



Background report on commodities

Status report on the implementation of recommendations

26 March 2014

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0 Point of Departure and Instructions

On 27 March 2013, the Federal Council took notice of the background report on commodities, emphasising the industry's economic importance for Switzerland. This published report¹ demonstrates that Switzerland is already active in ensuring its competitiveness and integrity as a centre of economic activity, including commodities trading. It also shows Switzerland's support of international efforts to deal with the negative side effects of commodities mining and trading. To improve conditions further and reduce existing risks – including reputational risks – the Federal Council adopted 17 recommendations and instructed the interdepartmental platform on commodities to report on the progress of their implementation.

The commodity report's recommendations are targeted at boosting Switzerland's attractiveness as a business location, increasing transparency and promoting corporate social responsibility. Other areas to which Switzerland should commit more fully are developmental policy as well as double taxation agreements and tax information exchange agreements. Furthermore, the report greatly encourages active dialogue between the country's Federal Administration and other stakeholders (cantons, companies and NGOs). The Federal Council continues to keep track of the commodities business and is keenly aware of the opportunities and risks that relate to it.

This report provides an overview of the objectives and intermediary stages achieved for each of the 17 recommendations since publication of the background report on commodities. Each recommendation is being implemented by the department responsible for that particular area. Numerous measures are rooted in ongoing projects as they also concern issues other than simply commodities. The interdepartmental platform on commodities will remain in force under the rotating leadership of the FDFA, FDF and EAER.

¹ See press release from 27 March 2013:
<http://www.seco.admin.ch/aktuell/00277/01164/01980/index.html?lang=en&msg-id=48319>

1 Attractiveness as a business location

1.1 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 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 multi-laterally 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

According to the latest figures from the Swiss National Bank (SNB)², the receipts from merchanting fell by 5% between the third quarter of 2012 and the third quarter of 2013. This marks a development that had already become evident in 2012, when receipts from merchanting transactions amounted to CHF 19 billion and had thus fallen by 3% on the receipts from 2010 and 2011 (about CHF 20 billion for each year).³ The SNB attributes this drop mainly to lower commodity prices. According to these recent figures on merchanting, the strong growth of the Swiss commodities sector has at least come to a temporary halt. At the same time, the Swiss commodities sector continues to face considerable competition from other business locations.

General conditions

The Federal Council remains committed to overall political, economic and legal conditions in Switzerland that are attractive and reliable. With regard to the drafting and implementation of regulations, such as in the area of financial market regulation, Switzerland advocates a level playing field for competing business locations. At the same time, there is uncertainty in certain areas about how these general conditions will continue to develop in the country: for example, the consequences of the adoption of the initiative on large-scale immigration on 9 February 2014 are difficult to gauge in the medium and long term.

² Swiss Balance of Payments (quarterly estimates) 3rd quarter 2013, SNB, 30 December 2013.

³ Swiss Balance of Payments 2012, SNB, August 2013.

Third series of corporate tax reforms

The Federal Council noted the interim report (published on 17 May 2013) prepared by the joint project organisation of the FDF and the FDC on the tax and fiscal policy thrust of the third series of corporate tax reforms. The report states that adjustments to the cantonal tax statuses with elements of ring-fencing are needed in particular to strengthen international acceptance of the Swiss corporate tax system. This will also affect companies operating in the international commodities sector, as they often have a cantonal tax status.

Based on this interim report, the project organisation clearly defined the tax policy thrust and submitted a report to the Federal Council (published on 19 December 2013).⁴ Once the cantons have been consulted on the report, the consultation draft is scheduled to be prepared by summer 2014. This process should take account of the interests of Switzerland as a business location. The report states, among other things, that the cantons may resort to the instrument of lowering profit tax rates where they deem this necessary to maintain their tax competitiveness. If the new provisions are formulated very narrowly, the aspect of lowering cantonal profit tax rates will gain more weight. According to the project organisation, the cantons should have autonomy when it comes to this decision.

