

FATF



Anti-money laundering and counter-terrorist financing measures

Switzerland

Mutual Evaluation Report

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Executive Summary

1. This report provides a summary of the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) measures in place in Switzerland as at the date of the on-site visit (25 February – 11 March 2016). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Switzerland's AML/CFT system, and provides recommendations on how the system could be improved.

A. *Key Findings*

- Swiss authorities generally have a good understanding of the risks of ML/TF, which was furthered by the first National Risk Assessment (NRA) published in June 2015. In 2013, Switzerland set up an AML/CFT co-ordination and cooperation body to bring AML/CFT strategy and policies in line with changes in identified risks.
- The Swiss financial system is exposed to a high risk of ML associated with the laundering of assets derived from offences that are mostly committed abroad. Banking, in particular private banking, is the sector most exposed to these risks. A number of important aspects specific to Switzerland, such as the use of cash or legal persons in general, including domiciliary companies, have not yet been analysed in detail with regard to the ML/TF risks to be included in the NRA. The risk of TF is more limited, but outreach is required to raise the awareness of non-profit organisations (NPOs).
- The Swiss AML/CFT framework has been developed using a risk-based approach and reflects the high risk level associated with the banking sector. In general, Swiss authorities take identified risk into account in their objectives and activities.
- In general, financial institutions and designated non-financial businesses and professions (DNFBPs) understand the ML/FT risks they face and their associated obligations. Overall, they apply measures commensurate with their risks, although classification of customers into inappropriate risk categories can undermine this approach. The implementation of due diligence measures with existing customers is not always satisfactory, particularly for longstanding customers of banks and asset managers classified as low risk at the beginning of the relationship, and where the source of funds was not always identified in line with current requirements.

- The number of suspicious transaction reports (STR) has been steadily increasing for several years following awareness-raising campaigns for reporting entities led by the Swiss authorities. However, the number remains insufficient, and most of them are produced in response to external information sources, usually when there is a grounded suspicion of ML/TF. FINMA needs to increase supervision and sanctions regarding compliance with the reporting requirement.
- The approach to AML/CFT supervision in Switzerland generally encourages a continuous monitoring of financial institutions and DNFBPs. The authority of the Swiss Financial Market Supervisory Authority (FINMA) is recognised by self-regulatory bodies (OARs) and the institutions/professionals it supervises directly. While this means that the remedial measures imposed by FINMA are generally complied with, its sanction policy for serious violations of AML/CFT obligations remains inadequate, as does that of the OARs. Furthermore, OARs are inconsistent in the way in which they take risk into account in their supervision activities. Work should continue in order to align the supervision practices of FINMA and OARs, particularly for the highest risk sectors such as fiduciaries. The general quality of AML/CFT audits still needs to be improved, and should include more detailed controls by FINMA.
- The Swiss authorities demonstrate a clear commitment to prosecute ML. Large-scale complex investigations are carried out, particularly using the high-quality intelligence provided by MROS on both a federal and cantonal level. Convictions have been obtained for all types of ML, especially in cases involving predicate offences committed abroad, which reflects the international exposure of Switzerland as a major financial centre. Assets have also been confiscated in cases where no conviction could be obtained. Investigations, prosecutions and confiscations are generally consistent with the risks identified. However, progress still needs to be made in imposing sanctions that are proportionate and sufficiently dissuasive.
- The mutual legal assistance provided by Switzerland is generally satisfactory and has involved the freezing and restitution of large sums linked with international corruption, but shortcomings associated with maintaining the confidentiality of requests have been observed. MROS and FINMA work jointly with their foreign counterparts at a level that corresponds to the international nature of the Swiss financial centre. However, there are some limits to this co-operation, which affect information sharing by MROS.

B. *Risks and General Situation*

2. Switzerland is a major international financial centre. In 2014, total assets managed stood at CHF 6 656 billion¹ [*USD 6 742 billion / EUR 6 079 billion*²], half of which belonged to foreign

¹ Swiss Bankers Association (2016), *The Financial Centre: Engine of the Swiss Economy*, www.swissbanking.org/en/financial-centre/20130715-fp_motor_der_schweizer_wirtschaft_en.pdf

² Exchange rate as of 11 March 2016 (end of on-site visit): 1 CHF = 1.01296 USD = 0.9134 EUR.

customers³. This corresponds to around 4.1% of global assets under management. The banking sector has a strong international dimension, due to both where institutions offering their services out of Switzerland come from, and the high proportion of customers domiciled abroad. Switzerland is also the global leader for cross-border private banking, with around a quarter of all global assets under cross-border management (CHF 2 377 billion)⁴.

