

PCSD North-South

MONITORING OF POLICY COHERENCE FOR SUSTAINABLE  
DEVELOPMENT IN A NORTH CONTEXT  
SOUTH

FINALIZATION OF THE CONCEPTUAL WORK

Policy Domain: Illicit Financial Flows (IFFs)  
Synthesis Report with Annexes

Bern, 26.10.2020

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Network Switzerland

## **PCSD North-South**

Monitoring of Policy Coherence for Sustainable Development in a North South  
Context – Finalization of the Conceptual Work

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Synthesis Report with Annexes

Bern, 26.10.2020

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# Synthesis Report

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## Background

Policy coherence for development (PCD) calls for better coherence between aid and non-aid policies. PCD strives to ensure that a country's domestic and foreign (non-aid) policies are consistent with, and support, development efforts. The underlying idea is that, in today's interconnected economy, some domestic policies (for example, trade and fiscal policies) may have negative spillover effects on the development prospects of other countries.

With the adoption of the Agenda 2030, the focus has shifted from PCD to policy coherence for sustainable development (PCSD), which not only looks at aid and non-aid policy coherence, but also to coherence issues across multiple and sometimes conflicting policy objectives (Brugger 2019, at 7). The PCSD framework requires to pay more attention to critical interlinkages (synergies or trade-offs) across multiple and sometimes conflicting development objectives across the economic, social and environmental spheres (horizontal coherence). It requires coherent actions at the local, regional and global levels (vertical coherence). It puts emphasis on the role of key actors (government, the private sector, civil society) across developed and developing countries. As regards monitoring, the PCSD framework requires going beyond the assessment of whether a country's sectoral policies cohere with its development policy. It requires new indicators that capture critical interactions (synergies and trade-offs) across economic, social and environmental development objectives, long-term impacts and transboundary effects (OECD 2016a).

The challenge of policy coherence is enshrined in the Swiss Federal Constitution (FC),<sup>1</sup> which frames the strategic direction of Switzerland's foreign economic policy. According to Art. 54 FC, the Confederation shall "[...] in particular assist in the alleviation of need and poverty in the world and promote respect for human rights and democracy, the peaceful co-existence of peoples as well as the conservation of natural resources".<sup>2</sup> In parallel, the Confederation is bound to "safeguard the interests of the Swiss economy abroad", pursuant to Art. 101 FC. Meeting both objectives at the same time can create tensions in the short term (Brugger 2019). As observed in Brugger, "[t]he tension between aid and non-aid policies is further implicated in the 1976 Law on Development Cooperation, which defines mutual respect of the rights and interests of the partners (article 2.1) as one of the tenets of development cooperation" (Brugger 2019, p. 3).

In its 2013 peer-review report on Switzerland, the OECD Development Assistance Committee (DAC) recommended that Switzerland "undertake systematic monitoring and analysis of its national policies, and the international policies, that affect developing countries" (OECD 2014). The 2019 DAC Peer Review of Switzerland acknowledged that policy coherence was addressed by Switzerland, but that public debate could be wider (OECD 2019a). To strengthen its efforts towards coherent policies for sustainable development, "Switzerland should further analyse the impact of its domestic policies on developing countries and identify possible inconsistencies. It should seek to disseminate and debate such analyses, both in the government and broader Swiss society" (OECD 2019a, p. 16, Recommendation 1).

Against this background, an initial study was conducted by the European Centre for Development Policy Management (ECDPM) on monitoring the coherence of policies related to food security, migration and development, and illicit financial flows (ECDPM 2016). Moving from the ECDPM study, a Consortium of Swiss universities - CDE (University of Bern), ETHZ NADEL and IHEID – carried out further conceptual work towards monitoring PCSD. The Consortium designed a coherent methodology for the systematic assessment of potential coherence gaps (Brugger and Batliner 2016), piloted in the areas of migration (Chetail et al 2016), IFFs (Carbonnier et al 2016) and food security (Bürgi et al 2016). This report presents the finalization of the conceptual work (indicators, baseline, peer reviews) focusing on the IFF policy domain. The work aimed to:

- Adjust the methodology to more explicitly relate to the SDG indicators, shifting from PCD to PCSD;

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<sup>1</sup> Bundesverfassung der Schweiz vom 18. April 1999 (FC; SR 101).

<sup>2</sup> Article 54 (2) FC.

- Finalize the PCSD indicators in the IFF domain and critically review the rationale behind;
- Increase the credibility, legitimacy and robustness of the PCSD assessment by conducting a peer review of the indicators in the domain of IFF;
- Test the approach by analysing a small set of recent policy decisions that relate to the IFF domain;
- Document the chosen indicators together with the rationale, together with the main results of the policy assessment in a synthesis report, which can be made publicly available.

This report summarises the work done and presents its main results in four annexes.

## Summary of Work Done and Main Results

Building on the Methodology paper (Brugger and Batliner 2016; Brugger 2019) and the IFF Annex (Carbonnier et al 2016), the analysis first delimited the IFF policy domain. The delimitation of the policy domain was twofold: the analysis first identified the sectoral policies and frameworks with regard to IFFs (policy domain) and then focused on specific SDG targets and indicators related to IFFs (development policy domain). Once defined the boundaries of the IFF domain in terms of policy instruments and development objectives, we assessed how the policy objectives and instruments interact with development goals. We captured coherence conflicts and synergies in a matrix that juxtaposed policy instruments and development objectives. Finally, we established indicators to measure progress towards the defined coherence gaps and set a baseline to assess progress. The framework was tested for usefulness on six policy decisions taken in 2018 and 2019.

### Policy Domain Delimitation: Key Policy Areas and Instruments in the IFF Domain

We first identified the sectoral policies and frameworks that related to IFFs (delimitation of the policy domain). The analysis was three-fold.

We first took stock of key overview reports and notes on IFFs from the Federal Council, SECO and SDC (Federal Council 2016; SDC 2014; SDC and SECO 2018).

We then added granularity and depth drawing from reports published by the Interdepartmental Coordinating Group on Combating Money Laundering and the Financing of Terrorism (CGMF) (CGMF 2015, 2017a, 2017b, 2018, 2019).

The analysis was subsequently widened and deepened based on key ‘external’ reference documents and processes with regard to IFFs, including major ‘peer reviews’ of Switzerland.<sup>3</sup> The analysis also leveraged the knowledge base built in the r4d project on curbing commodity trade-related IFFs.<sup>4</sup>

By cross-matching and combining these source documents and findings, the analysis mapped key issue areas and instruments in the IFF domain. They are displayed on the Y-axis of the coherence matrix, columns A and B (Annex 2).

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<sup>3</sup> Key reference documents included: the first and second round peer review reports on Switzerland by the Global Forum on Transparency and Exchange of Information for Tax Purposes (OECD 2011, OECD 2016b and OECD 2020); the Financial Action Task Force (FATF) fourth mutual evaluation report on Switzerland and its follow-up report (FATF 2016, FATF 2020); the Phase 4 Report on Switzerland by the OECD Working Group on Bribery (OECD 2018a); the report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights on his visit to Switzerland (UN Independent Expert on the Effects of Foreign Debt 2018); the OECD Policy Coherence for Sustainable Development (PCSD) Framework report – Chapter 4 on Policy Coherence and Illicit Financial Flows (OECD 2016a); the BEPS 2015 Final Reports and follow-up work within the OECD/G20 Inclusive Framework on BEPS; the European Commission’s Reports on Aggressive Tax Planning Structures and Indicators (European Commission 2015 and 2017); the Tax Justice Network (TJN) Financial Secrecy Index (TJN 2018) and the TJN Corporate Tax Haven Index (CTHI) (TJN 2019)

<sup>4</sup> <http://www.r4d.ch/modules/employment/curbing-illicit-financial-flows>.

## Development Policy Domain: SDG Targets and Indicators Related to IFFs

The identification of SDG targets and indicators related to IFFs required some subjective choice in order to narrow down a potentially over-encompassing scope.

IFFs cut deeply across many SDGs and potentially threaten all 17 SDGs. In particular, IFFs associated with illegal trade – from wildlife poaching to human trafficking – impact the SDGs in many significant ways, as mapped by the Transnational Alliance to Combat Illicit Trade (TRACIT 2019). TRACIT findings highlight the interconnected nature of the challenge and point to difficulties in prioritizing policy response.

**Table 1: Mapping illicit trade against the SDGs – TRACIT 2019**



Source: TRACIT 2019, at p. 6.

We narrowed the scope by focusing on SDGs targets and indicators that are explicitly or most directly related to IFFs, namely, SDG targets 16.4 (curb IFF and combat crime), 16.5 (reduce corruption), 16.6 (sound institutions), 16.10 (public access to information), 17.1 (mobilize domestic revenue), as well as targets 14.4 and 15.7 (illegal trade in natural resources).

We then added other SDG targets that involve potential policy tensions with the commitment to curb IFFs – SDG targets 8.1-8.3 (sustained growth, employment and SME development), SDG targets 8.10 and 10.c



(access to financial services and remittance costs), SDG target 16.3 (civic rights and guarantees embedded in the Rule of Law), SDG target 17.15 (respect for each country's policy space).

Annex 1 presents an overview of SDG targets and indicators related to IFFs, which are also deployed on the X-axis of the coherence matrix (Annex 2). The analysis is broadly consistent with the delimitation of the development policy domain done by Carbonnier et al. (2016) as regards IFFs. It reflects the approach outlined in the OECD PCSD framework in the IFF area (OECD 2016a, chapter 4).

### **PCSD Analysis: Coherence Matrix**

Based on the above analysis, the coherence matrix (Annex 2) maps:

1. Key policy areas and instruments in the IFF domain (Y-axis, columns A and B)
2. SDG targets and indicators most directly related to IFFs (X-axis, rows 2-3)
3. Interactions between Swiss IFF-related policy instruments and IFF-related SDGs (cell values)

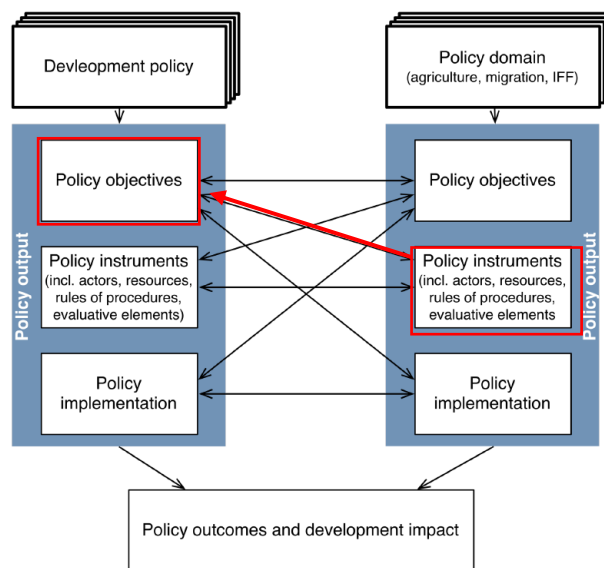
The cell values capture synergies and potential coherence tensions between Swiss policies (Y-axis) and IFF-related SDGs (X-axis). The interaction score is x/y, where:

- x denotes the type of interaction (0 for no or very limited interaction; 1 for indirect interaction mediated by several related factors; and 2 for automatic, direct interaction without mediating factor)
- y denotes the potential impact that each domestic policy instrument may have on the achievement of the SDGs (0 for no, limited, or negligible impact; 1 for moderate impact; 2 for substantial impact). The value of Y can be positive (+), negative (-), or both ( $\pm$ ), to indicate positive impact, negative impact or impact that can go both ways.

The matrix captures two sets of interactions: 1) Synergies and trade-offs between Swiss policies (Y-axis) and specific IFF-related development objectives (reduce IFFs, combat crime, mobilize revenue); 2) Critical interactions and inter-linkages (synergies or trade-offs) across the commitment to curb IFFs and other SDGs targets (for example, support of small and micro enterprises, access to financial services, civic guarantees etc.).

### **PCSD Monitoring: PCSD Indicators and Baseline Assessment**

We developed PCSD indicators at the policy instrument level in relation to seven domains in the Coherence Matrix, namely, tax transparency, transparency of business entities and investment, trade transparency and regulation, whistle-blower protection, corporate taxation, regulation of 'enablers' of tax evasion and avoidance, and corporate responsibility (Annex 3). In these issue areas, the indicators monitor the coherence of Swiss policy instruments in regard of their impact on development (IFF-related SDGs).



Source: Brugger 2019

The focus is on policy instruments (operative elements) in their interaction with specific IFF-related development objectives (reduce IFFs and strengthen DRM in developing countries). The following table provides an overview of the policy instruments considered in Annex 3.

Tax transparency	<ul style="list-style-type: none"> <li>• Exchange of information on request</li> <li>• Automatic exchange of information (financial accounts)</li> <li>• Country-by-country reports</li> </ul>
Transparency of business entities and investment	<ul style="list-style-type: none"> <li>• Beneficial ownership disclosure</li> </ul>
Trade transparency and regulation	<ul style="list-style-type: none"> <li>• Trade data</li> <li>• Payment and contract disclosure</li> </ul>
Whistle-blower protection	<ul style="list-style-type: none"> <li>• Whistle-blower protection</li> </ul>
Corporate taxation	<ul style="list-style-type: none"> <li>• Measures to address profit shifting</li> <li>• Double tax agreements</li> </ul>
Regulation of ‘enablers’ of tax evasion and avoidance	<ul style="list-style-type: none"> <li>• Penalties for professional enablers of abusive tax arrangements</li> <li>• Anti-money laundering duties</li> </ul>
Corporate responsibility	<ul style="list-style-type: none"> <li>• Supply chain due diligence and transparency</li> </ul>

The PCSD analysis is broken down by policy instrument and structured as follows.

For each policy instrument, a first section titled ‘**Coherence Analysis**’ assesses how the policy instrument in the given domain interacts with specific IFF-related development goals – with a focus on SDG 16.4 (reduce illicit financial outflows from developing countries and combat crime), SDG 17.1 (strengthen the domestic resource base of developing countries), and SDG 16.10 (enhanced public access to information).

The following section, titled ‘**Strengthening PCSD**’, identifies opportunities to improve coherence with the above-mentioned IFF-related goals. For monitoring purposes, the narrative sets targets to measure progress

towards the defined coherence goals. These targets are defined based on the literature and expert advice and do not reflect politically defined goals as measured by the administration. They need to be considered alongside competing interests and objectives through the political process. In order to inform this process, the analysis makes coherence tensions explicit. It expands the discussion of IFF-related targets by considering critical interactions with other SDGs, particularly in relation to social-inclusion goals (Box 1). It also points to trade-offs that arise in Switzerland with respect to the obligation to safeguard the interests of the Swiss economy, constitutionally enshrined. The definition and achievement of politically defined goals – beyond the scope of the analysis – will imply weighing and balancing these competing interests through the political process. The final outcome will reflect political interests and power structures.

**Box 1: IFF-related targets, critical interactions with other SDGs and normative trade-offs in Switzerland.**

The PCSD framework moves beyond identifying coherence tensions between a specific sectoral policy and the political commitment to curb IFFs. It requires mapping out critical interactions (synergies or trade-offs) across SDGs targets related to IFFs, and across sectoral policies related to IFFs.

In relation to Switzerland, for example, there are potential trade-offs and tensions between anti-IFF measures and a set of civic and ‘liberal’ rights deeply rooted in liberal democracies. For example, in the context of exchange of information procedures (anti-IFF policy), notification and appeal rights, the right to inspect the file, and other procedural safeguards, which are deeply entrenched in the Swiss legal system, may in practice deter, delay or prevent effective exchange of information. Tensions similarly arise with data protection rules and property rights: Switzerland may decline to exchange information that would disclose any trade, business, industrial, commercial or professional secret or trade process. In these examples, there are potential trade-offs between, on the one hand, the need to curb IFFs (SDG 17.14) and, on the other, civic rights and guarantees embedded in Rule of Law (SDG target 16.3).

Likewise, potential tensions and trade-offs arise between tightened financial and business regulation (anti-IFF policy) and social-inclusion goals. For example, anti-money laundering and counter financing of terrorism regulations may lead banks to no longer serve money transfer operators, which could inflate remittance transfer costs (against SDG targets 10.c and 8.10); tightened supply chain due diligence requirements may lead Swiss companies to cut ties with small and informal suppliers (in tension with, for example, SDG target 10.3); detailed reporting requirements under multiple disclosure frameworks may entail disproportionate compliance costs for small and micro enterprises (in conflict with SDG target 8.3 on SME development); and so on.

The PCSD framework invites to consider all these critical interactions.

The section ‘**Indicators**’ sets indicators that can be used to measure progress towards the defined coherence goals. The indicators measure progress towards IFF-related development objectives and specifically SDG target 16.4 (reduce IFFs and combat crime), SDG target 16.4 (enhance domestic resource mobilization in developing countries), and SDG target 16.10 (public access to information). They are developed at the policy instrument level. We used three sets of indicators:

- 1) Output indicators that examine outputs from the policy process (existence and design of a policy instrument);
- 2) Input indicators that measures donor expenditure on a particular policy area or policy process;
- 3) Policy stance indicators, to measure the actual negotiating position of Switzerland in multilateral negotiation processes.

In line with the established methodology (Brugger 2019), each indicator is composed of the following elements:

Criterion	Which measurable characteristic of the situation described in the specific policy output, input or stance do we observe and analyse?
Measure	How can we measure the criterion? What is the measuring unit?
Means of Verification	Where do we get the data?
Analysis	How are data analyzed? How is the information presented?

Source: Brugger 2019

A final section, titled ‘**Baseline Assessment**’, sets a baseline for analysis of policy changes in the future. For each PCSD indicator, the baseline determines what is the status quo regarding the indicator at time t1. For most indicators, the baseline is 2018.

### Testing the Framework: Six Policy Decisions

We selected six policy decisions taken in 2018-19, assigned them to the respective PCSD tension areas and assess them against the PCSD indicators and baselines. Annex 4 presents the findings of the analysis.

Policy decision	Date (adoption)
Law on the implementation of the recommendations of the Global Forum (RO 2019 3161 (-3172))	21 June 2019
Ruling from the Federal Tribunal in July 2018 on the interpretation of the good faith principle (Decision 2C_648/2017 of 17 July 2018)	17 July 2018
The Federal Council dispatch on AEOI with 19 further partner states	29 May 2019
The Federal Council dispatch on the amendment of the Anti-Money Laundering Act (AMLA)	26 June 2019
Rejection of a draft law on whistle-blower protection in the private sector	3 June 2019
Swiss signature and entry into force of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS	7 June 2017 and 1 December 2019

### Peer Review Meeting

The report and its Annexes were assessed at an expert workshop on 26 June 2020. Due to the Covid-19 situation, the meeting was held remotely. It brought together (online) the project team (CDE, NADEL and SDSN Switzerland) and seven external reviewers from the academia and civil society, attending in their personal capacity.<sup>5</sup>

The reviewers addressed three sets of questions: 1) whether the IFF policy domain had been delimited correctly (are we monitoring the right thing?); 2) if the monitoring exercise had been properly structured in terms of assessing progress against specified objectives/targets; and 2) if the right indicators had been used to monitor progress (do we use the right indicators to monitor PCSD in the IFF area?).