Meanwhile, Switzerland is continuing to hold talks with the EU with the aim of clearly defining the content and schedule of the understanding with the EU. Switzerland has indicated to the EU that it is willing to examine adjustments to its corporate tax system if the EU dispenses with defensive measures and plays fair in return. On 10 December, the EU Council of Economic and Finance Ministers expressed its desire to extend the dialogue on company taxation with Switzerland with a view to concluding it in June 2014. Switzerland remains interested in concluding the talks swiftly and achieving a balanced outcome.

2 Transparency

2.1 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 13 December 2013, the Federal Council launched the consultation on the new Financial Market Infrastructure Act (FMIA), which will implement the reforms of the OTC derivatives

⁴ See the press release of 19 December 2013: <http://www.sif.admin.ch/00488/index.html?lang=en&msg-id=51519>.

markets.⁵ The aim of these reforms is to strengthen financial stability and guarantee the competitiveness of the Swiss financial centre. The act is primarily oriented towards the international standards of the FSB and EU law so as to avoid contradictory regulations. An extensive reporting requirement is envisaged for increased transparency. In accordance with the draft FMIA, both financial and non-financial institutions (including those in the commodities sector) must report all transactions – not just over-the-counter derivatives but also commodity derivatives traded on exchanges – to a transaction register. This enables better detection of systemic risks and market abuse, among other things. However, certain exemptions apply to the requirement of central clearing. As long as non-financial institutions, including commodity traders, only use OTC derivatives to hedge risks that are directly connected to their commercial activity or liquidity or financial management (e.g. hedging physically held commodities), they are not subject to any central clearing requirement. Only if they also trade derivatives for other purposes and these derivatives exceed a defined threshold does the requirement of central clearing apply. Exemptions of this kind also exist in the EU.

Furthermore, the FDF has analysed the implementation of the IOSCO Principles for the Regulation and Supervision of Commodity Derivatives Markets and has concluded that Switzerland fulfils the majority of the IOSCO Principles with the regulatory framework it currently has in place. The principles it does not fulfil are those on the collection of data on over-the-counter derivatives, but these requirements will be met with the introduction of the FMIA (see above). Other measures (examination of agreements with trading surveillance offices abroad, increased post-trade transparency) for establishing greater transparency, along with the pros and cons of such measures, are due to be examined within the context of the implementation of the FMIA and the adoption of the implementing provisions.

2.2 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.*

General

On 4 September 2013, the Federal Council recommended the adoption of Postulate 13.3533 by Fehr⁶ "Unfair and Illicit Financial Flows from Developing Countries" and is willing to provide an overview of this topic and the related work in a report. In its comments, the Federal Council notes that the general conditions in the countries of origin are extremely important when it comes to combating illegal financial flows. At the same time, the countries that are

⁵ See the press release of 13 December 2013: <http://www.news.admin.ch/message/index.html?lang=en&msg-id=51372>. The consultation will run until 31 March 2014.

⁶ See http://www.parlament.ch/d/suche/seiten/geschaeft.aspx?gesch_id=20133533. In relation to Postulate 13.3533 by Fehr, the Federal Council also recommended the adoption of Postulate 13.3848 by Ingold "Outflows of Corrupt Assets from Developing Countries" on 20 November 2013. This postulate has not been considered by parliament either: http://www.parlament.ch/d/suche/seiten/geschaeft.aspx?gesch_id=20133848.

receiving unfair and illicit capital also have a role to play. Switzerland is therefore eager to suppress such financial flows as far as possible through specific measures (combating money laundering, tax evasion and avoidance, corruption, and acceptance of politically exposed persons' assets as well as implementing the recommendations made by the Background Report: Commodities). The Postulate has not yet been discussed in parliament.

Combating money laundering

On 13 December 2013, the Federal Council adopted the dispatch on the draft of the new Federal Act for Implementing the Revised Financial Action Task Force (FATF) Recommendations for the attention of parliament. This draft aims to strengthen the effectiveness of the Swiss system for combating money laundering by completing the implementation of international standards in Switzerland.⁷

The revision of the FATF recommendations in 2012 has affected the international regulatory regime on combating financial crime in a number of areas. From now on, 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 will get under way in 2014. A national risk assessment will enable Switzerland to optimise its system by strengthening the areas with high risk potential and relieving those where the risk potential is lower. 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 legislative amendments put forward in the dispatch of the Federal Council dated 13 December 2013 aim to define due diligence requirements for financial intermediaries more precisely and introduce transparency measures for companies which contribute to more effectively combating the abuse also in the area of natural resources and commodities trading.