3. Switzerland has committed to make protecting the integrity of the financial sector a key development aspect of its financial centre. Over the last few years, it has undertaken major initiatives to limit banking secrecy and proactively combat tax evasion. The long-term effects of these measures will encourage greater AML/CTF effectiveness.

4. Switzerland carried out a national ML/TF risk assessment published in June 2015 (NRA). It found that Switzerland is affected by financial crime and is attractive for laundering assets derived from offences that are mostly committed abroad. According to the report, the quality of AML/CTF measures implemented reduces vulnerability. The main threats in terms of predicate offences are fraud and breach of trust, corruption and participation in a criminal organisation. The highest risk identified was for private banking and universal banks operating internationally, independent asset managers, lawyers and notaries, fiduciaries and foreign exchange brokers. With regards to TF, the risk assessment concluded that there was a limited risk in Switzerland, and identified banks, money and value transfer services and credit services as the most exposed sectors.

C. Overall Level of Effectiveness and Technical Compliance

5. Switzerland has made a number of steps forward since the mutual evaluation in 2005. Legislative reforms made additional offences predicates for ML (such as the aggravated tax offence associated with direct taxes), given MROS the power to request additional information from reporting entities other than the entity that submits a suspicious transaction report (STR), and disassociated STRs from the freezing of funds. They have also introduced cross-border cash inspections, extended the field of TF offences relating to the groups “Al-Qaida” and “Islamic State” and related organisations, improved the transparency of legal persons, replaced the former canton and federal criminal procedure codes with a single criminal procedure code and allowed the immediate application of UN sanctions.

6. In terms of technical compliance, shortcomings were observed in the scope of application of the anti-money laundering law (LBA), the failure to update information on longstanding customers, and checking beneficial owners. Limits to co-operation between financial supervisory authorities for the supervision of groups were also noted.

7. In terms of effectiveness, some shortcomings remain, in particular with regard to the STRs submitted, the imposition of dissuasive sanctions, and international co-operation. However, clear progress has been made concerning FINMA controls and raising the awareness of institutions

³ SwissBanking (2015), *Wealth management in a period of change*, http://shop.sba.ch/1100006_e.pdf

⁴ The Federal Council (2016), *Report on international financial and tax matters 2016*, www.sif.admin.ch/sif/en/home/dokumentation/publikationen/bericht-ueber-internationale-finanz--und-steuerfragen.html

subject to the LBA and their role in the prevention of ML/TF, with some reservations regarding the high-risk fiduciaries sector.

C.1 National AML/CFT Policies and Co-ordination (Chapter 2 – IO 1; R 1, R 2, R 33)

8. Competent authorities in Switzerland generally all have a high level of understanding of ML/TF risks. The June 2015 NRA, to which the private sector contributed, has made an important contribution to this understanding. Overall, the NRA produced high-quality results, although some of the sources, which focused mainly on STRs, do not fully take into account emerging or developing risks. Nevertheless, the assessment is based on a realistic overview of risks, and examined all sectors covered by AML/CFT legislation and other sectors that present risks (e.g. real estate or free ports). Some important information that would provide Switzerland with a full picture of the nature and type of ML/TF risks to which it is exposed has yet to be taken into account. This includes risks associated with the use of cash, the fiscal framework or legal persons or arrangements.

9. A risk-based approach has been in place in Switzerland since the late 1990s and has led to the implementation and strengthening of AML/CFT measures, which particularly reflect the high level of risk associated with the banking sector. In general, the Swiss authorities take identified risks into account in their objectives and activities. With the 2015 NRA, Switzerland took this approach further. The conclusions drawn from it primarily cover legal and institutional aspects, which are deemed satisfactory for mitigating the risks affecting sectors already subject to AML/CFT legislation. Other aspects relating to, for example, priority sectors requiring awareness-raising (such as NPOs) or increased supervision should also be considered.

