard, further progress was made in relation to emerging economies and developing countries. For instance, a DTA in accordance with the international standard was initialled with Pakistan (the existing DTA without the OECD standard dates from 19 July 2005). Switzerland signed DTAs in line with the international standard with Argentina, Ghana and Uzbekistan in 2014 (DTAs without the OECD standard are already in force with the last two countries).<sup>29</sup>

With a view to implementing the Swiss administrative assistance policy as well as to expand the network of agreements and on the basis of existing resources, further DTAs and TIEAs are to be concluded with emerging economies and developing countries.

---

<sup>28</sup> See the Federal Council's report "Pros and Cons of Information Exchange Agreements with Developing Countries" in response to Postulate 10.3880 by the Committee for Economic Affairs and Taxation of the National Council of 1 October 2010, supplemented by answers to the additional questions asked by this committee by means of Postulate 13.3008 of 21 January 2013, which can be found under: [https://www.efd.admin.ch/dam/efd/de/dokumente/vor-\\_und\\_nachteilevoninformationsabkommenmitentwicklungslaendern.pdf.download.pdf/vor-\\_und\\_nachteilevoninformationsabkommenmitentwicklungslaendern.pdf](https://www.efd.admin.ch/dam/efd/de/dokumente/vor-_und_nachteilevoninformationsabkommenmitentwicklungslaendern.pdf.download.pdf/vor-_und_nachteilevoninformationsabkommenmitentwicklungslaendern.pdf). (German); [https://www.efd.admin.ch/dam/efd/fr/dokumente/vor-\\_und\\_nachteilevoninformationsabkommenmitentwicklungslaendern.pdf.download.pdf/avantages\\_et\\_inconvenient\\_sdelechangederenseignementsavecdespayse.pdf](https://www.efd.admin.ch/dam/efd/fr/dokumente/vor-_und_nachteilevoninformationsabkommenmitentwicklungslaendern.pdf.download.pdf/avantages_et_inconvenient_sdelechangederenseignementsavecdespayse.pdf) (French).

<sup>29</sup> See an up-to-date overview of Switzerland's DTAs and TIEAs at <https://www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-und-amtsilfe.html>.

In addition, the Federal Council intends to apply the international standard on the exchange of information also to DTAs that have not yet been adapted to this standard. The Federal Council therefore conducted a consultation procedure on the Federal Act on the Unilateral Application of the OECD Standard on the Exchange of Information (EoISA) from 22 October 2014 to 5 February 2015.<sup>30</sup> The various comments are currently being evaluated. With this proposal, the signing of the Multilateral OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters and the ongoing efforts to revise existing double taxation agreements, the Federal Council is underscoring its desire to swiftly implement the OECD standard regarding administrative assistance in tax matters.

Regarding progress in the field of transfer pricing, please refer to the remarks under Recommendation 5 on the BEPS (base erosion and profit shifting) action plan of the OECD.

## 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 each year prepared a media analysis based on a review of Swiss and foreign media reporting on the commodities trading industry. As of 2013, the analysis also comprises gold trading.

In 2014, there was a slight rise in the number of articles in the international media dealing with commodities trading, in general, and in relation to Switzerland, in particular. The main issues covered were the growing tendency of banks to exit from the commodities business, the fall in oil prices, and the effects of the sanctions on Russia on commodities trading. The proportion of articles dealing with commodities trading in connection with human rights, environmental issues and illegal activities rose slightly, but still amounts to only 8% of total press coverage on the industry. In the Swiss media, the volume of reporting on the subject of commodities trading has been rising steadily since 2011. At the same time, however, the number of articles that referred to illegal activities, or to human rights and environmental issues, has remained stable.

Trading in gold attracted less attention in the mainstream international press than in the previous year and references to Switzerland and illegal activities were more sparse. In the Swiss media, by contrast, reporting on the gold trade increased. The reasons for this were the popular referendum entitled "Save Our Swiss Gold", which was held in 2014, and the publication of country-specific gold statistics.

Beginning in 2014, the questionnaires to be completed by the embassies for use in the preparation of reports on the human rights situation also include a series of questions both on the issue of business and human rights and on commodities-related subjects.

Communication with the embassies on questions relating to social responsibility and to the commodities industry has continued. In the Democratic Republic of the Congo, for example, the Swiss embassy has initiated a multi-stakeholder dialogue between representatives of the extractive industry, the public sector, and civil society groups, as a means of improving gov-

---

<sup>30</sup> See press release of 22 October 2014 at <https://www.news.admin.ch/message/index.html?lang=en&msg-id=54902>.

ernance in the mining industry. In Ghana, the embassy participated in the organisation of a study tour for members of parliament focusing on the value chain of various commodities. In Colombia, in addition to its activities in connection with the *Ethical Commitment of Swiss Companies in Colombia* initiative and its support for *Guías Colombia*, the Swiss embassy also took part in a joint field visit by an NGO and a mining company from Switzerland. In September 2014, the *Myanmar Centre for Responsible Business*, of which Switzerland is a co-sponsor, published its first report on the social, environmental, and human rights impact of the oil and gas industry (*Sector-Wide Impact Assessment*).

## 2.7 Dialogue with actors outside the Confederation and interdepartmental platform

### 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 the various stakeholders was further strengthened, and numerous meetings on specific topics took place with both companies and NGOs. In March 2015, the second roundtable on commodities organised by the FDFA State Secretariat, SIF and SECO took place. The invited representatives of the cantons, companies, industry associations and NGOs discussed the most important upcoming challenges for the competitiveness and integrity of the commodities sector in Switzerland as well as the evaluation of the measures taken so far to address these challenges. In the assessment of the participating federal authorities, the dialogue among NGOs, companies, industry associations and cantons has improved significantly since publication of the background report on commodities.

To improve the state of knowledge on the conditions and consequences of commodity extraction and trading, both globally and for Switzerland, the Swiss Agency for Development and Cooperation (SDC) in cooperation with the Federal Office for the Environment (FOEN) and the Swiss Commission for Research Partnerships with Developing Countries (KFPE) initiated and co-funded a dialogue with Swiss universities and other tertiary institutions. On the basis of an international conference, three institutes of the University of Bern and the University of St.Gallen are developing an overview on the state of knowledge and gaps in research, under the patronage of the Swiss Academies of Arts and Sciences. This overview is intended to serve as the basis for a brief paper for the attention of policymakers.

Within the Confederation, the interdepartmental platform on commodities will be continued. The authorities concerned with the commodities issue (currently including the FOEN, SFOE, FOJ, SDC, FCA, fedpol, FINMA, SECO, SIF and the State Secretariat/Directorate of Political Affairs of the FDFA) meet several times a year under the rotating leadership of SIF, SECO and the FDFA State Secretariat to exchange information and to discuss the current situation.