#### 1) Policy domain delimitation

It was widely felt that the policy domain had been properly delimited: it was neither too broad nor too narrow and comprehensively captured key policy issues and areas in the IFF field. Yet some clarifications were needed as regards two policy areas: ‘trade transparency and regulation’ and ‘corporate responsibility’. It was observed that in those areas the focus was selectively on commodity trade-related issues. While this focus reflected the prominence of the commodity sector in Switzerland, it was pointed out that more IFF-related issues were involved, beyond those arising in commodities. Attention was drawn, for example, to counterfeit and pirated goods. Likewise, a wide array of approaches could be pursued to promote responsible business conduct abroad, beyond supply chain due diligence. An example brought to the table was the potential use of unfair competition rules in enforcing corporate social responsibility. While the report did not need to exhaustively assess the

<sup>5</sup> In alphabetical order, Professor Gilles Carbonnier (Graduate Institute), Professor Thomas Cottier (WTI), Mr. Dominik Gross (Senior Analyst, Finance and tax policy at AllianceSud), Ms. Marcena Hunter (Senior Analyst, Global Initiative Against Transnational Organized Crime), Ms. Sathi Meyer-Nandi (advisor at GIZ), Ms. Luckystar Miyandazi (Policy Officer at ECDPM) and Professor Kurt Schmidheiny (University of Basel).

PCSD implications of these policy options, it would need to mention the non-exhaustive or open nature of its list of indicators as regards trade and corporate responsibility. Concerning taxation, one reviewer observed that the report gave only passing attention to a key ‘game changer’ in the fight against tax-motivated IFFs – unitary taxation with formulary apportionment. Others argued that adding unitary taxation as a separate entry to the Annex would go too far, given the absence of consensus around that option at the international level. More generally, one reviewer felt that the entire exercise was too Swiss-specific, with exclusive focus on monitoring policy developments in Switzerland. This however reflected the project mandate – assess the PCSD of Swiss policies in the IFF area.

## 2) Assessing PCSD against what?

Once major concern was that setting targets at the policy instrument level would make the indicators extremely politicized. It was suggested that targets could be set at the policy objective level. Eventually, the SDGs could provide direction and guidance, without the need to set more specific and measurable targets. There was no agreement on this point, as others felt that monitoring implied some idea of what policy coherence would look like in concrete terms. Monitoring coherence at the policy instrument level implied knowing in which direction reform should move. Some felt that it was a matter of language and rephrasing so as to avoid prescriptive language. It was suggested to set targets and objectives hypothetically, to inform discussion. The point was also made that targets should not be presented as normative targets/objectives, which would imply that they were normatively grounded in law.

## 3) Indicators

The discussion on indicators ensued. There were questions as to whether the analysis was critical enough. In particular, most indicators monitored policy outputs (e.g. steps towards the enactment of new laws), without assessing reform impacts and distributional outcomes in practice. Likewise, some indicators used official documents as means of verification, without considering what lay behind formal statements. While these comments are certainly valid, a more critical analysis and the use of outcome indicators that measure results of policy changes would require empirical investigations and impact assessments. This might not be compatible with the need to keep the exercise simple and manageable.

All reviewers made rich comments, corrections and suggestions as regards the specifics of the indicators, particularly in the area of tax transparency and corporate taxation. A major revision of the Annex 3 report was carried out to take their comments into account. In the process, we believe the correctness and relevance of the indicators has been significantly improved.

## Open Questions and Lessons Learned So Far

Lessons learned so far, including from the peer review process, point to two major challenges that need to be addressed more systematically in the future.

First, it is methodologically difficult to monitor policy coherence for development in the IFF domain at the policy instrument level without setting concrete targets for Switzerland in the fight against IFFs. This leads to conflate PCSD monitoring in this area with the measurement of progress in implementing strategic actions to counter IFFs.

Second, with regard to the formulation of law reform indicators, there is a trade-off between the definition of objectively measurable and reliable indicators and the need to keep things simple. Likewise, trade-offs arise between the need to have specific indicators suitable for measurement and their relevance in the long-run.

These two sets of issues are discussed below.

## Setting Policy Targets to Measure Progress

Monitoring of policy coherence for sustainable development is conceptually problematic in the IFF area, in that it tends to conflate and fuse PCSD monitoring with the measurement of progress in the implementation of strategic action by Switzerland to curb illicit financial outflows from developing countries. As argued below, this is almost unavoidable.

Effective monitoring requires setting targets against which progress or lack of progress is measured. Therefore, we had to set IFF-related targets against which policy coherence is assessed in the IFF domain. Since we assessed policy coherence at the policy instrument level, we set targets at the policy instrument level, by calling for reform action by Switzerland to reduce illicit financial outflows from developing countries and maximize domestic resource mobilization therein. We set policy targets based on the literature and expert advice, while also taking into account cutting-edge reform in more progressive jurisdictions and reform pathways advocated by developing countries and major think tanks.

Such policy targets do not necessarily reflect politically defined goals as measured by the Swiss administration and may in some case encroach upon them. As mentioned, we expanded the discussion of IFF-related targets by making these coherence tensions explicit. In particular, the analysis points to trade-offs that arise in Switzerland between the commitment to curb illicit financial outflows from developing countries and the obligation to safeguard the interests of the Swiss economy, constitutionally enshrined. The analysis also considers critical interactions between the objective to curb IFFs from developing countries and other development objectives, in particular social inclusion objectives.

The definition and achievement of politically defined goals – beyond the scope of the analysis – will imply weighing and balancing these competing interests through the political process.

## Technical Trade-offs in Defining Law Reform Indicators

As regards law reform indicators, there is a trade-off between objectively measurable/reliable indicators and simple indicators. In order to be precise an objectively measurable, with minimal subjective bias, legal indicators must be specific. It is not enough to specify, for example, number of ‘good’ or ‘balanced’ double tax agreements (DTAs) with developing countries. In order to avoid subjective assessments of what a ‘balanced’ DTA is, the indicator must specify the key design features that DTAs with developing countries must have. This makes the indicator precise and measurable, but at the same time complex to measure.

In a related vein, there is some trade-off between the specificity of the indicator and its relevance in the long-run. Detailed PCSD indicators at the policy instrument level reflect the state of the policy/legal debate at a certain point in time. In a fast moving policy environment, new indicators will need to be developed as the frontiers of the policy debate move. There is some trade-off between the design of relevant and reliable indicators at a specific point in time, and their long-term relevance.

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# Annex 1

## SDG Targets and Indicators related to IFFs\*

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Ver. 1

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\* Adjusted from OECD 2016a and Carbonnier et al. 2016.

SDG target/indicator	Brief description	Relevance to IFFs	Notes
16.4	Reduce IFFs	-	
<i>Synergies</i>			
17.1	Strengthen DRM	Synergy	Curbing tax-motivated IFFs expands the tax base
10.5	Financial markets regulation	Synergy/Enabler	Precondition for certain anti-IFF measures
16.5	Reduce corruption and bribery	Synergy/Enabler	Progress mutually reinforcing with efforts to curb IFFs/ corruption can undermine anti-IFF measures
16.6	Sound institutions	Synergy/Enabler	Progress mutually reinforcing with efforts to curb IFFs/ poor institutions can undermine anti-IFF measures
16.a; 16.4	Institutions to combat crime	Synergy/Enabler	Progress mutually reinforcing with efforts to curb IFFs/ poor institutions can undermine anti-IFF measures
16.10	Public access to information	Synergy/Enabler	Progress mutually reinforcing with efforts to curb IFFs
3.a	Tobacco control (illicit tobacco trade)	Synergy	Illicit trade in tobacco products is a source of IFFs
5.2, 10.7, 16.2	Human trafficking	Synergy	Human trafficking is a source of IFFs
14.4, 15.7	Illegal trade in natural resources	Synergy	Illegal, unregulated, unreported trade in natural resources is a source of IFFs
<i>Potential trade-offs</i>			
8.1, 8.2	Sustained economic growth and employment	Potential trade-offs	For example, double tax agreements that expand the taxing rights of host states (+ SDG 17.1) may discourage inward foreign investment, with ramifications in terms of economic growth and employment (- SDG 8)
8.3	SME development	Potential trade-offs	The compliance costs associated with stringent registration, record keeping, traceability and disclosure requirements (anti-IFF measures, + SDG 16.4) may put an extra-burden on SMEs and further marginalize informal enterprises (- SDG 8.3)

SDG target/indicator	Brief description	Relevance to IFFs	Notes
8.10	Access to financial services	Potential trade-offs	Stringent identity documentation and transaction due diligence (+ SDG 16.4) may discourage access to financial services by vulnerable clients and lead financial intermediaries to disengage from vulnerable clients, sectors and countries (- SDG 8.10)
10.c	Reduce remittances costs	Potential trade-offs	Tightened anti-money laundering requirements (+ SDG 16.4) may lead banks to 'de-risk' and no longer serve money transfer operators (- SDG 10.c)
16.3	Rule of Law & access to justice	Synergy/trade-offs	The Rule of Law is mutually reinforcing with and a precondition for anti-IFF measures. However, it also raises potential trade-offs and policy conflict, particularly in relation to procedural rights that may affect the effectiveness of anti-IFF administrative/enforcement action. Note also that data protection rules and confidentiality provisions, enshrined in the Rule of Law, may conflict with anti-IFF measures
17.15	Respect each country's policy space	Synergy/trade-offs	Efforts to curb tax-motivated IFFs in general restore the fiscal policy space of other countries. However, some measures geared to maximize the development impact of anti-IFF policies, for example, conditioning return of stole assets to development goals, infringe on a country's policy space
<i>Overall development impact</i>			
17.4	Enhance PCSD		

# Annex 2

## Coherence Matrix

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Ver. 2

1 September 2020



## How to read the matrix:

The coherence matrix maps:

- Key policy areas and instruments in the IFF domain (Y-axis, columns A and B), based on the literature - refer to the Synthesis Report
- SDG targets and indicators most directly related to IFFs (X-axis, rows 2-3) – refer to the Synthesis Report
- Interactions between Swiss IFF-related policy instruments and IFF-related SDGs (cell values)

The matrix captures two sets of interactions:

1. Synergies and trade-offs between Swiss policies (Y-axis) and specific IFF-related development objectives (reduce IFFs, combat crime, mobilize revenue);
2. Critical interactions and inter-linkages (synergies or trade-offs) across the commitment to curb IFFs and other SDGs targets.

The cell values capture synergies and potential coherence tensions between Swiss policies (Y-axis) and IFF-related SDGs (X-axis). The interaction score is x/y, where:

- x denotes the type of interaction (0 for no or very limited interaction; 1 for indirect interaction mediated by several related factors; and 2 for automatic, direct interaction)
- y denotes the potential impact that each domestic policy instrument may have on the achievement of the SDGs (0 for no or negligible impact; 1 for moderate impact; 2 for substantial impact).

The value of Y can be positive (+), negative (-), or both ( $\pm$ ), to indicate positive impact, negative impact or impact that can go both ways.

Policy domain	SDGs	IFF-related SDGs								Critical interactions with other SDGs (North & South)					
		16.4 Reduce IFFs	17.1 Strengthen DRM	10.5 Financial markets regulation	16.4/a Combat organized crime	16.5 Reduce corruption and bribery	16.6 Sound institutions	16.10 Public access to information	14.4, 15.7 Illegal trade in natural resources	8.1, 8.2 Sustained growth and employment	8.3 SME development	8.10 Access to financial services	10.c Reduce remittance costs	16.3 Rule of Law & access to justice	17.15 Respect each country's policy space
<b>Tax transparency</b>															
	Exchange of tax information on request	1/+2	1/+2		1/+1	1/+2	1/+1						1/=1	1/+2	
	Automatic exchange of financial account information (also, spontaneous sharing/publication)	1or2/+2	1or2/+2	1/+1	1/+1	1/+2	1/+1	2/+2*					1/=1	1/+2	
	Exchange of discretionary tax rulings	1/+2	1/+2			1/+1	1/+1	1/+1					1/=1	1/+2	
	Filing and exchange of Country-by-Country reports	1/+2	1/+2				1/+1	2/+2*		1/=1			1/=1	1/+2	
<b>Transparency of business entities and investment</b>															
	Beneficial ownership transparency	1/+2	1/+2	1/+1	1/+2	1/+2		2/+2*					1/=1		
	Strength of auditing and reporting standards	1/+2	1/+1	1/+2		1/+2		1/+1		1/-1					
	Regulation of legal vehicles/arrangements that may be used for asset protection purposes (domiciliary companies, trusts, etc.)	1/+2	1/+1	1/+1	1/+2	1/+1							1/+1	1/+2	
	Regulation of securities exchanges	1/+2		2/+2											
	Quality of data and transparency of the property register (real estate)	1/+2	1/+1		1/+2			2/+2*							
<b>Trade transparency and regulation</b>															
	More relevant and transparent trade data	1/+2	1/+1			1/+1	1/+1	2/+2	1/+2				1/=1		
	Payment and contract disclosure ('first trades')	1or2/+2	1or2/+2			1or2/+2	1/+2	2/+2	1/+2		1/-1		1/+1		
	Freeport transparency and regulation	1or2/+2	1/+2		1/+2	1/+1		1/+1					1/+1		
	Regulation of samplers and assayers (precious metals)	2/+2	1/+2	1/+1		1/+1		1/+1			1/-1		1/+1		
	Enhanced Customs-to-Customs cooperation	1/+2	1/+2		1/+1	1/+1	1/+1								
<b>Whistle-blower protection</b>		1/+2	1/+2	1/+1	1/+2	1/+2	1/+1	2/+2*					1/=2		
<b>Corporate taxation</b>															
	Measures to address profit shifting into and through Switzerland	1or2/+2	1or2/+2	1/+1		1/+1	1/+1			1/+1	1/+1		1/+2	1/+2	
	Double Tax Agreements (DTAs)		2/=2				1/+1			1/=1				2/=2	
<b>Regulation of 'enablers' of tax evasion and avoidance</b>															
	Corporate criminal offence of failure to prevent the facilitation of tax evasion	1/+1	1/+1			1/+1		1/+1					1/+1		
	Penalties for professional enablers of abusive tax arrangements	1or2/+2	1/+2			1/+1		1/+1		1/+1			1/=1		
	Mandatory disclosure of tax avoidance schemes (DOTAS)	1/+2	1/+2			1/+1		2/+2*					1/+1		
	Anti-money laundering duties on trust and company service providers, legal professionals and accountants	1or2/+2	1/+2			1/+1							1/+1		
<b>Corporate responsibility</b>															
	Supplychain due diligence and transparency	1or2/+2	1/=1		1/+1	1/+1		1/+2	1/+2	1/=1	1/-2		1/+1		
	Self-regulation of professional services (lawyers, notaries, accountants, etc.)	1or2/+2	1/+2	1/+1	1/+2	1/+2							1/+1		
	Corporate 'tax responsibility' norm	1/+1-2	1/+1-2			1/+1-2		1/+1-2							

Policy domain	SDGs	IFF-related SDGs								Critical interactions with other SDGs (North & South)					
		16.4 Reduce IFFs	17.1 Strengthen DRM	10.5 Financial markets regulation	16.4/a Combat organized crime	16.5 Reduce corruption and bribery	16.6 Sound institutions	16.10 Public access to information	14.4, 15.7 Illegal trade in natural resources	8.1, 8.2 Sustained growth and employment	8.3 SME development	8.10 Access to financial services	10.c Reduce remittance costs	16.3 Rule of Law & access to justice	17.15 Respect each country's policy space
	Integration of IFF concerns in investment decisions (directors' duties, investors and asset managers' strategies)	1/+2	1/+1	1/+2		1/+1		1/+2						1/+1	
<b>Anti-money laundering (AML) framework</b>															
	Extension of the predicate offences for money laundering	1/+2	1/+2		1/+2	1/+2		1/+2							
	Expanded subjective scope (obliged entities), including:														
	fiducianes, trust or company service providers; auditors, external accountants and tax advisors; estate agents and notaries; lawyers and other legal professionals assisting in the planning or carrying out of transactions for their client	1or2/+2	1/+2	1/+1	1/+2	1/+2								1#2	
	persons trading or acting as intermediaries in the trade of works of art and antiques, including art galleries and auction houses or via free ports	1or2/+2			1/+2										
	service providers in respect of crypto asset trading and transactions	1or2/+2	1#1	2/+2	1/+2	1/+2					1/-1	1/-1	1/+2		
	money transmitters	1or2/+2	1#1	2/+2	1/+2						2/-1	2/-1	1/+1		
	crowdfunding platforms and charitable associations	1or2/+2	1#1	1/+1	1/+2	1/+1							1/+1		
	traders in precious metals and stones	1or2/+2	1/+2		1/+2										
	Mutual legal assistance in criminal matters	1/+2	1/+2		1/+2	1/+2							1#2		
<b>Transnational corruption</b>															
	More effective sanctions	1or2/+2	1/+2		1or2/+2	1or2/+2	1/+1						1/+1		
	Tackle the use of intermediaries in corrupt deals	1or2/+2	1/+2		1or2/+2	1or2/+2	1/+1						1/+1		
<b>Restitution of illicitly acquired assets</b>															
	Efficient recovery of stolen assets	2/+2	1/+2		1/+2	1/+2	1/+1	1/+2					1#2		
	Conditionality of return		2/+2											2/-2	
<b>Public transparency and accountability</b>															
	Regulation of political contributions/donations, conflict-of-interest situations including "revolving doors"	1/+1	1/+1		1/+1	1/+1	2/+2	1/+1					2/+2		
	Public access to restricted information (tax rulings, company filings, beneficial ownership information, summary penalty orders)	1/+2	1/+2			1/+2		2/+2					1#1		
	Exclusion of crime convicted companies from public contracts	1/+1				1/+2									

\* If public (even only summary/aggregate and de-identified information)

Cell interaction score xy:

x: denotes the type of interaction (0 for no or very limited interaction; 1 for indirect interaction mediated by several factors; and 2 for automatic, direct interaction)

y: denotes the potential impact that each domestic policy instrument may have on the achievement of the SDGs (0 for no or negligible impact; 1 for moderate impact; 2 for substantial impact).

The value of y can be positive (+), negative (-), or both (±), to indicate positive impact, negative impact or impact that can go both ways.

Color code:

	strong interaction, substantial positive impact
	indirect interaction, substantial positive impact
	indirect interaction, low positive impact
	ambivalent direction of impact
	negative impact

# Annex 3

## PCSD Indicators and Baseline Assessment

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## Acronyms

AML	Anti-money Laundering
ATAF	African Tax Administration Forum
AEOI	Automatic Exchange of Information
BEPS	Base Erosion and Profit Sifting
BO	Beneficial Ownership
CAA	Competent Authority Agreement
CbC	Country-by-Country
CC	Criminal Code
CIAT	Inter-American Center of Tax Administrations
CO	Code of Obligations
CREDAF	Cercle de réflexion et d'échange des dirigeants des administrations fiscales
CRS	Common Reporting Standard
DRM	Domestic Resource Mobilization
DTA	Double Taxation Agreement
DTC	Double Tax Convention
EOIR	Exchange of Information on Request
EU	European Union
FATF	Financial Action Task Force
FDF	Federal Department of Finance
FDI	Foreign Direct Investment
FTA	Federal Tax Administration
GAAR	General Anti-abuse Rule
G24	Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes



ICRICT	The Independent Commission for the Reform of International Corporate Taxation
ICTD	International Center for Tax and Development
IFFs	Illicit Financial Flows
LAAF	Loi fédérale sur l'assistance administrative internationale en matière fiscale
LBMA	London Bullion Market Association
MAAC	Convention on Mutual Administrative Assistance in Tax Matter
MCAA	Multilateral Competent Authority Agreement
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument)
MNE	Multinational Enterprise
OECD	Organisation for Economic Co-operation and Development
PCSD	Policy Coherence for Sustainable Development
PMCO	Precious Metals Control Ordinance
PE	Permanent Establishment
RGG	Responsible Gold Guidance
SDC	Swiss Agency for Development and Cooperation
SDGs	Sustainable Development Goals
SECO	State Secretariat for Economic Affairs
SIF	State Secretariat for International Financial Matters
SME	Small and Medium-sized Enterprise
STSA	Swiss Trading & Shipping Association
TIEA	Tax Information Exchange Agreement
TIWB	Tax Inspectors without Borders
TRAF	Tax proposal and AHV financing
UN IMTS	United Nations International Merchandise Trade Statistics
WHT	Withholding Tax

# 1. Tax Transparency

## 1.1 Exchange of Tax Information on Request (EOIR)

Policy domain	IFFs – Tax transparency	
Policy interaction	C5	C: Reduce IFFs (SDG 16.4)
		5: Exchange of tax information on request
Interaction	1/+2 (indirect impact/potentially strong synergies)	

### A) Coherence Analysis

Through EOIR procedures, tax authorities in developing countries can access tax-relevant information held offshore in Switzerland.<sup>7</sup> Such information can help tax authorities uncover undeclared financial assets held offshore by resident taxpayers. It is also critical in investigating transfer mispricing and other illicit practices that shift profits out of developing countries (Box 1). The African Initiative for example reports that EOI requests allowed a group of eight African countries to secure USD 189 million extra revenue between 2014 and 2019 (Global Forum et al 2020).