Freezing and restitution of assets obtained unlawfully by foreign politically exposed persons

Draft legislation establishing a new formal legal basis for the future freezing of assets of politically exposed persons as a precautionary measure is currently being drawn up (Federal Act on the Freezing and Restitution of Assets Obtained Unlawfully by Politically Exposed Persons). This draft federal act incorporates current practice and the legal bases currently in force, and will regulate all issues relating to the freezing, confiscation and restitution of assets of foreign potentates which were obtained by unlawful means. It includes procedures for the administrative confiscation and restitution of potentates' assets. In addition, it provides for targeted measures that make it possible to support the country of origin in its efforts to obtain the restitution of assets of criminal origin transferred abroad.

⁷ See the press release of 13 December 2013:
<http://www.sif.admin.ch/dokumentation/00513/00772/index.html?lang=en&msg-id=51377>.

Combating corruption

Switzerland is active in the international fight against corruption and has established a legal framework by ratifying the three main international agreements currently in force⁸; it is regularly evaluated by peer review. In May 2013 the Federal Council submitted for consultation a draft proposal for legislation to further strengthen the provisions under criminal law that criminalise corruption, providing in particular for private corruption to be prosecuted ex officio, rather than on complaint, as is currently the case. These proposed changes in the law will also allow certain recommendations by GRECO in its 2011 report on Switzerland to be implemented.⁹ Switzerland presented its written follow-up report on Phase 3 to the OECD in March 2014, in which it gave account of the progress made to date in implementing all the recommendations included in its last evaluation, specifically those concerning the making public of on-going criminal procedures and applied sanctions, the fight against money laundering and the inspection of companies susceptible to bribery of foreign public officials.

Within the framework of the UN Convention against Corruption, Switzerland campaigns for greater transparency in the review process and for increased participation by civil society. To this end, at the Conference of the States Parties to the United Nations Convention against Corruption in November 2013, Switzerland submitted a resolution along with co-sponsors Chile, Mexico, El Salvador and Norway calling for the publication of the – thus far – confidential country reports, improved participation by civil society and the private sector, a content-related discussion of the individual country reports and the establishment of a follow-up mechanism. This ultimately resulted in the decision whereby the member states are to develop suggestions for improving the review mechanism by the next Conference of the States Parties in Russia in 2015.

All these measures help underline the responsibilities of the States Parties and of the private sector in the fight against corruption, and also apply to the commodity extraction and trading sectors.

Development cooperation

Another way in which Switzerland deters inflows of illegal money is by bolstering the macro-economic conditions of developing countries. This is done through four main avenues: (i) by supporting the creation and implementation of strong national legislation through the IMF's Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) efforts and the United Nations Office on Drugs and Crime's (UNODC) Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism (GPML). Switzerland recently authorised a CHF 5 million contribution to the trust fund for 2014-19 to support its new phase; (ii) by supporting national tax authorities in order to ensure proper, transparent and fair corporate taxation. This reduces the scope for corruption and lowers the number of tax offences (see recommendation 13 for the latest activities regarding taxes and development); (iii) by supporting stable, transparent public finance management systems, clear democratic monitoring mechanisms and sufficient state capacity to reduce illegal money flows linked to

⁸ The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2000, the GRECO Criminal Law Convention on Corruption in 2006, and the United Nations Convention against Corruption in 2009.

⁹ See also: https://www.bj.admin.ch/content/dam/data/kriminalitaet/korruption_greco/grecoberichte/ber-iii-2011-4f-thema1-e.pdf

corruption; (iv) by supporting civil society organisations and thereby indirectly promoting the demand for increased transparency.