10. Switzerland has established a national AML/CFT co-operation and co-ordination framework led by the Interdepartmental Co-ordinating Group on Combating Money Laundering and the Financing of Terrorism (GCBF). All competent authorities take part in this group, which is responsible for the ongoing identification of risks to which the country is exposed.

C.2 Financial Intelligence, ML Investigations, Prosecutions and Confiscation (Chapter 3 – IOs 6-8; R 3, R 4, R 29-32)

11. Swiss authorities, particularly at a federal level, demonstrate a clear commitment to prosecute ML.

12. The Swiss financial intelligence unit (FIU), MROS, uses all its powers to analyse STRs, using a large number of databases, co-operation with foreign counterparts and additional intelligence from financial intermediaries, including parties that did not submit the STR. MROS generally co-operates well with other national authorities. In particular, the analysis performed by MROS provides a useful and timely contribution to ongoing investigations, and has detected new cases of ML and TF. However, feedback from law enforcement authorities to MROS and the authorities responsible for cash controls is incomplete. Furthermore, the authorities responsible for cross-border cash controls and supervisory authorities (FINMA and OARs) seem to make a limited contribution to collecting information and financial intelligence.

13. Large-scale complex investigations have been carried out on both a federal and cantonal level, including cases involving predicate offences committed abroad. The Office of the Attorney General of

Switzerland (*Ministère Public de la Confédération* - MPC) and some other cantonal prosecution authorities have specialised bodies to facilitate the use of financial intelligence in complex cases. A high number of ML convictions have been obtained in recent years. Authorities described some cases in which relatively heavy sentences were handed down, but the data supplied does not provide an overview of the level of sentences and the extent to which they are dissuasive.

14. Confiscation is a priority for the Swiss authorities, including in cases where no conviction for ML can be obtained. This policy involves the seizure of large sums, which have also been subject to international asset recovery procedures. Seizures and confiscation are generally consistent with the risks identified, and some are major successes in the global fight against corruption. However, the confiscation related to cross-border cash flows was not shown to be used as a dissuasive sanction where false information is communicated at the border.

C.3 Terrorist and Proliferation Financing (Chapter 4 – IOs.9-11; R 5-8)

15. The Counterterrorism Strategy for Switzerland of September 2015 recognises the importance of countering TF. Following recent events in neighbouring countries, federal resources for countering terrorism and TF have been increased (including within MROS). These resources complement existing federal and cantonal co-ordination mechanisms, which allow effective and sustained exchange of information between competent authorities regarding counter-terrorism, and in this context, terrorist financing. The MPC takes the necessary measures to assess the financial aspects in terrorism investigations. To date, one conviction for terrorist financing has been handed down. Furthermore, other types of support have been successfully prosecuted, and a number of proceedings for participation in and/or support of terrorism are underway.

16. Large sums have been frozen in application of sanctions based on United Nations Security Council Resolutions 1267 and 1373, and sanctions on Iran. In order to speed up the implementation of new designations, since March 2016, Swiss law has enacted the automatic adoption of the United Nations Security Council sanction lists pertaining to countering the financing of terrorism and proliferation.

17. With regard to countering TF, the fiscal and supervisory authorities responsible for foundations monitor the activity of some NPOs and the use of their funds, taking into account TF risks. However, the authorities have not undertaken awareness-raising within the NPO sector. Self-regulation initiatives for NPOs are in place, but they only partly fill the gaps regarding the understanding and management of TF risks in the sector.

18. With regard to combating financing the proliferation of weapons of mass destruction, the State Secretariat for Economic Affairs (SECO) provides support to financial intermediaries and other sectors (industry, transport services, etc.) to raise their awareness about the threat of proliferation, and facilitate the implementation of international sanctions. However, the checks performed or ordered by supervisory authorities responsible for monitoring financial intermediaries regarding the implementation of financial sanctions associated with proliferation are limited and formal.

C.4 Preventive Measures (Chapter 5 – IO 4 ; R 9-23)

19. The banking sector has a central place in the Swiss AML/CFT system due to the economic importance of this sector within the country. Overall, banking institutions understand their ML/TF risks. There is inconsistency with regard to the capacity of non-banking institutions subject to AML/CFT legislation, including smaller fiduciaries, to identify their risks.