**Box 1: Exchange of tax information on request (EOIR)**

What	If an EOIR framework is in place, a foreign tax authority can ask for particular information from the Swiss tax authority, typically in connection with a tax investigation of a specific taxpayer. In principle, the request can concern all foreseeably relevant information - e.g. a tax return filed with a Swiss cantonal tax authority, the beneficial owner of a company registered in Switzerland, bank account details, as well as commercial invoices. <sup>8</sup> If this information is not at the disposal of the Swiss tax administration, the Swiss tax administration will collect it from the third party who holds the information.
Use	Through the EOIR, tax authorities in developing countries can access tax-relevant information held offshore in Switzerland, for a variety of tax assessment-related purposes. Take the example of a mine in a developing country that sells its mineral output through a related trader in Switzerland. Through the EOIR procedure, the developing country’s tax authority may seek from Switzerland: - specific documentation that details the Swiss trading arm’s actual functions, assets and risks, and operating costs, to assess if the related trader charged disproportionate service fees to the mine, in the context of a transfer pricing investigation; - the third party sale agreement between the Swiss trader and the final buyer (without prejudice to trade or commercial secrets), in order to compare it with the terms and conditions of the mine offtake agreement, to identify potential mispricing; - information on the beneficial owner of a Swiss resident entity, to assess if the entity is genuinely resident in Switzerland or is a pass-through entity for tax treaty purposes; - access to the trader’s tax return filed in Switzerland, to cross-check tax and customs values in relation to exported items that are deductible costs for tax purposes in Switzerland <sup>9</sup> . The information request may also broadly concern risk analysis techniques or tax evasion or avoidance schemes documented by the Swiss tax authority.

Effective information exchange procedures can thus help tax authorities in developing countries to counter illicit financial outflows channelled through tax evasion and avoidance and mobilize domestic revenue (SDG targets 16.4 and 17.1). However, the development impact of EOIR procedures (and tax transparency

<sup>7</sup> There are procedural limits, as discussed in Musselli and Bürgi (2018).

<sup>8</sup> There are number of restrictions, however (see Musselli and Bürgi 2018).

<sup>9</sup> When the purchased inputs are deductible costs by the Swiss-related party, the Swiss entity has an incentive to state the correct price of the imported input for income tax purposes in Switzerland, while the seller at source may have an incentive to understate the price. Customs declarations may be cross-checked with the income tax return filed by the buyer in Switzerland to spot undervaluation with respect to custom duties, value-added taxes, and excise taxes in the exporting countries.

in general) is indirect, mediated by the recipient's country ability to process and use the information exchanged (Oats and Tuck 2019).

## **B) Strengthening PCSD**

Switzerland has committed to bring all its exchange of information relationships in line with the internationally agreed EOIR standard;<sup>10</sup> to negotiate standard-compliant EOIR instruments with all countries that meet the standard requirements in terms of data protection, confidentiality and proper use of the information; and to support developing countries in making progress towards implementing the EOI standard.

In terms of development targets, Switzerland is seeking to establish standard-compliant EOIR procedures with all interested developing countries that meet standard requirements in terms of data protection, confidentiality and proper use of the information. Indicator 1.1.a measures progress towards this end. Its attainment does not imply that Switzerland has EOI mechanisms in place with all developing countries, since not all developing countries are interested in entering into such relationship with Switzerland. Note also that Switzerland's EOI network only covers partners that have adequate provisions to ensure the confidentiality of information received, in line with the internationally-agreed EOI standard.

To make its commitment on exchanging tax information more development-friendly, Switzerland could proactively assist selected low-income countries build exchange capacity, by deploying resources, technology packages and temporarily seconding staff (see indicator 1.1.b). It may build capacity to draft tax information requests and to use the information received, for example through Tax Inspectors without Borders (TIWB) or other secondment programmes. This action could be integral part of on-going efforts by Switzerland to strengthen co-operation on tax matters and contribute to the domestic resource mobilisation efforts of developing countries. It would require operational synergies between SECO, SDC and the FTA, in line with the PCSD requirement for strengthened inter-departmental and cross-sectoral collaboration.

Finally, progress towards the internationally agreed EOIR standard as monitored by the Global Forum (indicator 1.1.c) provides a useful indicator of whether the appropriate balance is being struck, in Swiss law and practice, between tax transparency and competing interests and objectives. These latter include due process requirements, taxpayers' rights to privacy and data security, and the legitimate protection of commercial secrets. In the context of tax information exchange procedures coherence tensions may arise between the expeditious and extensive cross-border exchange of tax information to curb tax-motivated IFFs (SDG 17.14) and a host of civic rights and guarantees embedded in the Rule of Law (SDG target 16.3). For example, taxpayer's procedural rights (notification and appeal rights, and the right to inspect the file)<sup>11</sup> may in practice deter, delay or prevent effective exchange of information. Tensions similarly arise with data protection rules and property rights: Switzerland may decline to exchange information that would disclose any trade, business, industrial, commercial or professional secret or trade process. The PCSD

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<sup>10</sup> The international standard for transparency and exchange of information on request for tax purposes has been set by the OECD-sponsored Global Forum on Transparency and Exchange of Information for Tax Purposes. The EOIR standard provides for exchange on request of all information foreseeably relevant to the tax laws of a requesting jurisdiction. All foreseeably relevant information must be provided, including ownership, accounting and banking information. So-called "fishing expeditions", i.e. "random, speculative requests, with no apparent nexus with an ongoing tax inquiry or investigation" are not authorized.

<sup>11</sup> Switzerland maintains strong rules and procedures regarding taxpayers' rights. Under Swiss law (*Loi fédérale sur l'assistance administrative internationale en matière fiscale* (LAAF), SR 651.1) the person targeted by the information request as well as all persons entitled to appeal are notified in writing of the main points of the information request before it takes place. The person targeted has the right to inspect the file, including the information request letter itself, and to appeal, which suspends the notification procedure. These procedural rights, deeply anchored in Swiss law and practice, may delay the information exchange (in case of suspensive appeal), hinder its effectiveness (when the informed taxpayer conceals the evidence), and deter requests. Note in particular that the request letter displays details about the requesting authority and staff, and its disclosure may expose tax officials in developing countries to political pressure and retaliation threats.

framework requires to carefully weigh and balance these interests, as provided for under the international EOIR standard. Trade-offs can and should be managed, for example by introducing exceptions to the taxpayer's right to be notified prior to the exchange, as Switzerland has done.

### C) Indicators

#### *Indicator 1.1.a: Number of standard-compliant EOIR instruments with developing countries*

Criterion (what do we measure)	Standard-compliant EOIR instruments between Switzerland and developing countries, <sup>12</sup> broken down by income group. <sup>13</sup>
Measure	Number and %
Means of verification	<ul style="list-style-type: none"> <li>- <i>Swiss standard-compliant EOIR</i>: SIF list of exchange of information upon request (DTA with OECD standard)<sup>14</sup> + list of jurisdictions participating in the MAAC<sup>15</sup></li> <li>- <i>Breakdown by income group</i>: World Bank country classifications by income level<sup>16</sup></li> <li>- <i>Developing countries committed to the EOIR standard</i>: List of Members of the Global Forum on Transparency and Exchange of Information for Tax Purposes<sup>17</sup>.</li> </ul>
Analysis	<p>The analysis only counts 'standard-compliant' EOIR instruments, i.e. exchange of information compliant with Article 26 of the OECD Model Tax Convention/UN Model Tax Convention (as updated). It only counts standard-compliant EOIR instruments approved by the Swiss Parliament (activated and not yet activated). It covers information exchanges based on DTAs, TIEAs and the MAAC.</p> <p>The analysis breaks down Swiss exchange partners (standard-compliant EOIR) by income group (high-income, upper-middle income, lower-middle income, low-income), specifying the number and share of Swiss standard-compliant EOIR with each group. It further specifies the share of developing country members of the Global Forum (low- to upper-middle income countries only) that have a standard-compliant EOIR with Switzerland.</p>

#### *Indicator 1.1.b: EOIR - Capacity building efforts*

Criterion (what do we measure)	Capacity building efforts to ensure that low-income exchange partners are enabled to effectively request and use tax information in the context of an EOIR procedure.
Measure	Number of technical cooperation initiatives and expenditure

<sup>12</sup> Low, lower-middle and upper-middle income countries, as measured by the World Bank.

<sup>13</sup> Low-income countries, lower-middle income countries, upper-middle income countries, as measured by the World Bank.

<sup>14</sup> [https://www.sif.admin.ch/sif/en/home/multilateral/steuer\\_informationsaust/informationsaustausch-auf-ersuchen.html](https://www.sif.admin.ch/sif/en/home/multilateral/steuer_informationsaust/informationsaustausch-auf-ersuchen.html)

<sup>15</sup> <https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>

<sup>16</sup> <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

<sup>17</sup> <http://www.oecd.org/tax/transparency/about-the-global-forum/members/>

Means of verification	SECO and SDC reports
Analysis	The analysis counts tailored support to address the specific needs and priorities of low-income countries to grow their capacity in exchange of information, for example through Tax Inspectors without Borders (TIWB) or other secondment programmes. These actions can be part of broader on-going efforts by Switzerland to strengthen co-operation on tax matters and contribute to the domestic resource mobilisation efforts of developing countries. The analysis also counts contributions to multi-donor programmes providing technical assistance and capacity development in tax information exchange.

*Indicator 1.1.c: Progress to align Switzerland's exchange framework and practice with international standards*

Criterion (what do we measure)	Steps taken to implement recommendations by the Global Forum on Transparency and Exchange of Information for Tax Purposes with regards to Switzerland's EOIR framework and practice.
Measure	Federal laws adopted, cases and interpretative rulings from the Federal Tribunal, ordonnances and published administrative guidance
Means of verification	Peer Review Reports by the Global Forum
Analysis	The analysis defers to the evaluation of the Global Forum. The Global Forum assesses implementation of the EOIR standard as set out in the 2016 Terms of Reference, which break down the EOIR standard into 10 essential elements under three categories (availability of ownership, accounting and banking information; access to information by the competent authority; and exchanging information).

**D) Baseline Assessment (2018)**

Indicator 1.1.a: As of 1 October 2018 (baseline)<sup>18</sup> Switzerland had 112 standard-compliant EOIR instruments, of which 43 (38%) with developing countries – low, lower-middle and upper-middle income countries as measured by the World Bank. The breakdown of Swiss exchange partners by income group was as following:

- 69 (62 %) high-income countries;
- 28 (25%) upper-middle income countries;
- 13 (12%) lower-middle income countries; and
- 2 (2%) low-income countries.

<sup>18</sup> The baseline study (Musselli and Bürgi, 2018) collects data on Switzerland's standard-compliant EOIR instruments (approved by Parliament) as of 2 October 2018. For details on the methodology used, Musselli and Bürgi, 2018, Annex 1.

As of October 2018, Switzerland's EOI network (standard-compliant exchanges) covered 43% of developing country members<sup>19</sup> of the Global Forum.

Indicator 1.1.b: Through 2018, Switzerland continued to provide tax-related development co-operation to developing countries on a bilateral, regional,<sup>20</sup> and multilateral<sup>21</sup> basis. It did not specifically engage in building capacities to exchange and use information by partnering in a pilot project within the Global Forum or outside of that framework.

Indicator 1.1.c: In 2016, the Global Forum evaluated Switzerland for both the legal implementation of the EOIR standard as well as its operation in practice. A second round of review was concluded in 2020. In both the 2016 and 2020 reports, Switzerland was rated Largely Compliant overall with the standard, but recommendations for improvement were made with respect to several key aspects of concern to developing countries (OECD 2016b and 2020).

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<sup>19</sup> We did not consider high income developing countries and transition economies.

<sup>20</sup> Swiss-sponsored regional instruments and initiatives included the African Tax Administration Forum (ATAF), the Centro Inter-Americano de Administraciones Tributarias (CIAT); the IMF Regional Technical Assistance Centres; and the UNODC Mentor Programme against Money Laundering, Proceeds of Crime and Financing of Terrorism.

<sup>21</sup> Switzerland supported a few multi-donor programmes providing technical assistance and capacity development in tax matters. These included the IMF Revenue Mobilization Trust Fund (RMTF), the IMF Topical Trust Fund on Managing Natural Resource Wealth (TTF MNRW), the IMF Topical Trust Fund on Anti-Money Laundering/Combating the Financing of Terrorism (TFF AML/CFT), the World Bank Global Tax Programme (GTP), the Extractive Industries Transparency Initiative (EITI), and Tax Administration Diagnostic and Assessment Tools.

## 1.2 Automatic Exchange of Financial Account Information

Policy domain	IFFs – Tax transparency	
Policy interaction	C6	C: Reduce IFFs (SDG 16.4)
		6: Automatic exchange of financial account information (also, spontaneous sharing/publication)
Interaction	1 or 2/+2 (indirect and direct impact/potentially strong synergies)	

### A) Coherence Analysis

When effectively implemented, the automatic exchange of financial account information (AEOI) is a powerful tool for developing countries to track (and recover) undeclared offshore wealth (Box 2).

#### Box 2: Automatic exchange of financial account information (AEOI)

What	Under the AEOI procedure, Swiss banks collect financial information on their clients residing abroad and transmit the information once a year to the Swiss tax authority, which forwards the data to the respective tax authority abroad.
Use	Switzerland is the world's biggest centre for managing offshore wealth, storing \$2.3 trillion in 2018, or almost 1/3 of all global overseas wealth (Boston Consulting 2018). The automatic exchange of data would allow developing countries to identify undeclared financial accounts held in Switzerland by their residents. If the information received is put to effective use, the procedure is key to uncover and recover undeclared offshore wealth.

There are potentially strong synergies (+2) between the automatic exchange of financial account data, the commitment to curb IFFs and domestic resource mobilization. AEOI is key to uncover (and reclaim) undeclared bank deposits kept offshore by tax residents. It contributes towards curbing tax evasion and mobilizing domestic resources (potentially strong synergies with SDG 16.4 and 17.1). In 2018 the OECD reported that countries had mobilized around EUR 93 billion in additional tax revenue since 2009 because of voluntary compliance mechanisms and offshore investigations spurred by the automatic exchange of financial account data (OECD 2018c).

The development impact of AEOI procedures is generally indirect, mediated by the recipient's country ability to process and use the information. As observed in the literature (Oats and Tuck 2019), tax administrations vary in terms of their ability to process and absorb the information exchanged, especially if sent in bulk or encrypted; further, there is significant variation among them in terms of their willingness to use or ignore the information, especially in contexts of undue influence by politically influential persons.

Note however that the regular, automatic exchange of bulk data on non-resident financial accounts may also have direct impacts, by deterring undeclared offshore wealth flows: empirical evidence points to a significant decline in bank deposits kept offshore by non-residents because of automatic exchange procedures (OECD 2019b).

### B) Strengthening PCSD

Switzerland has committed to automatically exchange financial account information with all countries that meet stringent standard requirements in terms of data protection, confidentiality and proper use of the information, and that provide safeguards against human rights abuses involving the taxpayers under investigation (Swiss Federal Assembly 2017). Within the framework of the Global Forum, it has committed to support developing countries in making progress towards meeting the AEOI standard.

Development targets in this area (Global Forum 2014 and Meyer-Nandi 2018a) envisage that Switzerland set standard-compliant AEOI procedures with all interested developing countries that meet the AEOI standard requirements (indicator 1.2.a). To help developing countries transition to AEOI, Switzerland could assist selected low-income countries build exchange capacity, by deploying resources, technology packages and temporarily seconding staff (indicator 1.2.b). It could further support developing countries by spontaneously sharing data with them on the existence and amount of accounts held by their residents in Switzerland (Global Forum 2014); or alternatively publish a summary table with aggregate information on the existence and amount of foreign owned accounts, by jurisdiction (Meyer-Nandi 2018a) (indicator 1.2.c). An example is set by Australia, who has approved a Bill to publish de-identified aggregated information about accounts held in Australia by non-residents.

These development targets do not imply that Switzerland establishes AEOI relationships with all developing countries, since Switzerland’s commitment is limited to countries that meet stringent data protection requirements and have human rights safeguards in place. There is a need in this area to strike the appropriate balance between strengthening tax transparency and information exchange (anti-IFFs policy that supports SDG 17.14), and protecting taxpayers’ rights to privacy, data security and proper use of the information (embedded in the Rule of Law, SDG target 16.3). Considerations of due process and protection against human rights abuses also come into account. The balance between transparency interests and competing concerns is ‘written’ in the internationally-agreed AEOI standard. In particular, AEOI procedures include stringent data protection and confidentiality requirements that address confidentiality concerns, but at the same time make compliance difficult for developing countries and low-income countries in particular.

It is also important to acknowledge that not all developing countries have committed to the AEOI standard. In developing countries, implementation of AEOI raises opportunity-costs when considering spending needs for other reform priorities. AEOI requirements include information technology, legal frameworks, rigorous confidentiality and data protection safeguards, and human resources, dedicated to the AEOI facility. Meeting these requirements can be extremely costly in countries that face competing tax reform priorities. Resource-strained tax administrations need to balance the potential usefulness of exchange of information frameworks against the expected costs and administrative burden of implementing and sustainably operating such frameworks.

Note however that the AEOI standard “is not out of reach for developing countries in general and African countries in particular” (Global Forum et al 2020, at 40). All the current 32 African members of the Global Forum are committed to the implementation of the AEOI standard. A few (South Africa, Mauritius, Ghana and the Seychelles) are already exchanging information; others (the case of Morocco and Egypt) participate in pilot projects with a partner jurisdiction to assist them in implementing AEOI. All the 32 Global Forum African members have Rule of Law systems that embed due process requirements and human rights safeguards.

### C) Indicators

#### *Indicator 1.2.a: Number of AEOI instruments with developing countries*

Criterion (what do we measure)	Number of standard-compliant AEOI instruments between Switzerland and developing countries, <sup>22</sup> broken down by income group
Measure	Number and %

<sup>22</sup> Low, lower-middle and upper-middle income countries, as measured by the World Bank.



Means of verification	<ul style="list-style-type: none"> <li>- <i>Swiss standard-compliant AEOI</i>: SIF list of AEOI partner states<sup>23</sup></li> <li>- <i>Breakdown by income group</i>: World Bank country classifications by income level<sup>24</sup></li> <li>- <i>Countries committed to the AEOI standard</i>: List of Members of the Global Forum on Transparency and Exchange of Information for Tax Purposes<sup>25</sup></li> </ul>
Analysis	The analysis considers standard-compliant (OECD Common Reporting Standard) AEOI instruments concluded by Switzerland with developing countries on a bilateral (DTA + bilateral CAA) or multilateral basis (OECD MAAC + CRS MCAA). It only counts AEOI relationships approved by the Swiss Parliament (whether operational or not). The analysis breaks down Swiss AEOI exchange partners by income group (high-income, upper-middle income, lower-middle income, low-income). It specifies the number and share of Swiss standard-compliant AEOI with each group. It further specifies the share of developing countries covered that have committed to implement the AEOI standard.