2.3 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.*

On 19 July 2013, the OECD published its Action Plan on BEPS (Base Erosion and Profit Shifting), which received the backing of the G20 at the meeting of finance ministers in Moscow on 20 July 2013. Meanwhile, the OECD has got work in this area under way. Switzerland is represented in the various working groups and actively contributes to the discussions. Emerging economies and certain developing countries are also involved in the work of the OECD. Comprising 15 actions, the main aims of the Action Plan are to ensure that profits are taxed in the jurisdiction where the actual economic activity takes place, to fight aggressive tax planning and to avoid international non-taxation. Initial concrete measures are expected in the second half of 2014 and the results for all actions should be made available by the end of 2015. These results are then to be implemented. Given the very diverse interests of the countries participating in the project, it is difficult to say what the possible measures and results will be.

2.4 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 2013, Switzerland was invited by the Russian presidency to take part in the G20 Finance Track and was thus able to contribute directly to matters concerning finance and natural resources in the G20 process. On 28 May 2013, the FDF organised a G20 expert outreach seminar in Geneva at the request of the Russian presidency. The seminar brought together representatives from G20 finance and energy ministries, the commodities sector and international organisations to discuss options for establishing greater transparency in physical commodity markets, and promoted mutual exchange between government representatives and the private sector. At the same time, this contribution from Switzerland at an international level highlighted its active support of greater transparency in commodity markets. Switzerland also expressed its support of this at the meetings of the G20 Energy Sustainability Working Group (ESWG). Nevertheless, the matter of greater transparency in commodity markets has not yet received the support of all of the influential G20 countries. In its contacts with G20 countries and in multilateral forums, Switzerland will continue to speak out in favour of increased transparency.

2.5 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 EITI board formally adopted the revised EITI standard on 22 May 2013, with support from Switzerland. The standard now requires additional relevant, reliable and useful information that is essential for ensuring accountability in the extractive industry and understanding revenue distribution. This includes (i) reports on financial flows at the project level, (ii) sub-national transfer payments, (iii) the sale of national oil companies to trading companies and (iv) disclosure of production licences. The standard also requires that contracts be disclosed.

Switzerland's membership as a supporting country on the EITI board (20 members, of which 3 represent supporting countries) was renewed for another year on 23 May 2013. Until July 2014 Switzerland will represent a group of 5 countries (Switzerland, Germany, France, Italy, the Netherlands) and the European Commission as it actively promotes efficient implementation of the EITI standard. There are currently 25 EITI-compliant countries and 16 EITI candidates. The EITI reports issued to date by the implementing countries cover 192 fiscal years and over USD 1,200 billion in payments/revenues.

Switzerland submitted a request to the EITI secretariat on 16 January 2014 to hold the EITI board meeting from 8-9 July 2014 in Switzerland. The decision is still pending.

2.6 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 29 May 2013, the Federal Council recommended the adoption of Postulate 13.3365,¹⁰ submitted by the Foreign Affairs Committee of the National Council. The postulate requests a review of whether to include the entire Swiss commodities sector when implementing recommendation 8 (both listed and unlisted public commodities companies, and both production business and physical-trading business). It also requests an evaluation of how the Federal

¹⁰ See the Federal Council's response to Postulate 13.3365 submitted by the FAC-N (German): http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20133365.

Council can promote global transparency standards. The National Council adopted the postulate on 11 June 2013.

In its response to the postulate, the Federal Council indicated that any new regulations must be coordinated multilaterally so as to prevent Swiss companies from being subject to unfavourable conditions compared to companies in other relevant locations (see recommendation 2). The field of applicability for new transparency regulations is currently being analysed, taking into account various aspects including the international context.

The Federal Council is expected to adopt the report mid-2014, thus fulfilling the postulate (as well as recommendation 8). The department in charge, the FDJP, has already begun working on the report.

2.7 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 supports and finances implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Guidance). Funding for OECD implementation efforts was renewed in August 2013. Switzerland is a member of the multi-stakeholder group controlling this OECD process. As such, the country voices concerns and contributes expertise at the group’s semi-annual stakeholder meetings, the last of which took place in November 2013 in Kigali, Rwanda. The Federal Administration uses various channels to raise awareness of the OECD Guidance among Swiss companies. For instance, it maintains regular contact with business representatives, gives presentations at conferences and provides information on its websites.¹¹ Switzerland also participates in the OECD Policy Dialogue on Natural Resource-Based Development, whose goal is to better exploit commodities-based wealth for the development of resource-rich countries.