**Indicator 1.2.b: AEOI - Capacity building efforts**

Criterion (what do we measure)	Swiss-sponsored capacity building initiatives in tax transparency and exchange of information, including through AEOI pilot projects/related capacity building efforts
Measure	Number and expenditure
Means of verification	Reports from SDC and SECO
Analysis	The analysis counts technical support initiatives by Switzerland in developing countries to set up a functional infrastructure for exchange of information and to use cross-border exchanged information in tax investigations. It counts bilateral initiatives directly undertaken by Switzerland, including as part of broader tax-related technical assistance, as well as contributions to multi-donor programmes providing technical assistance and capacity development in tax information exchange.

**Indicator 1.2.c: Spontaneous sharing of data/publication of aggregate data**

Criterion (what do we measure)	Spontaneous sharing with selected low-income treaty partners of data on the existence and amount of non-resident accounts / publication of de-identified aggregated information about accounts held by non-residents
Measure	Instances of (spontaneous sharing) / evidence of (publication)
Means of verification	Inquiries with SIF/FTA; Annual banking statistics

<sup>23</sup> [https://www.sif.admin.ch/sif/en/home/multilateral/steuer\\_informationsaust/automatischer-informationsaustausch/automatischer-informationsaustausch1.html](https://www.sif.admin.ch/sif/en/home/multilateral/steuer_informationsaust/automatischer-informationsaustausch/automatischer-informationsaustausch1.html)

<sup>24</sup> <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

<sup>25</sup> <http://www.oecd.org/tax/transparency/about-the-global-forum/members/>

Analysis	Based on interviews with SIF and FTA, the analysis will only answer the question whether Switzerland spontaneously shares financial account data with developing treaty partners. It will not provide details on the beneficiary countries, unless this information is made publicly available
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#### **D) Baseline Assessment (2018)**

Indicator 1.2.a: As of 1 October 2018, Switzerland had 81 standard-compliant AEOI (financial accounts) instruments, 20 of which (25%) with developing countries. It covered 56% of developing countries that had committed to automatically exchange information by 2018. The breakdown of Swiss exchange partners by income group was as following:

- 61 standard-compliant AEOI instruments (75 % of all Swiss standard-complaint AEOI) with high income countries
- 18 (22%) with upper-middle income countries
- 2 (2%) with lower-middle income countries
- 0 (0%) with low-income countries.

Indicator 1.2.b: As of 2018, Switzerland supported several tax-related capacity building efforts but did not directly partner in pilot AEOI projects.

Indicator 1.2.c: As a practice, Switzerland does not publicly release de-identified data on the existence and amount of foreign-owned accounts in Switzerland, nor does it spontaneously share this data with developing countries. However, relevant datasets on domestic v. foreign-held accounts are published by the Swiss National Bank (Annual banking statistics).

### 1.3 Filing and Exchange of Country-by-Country Reports

Policy domain	IFFs – Tax transparency	
Policy interaction	D8	D: Strengthen DRM (SDG 17.1)
		8: Filing and exchange of Country-by-Country reports
Interaction	1/+2 (indirect/potentially strong synergies)	

#### A) Coherence Analysis

The filing and exchange of Country-by-country (CbC) reports can serve efforts to counter artificial profits shifting and mobilize domestic resources in developing countries (Box 3).

#### Box 3: CbC reports

What	CbC reporting requires MNE parent companies (consolidated group revenue $\geq$ €750 million) to provide data about their operations in every country - names and locations of each entity, along with aggregate information on tangible assets, turnover, employee numbers, profits declared and tax paid, in each jurisdiction. The MNE files the report with the headquarter country that shares it with qualifying exchange partners.
Use	CbC reports can be effectively used to track misalignments between where MNE economic activity takes place, and where taxable profit is declared. They provide accountability that MNEs pay tax where their economic activities occur and value is created. The OECD standard allows this use for tax risk assessment and economic analysis, but disallows the use of CbC reports to directly adjust tax returns or to apportion taxes between jurisdictions. Furthermore, under the OECD model, the parent company does not send the CbC report directly to its subsidiaries for local filing, but files the report with the headquarter country that shares it with qualifying exchange partners. More far-reaching uses of CbC report data (see below) depend on easing these constraints on access and use.

There are potentially strong synergies (+2) between the filing and exchange of CbC reports, the commitment to curb IFFs and DRM. CbC reports can be effectively used to estimate and track misalignments between where MNE economic activity takes place, and where taxable profit is.<sup>26</sup> At the multilateral level, CbC report data could be used as a basis to allocate a firm's worldwide income across countries using formulas based on some combination of sales, assets, and payroll/labour in each jurisdiction (unitary taxation with formula apportionment – as proposed by the G24, ATAF and individual developing countries under Pillar 1 of the Work Programme on the digital economy). If heavy weight is placed on labour in the apportionment, developing countries would likely gain tax base under this unitary approach, in furtherance of SDG target 17.1.

The impact is indirect (value=1). Tax administrations in developing countries vary in terms of their ability to effectively use CbC report data for tax risk assessment and economic analysis. Note also that the use of CbC report data as a basis for apportioning a firm's taxable income across countries depends on major reforms of international corporate taxation, which are far from being agreed upon.

#### B) Strengthening PCSD

As discussed above, CbC reports have potentially wide-reaching implications in terms of efforts to counter artificial profit shifting and mobilize domestic resources in developing countries. The review of the BEPS

<sup>26</sup> Collated and processed by the OECD, the IMF or both, CbC data could be used to estimate and track misalignments between where MNE economic activity takes place, and where taxable profit is declared, with the OECD, IMF or both publishing annual assessments of the scale and country-level intensity of such misalignment (BEPS Action 11).

Action 13 minimum standard for CbC reporting in 2020 opens up opportunities to accommodate developing countries’ call for enhanced access and use of CbC report data. In the absence of political convergence around ambitious unitary taxation reforms, a development-oriented approach to the exchange of CbC reports can concentrate on politically attainable short-term goals: easing the process of receiving CbC reports through more local filing obligations (or publication of CbC reports) and helping developing countries to use CbC report data through capacity building in identifying tax risks.

While Switzerland is fully compliant with the CbC reporting minimum standard, as set out in BEPS Action 13, there is scope to make the implementation of the standard more development-oriented, along the lines outlined above. Switzerland may consider the following development-oriented targets: exchange CbC reports with all interested developing countries that meet the CbC standard requirements on confidentiality, data protection and proper use of the information<sup>27</sup> (indicator 1.3.a); assist selected low-income countries to meet the CbC standard requirements and in using CbC report data for tax risk assessment, including by temporarily seconding staff (indicator 1.3.b); support an internationally agreed solution that accommodates developing countries’ needs as regards expanded access to and use of CbC report data (indicator 1.3.c). In this latter respect, publication of CbC reports would give easy and immediate access to this important information for all tax authorities.

The above targets need to be assessed against competing interests and objectives. There may be tensions between public CbC reports (in furtherance of SDG 16.4 and 17.1), on the one hand, and concerns about data protection and confidentiality (embedded in the Rule of Law, SDG target 16.3), on the other. For example, France introduced a requirement for public CbC reports that was subsequently stricken down by the French Constitutional Court as posing a disproportionate burden on business. Note however that other countries (the US) have published partial aggregate CbC data or support/are considering (the EU and the UK) public CbC reporting. Banks, extractive companies and many companies with consumer exposure already publish CbC reports voluntarily, and this has not triggered any commercial confidentiality problems. These latter developments corroborate the view that CbC reports do not contain information that should be considered commercially confidential (BEPS Monitoring Group 2019).

Finally, there are concerns about the compliance costs for administrations and business of expanded CbC reporting requirements. Companies and administrations often implement costly tools to comply with CbC reporting and process CbC data. Changes to the CbC reporting template must weigh and balance the administrative and commercial costs and benefits of reform.

### C) Indicators

#### *Indicator 1.3.a: Number of CbC reports with developing countries*

Criterion (what do we measure)	Switzerland’s exchange relationships (CbC reports) with developing countries <sup>28</sup>
Measure	Number (and %) of exchange relationships (CbC reports) that Switzerland has in place with low income countries, with lower-middle income countries, with upper-middle income countries

<sup>27</sup> In particular, under the CbC standard, the recipient jurisdiction must have in place and enforce specific laws, operational procedures and infrastructure to ensure confidentiality, data protection and proper use of the CbC report data.

<sup>28</sup> Low, lower-middle and upper-middle income countries, as measured by the World Bank.

Means of verification	<ul style="list-style-type: none"> <li>- <i>CbC report exchange relationships</i>: SIF list of CbC partner states<sup>29</sup></li> <li>- <i>Breakdown of exchange partners by income group</i>: World Bank country classifications by income level<sup>30</sup></li> </ul>
Analysis	The analysis counts CbC exchange relationship in place, as approved by the Swiss Parliament (including when the exchange has not yet taken place).

**Indicator 1.3.b: CbC reports - Related technical assistance**

Criterion (what do we measure)	Technical support to use CbC reports in tax assessment
Measure	Number of Switzerland's technical assistance projects that support tax administrations in developing countries in using CbC reports to identify and address tax risks.
Means of verification	Reports from SDC and SECO.
Analysis	The analysis counts technical assistance projects by SDC and SECO that specifically include training to use CbC reports in tax assessment. It also considers contributions to multi-donor programmes providing technical assistance in setting up exchange of information infrastructure and audit capacity development in using CbC report data.

**Indicator 1.3.c: Switzerland's negotiating stance in the review of CbC reporting standard**

Criterion (what do we measure)	Switzerland's policy stance in the review of the BEPS Action 13 minimum standard for CbC reporting.
Measure	Policy stance of Switzerland compared against developing countries' stance in the CbC standard review process
Means of verification	Reports and press releases from SIF, FDF and other relevant bodies; OECD reports
Analysis	Based on SIF reports and official press releases, the policy stance indicator captures the negotiating position of Switzerland in relation to key issues of concern to developing countries. These issues, as identified by experts and in the tax & development literature, include: scope for non-headquarter countries to require direct filing of the CbC report by local subsidiaries; public CbC reports; the revenue threshold required to file a CbC report; use of CbC report data to estimate and monitor profit misalignment with real economic activity and for the design of tax formulae, as part of an internationally agreed solution.

<sup>29</sup> [https://www.sif.admin.ch/sif/en/home/multilateral/steuer\\_informationsaust/automatischer-informationsaustausch/cbcr.html](https://www.sif.admin.ch/sif/en/home/multilateral/steuer_informationsaust/automatischer-informationsaustausch/cbcr.html)

<sup>30</sup> <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

#### D) Baseline Assessment (2018)

Indicator 1.3.a: Few developing countries have access to CbC reports filled by Swiss-based MNEs. As of 1 October 2018, Switzerland had 57 CbC exchange relationships,<sup>31</sup> of which 15 (26%) with developing countries.<sup>32</sup> The breakdown of Swiss CbC exchange partners by income group was as following:

- 42 (74%) high income countries;
- 12 (21%) upper-middle income countries;
- 3 (5%) lower-middle income countries;
- 0 (0%) low-income countries.

Indicator 1.3.b: No technical assistance initiatives in this specific area.

Indicator 1.3.c: Switzerland does not advocate public CbC reports or strengthened local filing.

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<sup>31</sup> Switzerland exchanges CbC reports with countries that are party to the MAAC, have signed the CbC MCAA and are ‘bilaterally’ listed by Switzerland.

<sup>32</sup> Low, lower-middle and upper-middle income countries, as measured by the World Bank, without counting transition economies.

## 2. Transparency of Business Entities and Investment

### 2.1 Beneficial Ownership Transparency

Policy domain	IFFs – Transparency of business entities and investment	
Policy interaction	C10	C: Reduce IFFs (SDG 16.4)
		10: Beneficial ownership transparency
Interaction	1/+2 (indirect/potentially strong synergies)	

#### A) Coherence Analysis

A beneficial owner is the physical person who ultimately owns, controls or benefits from a legal vehicle/arrangement. The identity of the beneficial owner can be concealed behind a chain of corporate vehicles, trusts, nominees and bearer shares to hide conflict of interests in public contacting, evade taxes and launder the proceeds of crime.

Beneficial ownership transparency is key to stem IFFs from developing countries, by shedding light on opaque business structures and arrangements that are used to mask corruption, conceal assets and launder money (potentially strong synergies (+2) with SDGs 16.4, and 16.5). According to the World Bank, approximately 70% of the largest corruption cases between 1980 and 2010 involved anonymous companies (World Bank 2011). The Panama papers (ICIJ 2019a), Paradise Papers (ICIJ 2019b) and Luanda Leaks (ICIJ 2020) illustrate the use of complex company structures to evade and avoid taxes.<sup>33</sup> Switzerland is particularly risk-prone to the misuse of legal persons and arrangements for asset protection purposes, given its favourable tax environment and its leading role as an offshore wealth centre. Infiltrated by mafia networks,<sup>34</sup> Switzerland is also particularly exposed to the risk that legal persons and arrangements are exploited to conceal and launder the proceeds of organized crime. The African Union (UN ECA 2015) estimates that Africa could recover 50 billion USD each year by stemming IFFs facilitated by opaque corporate structures (potential synergies (+2) with SDG 17.4).

The anti-IFF and development impact of beneficial ownership transparency is indirect (value=1), mediated by law enforcement agencies.

If made public, beneficial ownership registers will increase open data in the hands of civil society (direct impact and potentially strong synergies (2/+2) with SDG 16.10), enabling citizens to hold companies and authorities accountable. Public registries will also grant direct access to beneficial ownership data to tax and enforcement authorities in developing countries, without the need to set up complex and costly information exchange procedures.

#### B) Strengthening PCSD

There is increased momentum on beneficial ownership reform. Member States of the G8, G20, and the EU pledged to establish beneficial ownership registries in 2013, 2014 and 2015, respectively (OGP 2018). At

<sup>33</sup> The Luanda Leaks (ICIJ 2020) offer a recent case study of how the former Angolan president's daughter and her husband, with stakes in national companies and banks, approved suspicious payments to offshore companies they ultimately owned, including in Switzerland.

<sup>34</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20163981>;  
<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20194085> ;  
<https://www.tio.ch/ticino/focus/1251533/la-svizzera-e-la-mafia-un-rapporto-che-dura-da-50-anni>;  
<https://www.tio.ch/ticino/attualita/1402148/la-mafia-in-svizzera-c-e-e-le-piace-la-mesolcina>.

the 2016 Anti-Corruption Summit in London, a few States (e.g., the United Kingdom, Afghanistan, Kenya, France, the Netherlands, and Nigeria) have committed to set up public beneficial ownership registries. A strong push in this direction came from the fifth EU Anti-Money Laundering Directive, which required EU members to provide public access to their registers by 2020.

To give access to relevant beneficial ownership information for authorities in developing countries, Switzerland may consider implementing and maintaining the highest disclosure standards, as set for example by the Open Government Partnership (OGP 2018). Under this expanded option, Switzerland would ensure that there is adequate, accurate and timely beneficial ownership information across all legal vehicles and arrangements; it would set up a centralized beneficial ownership register with verified and updated beneficial ownership information across various legal vehicles and arrangements; ensure the interoperability of the register with other commercial repositories (real estate registers, company registries, public procurement data) to track assets across sectors; grant public access to the register.

In practice, there is a need to weigh and balance competing interests. Beneficial ownership disclosure may raise legal concerns about consent, privacy and security in relation to personal data protection and individual's rights to privacy. Furthermore, there are proportionality concerns that relate to the costs and benefits to society of beneficial ownership disclosure systems that effectively work. Legal requirements for beneficial ownership disclosure can be easily circumvented through complex control structures involving multi-jurisdictional vehicles, layers of shares spread across jurisdictions, informal nominee shareholders and directors, and the use of professional intermediaries. Capturing the beneficial owner behind these structures requires extremely far-reaching disclosure requirements across multiple jurisdictions, which may result in high costs for business, costly verification systems for the administration, and excessive reporting that dilutes the value of reports. In the political deliberation process, development objectives (maximum beneficial ownership transparency in Switzerland) will need to be weighed and balanced against these concerns.

### C) Indicators

#### *Indicator 2.1.a: Strengthening beneficial ownership transparency*

Criterion (what do we measure)	Progress towards a central public register with adequate, accurate and timely beneficial ownership information across legal vehicles and arrangements.
Measure	Enactment of new laws and regulations that expand the scope and reach of beneficial ownership disclosure (see Analysis)
Means of verification	Adopted laws and regulations (Swiss classified compilation of Federal laws), <sup>35</sup> administration's published guidelines and technical (IT) documentation
Analysis	The analysis considers the number of new laws and regulations on beneficial ownership and their design, covering the following aspects: <ul style="list-style-type: none"> <li>– Coverage of legal persons/arrangements: companies only (modest progress); other legal vehicles/arrangements, including trusts, foundations, partnerships, association, cooperative societies (strong progress)</li> <li>– Approaches to determine the beneficial owner: threshold approach only (for example any person owing 25% of a company's share) (modest progress); determination</li> </ul>

<sup>35</sup> <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>



	<p>through various means, including contracts, identity of nominator, personal connections, financing, beneficitation (strong progress)</p> <ul style="list-style-type: none"> <li>– Disclosure requirements in relation to nominee shareholders and directors, treatment of bearer shares, ultimate control in chains of companies (strong progress)</li> <li>– Information verification mechanisms (strong progress)</li> <li>– Access to beneficial ownership information by the general public (strong progress)</li> <li>– Interoperability of beneficial ownership registers across sectors and jurisdictions (strong progress).</li> </ul>
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#### **D) Baseline Assessment (2018)**

Swiss law defines beneficial owner as any person who directly or indirectly holds at least 25% of the capital or voting rights in a legal entity or otherwise control it (AMLA, Art. 697j par. 1 of the Code of Obligations).

Switzerland requires beneficial ownership disclosure under several frameworks (Federal Act on Combating Money Laundering and Terrorist Financing AMLA, Code of Obligations). It does not maintain a central beneficial ownership registry, relying instead on beneficial ownership information maintained by legal entity themselves or collected by financial institutions. Information about the beneficial ownership of corporate vehicles is then scattered in different places, including company registries, financial institutions, legal professions, tax authorities and stock exchange commissions. In the absence of a central beneficial ownership registry, the public does not have comprehensive access to beneficial ownership information. Domestic authorities need to consult available cantonal and federal registries containing ownership information or request information held by third parties –companies and financial intermediaries.

As of 2018, shortcomings were observed in the scope of application of beneficial ownership requirements laid down in Swiss law (FATF 2016, Transparency International 2018, and Global Forum 2020). The following gaps were noted:

- Swiss law defines beneficial owner as any person who directly or indirectly holds at least 25% of the capital or voting rights in a legal entity or otherwise control it. When there is a doubt that the natural persons identified as having a controlling ownership interest in a legal entity are in fact the beneficial owners, there is no explicit requirement for the AML obliged professionals to also identify any natural person who may exercise a control by other means. Further, some independent monitoring bodies (see for example Transparency International 2018) believe a 25% threshold is not adequate to ensure the meaningful identification of the real owners behind companies and trusts.;
- Financial institutions were required to request a written declaration from the customer attesting the identity of the beneficial owner, but there was no obligation to independently verify the veracity of the information provided by the customer;
- A trustee was not legally required to maintain beneficial ownership information related to all parties to the trust, unless he/she was a professional trustee; Trustees of foreign trusts operating in the country were also not required to disclose information on the parties to the trust;
- Non-financial businesses or profession such as trust and corporate service providers, accountants, and lawyers were subject to AML due diligence obligations only when carrying out financial transactions on behalf of the clients. AML did not cover professional services that did not involve

cash flows, such as the establishment of companies or other complex legal arrangements, in contrast to what was required by international standards;

- Real estate agents, dealers in precious metals and luxury goods were only required to conduct due diligence and identify the beneficial owner of clients if they accepted more than 100,000 CHF in cash; transactions of lower value or not in cash were not subject to due diligence;
- Bearer shares were allowed in Switzerland. New rules adopted in 2015 had brought some transparency, by requiring that persons who acquired bearer shares in a non-listed company give notice to the company and identify themselves; and by requiring non-listed companies issuing bearer shares to maintain a register of bearer shareholders;
- Nominee shareholders and professional nominee directors were allowed in Switzerland, subject to limited disclosure requirements.

Legislative reforms between 2018 and 2020 have partially filled these gaps.

### 3. Trade Transparency and Regulation

The following analysis selectively focuses on commodity trade-related IFFs. While this focus reflects the prominence of the commodity sector in Switzerland, it is important to stress that more issues are involved, beyond commodities. Trade-related IFFs concern all sectors, including pharmaceuticals and high-end luxury good. They cut across many issue areas and potentially hinder all the SDGs. The spectrum of relevant issues is extremely broad, including such diverse issues as counterfeit and pirated good, trafficking in persons, drugs and wildlife, and illegal alcohol trade. Likewise, the portfolio of policy measures available in the fight against trade-related IFFs is extremely broad and diverse. The following PCSD indicators selectively focus on commodity trade-related IFFs, with a focus on precious metals and gemstones – a specific part of a larger problem.

#### 3.1 More Relevant and Transparent Trade Data (Commodities)

Policy domain	IFFs – Trade transparency and regulation	
Policy interaction	C16	C: Reduce IFFs (SDG 16.4)
		16: More relevant and transparent commodity trade data
Interaction	1/+2 (indirect /potentially strong synergies)	

#### A) Coherence Analysis

Better commodity trade data help investigate the magnitude, mechanics and direction of commodity trade-related IFFs. Such information may enable policy makers in developed and developing countries to devise more effective policy responses to curb trade-related IFFs (SDG target 16.4), mobilize domestic revenue (SDG 17.1) and counter illegal trade in natural resources (SDG targets 14.4 and 15.7) (indirect effect, potentially substantial). Potential areas for action include fine-tuned or refined customs classifications, publication of merchant trade datasets by product, supplementary information on the country of ‘first origin’ of mined gold, supplementary data on the source of recycled gold, and qualified access for research institutes to transaction-level trade data.

Table 1: Main public data gaps

Issue area	Problem	Response
Classification of precious metals	For example, under the Harmonized Tariff Schedule, an alloy containing 2% or more, by weight, of gold, is to be treated as gold. This results in a situation where traded silver is accounted for as gold, and apparently mispriced	Better customs classification (internationally agreed)
Merchant trade	Trade statistics record physical import routes that do not necessarily reflect financial and contract flows. Often they do not include data on merchant trade, where traders purchase goods from a supplier abroad and sell these on to a buyer abroad without the goods entering the Swiss border. This may result in discrepancies between reported exports from commodities producing countries and imports from their trade counterparts	Publication of merchant trade datasets disaggregate by product, origin and destination
Lack of transparency concerning the provenance of precious	Trade statistics do not shed full light on the ‘true’ countries of origin. For large volumes of imported raw gold, the country where the gold was mined cannot be identified from the Swiss	Supplementary information to specifically identify or

metals and stones imported into Switzerland	foreign trade statistics, which record instead the last transit country where ‘substantial transformation’ (smelting/initial refining) took place. This obscures whether Swiss refined gold originates from conflict zones or illegal mines. Note in this respect that Swiss refineries process about 70% of the unrefined gold mined in the world each year. Roughly half of this gold comes from Britain, the United Arab Emirates or Hong Kong (Federal Council, 2018) – which are not gold producing countries, but first-tier importers/processors.  Recycled or scrap gold raises even more intractable problems, since it is not technically possible to trace the origin, and it is difficult to trace all the sources. Refiners have to trust the documentation provided by the supplier to ensure that anti-money laundering and other requirements are met.	verify the provenience of precious stones and metals; Internationally redefined ‘rules of origin’
Transaction-level data	Limited/no public access to disaggregated (firm-level) trade data	Improved access subject to proper use of the information

Online free access to the data regarding the ‘true’ countries of origin will enhance public access to information (SDG target 16.10 - direct effect, potentially substantial). By means of double-checks by the public, an open data policy would contribute to the accountability of private and public operators’ in the natural resource sector.

### B) Strengthening PCSD

The 2013 background report on commodities (FDFA et al 2013) recommended that Switzerland publish foreign gold trade statistics broken down on a country-by-country basis – which Switzerland subsequently did. It further recommended that Switzerland support the G20 initiatives to increase transparency regarding prices and quantities in the physical commodities markets.

The Expert Study on the Swiss Gold Sector and related Risks on Human Rights Abuses (Tratschin et al 2017) recommended complementing the foreign trade statistics with supplementary information identifying the provenience/source of raw gold. The Study pointed out that this information is already in the possession of Swiss refiners (Tratschin et al 2017), as also acknowledged in a Report by the Federal Council (Federal Council 2019). Knowledge of the source country of raw gold is required for instance by the London Bullion Market Association (LBMA) RGG guidance, even if it is not required that this information be publicly disclosed (Tratschin et al 2017). Note also that melter licence holders in Switzerland are duty-bound to know the origin of the melt products under the Precious Metals Control Ordinance (PMCO (941.311), art. Art. 168a and Art. 168b).<sup>36</sup>

To pursue its efforts towards coherent policies for commodity trade transparency and development, Switzerland could take steps in all the critical issue areas outlined in Table 1 above. In particular, it may complement its foreign trade statistics with supplementary information to specifically identify or verify the provenience/source of precious stones and metals (indicator 3.1.a). Public disclosure of the ‘real’ country of origin will clarify if gold imported in Switzerland from other trading hubs/transit countries originates from conflict zones or illegal mines, thus contributing to increased transparency and accountability in the commodity sector.

<sup>36</sup> This obligation concerns melt products, such as ingots and bars, and not raw gold. It is discharged when the licence holder can verify that the melt product was lawfully acquired by the seller.

This transparency objective is qualified by concerns about compliance costs for Swiss traders and refiners, confidentiality, and their likely competitive effects. There are concerns that detailed, contextual information about the ‘true origin’ of commodities might disclose commercially or competitive sensitive information, with competitive costs for traders and refiners. There are also privacy and confidentiality concerns in respect of information that would disclose details of traders’ and refiners’ clients and suppliers. These concerns are met if importers are required to specify the country where gold was mined, without public disclosure of transaction data that identify individual suppliers.

### C) Indicators

#### *Indicator 3.1.a: Supplementary data on the ‘real’ country of origin (precious metals and stones)*

Criterion (what do we measure)	Publication of supplementary datasets on the country from where the imported gold is mined
Measure	Amendments to customs regulations (RS 632.14), policies and practices
Means of verification	Website of the Federal Customs Administration
Analysis	-

### D) Baseline Assessment (2018-19)

#### Indicator 3.1.a

Swiss trade statistics do not currently disclose the ‘true origin’ of gold and other precious stones and metals. In line with internationally agreed methodologies, the country of origin of Swiss imports is the country in which the ‘last substantial manufacturing or processing’ occurred (revised Kyoto Convention, annex K, chapter 1, definition F1/E3; UN IMTS Compilers Manual 2010, paragraph 16.9). In the case of gold, this is the country where refining takes place (UN IMTS Compilers Manual 2010, paragraph 20.8, letter b). Note however that “si elle n’est pas toujours reflétée dans les statistiques d’importation d’or, l’origine de l’or traité par les raffineurs suisses est connue par ces derniers et transmise à la LBMA dans le cadre de la mise en œuvre des standards qu’elle exige” (Federal Council 2019, at 10). Further, “L’Administration fédérale des douanes (AFD) confirme que l’origine réelle des marchandises doit être annoncée dès lors qu’elle est connue” (Federal Council 2019, at 9).

### 3.2 Payment and Contract Disclosure (‘first trades’)

Policy domain	IFFs – Trade transparency and regulation	
Policy interaction	C17	C: Reduce IFFs (SDG 16.4)
		17: Payment and contract disclosure (first trade)
Interaction	1 or 2/+2 (indirect or direct/potentially strong synergies)	

#### A) Coherence Analysis

In many resource-rich developing countries, the state or a state-owned enterprise (SOE) owns shares in a producing license or receives in-kind payments (transfers of oil, gas and minerals) in exchange for the right to extract. The state entity then sells these physical resources to trading companies or domestic refiners/smelters – what is termed ‘first trades’. In some contexts, these sales represent the largest revenue streams accruing to government. For example, from 2011 to 2013 the sale of crude oil by the national oil companies of Africa’s ten largest oil producers reportedly equalled 56% of their combined government revenues – more than 10 times international aid flows to these countries (NRGI et al 2014).

While economically significant, ‘first trade’ payments are generally opaque and prone to corruption. The lack of transparency and oversight may lead to suboptimal sales and provides opportunities for corruption. As reported by the NRGI, for example, in Nigeria treasury receipts from oil sales fell significantly during the boom of 2011 to 2014, also because of suboptimal sales arrangements entered by the national oil company – offshore processing agreements and crude oil swap deals then cancelled by the following administration (NRGI 2015). Lack of transparency in relation to first trades also enables misappropriation by state companies of revenue generated from commodity sales – funds that should instead be remitted to the central government budget. Payment disclosure requirements on traders will contribute to expose and deter these practices.

To pursue efforts towards coherent policies for commodity trade transparency and development, all major trading hubs, including Switzerland, may require commodity traders to publicly report on their transactions with government entities – ‘first purchase’ payments and volumes, or ‘first trades’. Public disclosure of traders’ payments to governments is expected to fight corruption-related IFFs and improve revenue management, by enhancing the accountability of companies and host country governments (potentially strong synergies (+2) with SDG 16.4, 17.1, 16.5, 16.6). Since ‘first trades’ are a major source of revenue inflows for the government, there are potentially strong synergies between first trade transparency and the objective to curb IFFs and mobilize revenue. Yet, the link between transparency and governance improvement is indirect, mediated by several factors – for example, how prosecutors and policy-makers use the disclosed information. Note however that improved transparency and oversight in the trade of government’s share of production may also *per se* dissuade suboptimal deals, misappropriation and embezzlement, with potentially direct impacts (2) on SDG 16.4, 17.1, 16.5, 16.6. Public disclosure requirements for traders also expand the body of trading data in the public domain, with strong and direct effects (2/+2) on public access to information (SDG 16.10).

There is on-going debate on the precise scope and depth of payment disclosure requirements for traders, with divergent views as to the granularity of the disclosed information and regarding the required contextual information about the commodity sale process. Outstanding implementation issues concern: the

(material) threshold above which payments are deemed significant and should be reported (\$10,000, \$15,000, \$100,000 ...);<sup>37</sup> coverage of indirect ‘first purchases’ through intermediaries and payments to other influential persons;<sup>38</sup> and the specific reporting template for traders, particularly in relation to the type of contextual information to be disclosed.

	Coverage	Use/Impact
Minimum disclosure requirements	Direct ‘first purchase’ payments and volumes, disaggregated by counterparty	Help to expose potential misappropriation/misuse of public revenue
More expansive and inclusive requirements	The processes by which sales contracts are allocated, key terms of the contract, pricing methods, etc.; payments to intermediaries	Help to expose suboptimal deals and overly favourable contractual terms for the purchaser

### B) Strengthening PCSD

Switzerland is one of the world’s largest hubs for oil and other commodities trading, accounting for 1/3 of world trade in crude oil and products and 60% of metals trade (STSA). Its weight triggers leverage and responsibility: commodity trading transparency is an area where reporting by Swiss traders could make a difference. The Swiss government has recognized the reputational risk posed by such a large sector and has committed to submit a law before Parliament that would require extractive companies to disclose their payments to government agencies. Under a previous draft of the law, the Federal Council was given discretion to extend payment disclosure to commodity traders, as part of an internationally agreed process.<sup>39</sup>

To pursue coherent efforts towards commodity trade transparency and development, Switzerland could continue to proactively support and spark innovative approaches on transparency in commodity trading. Multistakeholder initiatives play a key role in advancing the debate on commodity trading transparency, assessing technical feasibility and elaborating reporting templates. Further, as part of an internationally agreed process, Switzerland may consider implementing expansive payment disclosure requirements on traders, as envisaged in a previous draft of the company law reform. New provisions would be introduced in Swiss company law requiring commodity traders to disclose their direct and indirect payments to government entities. The two PCSD indicators below (3.2.a and 3.2.b) track progress in these areas.

Transparency and development interests need to be assessed against competing interests and objectives. In Switzerland, payment disclosure requirements for traders raise three sets of concerns - about confidentiality, compliance costs for business, and their likely competitive effects. Expansive payment disclosure may divulge potentially sensitive commercial information; put disproportionate compliance costs on traders (compared with viable disclosure alternatives on the sale side); and affect the

<sup>37</sup> As pointed out in relation to payment disclosure by extractive companies, setting the threshold too high “would leave important payment streams undisclosed and could encourage companies and governments to structure payments in future contracts in a way that would avoid the disclosure requirement”; setting the threshold too low would cloud the data with irrelevant information and result in undue compliance burdens (SEC Final Rule 2012, letter from Rep. Frank et al).

<sup>38</sup> SOEs often sell to “passive intermediary companies”, including banks, which pass on the product on to, among other, international traders. Traders, on their side, can insert middlemen into deals so as to avoid dealing directly with SOEs. This would easily lead to a circumvention of disclosure requirements. If the scope of reporting requirements covered indirect ‘first purchases’, through intermediaries, traders would need to change their traceability systems, which pick up the data thread from the point at which they take title.

<sup>39</sup> <https://www.ejpd.admin.ch/ejpd/en/home/aktuell/news/2014/2014-11-28.html>

competitiveness of Swiss traders compared to unregulated traders. There is a need to weigh and balance transparency, privacy and economic efficiency, as outlined below.

Concerns	Mitigation strategies
<i>Confidentiality</i>	
Concern over divulging potentially sensitive commercial information / confidentiality clauses in contracts.	Time delays in disclosure, disclosure of less sensitive data.
<i>Compliance costs for business, cost-effectiveness and opportunity costs</i>	
Traders may need to modify their reporting systems in order to capture and report data; if disclosure requirements cover deals through intermediaries, traders would need to change their traceability systems, which pick up the data thread from the point at which they take title.  It may be more cost-effective to require disclosure on the sale side of the transaction, by the Government or a SOE (EITI Requirement 4.1.c).	Make transparency disclosure commercially viable (build on existing reporting practices and due diligence initiatives; leverage new technologies for traceability).
<i>Competitiveness</i>	
Traders subject to reporting requirements may be at a competitive disadvantage compared to traders that are not: counterparts in non-EITI countries that wish to avoid disclosure of commercial information may give preference to trading firms that are not subject to mandatory home-country disclosure requirements. Regulated traders could avoid disclosure by relocating or de-listing.	Harmonization across all major trading hubs regarding disclosure requirements.

### C) Indicators

#### *Indicator 3.2.a: Support to initiatives on commodity trading transparency*

Criterion (what do we measure)	Switzerland's contribution to multistakeholder initiatives on commodity trading transparency
Measure	Participation (membership), financial support, policy stance taken
Means of verification	SECO and SDC reports, institutional websites
Analysis	We distinguish participation from financial support and political support. We count as <ul style="list-style-type: none"> <li>– Minimal progress towards PCSD when Switzerland participates in the initiatives;</li> <li>– Reasonable progress towards PCSD when Switzerland financially supports initiatives that promote transparency and accountability in commodity trading;</li> <li>– Strong progress, when Switzerland proactively engages as reformer and sparks expansive reporting requirements within the framework of multistakeholder initiatives.</li> </ul>



*Indicator 3.2.b: Home country disclosure requirements on traders (payments to government entities)*

Criterion (what do we measure)	Provisions that require commodity traders to publicly report on their ‘material’ transactions with government entities (‘first trade’) and their intermediaries
Measure	Revision of Swiss Company Law
Means of verification	Minutes of the Federal Council and the Parliament; text of new law (Swiss classified compilation of Federal laws) <sup>40</sup> and published guidelines
Analysis	The analysis considers the transposition in national law of international guidelines on transparency of payments to governments in commodities trading. In 2017, the EITI working group produced a model reporting template on ‘first trades’ of the state’s share in oil production. While the reporting template is principally aimed to guide disclosure by government/SOEs (sale side), it also provides a template for disclosure by traders (purchase side) (EITI 2017).

**D) Baseline Assessment (2018)**

Indicator 3.2.a (support to initiatives on commodity trading)

Switzerland is an EITI supporting country and provides funding for the EITI International Secretariat; it is formally engaged in the OECD Policy Dialogue on Natural Resource-based Development; it supports other initiatives that promote accountability and good governance in the commodities sector (including the Natural Resource Governance Institute and the U4 Anti-Corruption Resource Centre).

Indicator 3.2.b (domestic requirement on traders to disclose ‘first trades’)<sup>41</sup>

2013 - In Recommendation 8 of the Inter-departmental Background Report on Commodities, the Federal Council accepted to consider the drafting of a consultation draft on transparency requirements compatible with the US and EU provisions for the Swiss commodity sector (FDFA et al 2013).

2015 – The Federal Council continued to support payment to government disclosure by traders (2<sup>nd</sup> Status Report, 2015). The draft revision of Swiss company law included proposed rules that would require listed and ‘large’ companies in the extractive sector to disclose payments to government agencies in excess of 120,000 Swiss francs. The original draft of 28 November 2014 (pre-Draft) included a “delegation provision”, whereby the Federal Council was given discretion to extend the payment disclosure requirements to traders, as part of an internationally concerted process (Art. 964f in the Pre-Draft of 28 November 2014). However, this provision was not maintained in the final draft to the Parliament.

2016 - In 2016, Switzerland committed at the London Anti-Corruption Summit to “enhance company disclosure regarding payments to governments for the sale of oil, gas and minerals”. Art. 964f was deleted from the draft revision of Swiss company law. The 3<sup>rd</sup> status report is less specific on this point.

2018 – The last Federal Council report on the Swiss commodities sector (Federal Council 2018b) does not make explicit reference to the extension to traders of payment to government disclosure requirements. However, the Federal Council continues to support “the development of standards on transparency of payments to governments in commodities trading and the adoption of these standards by the OECD”.

<sup>40</sup> <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>

<sup>41</sup> Review based on Bürgi et al (2016), Food Security Annex.



## 4. Whistle-blower Protection

Policy domain	IFFs – Whistle-blower protection	
Policy interaction	C21	C: Reduce IFFs (SDG 16.4)
		21: Whistle-blower protection
Interaction	1/+2 (indirect /potentially strong synergies)	

### A) Coherence Analysis

Across jurisdictions, there is growing policy emphasis on new rules directed to protect private sector employees who report suspicious transactions (whistle-blowers). Whistle-blowers are key to expose secretive information on opaque business structures and arrangements that mask corruption, money laundering and tax evasion/ avoidance. Scandals such as the Panama Papers and Luxleaks were brought to light by whistle-blowers. Developing countries’ request for assistance in tax-dodging probes often arise from information leaked by whistle-blowers.<sup>42</sup> A strong protective framework for whistle-blowers will indirectly facilitate the detection of illicit flows from developing countries associated with corruption, unlawful tax evasion/avoidance and money laundering (potentially strong synergies (+2) with SDG 16.4, 17.1, 16.5, 16.6). The causal link between whistle-blower protection and reduced IFFs is indirect (value=1), depending on consequent action by prosecutors and law-enforcement agencies.