¹¹ E.g. <http://www.seco.admin.ch/themen/00645/05107/05109/index.html?lang=de> (German) and <http://www.seco.admin.ch/themen/00513/00527/01213/index.html?lang=en>.

Better Gold Initiative

In October 2013, Switzerland co-launched the Better Gold Initiative with the Swiss Better Gold Association in the form of a public-private partnership.¹² The initiative's objective is to boost supply and demand for sustainably produced gold from small- and medium-sized mines, reinforce the relevant voluntary sustainability standards and bring together the various stakeholders along the value chain. Sustainably produced gold currently comes from Peru, but evaluations are underway to extend the programme to Colombia and Ghana.

Kimberley Process

Swiss implementation of the Kimberley Process Certification Scheme has been peer-reviewed, and an assessment report submitted at the end of 2013 confirms that Switzerland has met the scheme's requirements. The report also acknowledges that Switzerland has, to a large extent, implemented the recommendations from the first review visit in 2004.

Gold trade statistics

Based on the report drawn up by a working group¹³ composed of FDFA, SIF, SECO and FCA representatives, the Federal Council decided on 13 December 2013 that gold and silver imports and exports in the form of bars and coins would be published from 1 January 2014 onwards and included in full in the foreign trade statistics as of 1 January 2015. Imports and exports of these products will now be presented with a breakdown by country in the statistics. With this change in practice, Switzerland complies with applicable international standards on the publication of foreign trade statistics.

With regard to the publication of historical data (1981-2013), the Federal Council has instructed the FDF, in cooperation with the FDFA and the EAER, to submit proposals by the end of November 2014.

3 Corporate responsibility and government responsibility

3.1 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"¹⁴, 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 dili-*

¹² See <http://www.seco-cooperation.admin.ch/themen/05404/05405/05406/05411/index.html?lang=en> .

¹³ See the press release of 13 December 2013: <http://www.news.admin.ch/dokumentation/00002/00015/index.html?lang=en&msg-id=51380>.

¹⁴ See the Federal Council's response to Postulate 12.3503 submitted by von Graffenried (German): http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20123503.

gence 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.

At an interdepartmental meeting on 24 June 2013, the FDFA and SECO launched preparations for the implementation of Postulate 12.3503 as submitted by Graffenried. To gain an overview of the current situation, information on the existing instruments and initiatives for implementing the UN Guiding Principles was collated up to the end of 2013 and consolidated by the end of February 2014.

With a view to drafting the strategy, the participants of the interdepartmental working group decided to commission an external expert to conduct the necessary consultations with the stakeholders. The meeting participants conferred on the frame of reference for this mandate, which was awarded to swisspeace, the Swiss Peace Foundation, in October 2013. Swispeace held talks with companies, business associations, trade unions, NGOs and academic institutions until the end of February 2014 in order to clarify a) how these stakeholders evaluate the current status of the implementation of the UN Guiding Principles, and b) where, in their opinion, the focus of the strategy for implementing the UN Guiding Principles should lie.

The stakeholders were informed of the proposed approach on 30 August 2013 at a further round of the multi-party dialogue on business and human rights. The next round of the multi-party dialogue is scheduled for the end of March 2014.

Based on the internal review and the swisspeace report on the consultations with stakeholders, the federal administration is currently in the process of identifying any gaps and the corresponding need for action, and defining suitable measures for inclusion in the strategy. To enable the corresponding report to be approved by the Federal Council in December 2014 in conformity with Postulate 12.3503, these content-related tasks should be completed by September 2014.

In March 2013, Switzerland took over the chairmanship of the Voluntary Principles on Security and Human Rights (VPs) for a period of one year. The main objective of the Swiss chairmanship was to encourage implementation of the VPs on the ground and to promote accountability within the initiative and among its participants. To this end, Switzerland recently enabled a 2013-2016 strategy for the VP Initiative to be successfully negotiated. This strategy provides for the development of voluntary measures to verify the adherence of participants to the VPs and for an assessment of the consistency of the Voluntary Principles Initiative with the UN Guiding Principles on Business and Human Rights. The strategy is currently being discussed by the participants, and the verification mechanisms are to be approved at the plenary session in March 2014.