### B) Strengthening PCSD

The OECD Working Group on Bribery has consistently highlighted the inadequacy of Switzerland’s legal protection framework for whistle-blowers. The OECD recommends that “Switzerland adopt promptly an appropriate regulatory framework to compensate and protect private sector employees who report suspicions of foreign bribery from any discriminatory or disciplinary action” (2009 Recommendation IX(iii)]; Phase 3 Recommendation 11; Phase 4 Recommendation 1) (OECD 2018a). In line with OECD guideline, Switzerland may take steps to effectively protect private sector employees who report suspicious transactions from any discriminatory or disciplinary action. It would need to enact specific legislation on whistle-blower protection and in parallel introduce exceptions and defences in secrecy and confidentiality provisions. In doing so, Switzerland may consider key international standards and recent legislation, such as the French Loi Sapin II and the planned EU directive on whistle-blower protection.

There are perceived trade-offs between enhanced whistle-blower protection and confidentiality concerns, particularly in respect of commercial and professional secrecy.<sup>43</sup> These trade-offs can be managed by means of qualified exceptions and defences introduced in secrecy and confidentiality provisions. Note also that whistle-blower protection does not imply going public straightaway. A three-tier reporting system is generally foreseen consisting of internal reporting channels, reporting to competent authorities, and Public/media reporting as a measure of last resort – if other channels do not work or could not reasonably be expected to work.

<sup>42</sup> For example, an information request submitted by India to Switzerland, upon which the Swiss highest Court ruled in 2018, involved information leaked by whistle-blower Herve Falciani, a French citizen who worked for HSBC’s Swiss private bank.

<sup>43</sup> In the Swiss legal system, secrecy and confidentiality concerns are enshrined in the duty of care and loyalty (Article 321a(4) Code of Obligations (CO)), commercial secrecy (Article 162 Criminal Code (CC)), professional secrecy for certain professions (Article 321 CC), bank secrecy, which is binding under certain circumstances (Article 47 of the Federal Banking Act), and secrecy for those in the accountancy profession, referred to as “duty of discretion” (Article 730b(2) CO) (OECD 2018a).

## C) Indicators

### *Indicator 4.a: Steps towards an adequate legal framework to protect whistle-blowers in the private sector*

Criterion (what do we measure)	Strengthened protection of private sector employees who report suspicious transactions from any discriminatory or disciplinary action
Measure	Enactment of specific whistle-blower protection legislation in line with international guidance (see Analysis) and related amendment of existing secrecy and confidentiality provisions
Means of verification	Minutes of the Federal Council and the Parliament; text of new law (Swiss classified compilation of Federal laws) <sup>44</sup> and published guidelines
Analysis	The analysis will consider if new provisions are enacted and if they are ‘adequate’, based on the framework set by the OECD Working Group on Bribery. An adequate regulatory framework to protect whistle-blowers include the following features (OECD 2018a): - a clearly defined framework to ensure confidentiality of the report and protection of the whistle-blower’s identity; - safeguards other than compensation for unfair dismissal, including protection from being fired, demoted or discriminated; - shifting of the burden of proof onto the employer to justify dismissal or any other discrimination against an employee; - sanctions for those who take retaliatory measures against whistle-blowers; - exemption from violation of professional confidentiality; - exemption from liability in the event that a whistle-blower is the subject of a claim for civil, administrative or criminal liability in connection with his/her report; - coverage of employees whose contract or working environment is not covered by an employment contract within the meaning of the Code of Obligations, including volunteers, retirees, the self-employed, etc. (OECD 2018a)

## D) Baseline Assessment (2018-19)

Whistle-blower protection bills were submitted to Parliament but rejected in 2015 and 2019.

- In November 2013, the Swiss government proposed new legislation for whistle-blower protection in the private sector. The Council of States approved the draft law with few modifications in September 2014, but the National Council rejected the draft in September 2015, due to the alleged lack of clarity of the proposal;
- In September 2018, the Federal Council released a revised proposal that set a three-stage process for whistleblowing. The draft was rejected by the National Council in June 2019 by 144 votes against 27 and again in March 2020, by 147 votes against 42.

As reviewed by the OECD (OECD 2018a), Switzerland does not have specific legislation to protect whistle-blowers in the private sector. Private sector employees are subject to several legal obligations of secrecy enshrined in the duty of care and loyalty (Article 321a(4) Code of Obligations (CO)), commercial secrecy (Article 162 Criminal Code (CC)), professional secrecy for certain professions (Article 321 CC), bank secrecy (Article 47 of the Federal Banking Act), and secrecy for those in the accountancy profession, referred to as “duty of discretion” (Article 730b(2) CO). In principle, if an employee wants to report

<sup>44</sup> <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>

suspicious transactions, s/he must first inform the employer. As summarised by the OECD examiners, “If the employee contacts a body or a person outside the company, then, under case law, protection is only available where the interests of third parties or the general interest take precedence over the legitimate interest of the employer, and where the authority ‘continues to take no action’ or is unable to take action in a timely manner. The same case law states that ‘the employee must also maintain confidentiality in relation to criminal or administrative offences committed by his employer unless there is an overriding interest to disclose’.” (OECD 2018a). The OECD examiners were of the view that “these criteria are imprecise especially because they are subject to the discretion of the court on a case-by-case basis.” (OECD 2018a).

## 5. Corporate Taxation

### 5.1 Measures to Address Profit Shifting into and through Switzerland

Policy domain	IFFs – Corporate taxation	
Policy interaction	D23	D: Strengthen DRM (SDG 17.1)
		23: Measures to address profit shifting into and through Switzerland
Interaction	1 or 2/+2 (indirect or direct /potentially strong synergies)	

#### A) Coherences Analysis

Domestic tax policy is no longer a matter of sovereign discretion, given the effects that one country's tax rules and practices have on others – what is termed 'tax spillovers'. For example, low/minimal tax rates, coupled with lack of substantial activity requirements, offer incentives to shift profits from a high tax jurisdiction to the low tax one for reducing tax liability. PCSD requires that developed countries assess and mitigate the negative impact that their tax rules or practices have on developing countries, with due regard for the interplay of domestic laws and tax treaty obligations.

There are potentially strong synergies (+2) between measures to address domestic tax spillovers and counter profit shifting, on the one hand, and revenue mobilization in developing countries (SDG 17.1). Profit shifting drains revenue away from developing countries and is a main obstacle to achieving the SDGs. IMF data point to an estimated \$200 billion of revenue loss via tax-motivated base erosion and profit shifting (BEPS) for non-OECD countries, corresponding to 1.3% of GDP (Crivelli et al 2015). This is in line with OECD data: developing countries are losing out on some \$100-240 billion in revenues each year due to profit shifting, according to the OECD (OECD 2019d). The poorer countries have the most to lose, since corporate income tax constitutes a large proportion of their total revenue.

Measures to address domestic tax spillovers and counter profit shifting can have direct and indirect effects (1 or 2), depending on whether they remove rules that actively prompt or simply enable profit shifting. Specific domestic tax rules and practices can directly promote artificial profit shifting. A simple example could be a patent-box regime that charges reduced tax rates on income from intellectual property, with no substantial activities requirements: such a regime offers incentives to shift patents and the corresponding income (and tax revenue) to the preferential regime, while keeping the underlying research and development activity elsewhere. More generally, no/minimal tax rates provide incentives to allocate returns for tax reasons to low taxed entities. Other tax rules and practices do not by themselves prompt aggressive tax planning and profit shifting but enable it. Examples include the absence of specific and general anti-abuse rules, as well as mismatches between tax rules.

The above analysis focuses on aggressive tax planning by MNEs and artificial profit shifting out of developing countries. While these practices are linked to international tax competition, this latter issue is broader and raises more complex welfare considerations. The theoretical and empirical literature is divided about the efficiency and distributional effects of international tax competition. Some argue that excessive tax competition can lead to net efficiency losses from a global welfare perspective, by distorting investment location decisions and leading to under-provision of public goods and services (see, for example, Zodrow and Mieskowski 1986, Zucman et al 2020). Developing countries, especially those with smaller markets have much to lose in such a race to the bottom. Others contend that tax competition is efficient and welfare improving, at least if its intensity is not too high (see FFA and FTA 2005 for a review

of the literature). Proponents of this view argue that sub-optimally high corporate income tax (CIT) rates may be harmful for investment and innovation and negatively associated with growth rates, regardless of other jurisdiction’s tax policy. They recommend that developing countries focus on VAT and on personal income tax instead, possibly complemented by the taxation of real estate. In addition, substantial revenues should be generated from the exploitation of natural resources (if available) by concession fees and royalties. CIT, however, should be kept at a moderate level. Eventually, ‘the jury is still out on scoring tax competition on efficiency grounds’ (FFA and FTA 2005, at 39).

### B) Strengthening PCSD

There is significant momentum for domestic tax reform that accommodates developing countries’ concerns. The G20-OECD project on base erosion and profit shifting (BEPS) has set minimum and optional standards to better ensure the alignment of taxation with the place of value creation. The international community seems to have reached a new critical reform momentum under the OECD/G20 Inclusive Framework on BEPS. Under Pillar 1 of the Work Programme on digitalisation, over 135 countries are collaborating to set new rules that define where tax should be paid and on what basis in relation to digitalisation. Under Pillar Two (the global anti-base erosion (GloBE) proposal), countries are considering new rules to counter tax competition and the shifting of profits to low or no tax jurisdiction.

Against this background, Switzerland may consider further actions to adjust its policies to better support developing countries. At the regional and multilateral level, Switzerland may continue to support concerted efforts to counter artificial profit shifting and ‘excessive’ tax competition<sup>45</sup> (see indicator 5.1.a). It may seek to ensure that “any new international tax norms being developed must be well-tailored for developing countries—including the least developed and smaller countries—and inclusive of developing-country voices in their formation and agreement” (United Nations 2020). At the domestic level, Switzerland may take steps to address remaining tax rules and practices (or lack thereof) that facilitate aggressive tax planning by MNEs, to ensure coherence between domestic tax policies and global sustainable development objectives (see indicator 5.1.b).

Policy coherence for development engages complex normative trade-offs in tax matters. Some coherence tensions are difficult to resolve, considering a perceived trade-off between Swiss national economic interests and development interests. Switzerland anticipates that smaller, innovative and export-based economies such as Switzerland will lose out from some of the measures advocated by developing countries (the G24, ATAF, CREDAF and other stakeholders from developing countries) under the OECD/G20 Inclusive Framework on BEPS. The Swiss government may here strike a delicate balance between domestic interests and competing development objectives, in concertation with other headquarter states. Possible PCSD indicators in this coherence area may try to assess the extent to which development concerns are considered in the legislative process (indicator 5.1.c).

### C) Indicators

#### *Indicator 5.1.a: Negotiating stance – Multilateral tax reform efforts*

Criterion (what do we measure)	Switzerland’s support for reform initiatives that ensure effective inclusion of developing countries in tax norm-setting and that promote changes to international tax norms well-tailored for developing countries, including the least developed
Measure	Participation (membership), financial support, policy stance taken

<sup>45</sup> As regards the efficiency debate on tax competition, see above, section 5.1.a.

Means of verification	<ul style="list-style-type: none"> <li>- <i>Participation</i>: Reviews and reports by the relevant international bodies</li> <li>- <i>Finance</i>: Reports by SIF and SECO</li> <li>- <i>Policy stance</i>: <u>Switzerland</u>: Official statements and reports from SIF, SECO, FDF; <u>Developing countries</u>: Views formulated by ATAF's Technical Committee, the African francophone countries members of CREDAF, CIAT, the Addis Tax Initiative, the UN Tax Committee, the United Nations Economic Commission for Africa, the United Nations Inter-agency Task Force on Financing for Development, the Coalition for Dialogue on Africa (CoDA), the G24 and individual developing countries. The PCSD framework invites to also consider relevant views from civil society. In tax matters, development-oriented tax reform proposals are being articulated by key think tanks and advocacy groups, including the BEPS Monitoring Group, ICRICT, ICTD, the Tax Justice Network and AllianceSud in respect of Swiss tax policy.</li> </ul>
Analysis	<p>The analysis considers regional and multilateral initiatives led by developing countries, or inclusive of developing-country voices. We distinguish participation (membership) from financial support and political support. We count as</p> <ul style="list-style-type: none"> <li>– Minimal progress towards PCSD when Switzerland participates in the initiatives;</li> <li>– Reasonable progress towards PCSD when Switzerland financially supports initiatives that promote the interests of developing countries, including through technical assistance to assess the medium- and long-term impact of tax reform on revenue mobilization in developing countries;</li> <li>– Strong progress, when Switzerland supports adaptation of international tax norms and practices to the realities and needs of developing countries, including the least developed.</li> </ul>

*Indicator 5.1.b: Domestic reform to address tax rules and practices that may incentive profit shifting*

Criterion (what do we measure)	Adoption and enforcement of new laws and regulations that address profit shifting into and through Switzerland
Measure	Adopted laws and regulations
Means of verification	<p>Source of minimum and optional standards: 15 BEPS Actions; OECD/G20 Inclusive Framework on BEPS; UN Tax Committee.</p> <p>Compliance with standards: Progress reports by the OECD, Reports of Federal Council and relevant offices (SIF); Adopted laws and regulations (Swiss classified compilation of Federal laws)<sup>46</sup> and administration's published guidelines.</p>

<sup>46</sup> <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>



Analysis	<p>We distinguish between minimum and optional standards. We count as</p> <ul style="list-style-type: none"> <li>- Reasonable progress towards PCSD when Switzerland complies with minimum international standards in tax matters (attained)</li> <li>- Maximum progress towards PCSD when Switzerland further complies with optional standards of special interest to developing countries under the Inclusive Framework and the UN Tax Committee</li> </ul>
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*Indicator 5.1.c: Mechanisms to flag, address and arbitrate development policy incoherence in tax matters<sup>47</sup>*

Criterion (what do we measure)	Mechanisms to flag, address or arbitrate development policy incoherence and policies' spillover effects on developing countries in the tax area.
Measure	<p>The existence and effectiveness of Switzerland's inter-department consultation mechanisms supporting PCSD, as assessed by the OECD Development Assistance Committee (DAC);</p> <p>The extent to which development concerns are taken into consideration in the Federal Council responses to the parliamentary motions/postulates/questions in the tax area</p>
Means of verification	<p>Official Swiss reports and OECD DAC Peer Reviews of Switzerland;</p> <p>Federal Council responses to the parliamentary motions/postulates/questions</p>
Analysis	The effectiveness of the inter-department consultation mechanism is assessed by the OECD Development Assistance Committee (DAC) in its periodic reviews of Switzerland's development cooperation efforts.

**D) Baseline Assessment (2018)**

Indicator 5.1.a

**Participation:** Switzerland is a Member of the Inclusive Framework on BEPS and is actively involved in the UN Committee of Experts on International Cooperation in Tax Matters.

**Financial support:** SECO contributes to multi-donor programmes providing technical assistance and capacity development in tax matters to developing countries.<sup>48</sup> On 12 July 2017, SECO and the African Tax Administration Forum (ATAF) signed a partnership agreement to the value of USD 900'000 that will

<sup>47</sup> While most PCSD indicators in this report look at the policy outcome, this indicator considers institutional coordination mechanisms and differs in nature from the others. It was important to capture this dimension, as required under the PCSD framework. PCSD requires breaking down policy silos and systemic dialogue between different communities. It entails, among other things, strengthened mechanisms for inter-ministerial, cross-sectoral collaboration. Indicator 5.1.c tries to capture this aspect.

<sup>48</sup> These included the IMF Revenue Mobilization Trust Fund (RMTF), the IMF Topical Trust Fund on Managing Natural Resource Wealth (TTF MNRW), the IMF Topical Trust Fund on Anti-Money Laundering/Combating the Financing of Terrorism (TFF AML/CFT), the World Bank Global Tax Programme (GTP), the Extractive Industries Transparency Initiative (EITI), and Tax Administration Diagnostic and Assessment Tools. At a regional level, it supports the Centro Interamericano de Administraciones Tributarias (CIAT) and the African Tax Administration Forum (ATAF).

assist in the implementation of ATAF's Strategic Plan in the period 2017 to 2020. SDC supports research and studies on tax-motivated IFFs.

Policy stance taken within OECD/G20 Inclusive Framework on BEPS: There are significant divergences between the views expressed by Switzerland<sup>49</sup> and statements from developing countries and development experts<sup>50</sup> about adapting international tax norms and practices to the realities and needs of developing countries. Under Pillar 1 of the Work Programme on the digital economy, the policy stance of Switzerland is that existing transfer pricing rules should remain at the heart of the global tax framework; any new rules allocating more income to market jurisdiction should remain anchored to the arm's length principle. Regarding Pillar 2, Switzerland is committed to tax sovereignty and 'fair' tax competition and favours 'moderate' over radical reform (modest minimum tax rate, comprehensive carve-out of substance-based IP regimes and global blending). SIF disfavours measures outside the scope of double tax agreements, such as measures based solely on turnover; it argues that the introduction of minimum tax rates restricts competition and can lead to additional burdens for companies.

#### Indicator 5.1.b

In tax matters, Switzerland is compliant with all the minimum standards monitored by the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inclusive Framework on BEPS.

- On 13 March 2009, the Federal Council publicly announced that Switzerland would exchange tax information on request in line with the internationally agreed standard and has adjusted its domestic framework and tax treaties accordingly
- Switzerland has implemented the OECD standard for the compulsory spontaneous exchange of tax rulings (domestic legal framework in force on 1 January 2017, first exchange in 2018)
- It has implemented the automatic exchange of financial account information (first exchange in 2018)
- Switzerland is assessed fully compliant with the Country-by-Country reporting standard (associated laws and ordinances in force in December 2017, first exchange in 2020);
- Switzerland has implemented the minimum standards as regards tax treaty abuse (BEPS Action 6 minimum standard on preventing the granting of treaty benefits in inappropriate circumstances and BEPS Action 15 Multilateral Instrument – see also section 5.2 on DTAs)
- With the introduction of the Tax Reform and AHV Financing (TRAF) Act (adopted 2018, in force on 1 January 2020), Switzerland abolished its harmful tax regimes – privileged regimes of taxation of profits for holding companies, domiciliary companies, mixed companies, principal companies, as well as Swiss finance branches. In 2019 Switzerland was delisted from the EU tax haven grey list.

Although being in line with the internationally agreed minimum standards, Switzerland has not gone forward in implementing optional recommendations that reflect developing countries' concerns. In particular

- It has not taken any measures to implement the recommendations of BEPS Action 7 (artificial avoidance of permanent establishment) (see also the analysis of DTAs)

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<sup>49</sup> Letter from the President of the Swiss Confederation, Ueli Maurer, to the OECD, Berne, 13 December 2019 [https://www.sif.admin.ch/sif/en/home/finanzmarktpolitik/digit\\_finanzsektor/best\\_digit\\_wirtschaft.html](https://www.sif.admin.ch/sif/en/home/finanzmarktpolitik/digit_finanzsektor/best_digit_wirtschaft.html); SIF's position on taxing the digitalised economy, 8 March 2018, and SIF's updated position on the taxation of the digitalised economy [https://www.sif.admin.ch/sif/en/home/finanzmarktpolitik/digit\\_finanzsektor/best\\_digit\\_wirtschaft.html](https://www.sif.admin.ch/sif/en/home/finanzmarktpolitik/digit_finanzsektor/best_digit_wirtschaft.html).

<sup>50</sup> For example, the proposal for unitary taxation made by the G24 group under Pillar 1 of the Work Programme on digitalisation, as well as views from the African Tax Administration Forum (ATAF 2014) and the Economic Commission for Africa (UN ECA 2018 and 2019).

- Switzerland does not have stringent controlled foreign companies (CFC) legislation<sup>51</sup> and provides for unilateral unconditional tax exemption for income derived from abroad (not conditional on the payment of taxes abroad). These features may enable double non-taxation and profit shifting to and through Switzerland.
- Switzerland is a relatively low tax jurisdiction. The tax reform has compensated for the abolition of cantonal tax privileges with special tax incentives – including a mandatory patent-box regime at cantonal level, optional R&D super-deductions, and nominal interest deduction for self-financing. Furthermore, several Cantons have dropped their tax rates. The combined effective corporate income taxes (federal, cantonal and communal) before TRAF ranged from 12% to 24%; following the introduction of the tax reform, the combined effective rates are expected to vary between 12% and 18% (Eckert and Hinnny 2020). The new tax regime is generally considered substance-based and harmless, as it does not directly incentivise artificial profit shifting through highly contrived schemes.<sup>52</sup> However, the relatively low corporate tax rates applied and the consequent tax rate differential with (high-tax) developing countries may *per se* stimulate (genuine) profit shifting from comparatively high-tax jurisdictions, as documented in the empirical literature (see for example, IMF 2014; Heckemeyer and Overesch 2013; Zucman et al 2020).<sup>53</sup>

#### Indicator 5.1.c

Switzerland requires inter-departmental consultations throughout the process of legislative initiatives. To address policy coherence for sustainable development, it has established a new interdepartmental structure consisting of a Board of Directors with representatives from all federal departments. An assessment of the effectiveness of this mechanism is provided by the OECD Development Assistance Committee in its periodic review of Switzerland's development co-operation efforts.

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<sup>51</sup> Absence of strong statutory CFC rules contributes to make Switzerland an attractive headquarter location for MNEs, which can from there park profits in offshore tax havens. Absence of CFC rules in headquarter states does not directly erode the tax base of developing (source) countries, but is a precondition for complex multi-jurisdictional profit shifting schemes that shift profits from source to headquarter states and from there to offshore centres. For a detailed review of operational mechanisms, European Commission 2015 and 2017.

<sup>52</sup> For a different account, Tax Transparency Project / AllianceSud 2018.

<sup>53</sup> Note however that the debate on the efficiency and distributional effects of 'genuine' tax competition is still open, with some strands of theoretical and empirical literature pointing to the overall welfare-enhancing effects of international tax competition (see above section 5.1.a).

## 5.2 Double Tax Agreements

Policy domain	IFFs – Corporate taxation	
Policy interaction	D24	D: Strengthen DRM (SDG 17.1)
		24: Double tax agreements
Interaction	2/±2 (direct /potentially strong synergies or conflicts)	

### A) Coherence Analysis

Double tax agreements (DTAs) set limits to the taxation of cross-border investments by allocating taxing rights between the host state (in fiscal terms referred to as the source country) and the home state (residence country of the investor). In general, DTAs restrict the scope of source country’s taxing rights over foreign investment, by specifying maximum withholding tax rates on interest, dividends, royalties and other outbound payments from the source state. DTAs also generally provide that the business profits of a foreign enterprise are taxable in a source jurisdiction only to the extent that the enterprise has in that jurisdiction a permanent establishment to which the profits are attributable.

DTAs can lead to revenue losses or gains in developing countries, depending on their terms and investment effects. The interaction between DTAs and revenue mobilization in developing countries is direct, with potentially strong synergies or conflict. For example, it has been estimated that US tax treaties cost their developing-country treaty counterparts at least \$1.7 billion in revenue every year (de Mooij, Mathesa and Schatan 2015) and that Dutch tax treaties cost their developing-country counterparts at least EUR 770 million in revenue in 2011 (McGauran 2013).

Two sets of issues raise concerns, as pointed out by Meyer-Nandi (2018b). First is the concern about the tax losses resulting “from the surrendering of taxation powers by the source State” (Meyer-Nandi 2018b), since DTAs tend to restrict a source’s country taxing rights over foreign investment. The second issue concerns revenue losses spurred by treaty abuse in aggressive tax planning structures. This can occur for example through treaty shopping, where investment is routed through a state that has an advantageous DTA with the recipient of the FDI. It can also occur through the artificial avoidance of permanent establishment status that triggers taxation at source. The selected PCSD indicators tackle these two dimensions.

The revenue loss resulting from reduced source taxation in DTAs are to be weighed against the alleged benefits created by DTAs. These include increased investment inflows (and hence increased revenue) into developing countries, employment and economic growth (SDG 8). Note however that there is mixed empirical evidence about the positive investment effects of DTAs (IMF 2014, at 26), while revenue foregone in developing countries from reduced tax rates in DTAs is estimated high.

### B) Strengthening PCSD

Well-designed DTAs can potentially lead to a more equitable distribution of tax revenue between host and home countries. If properly designed with anti-abuse tools, DTAs provide opportunities to tackle non- or reduced taxation achieved through tax evasion and avoidance. The target is to have well-balanced DTAs that expand the tax base of developing countries without undermining inward investment.

Towards this end, Switzerland can take steps to set a coherent development policy in place for DTAs with developing countries and ensure that its DTAs with developing countries are aligned with the development

objective to raise tax revenue in developing countries (see indicator 5.2.a). In moving further towards greater policy coherence for development, Switzerland could ensure that its DTAs with developing countries integrate adequate measures against treaty abuse (see indicator 5.2.b).

Developing countries have little bargaining power when negotiating DTAs because they compete to attract and retain foreign direct investment through tax incentives. DTAs with high withholding tax rates or disadvantageous tax terms for the investor tend to be perceived as unfavourable to FDI. In developing countries, this leads to a perceived trade-off between two competing development targets: attracting foreign direct investment, which translates in employment and economic growth – and possibly more revenue (SDG 8), on the one hand, and enhanced resource mobilization through higher taxation of foreign direct investment (SDG 17.4), on the other. These trade-offs can be managed and mitigated. First, tax benefits from DTAs are often redundant in attracting investment. Second, taxes paid at source could be made tax deductible/creditable against the tax due in the country of residence of the investor. By doing so, residence countries can help revenue mobilisation in developing countries while also limiting the higher costs for the investor.

### C) Indicators

#### *Indicator 5.2.a: Moderating treaty ‘aggressiveness’*

Criterion (what do we measure)	The ‘tax aggressiveness’ of DTAs signed by Switzerland with developing countries
Measure	Tax aggressiveness as revealed by restrictions of source country taxing rights through no or low withholding tax rates (WHT) on interest, dividends, royalties, and other payments; narrow definition of permanent establishment (PE); other restrictions on the scope of a source country’s own tax jurisdiction (see Analysis)
Means of verification	SIF list of DTAs <sup>54</sup> and text of DTAs
Analysis	<p>Based on criteria set in the literature on tax and development (Meyer-Nandi 2018a and 2018b, Oguttu 2018), the analysis considers if Swiss DTAs with developing countries are aligned with the Swiss development objective to raise tax revenue in developing countries. Specific items to be reported on include:</p> <ul style="list-style-type: none"> <li>– The rate of withholding tax on dividends, interest and royalties (target: <math>\geq</math> domestic WHT rates);</li> <li>– Whether a tax credit is granted in Switzerland for the withholding taxes paid in the developing countries (target: a full tax credit would neutralize the investment effects of high withholding taxes at source);</li> <li>– The definition of permanent establishment (PE) (target: expansive definition in line with BEPS Action 7 or UN Model Art. 5)</li> <li>– The allowable deductions in calculating the profits of a PE (target: limits to deductibility of payments to head office as per UN Model Art. 7.3)</li> <li>– Flexibility for fractional apportionment methods to determine the profits of a PE (target: flexibility retained, as per UN Model Art. 7.4)</li> </ul>

<sup>54</sup> <https://www.sif.admin.ch/sif/en/home/bilateral/steuerabkommen/doppelbesteuerungsabkommen.html>

	<ul style="list-style-type: none"> <li>– The taxability at source of income from technical services (target: taxable through a service PE definition or a service fee);</li> <li>– Whether Switzerland requires its treaty partners to make corresponding transfer pricing adjustments (MLI Article 15), which limits the flexibility developing countries have to apply their own approaches to intra-group transactions (target: no corresponding adjustment required for low-income countries that apply simplified transfer pricing methods)</li> </ul>
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*Indicator 5.2.b: Preventing tax treaty abuse and tax avoidance*

Criterion (what do we measure)	The extent to which Swiss DTAs address treaty abuse arrangements that erode the tax base of developing countries
Measure	Number of DTAs with developing countries that include anti-abuse provisions (see Analysis)
Means of verification	<p><i>MLI implementation:</i> OECD peer review reports (BEPS Action 6); MLI Database - Matrix of options and reservations; SIF reports.</p> <p><i>Optional MLI provisions most relevant to developing countries:</i> Recommendations by the UN subcommittee on BEPS, views of ATAF and other regional tax organisations, literature (Meyer-Nandi 2018b, Oguttu 2018, BEPS Monitoring Group etc.).</p>
Analysis	<p>The analysis considers if the DTAs signed by Switzerland with developing countries integrate measures against treaty-abuse.* Specific items of interest to developing countries to be reported on include:</p> <ul style="list-style-type: none"> <li>– Beneficial ownership provisions to inhibit treaty shopping;</li> <li>– Measures against hybrid mismatch arrangements such as transparent and dual residence entities (MLI Articles 3 and 4)<sup>55</sup> and hybrid instruments (MLI Article 5)<sup>56</sup></li> <li>– General anti-abuse provision, in the form of a “principal purpose test” (PPT) and/or specific anti-abuse rules such as “limitation-on-benefits” (LoB) provisions (BEPS Action 6; MLI Articles 6 and 7)</li> <li>– Provisions capturing indirect transfers of property (MLI Article 9),<sup>57</sup> and other specific anti-abuse rules with respect to dividend transfer transactions (MLI Article 8),<sup>58</sup> permanent establishments situated in third jurisdictions (MLI Article 10),<sup>59</sup> etc.</li> <li>– Anti-abuse measures that counter artificial avoidance of permanent establishment status through commissionaire arrangements (MLI Article</li> </ul>

<sup>55</sup> Entities treated as transparent (non-taxable, or “pass through”) by the treaty partner and dual-resident entities (in absence of agreement on their residence) are not entitled to treaty benefits.

<sup>56</sup> Instruments treated as debt in one country and as equity in another may result in double deduction/double non-taxation.

<sup>57</sup> Addresses situations in which MNES avoid capital gains tax in the source state by incorporating conduit companies in low tax jurisdictions to dispose shares in assets located in third countries.

<sup>58</sup> A minimum shareholding period shall be satisfied in order for a company to be entitled to a reduced rate on dividends from a subsidiary.

<sup>59</sup> Denial of treaty benefits in respect of income attributable to a PE in a low/no tax jurisdiction (tax is less than 60% of the tax that would be imposed in the residence state).

	<p>12),<sup>60</sup> specific activity exemptions (MLI Articles 13),<sup>61</sup> or contract splitting (MLI Article 14).<sup>62</sup></p> <p><i>*This assessment does overlook the demand side of developing countries regarding each anti abuse provision shown above. While the PPT/LOB is a minimum standard that should be included, other provisions are optional and not all developing countries may want them as they may be too complex. An assessment of the specific position of all developing countries in the MLI about which rules they want to be included is however too demanding in the context of this monitoring exercise.</i></p>
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#### D) Baseline Assessment (2018)

##### Indicator 5.2.a

As reported in Meyer-Nandi (2018a), in 2018 Switzerland had approximately over 100 DTAs in force out of which 44 were with developing countries. Switzerland did not have a specific policy for DTAs with developing countries, which were very diverse. Most followed the OECD Model Treaty, adjusted in course of negotiation. For some treaties, some divergence from the OECD model were made due to the special economic situation of the country.

##### Indicator 5.2.b

In 2017 Switzerland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument, or MLI). The MLI entered into force on 1 December 2019. The MLI modifies the application of DTAs between two or more MLI Parties to implement tax treaty-related anti-abuse BEPS measures (under BEPS Actions 2, 6, 7 and 14). The MLI does not directly amend the text of the covered DTAs but is applied alongside existing tax treaties, modifying their application to implement the BEPS measures. Countries can specify the tax treaties to which the MLI applies (the “Covered Tax Agreements”). Furthermore, they can opt out from provisions that do not reflect minimum BEPS standards. There is significant scope to make Switzerland’s commitments under the MLI more development-friendly. In particular:

- Switzerland listed only 14 DTAs under the MLI – all with high-income or upper middle-income countries.<sup>63</sup>
- Switzerland has opted out from key MLI provisions of interest to developing countries: standards for transparent and dual resident entities (MLI Articles 3 and 4); specific anti-abuse rules on dividend transfer transactions, capital gains, permanent establishment in third jurisdictions (MLI Articles 8 - 10); provisions regarding the artificial avoidance of permanent establishment status (Articles 12 – 15).

<sup>60</sup> Companies often use agency or commissionaire arrangements instead of establishing related distributors to avoid PE status. With the revised regulation, a PE arises when an agent acting on behalf of a foreign enterprise plays the principal role leading to the conclusion of a contract, even if the contract is formally signed with the foreign enterprise.

<sup>61</sup> PE status can be circumvented by claiming that the business activities are preparatory and auxiliary in nature or fragmenting them.

<sup>62</sup> These rules address avoidance of PE status achieved through the following arrangements: commissionaire arrangements, by claiming that business activities are preparatory and auxiliary in nature and exempted from PE status, and by splitting up contracts.

<sup>63</sup> Argentina, Austria, Chile, the Czech Republic, Iceland, Italy, Lithuania, Luxembourg, Mexico, Portugal, South Africa and Turkey. These countries were prepared to agree with Switzerland on the precise wording of the DTAs to be adapted via the MLI by means of mutual procedure agreements

## 6. Regulation of ‘Enablers’ of Tax Evasion and Avoidance

### 6.1 Penalties for Professional Enablers of Abusive Tax Arrangements

Policy domain	IFFs – Regulation of ‘enablers’ of tax evasion and avoidance	
Policy interaction	C27	C: Reduce IFFs (SDG 16.4)
		27: Penalties for professional enablers of abusive tax arrangements
Interaction	1 or 2/+2 (indirect /potentially strong synergies)	

#### A) Coherence Analysis

Key revelations from the Panama Papers (ICIJ 2019a) point to the involvement of Swiss-based professionals in facilitating opaque offshore deals – with details on 1,339 Swiss lawyers, financial advisors and other middlemen that had set up more than 38,000 offshore entities over the past 40 years.<sup>64</sup> These revelations have drawn attention to professional advisors in Switzerland – lawyers, accountants, fiduciaries etc. – as key enablers of complex tax avoidance arrangements that draw resources out of developing countries.

The term ‘enabler’ here designs those who, in the course of their business, design, manage, market or otherwise facilitate aggressive tax planning schemes. The focus is on lawyers, accountants, fiduciaries, notaries and other advisors who benefit financially from designing, marketing or otherwise facilitating cross-border tax avoidance schemes. By supplying the accounting and legal solutions that shift MNE profits out of where they are produced, ‘enablers’ are a main driver of abusive tax avoidance. Yet, they remain unaccounted for the risks they create, unless the scheme they facilitate amounts to tax evasion or tax fraud.

The introduction of penalties for enablers of defeated abusive tax arrangements promotes a business model that internalizes costs and risks. It is expected to contribute to efforts to curb aggressive tax planning schemes that lead to profit shifting from developing countries (potentially strong synergies with SDGs 16,4 and 17.1). It will do so indirectly, by promoting behavioural change (more risk-averse attitude) in the tax agents, intermediaries and others who design and enable artificial cross-border tax avoidance schemes (indirect impact (1)). Effective penalties scheme may also have direct effects, if their enactment translates in the reduce recourse to abusive schemes.

#### B) Strengthening PCSD

The UK has recently enacted legislation that introduces penalties for enablers of abusive tax avoidance arrangements, while setting safeguards for professionals who adhere to professional standards. This legislation can set a model for other offshore wealth centres, including Switzerland. Under UK law, when a (non-criminal) aggressive tax arrangement is counteracted by the tax administration, any person who enabled the defeated scheme is charged a penalty. The penalty will be equal to the total amount received for enabling the arrangement.

The introduction of penalties for enablers of defeated cross-border tax avoidance schemes would contribute to close a prominent coherence gap in Switzerland: between the commitments to curb artificial profit

<sup>64</sup> [https://www.swissinfo.ch/eng/tax-havens\\_panama-papers-data-confirms-swiss-links/42143340](https://www.swissinfo.ch/eng/tax-havens_panama-papers-data-confirms-swiss-links/42143340)



shifting from developing countries and lenient action taken against the Swiss-based designers and marketers of opaque offshore deals.

There is a normative balance to be found between the need to prevent and deter the facilitation of aggressive tax planning schemes detrimental to developing countries, and the need not to hinder the activity of most lawyers, accountants, etc. who adhere to professional standards. The UK law includes two sets of safeguards that help mitigate and manage this trade-off.<sup>65</sup>

### C) Indicators

#### *Indicator 6.1.a: Introduction of penalties for professional enablers of defeated tax avoidance arrangements*

Criterion (what do we measure)	Introduction of penalties for ‘enablers’ of abusive tax planning schemes that are defeated in administrative courts (assessment litigation) or otherwise counteracted by the tax administration
Measure	New laws and regulations that sanction professional enablers of defeated tax avoidance schemes
Means of verification	Minutes of the Federal Council and the Parliament; text of new law (Swiss classified compilation of Federal laws) <sup>66</sup> and published guidelines
Analysis	The analysis will consider the enactment of new legislation in line with what other ‘reformers’ have done (e.g. the UK legislation on penalties for enablers of defeated tax avoidance schemes).

### D) Baseline Assessment (2018)

In Switzerland, tax avoidance arrangements that do not constitute criminal tax offences can still be subject to assessment litigation in administrative courts or be otherwise counteracted by the tax administration. Administrative assessment and counteraction may result in adjustments to the taxpayer’s tax position. The costs – nullification of the tax advantage that the scheme would provide – are borne by the taxpayer. There is no specific legislation that sanctions the professional ‘enablers’ of the scheme.

## 6.2 Anti-money laundering duties on trust and company service providers, legal professionals and accountants

Policy domain	IFFs – Regulation of ‘enablers’ of tax evasion and avoidance	
	C29	C: Reduce IFFs (SDG 16.4)

<sup>65</sup> First, the scheme must be ‘defeated’, which means that it has been effectively counteracted by the tax authority, and the counteraction has become final. A scheme is counteracted when the tax administration has made adjustments to the taxpayer’s tax position or its own tax position, or has entered into a contract settlement with the taxpayer; or a tribunal or court has made adjustments to the taxpayer’s tax position. The counteraction becomes final when the adjustments can no longer be varied either on appeal or in any other way. Second, the defeated scheme must be ‘abusive’. Under the UK the General Anti-Abuse Rule (GAAR), tax arrangements are abusive if they “cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions” (narrow ‘double reasonableness test’). The UK tax authority takes into account the opinions of a committee of independent specialists - the GAAR Advisory Panel – to assess abusive arrangements, based on established guidelines and cases.

<sup>66</sup> <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>

Policy interaction		29: Anti-money laundering duties on trust and company service providers, legal professionals and accountants
Interaction	1 or 2/+2 (indirect or indirect/potentially strong synergies)	

### A) Coherence Analysis

Same analysis as under 6.1, but in relation to financial crime.

### A) Strengthening PCSD

The Financial Action Task Force recommended that Switzerland extend its AML framework to the activities of lawyers, notaries and fiduciaries related to the creation of legal persons and legal arrangements (FATF 2016). Many jurisdictions have moved in this direction. For example, the EU AML framework imposes anti-money laundering obligations (suspicious transaction reporting, client due diligence checks, record keeping and international co-operation) on legal professionals assisting in the planning or execution of client transactions, including property transactions, the management of client money or other assets and the creation of companies and trusts.