The FDFA supports the Geneva Academy of International Humanitarian Law and Human Rights in creating a database for the identification of conflict zones around the world, which should aid the mining industry to determine which zones require particular attention with respect to due diligence compliance.

3.2 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.*

Within the scope of the implementation of Recommendation 11, the University of St Gallen was asked to produce a working paper compiling the standards and good practices that currently exist at trading company level in terms of corporate social responsibility (CSR), as well as the gaps and opportunities for improvement.

Once the working paper had been drawn up by the University of St Gallen, the FDFA and SECO decided to organise three separate working meetings for the stakeholders: NGOs, representatives of trading companies and representatives of cantonal authorities concerned. The meetings with private sector representatives (professional associations and 10 or so companies) and the NGOs (around 10 Swiss NGOs active in the sector) have already taken place, in October 2013 and January 2014 respectively. These sessions, organised by the FDFA and SECO with the participation of the University of St Gallen, will allow the ideas and comments of the different stakeholders to be gathered in a constructive environment before going on to plan the next steps in implementing Recommendation 11. It is intended to organise a final wrap-up session, taking into account the opinions advanced by the three groups, in order to define the avenues that are to be pursued with a view to establishing appropriate standards/guiding principles for trading companies. To this end, it is important that the actors involved jointly come to a mutual agreement on the overall conditions, the process and the objectives of Recommendation 11. The federal administration provides support and coordinates this process.

3.3 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.*

The comparative legal report requested by the Foreign Affairs Committee of the National Council (Postulate 12.3980 “Comparative legal report regarding due diligence on human rights and the environment in connection with Swiss companies’ business abroad”¹⁵) sets out if and how company boards of directors in countries comparable to Switzerland are legally required to perform due diligence on human rights and the environment for any business abroad. This report will serve as the basis for identifying suitable solutions for Switzerland in coordination with other countries and international organisations.

¹⁵ See the Federal Council's response to Postulate 12.3980 submitted by the FAC-N (German): http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20123980.

In the autumn of 2013, the FOJ compiled an initial draft of the report in compliance with the postulate. The report's appendix will include the comparative legal opinion of the Swiss Institute of Comparative Law SICL of 6 September 2013. The Federal Council will decide shortly on the joint request submitted by the FDJP and FDFA.

4 Development policy

4.1 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.*

Switzerland has prepared, launched or reinforced new global, regional and bilateral initiatives in a targeted manner since the background report was published. These initiatives focus on taxes and development, reinforced accountability and anti-corruption efforts. Project implementation is led by the SDC and SECO.

Global initiatives and topical focus

The SDC aims to implement recommendation 13 through an SDC-wide programme. The reporting period primarily spanned the programme's evaluation and planning stages; various activities will be launched and preliminary results are expected in 2014.

The SDC is seeking a partnership with Revenue Watch Institute (RWI) – a leading international, government-independent organisation that advocates good governance standards in oil, gas and mineral extraction – to promote transparency through improved accountability in the commodities sector. The goal is to enable systematic compilation, analysis and distribution of the data available on commodity extraction and trading (e.g. from corporate reports, EITI reports or government documents). This will help increase understanding of the existing lack of governance in developing countries and give local stakeholders (such as NGOs, the media, parliaments or government agencies) the opportunity to demand democratically controlled exploitation and use of commodities. Where appropriate, specific additional efforts will be applied in selected regions or the SDC's focus countries.

The SDC has expanded its anti-corruption human resources to accommodate the commodities issue better. Its aim is to prevent and fight corruption on a local level more effectively through the implementation of international standards and by supporting globally oriented yet locally active stakeholders. The SDC has reviewed its related efforts – such as contributions to Transparency International, the International Center on Asset Recovery (ICAR) and the World Bank (Stolen Asset Recovery, StAR) – in light of its goal to combat corruption linked to commodities mining and trading better. In addition, evaluations are underway to determine whether to support other global programmes that strengthen the corruption-fighting capacity

of local institutions, such as those led by the United Nations Development Programme (UNDP) or World Bank.