### B) Indicators

#### *Indicator 6.2.a: Steps towards extending AML duties on legal professionals, accountants and trust/company service providers*

Criterion (what do we measure)	Steps to imposes anti-money laundering obligations on lawyers, notaries , fiduciaries and other legal professionals assisting in the planning or execution of client transactions, including property transactions, the management of client assets and the creation of companies and trusts
Measure	New laws and regulations that impose anti-money laundering duties on legal professionals, accountants and other business service providers
Means of verification	Minutes of the Federal Council and the Parliament; text of new law (Swiss classified compilation of Federal laws) <sup>67</sup> and published guidelines
Analysis	The analysis will consider the enactment of new legislation that aligns the Swiss legal framework with the FTAF standards (FATF 2019a, 2019b, 2019c) and the most expansive AML frameworks (for example, the EU)

### A) Baseline Assessment (2018)

Non-financial businesses or profession such as trusts and corporate service providers, accountants, and lawyers were subject to AML due diligence obligations only when carrying out financial transactions on behalf of the clients. AML did not cover professional services that did not involve cash flows, such as the establishment of companies or other complex legal arrangements, in contrast to what was required by international standards.

Real estate agents, dealers in precious metals and luxury goods were only required to conduct due diligence and identify the beneficial owner of clients if they accepted more than 100,000 CHF in cash; transactions of lower value or not in cash were not subject to due diligence.

<sup>67</sup> <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>

Subsequent law reforms have partially closed these gaps.

## 7. Corporate Responsibility

The following analysis selectively focuses on supply chain due diligence and transparency in commodities. This is just one of the many policy instruments and approaches that can be used to fight IFFs. Other approaches revolve around the self-regulation of lawyers, notaries, accountants and other professional services; the elaboration of a corporate 'tax responsibility' norm; the integration of IFF concerns in investors and asset managers' strategies, including through a redefinition of directors' duties; and the potential use of unfair competition rules in enforcing corporate social responsibility. The United Nations Guiding Principles on business and human rights provide an overarching framework that captures a range of approaches to prevent human rights abuses by business enterprises. Steps taken to implement and operationalize the UN framework can be used as broadly encompassing indicator that captures policy developments across different areas. The indicators below are more specific in focus since they capture progress in a specific policy area in the fight against commodity trade-related IFFs: supply chain due diligence and transparency.

### 7.1 Supply Chain Due Diligence and Transparency

Policy domain	IFFs – Corporate responsibility	
Policy interaction	C31	C: Reduce IFFs (SDG 16.4)
		31: Supply chain transparency and due diligence
Interaction	1 or 2/+2 (direct-indirect impact/potentially strong synergies)	

#### A) Coherence Analysis

Swiss commodity traders and processors often source their commodities from fragile states and contexts, which puts them at risk of being caught up in illicit flows. One example is raw gold sourced from artisanal mines in Mali, Burkina Faso and Niger, then (indirectly) imported to Switzerland – a trade that is reportedly fuelling jihadist extremism in the Sahel region.<sup>68</sup>

Whatever measures the Swiss government decides to engage – soft law initiatives, hard law, or a mix of soft and hard law instruments – product traceability and supply chain due diligence are key to curb illicit flows associated with illegal trade in natural resources (strong synergies with SDG targets 16.4, 14.4 and 15.7). The impact of traceability and due diligence initiatives/requirements can be direct, having a deterrent effect on illegal trade. This implies that the trader subject to due diligence requirements has enough leverage on its suppliers. The impact may also be indirect, when a decision by the trader to withhold from a 'problematic' export would only result in that trader losing the business to another (unregulated) trader.

#### B) Strengthening PCSD

On 17 May 2017 the EU adopted a regulation on supply chain due diligence obligations for EU importers of minerals from conflict-affected and high-risk areas. In March 2017, France adopted a law that requires parent and subcontracting companies to identify and prevent the negative environmental and human rights

<sup>68</sup> L'or, une aubaine pour les djihadistes, Le Temps, 19 novembre 2019; Au Sahel, les raisons d'une guerre sans fin, Le Temps, 19 novembre 2019.

impacts of their activities and of those of their subsidiaries, suppliers and subcontractors (law no. 2017-399 of 27 March 2017). The Swiss government has committed to effectively promote supply chain due diligence and transparency through a “smart-mix” of binding regulations and non-binding instruments. A domestic policy debate is ongoing in Switzerland as to the enactment of mandatory due diligence requirements.

To pursue its efforts towards coherent policies for commodity trade transparency and development, Switzerland could continue its multistakeholder engagement to spearhead traceability and due diligence standards in the natural resource sector (see indicator 7.1.a). Furthermore, in line with OECD recommendations (OECD 2016c), it could move in the direction of strengthened supply chain due diligence requirements on companies active in high-risk commodities (see indicator 7.1.b). Companies should verify the origin of the commodities, and the conditions under which they are acquired, in particular when sourcing from high-risk areas.

These development-oriented targets are qualified by competing development interests: as discussed below, there are potential tensions and trade-offs between tight supply chain due diligence and social-inclusion goals. Further, there are concerns about compliance costs for business and their likely competitive effects in the Swiss context.

Due diligence and traceability initiatives/measures need to be carefully designed so as to promote, rather than hinder, social inclusion objectives. Badly targeted traceability and due diligence requirements may have potential unintended consequences, including adverse development impacts. Potential tensions and trade-offs arise between tightened due diligence regulation and social-inclusion goals, in the sense that stringent supply chain due diligence requirements may lead Swiss companies to cut ties with small and informal suppliers (in tension with, for example, SDG target 10.3). In June 2019, for example, Swiss gold refinery Metalor announced it would no longer source gold from artisanal miners, given the perceived reputational and due diligence costs involved in dealing with artisanal mining operations. Detailed reporting requirements under multiple disclosure frameworks may also entail disproportionate compliance costs for small and micro enterprises (in conflict with SDG target 8.3 on SME development). Note also that the relationship between curbing illegal trade and enhancing domestic revenue in developing countries (SDG 17.1) is complex. Illegal trade is a source of (illicit) financial inflows to developing countries. These inflows may be productively reinvested in the local economy or may simply fuel corruption and conflict. The net revenue and welfare impacts depend on the circumstances of the case.

In Switzerland, particularly in respect of commodity traders, there is some perceived trade-off between strengthening supply chain due diligence requirements for Swiss companies and the obligation to safeguard the interests of the Swiss economy. There are intrinsic challenges to achieve traceability in highly complex value chains, which results in high competitive costs for regulated business. The Swiss trading hub is under constant pressure given the attractiveness of Singapore, Dubai and London. In this context, there are concerns that, if Switzerland acted unilaterally, Swiss traders subject to reporting requirements would be at a competitive disadvantage compared to traders that are not. The interests of the Swiss economies are allegedly engaged – in 2010, trading replaced banks' financial services as Switzerland largest services export, and its share of GDP is higher than that of tourism; in Cantons such as Geneva, Ticino and Zug, commodity trading companies are major fiscal contributors to public finances (STSA). These concerns put emphasis on the need for internationally concerted solutions across all major trading hubs.

## C) Indicators

### *Indicator 7.1.a: Strengthening multi-stakeholder dialogue and expanding development cooperation on traceability and supply chain due diligence*

Criterion (what do we measure)	Support for multistakeholder initiatives that promote traceability and supply chain due diligence in commodity supply chains
Measure	Number of supported initiatives and amount of financial support
Means of verification	SECO and SDC reports, institutional websites
Analysis	The analysis counts as progress towards PCSD when Switzerland participates in and financially supports initiatives that promote supply chain transparency and accountability in the commodity sector. The analysis only considers the stated goal of the initiative, not its effectiveness in pursuing the stated goal.

### *Indicator 7.1.b: Steps taken to encourage and enforce supply chain due diligence*

Criterion (what do we measure)	Steps taken to promote supply chain due diligence by extractive companies and commodity traders domiciled in Switzerland
Measure	New provisions for supply chain due diligence, but also enforcement of existing due diligence provisions and soft-law frameworks
Means of verification	<p><i>New provisions:</i> Minutes of the Federal Council and the Parliament; text of new law (Swiss classified compilation of Federal laws)<sup>69</sup> and published guidelines</p> <p><i>Implementation of existing mandatory due diligence requirements:</i> Jurisprudence and published administrative guidance</p> <p><i>Number of existing soft-law frameworks and instruments:</i> Reports from SECO and other bodies.</p>
Analysis	The analysis will assess the number, but not the effectiveness, of existing soft-law frameworks and instruments in the area of supply chain due diligence. It will consider the expanded use of existing mandatory rules to enforce due diligence in commodity chains, as well as the enactment of new provisions to fill gaps.

## D) Baseline Assessment (2018)

### Indicator 7.1.a

<sup>69</sup> <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>

In 2018 Switzerland was actively engaged in the following multistakeholder initiatives in the area of supply chain due diligence and traceability in the commodity sector:

- Implementation of the Better Gold Initiative for Artisanal and Small-Scale Mining (ASM) in Peru, Colombia and Bolivia;
- Support to studies and research (OECD Development Cooperation Directorate and OECD Development Centre; Natural Resource Governance Institute (NRGI), USA; Swiss Programme for Research on Global Issues for Development (r4d programme))
- Financial support for global programmes (Extractives Global Programmatic Support (EGPS) of the World Bank, IMF Topical Trust Fund on Managing Natural Resource Wealth, and the Extractive Industries Transparency Initiative (EITI))
- The thematic dialogue on the possibilities for global transparency and reporting standards in commodities trading (the OECD's Development Centre under the Policy Dialogue on Natural Resource-based Development)
- Financial support for the Responsible Mining Index (RMI).

#### Indicator 7.1.b

##### Soft law:

The Federal Council expects companies based and/or operating in Switzerland to act in accordance with international Corporate Social Responsibility (CSR) standards. The Federal Council CSR strategy was set out in the Federal Council's Position Paper on Corporate Social Responsibility (2015) and the 2015-2019 Action Plan and reconfirmed in the revised CSR Action Plan 2020-2023. In 2018, the Swiss Government mandated the Institute for Human Rights and Business (IHRB) to produce guideline for the commodity trading sector on implementing the UN Guiding Principles on Business and Human Rights.

##### Hard law:

To some extents, Swiss companies are already required to engage in due diligence and risk assessment with respect to overseas operations. Relevant due diligence requirements can be derived from various Swiss laws and regulations, including the Precious Metals Control Ordinance (PMCO), the Anti-Money Laundering Act (AMLA), the Swiss criminal code, and Swiss company law, particularly with respect to the duty of care and loyalty of the board of directors, ordinary reporting obligations and employer's liability (Tratschin et al 2017).

In November 2016 a coalition of Swiss civil society organizations filed a public initiative to hold Swiss companies to account for human rights abuses committed abroad. The initiative promotes a constitutional amendment to introduce mandatory human rights due diligence requirements for all Swiss companies. On 15 September 2017 the Federal Council's dispatch on the "Responsible Business Initiative" recommended that the Swiss Parliament reject the Initiative. Counter-proposals were put forward by both the upper and lower houses of the Swiss Parliament, which eventually converged towards a sustainability reporting-centred proposal that envisages due diligence obligations only in respect of child labour and conflict minerals. The Responsible Business Initiative is set for public referendum.

# Annex 4

## Policy Decisions

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Ver. 1

14 May 2020



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## Law of 21 June 2019 on the implementation of the recommendations of the Global Forum

Decision	Law on the implementation of the recommendations of the Global Forum (Loi fédérale du 21 juin 2019 sur la mise en oeuvre des recommandations du Forum mondial sur la transparence et l'échange de renseignements à des fins fiscales) (RO 2019 3161 (-3172))
IFF related area	Tax Transparency – Exchange of Information on Request (B5 in the Coherence Matrix) & Transparency of Business Entities and Investment – Beneficial Ownership Transparency (B10 in the Coherence Matrix)
Key changes introduced	Since 1 November 2019: Bearer shares can only be issued by listed companies or in the form of intermediated securities, to ensure the identification of their holders and beneficial owners. Pre-existing bearer shares must be converted into registered shares and the remaining bearer shares will be automatically converted into registered shares in May 2021 / Companies incorporated outside of Switzerland but tax resident there are required to keep in Switzerland an up-to-date list of their holders / Companies that do not maintain an up-to-date register of their shareholders are liable to penalties and administrative procedures that can lead to dissolution / Administrative assistance can be provided for deceased persons in all cases.
PCSD assessment	+  The reform is a further step towards aligning Switzerland's laws and practices with the international standards of transparency and exchange of information for tax purposes (Indicator 1.1.c) ; it strengthens beneficial ownership transparency (Indicator 2.1.a). Beneficial ownership transparency is key to stem illicit financial outflows from developing countries, by shedding light on opaque business structures and arrangements that are used to mask corruption, conceal assets and launder money (potentially strong synergies with SDGs 16.4 and 16.5).

## Ruling from the Federal Tribunal in July 2018 on the interpretation of the good faith principle

Decision	Ruling from the Federal Tribunal in July 2018 on the interpretation of the good faith principle (Decision 2C_648/2017 of 17 July 2018)
IFF related area	Tax Transparency – Exchange of Information on Request (B5 in the Coherence Matrix)
Key changes introduced	The decision provides that Switzerland can process requests for tax information that are based on leaked or stolen data, as long as the requesting authority has not actively sought out stolen data outside an administrative assistance procedure, including buying data from a private person. In practice, the ruling authorises the use of “leaked” data as the basis for an information request to Switzerland, as long as the requesting country did not purchase the data.
PCSD assessment	+ Step taken to align Switzerland’s laws and practices with the international standards of transparency and exchange of information for tax purposes (Indicator 1.1.c). This new interpretation of the concept of good faith allowed for example Switzerland to meet an India’s request for assistance in a tax-dodging probe based on leaked data. In that case, Switzerland’s highest court allowed tax authorities to turn over bank account details of two Indian citizens who had appealed against the release on the grounds that India’s request arose from stolen bank data. The case involved information leaked by whistleblower Herve Falciani, who had worked at the Swiss branch of HSBC and in 2008 disclosed details on thousands of clients he suspected were keeping undeclared offshore accounts in Switzerland.

## Federal Council dispatch on AEOI with 19 further partner states, 29 May 2019

Decision	During its meeting on 29 May 2019, the Federal Council adopted the dispatch on the introduction of the automatic exchange of financial account information (AEOI) with 19 further partner states. Entry into force is planned for 2020 with the first exchange of data in 2021.
IFF related area	Tax Transparency – Automatic Exchange of Financial Account Information (B6 in the Coherence Matrix)
Key changes introduced	If the corresponding federal decrees are approved by Parliament (expected autumn or winter session 2020), Switzerland will have a legal basis to automatically exchange bulk bank data with Albania, Azerbaijan, Brunei Darussalam, Dominica, Ghana, Kazakhstan, Lebanon, Macao, the Maldives, Nigeria, Niue, Pakistan, Peru, Samoa, Saint Maarten, Trinidad and Tobago, Turkey, Vanuatu and Oman.
PCSD assessment	+  If the corresponding federal decrees are approved by Parliament, the number of standard-compliant AEOI instruments between Switzerland and developing countries will increase (Indicator 1.2.a). Four new low-income countries will be added (Ghana, Nigeria, Pakistan, Vanuatu): Swiss banks will collect bank data on their clients residing in these countries and the information will be forwarded annually by the Swiss Tax Administration to the respective tax authorities abroad. The exchange will help uncover (and reclaim) undeclared bank deposits kept offshore in Switzerland by tax residents abroad. It will contribute towards curbing tax evasion and mobilizing domestic resources (potentially strong synergies with SDG 16.4 and 17.1)

## Federal Council dispatch on the amendment of the Anti-Money Laundering Act (AMLA), 26 June 2019

Decision	On 26 June 2019, the Federal Council adopted the dispatch on the amendment of the Anti-Money Laundering Act (AMLA).
IFF related area	Regulation of ‘Enablers’ of Tax Evasion and Avoidance – Extension of Anti-money Laundering Law to Professionals (B29 in the Coherence Matrix)
Key changes introduced	Under the revised Anti-Money Laundering Act, all persons (natural or legal persons) providing services in connection with the creation, the management or the administration of domiciliary companies and trusts are subject to the AMLA. They are submitted to the AML due diligence obligations as well as the obligation to report suspicious operations to the Money Laundering Reporting Office Switzerland. The measure only covers services for domiciliary companies or trusts / The threshold above which precious metals and gemstone traders must undertake duties in respect of due diligence in case of cash payments was lowered to CHF 15,000 (previously CHF 100,000)
PCSD assessment	<p style="text-align: center;">+</p> <p>The envisaged reform marks a step in the direction of imposing anti-money laundering duties on lawyers, notaries, fiduciaries and other legal professionals assisting in the planning or execution of client transactions, including property transactions, the management of client assets and the creation of companies and trusts (Indicator 6.2.a). Swiss legal professionals will be more risk-averse and possibly more reluctant to serve clients engaged in tax fraud or otherwise money-laundering schemes to the detriment of developing countries. The progress is moderate since the measure only covers services for domiciliary companies or trusts.</p>

## Inability to enact whistle-blower protection law (June 2019, March 2020)

Decision	The new draft legislation for whistle-blower protection in the private sector was rejected by the National Council in June 2019 by 144 votes against 27 and again in March 2020, by 147 votes against 42.
IFF related area	Whistle-blower Protection (B21 in the Coherence Matrix)
Key changes introduced	No change introduced. As reviewed by the OECD (OECD 2018a), Switzerland does not have specific legislation to protect whistle-blowers in the private sector.
PCSD assessment	–  Lack of progress towards curbing illicit outflows from developing countries, as measured under Indicator 4.a. Switzerland has been unable to enact specific whistle-blower protection legislation in line with international guidance. Whistle-blowers are key to expose secretive information on opaque business structures and arrangements that mask corruption, money laundering and tax evasion/ avoidance. Scandals such as the Panama Papers and Luxleaks were brought to light by whistle-blowers. Developing countries' request for assistance in tax-dodging probes often arise from information leaked by whistle-blowers.

## Signature and entry into force of the MLI Convention (7 June 2017 and 1 December 2019)

Decision	On 7 June 2017, Switzerland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument, or MLI). The MLI entered into force on 1 December 2019. At the time of signature, Switzerland submitted a list of 14 double tax agreements (DTAs) that it would like to be amended through the MLI. Together with the list of DTAs, Switzerland also submitted a provisional list of reservations and notifications (MLI positions) in respect of the various provisions of the MLI.
IFF related area	Corporate Taxation – Double Tax Agreements (B24 in the Coherence Matrix)
Key changes introduced	The MLI modifies the application of DTAs between two or more MLI Parties in order to implement tax treaty-related anti-abuse BEPS measures (under BEPS Actions 2, 6, 7 and 14). The MLI does not directly amend the text of the covered DTAs but is applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures. Countries can specify the tax treaties to which the MLI applies. Furthermore, they can opt out from provisions that do not reflect a minimum BEPS standards.
PCSD assessment	<p>Nihil</p> <ul style="list-style-type: none"> <li>– Switzerland listed only 14 DTAs under the MLI – all with high-income or upper middle-income countries;<sup>70</sup></li> <li>– Switzerland decided to opt out from key MLI provisions of interest to developing countries: standards for transparent and dual resident entities (MLI Articles 3 and 4); specific anti-abuse rules on dividend transfer transactions, capital gains, permanent establishment in third jurisdictions (MLI Articles 8 - 10); provisions regarding the artificial avoidance of permanent establishment status (Articles 12 – 15).</li> </ul> <p>There is significant scope to make Switzerland’s commitments under the MLI more development-friendly.</p>

<sup>70</sup> Argentina, Austria, Chile, the Czech Republic, Iceland, Italy, Lithuania, Luxembourg, Mexico, Portugal, South Africa and Turkey. These countries were prepared to agree with Switzerland on the precise wording of the DTAs to be adapted via the MLI by means of mutual procedure agreements

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