SECO's activities on a global level have been primarily a continuation of existing initiatives. Particular attention should be called to its support of the IMF's Managing Natural Resource Wealth trust fund, whose controlling committee met under Swiss chairmanship in Bern in June 2013. Support from the fund has helped make significant progress in reinforcing the fiscal regime in Guinea and Mozambique as well as tax administration in Mongolia. SECO uses the trust fund as a platform to advocate the development and implementation of globally accepted indicators to measure the governance of commodities-based wealth. Such indicators would help objectively analyse and improve the relevant legislation and institutional arrangements.

SECO has focused especially on taxes and development since the background report was published. As part of its existing cooperation with the OECD, SECO has addressed the application of transfer pricing standards in the commodities sector, which allow developing countries to collect revenues cleanly and efficiently. Thanks to SECO's support of the IMF, a new method for measuring the performance of tax administrations is being developed with the cooperation of the FTA. This method will provide a more strategic approach to future tax projects and help improve the capacities of developing countries in a more targeted manner. Furthermore, SECO has launched two new partnerships – with the African Tax Administration Forum and the Inter-American Center of Tax Administrations – to foster regional dialogue and mutual support between tax administrations. Member states will receive training and technical consulting services to encourage more efficient and modernised tax collection.

Regional initiatives

In addition to the planned cooperation between the SDC and RWI, SECO is also preparing to support a regional RWI centre in Azerbaijan whose goal is to reinforce government accountability in the commodities sector in central Asia and the Caucasus. Planned activities include training for members of parliament, journalists and NGOs. This project is meant to complement implementation of the EITI standard. It will undergo a two-year trial period, after which an expansion to additional SECO focus countries is planned.

Bilateral initiatives

Efforts on the bilateral level also focus on improving transparency and accountability by reinforcing non-governmental stakeholders in particular. The key is to ensure that programmes are invariably conflict-sensitive. They must also include all relevant stakeholders (government, civilians, private sector, etc.) from the outset. Switzerland also aims to organise commodities-related projects and programmes within the scope of its bilateral relations. Swiss commitments in various regions of Africa, Asia and Latin America are currently being reviewed, and decisions concerning Bolivia and Mali in particular are awaited shortly. The SDC is also reviewing possible programmes for the Afghan commodities sector. It plans to support in particular the creation of general conditions necessary to guarantee socially responsible use of commodities. While doing so, the SDC can look to past experiences and base itself on existing programmes (albeit requiring expansion), especially initiatives in eastern and southern Africa, Burkina Faso (through the SDC's budget support) and an ongoing programme in Mongolia dedicated to the sustainable use of resources. The SECO's bilateral tax project in Ghana has been expanded and now also covers the management of revenues generated through commodities extraction.

5 Double taxation agreements and transfer pricing

5.1 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.*

The Federal Council policy outlined in recommendation 14 remains valid. In August and September 2013, Switzerland signed the first TIEAs with the Isle of Man, Guernsey and Jersey, which were submitted to parliament for approval in the form of a dispatch. Further TIEAs were signed with Andorra and Greenland in March 2014 and initialled with the Seychelles and San Marino in recent months. In addition, DTAs containing an exchange of information clause in compliance with the OECD standard were signed or initialled with emerging economies and developing countries. For instance, a DTA in accordance with the international standard was signed with China (the existing DTA without the OECD standard dates from 27 September 1991). Switzerland initialled DTAs in line with the international standard with Argentina, Ghana, Ukraine and Uzbekistan (DTAs without the OECD standard are already in force with the last three countries).¹⁶ 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 should be concluded with emerging economies and developing countries.¹⁷ 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 and has instructed the FDF to prepare a corresponding draft.¹⁸ With this measure, the signing of the multilateral OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters on 15 October 2013 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.

¹⁶ See an up-to-date overview of Switzerland's DTAs and TIEAs at <http://www.sif.admin.ch/themen/00502/00899/index.html?lang=en>.

¹⁷ See also 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: http://www.efd.admin.ch/dokumentation/zahlen/00578/02749/index.html?lang=de&download=NHZLpZeg7t,Inp610NTU042I2Z6ln1acy4Zn4Z2qZpnO2Yuq2Z6gpJCDe4J_gGym162epYbg2c_JjKbNoKSn6A--.

¹⁸ See the press release of 19 February 2014 at <http://www.efd.admin.ch/dokumentation/medieninformationen/00467/index.html?lang=en&msg-id=52061>.

6 Reputational risks

6.1 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.*

In 2012, Presence Switzerland began conducting an annual analysis of national and international print media in order to identify the volume of articles on commodity trading. The subject of gold trading has been included in this analysis since 2013.

In 2013 a drop in the number of articles appearing in the international press on the topic of commodity trading – both in general and in relation to Switzerland – could be observed, running counter to the trend of recent years. In the national media, on the other hand, the subject remained in the spotlight, with the number of reports even rising slightly in the last year, especially in the daily and weekly press.¹⁹ Although economic and business coverage continues to predominate even in Switzerland, human rights and environmental issues are beginning to meet with more interest.

In terms of coverage of Switzerland as a centre for gold trading, a slight rise in interest could be detected among the leading international media. However, this is attributable to the general increase in the number of reports on the gold trade, which in turn is mainly connected to global developments in the gold market. Individual articles pointed to Switzerland's rapid growth in significance as a hub for gold trading. At present, these topics do not feature substantially in the foremost international media. An increase in the number of reports on the gold trade could also be detected in the Swiss media. This was mostly due to increased coverage in the mainstream press, whereas the number of articles in the specialised business press rose only fractionally.²⁰

Communication with the embassies on the subject of natural resources has been stepped up. The embassies have incorporated commodities-related issues within their reporting. Through its embassies and in collaboration with them, Switzerland has also done much to promote the Voluntary Principles on Security and Human Rights (VPSH) among the governments of countries rich in natural resources, such as Peru, the Democratic Republic of Congo (DRC), Nigeria, Ghana, Mongolia, the Philippines, Indonesia and South Africa, to convince them to comply with this initiative. The FDFA travelled to Peru back in November 2013 to promote the VPs and made another promotional visit to South Africa in February 2014.²¹

¹⁹ This is not least attributable to the publication of the background report on commodities.

²⁰ The increase in coverage of the gold trade is most likely also connected to the launch of the Better Gold Initiative in Switzerland in November (see Recommendation 9).

²¹ See Recommendation 10.

7 Dialogue with actors outside the Confederation and interdepartmental platform

7.1 Recommendation 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.*

Various departments in the Federal Administration maintain an ongoing dialogue regarding the commodities issue with the cantons, on the one hand, and the industry (companies and trade federations) and NGOs, on the other.

SECO, SIF and State Secretariat of the FDFA invited representatives of companies, cantons and NGOs to discussions in Bern on 18 February 2014. The goal of these discussions was to identify opportunities and risks early on and foster dialogue between the stakeholders. Two separate roundtables took place (NGO/cantons and companies/cantons), enabling all stakeholders to openly articulate their position vis-à-vis the Federal Administration. Central to the discussion were the stakeholders' assessments of Switzerland's current situation, opportunities and risks as a commodities trading hub. These roundtable discussions featured 4 cantons, 12 NGOs, 8 companies and 3 federations. Similar exchanges are due to be held at regular intervals in the future. The Federal Administration also participates in various multi-lateral discussions (see recommendations 10 and 11), through which it confers with stakeholders over the specific challenges of the commodities industry.

In 2014, the FDFA will join the board of trustees of the Swiss Research Institute on Commodities at the University of Geneva. This will provide the opportunity to introduce human rights and environmental issues to the institute's fundamental research. Development-related commodities questions will be treated within the existing structures focused on promoting research cooperation with developing countries.

The commodities platform will continue to exist to ensure a continued exchange of information within Switzerland. The authorities concerned with the commodities issue (currently the FOEN, SFOE, FOJ, SDC, FCA, fedpol, FINMA, SECO, SIF and State Secretariat/Directorate of Political Affairs of the FDFA) will meet at least twice a year under the rotating leadership of the Directorate of Political Affairs of the FDFA, SIF and SECO in order to discuss the current situation.