20. In general, financial institutions and DNFBPs comply with their record keeping and due diligence obligations. They apply stronger measures in situations presenting higher risks, particularly those involving a politically exposed person. However, the criteria used for classifying customers into risk categories are sometimes incomplete and do not always provide a satisfactory risk profile, which can impact the suitability of the measures applied to control and mitigate these risks. Furthermore, some non-banking institutions subject to AML/CFT legislation apply risk criteria which are not always appropriate for the specific nature of their various customer categories and activities.

21. Overall, banking institutions do not sufficiently review and update available information on existing customers (“legacy assets”). This may lead to the failure to identify customers that have become high-risk or unusual or suspicious transactions, thereby weakening the implementation of the risk-based approach. Furthermore, the numbers of STRs are continually increasing but remain too low. Financial institutions and DNFBPs tend to submit reports primarily when there is a grounded suspicion of ML/TF, most often when this is backed up by external sources and do not yet fully implement the broader understanding of reporting actively promoted by the Swiss authorities.

C.5 Supervision (Chapter 6 – IO 3; R 26-28, R 34-35)

22. Supervisory authorities have adopted the principle of a risk-based approach. Implementation of this approach by FINMA is satisfactory. Its application by some OARs is inconsistent, particularly because the intensity of their controls are not adequately differentiated according to risks, e.g. with regard to fiduciaries involved in creating offshore schemes.

23. The scope of FINMA’s supervisory powers ensures close continuous supervision of financial intermediaries and means that measures can be increased as required. The authority of FINMA is recognised by the financial intermediaries it supervises directly and by the OARs. There is still progress to be made for FINMA and the OARs in developing a common approach to risks and the supervision of organisations in the same sector, in particular for high-risk activities such as fiduciaries. Furthermore, the quality of reports from auditors performing AML/CFT controls still needs to be improved so that material weaknesses in the application of AML/CFT measures by financial intermediaries are fully identified, in particular for suspicious transaction reporting violations. Measures to improve the qualitative approach of auditor supervision of affiliates of OARs must also be taken.

24. The possibility of sanctions affecting the ability to carry out activities as a financial intermediary is feared by the profession. However, the effective application of sanctions on bank executives and staff involved in major cases involving serious violations of supervision law committed by these institutions has not been demonstrated. Furthermore, the sanctions imposed by

FINMA seem too low to allow it to punish all violations of AML/CFT obligations effectively and proportionately.

C.6 Transparency of Legal Persons and Arrangements (Chapter 7 – IO 5; R 24-25)

25. Switzerland's ratification of the Hague Trust Convention in 2007 allowed foreign trusts to be recognised under civil law. There are no other similar types of legal arrangement in Switzerland. Legal persons in Switzerland are subject to general obligations for transparency which is a basic safeguard from their being used for ML/TF purposes. Recent measures have increased this transparency, particularly with regard to bearer shares. Those who purchase these shares must now declare themselves to the company or a financial intermediary. Companies must also keep a register of their shareholders/partners and their beneficial owners. This also applies to companies with bearer shares. However, the sanctions for violations of this requirement do not seem to be adequately dissuasive.

26. Switzerland has not performed a detailed analysis of mechanisms through which the use of national domiciliary companies and legal persons established in Switzerland in general can be misused for ML/TF purposes, so assessors were unable to ensure that the measures taken to ensure the transparency of legal persons are adequate and appropriate. The risks associated with the creation of companies in offshore centres or non-cooperative countries, and the role of financial intermediaries involved in the process to create them also need to be assessed for legal persons established in Switzerland.

27. Swiss competent authorities state that they obtain reliable information on the beneficial owners of Swiss legal persons, inasmuch as such information is available. Information on the beneficial owners of trusts can be accessed from trustees in Switzerland, and via international co-operation.

C.7 International Co-operation (Chapter 8 – IO 2; R 36-40)

28. As regards mutual legal assistance in criminal matters, Switzerland has a comprehensive legislative, contractual (via the numerous treaties of which it is a signatory) and administrative framework, and is highly active with incoming and outgoing requests. According to comments from other delegations, Switzerland generally responds to requests for mutual assistance in a sufficient and timely manner. Law enforcement authorities also send a relatively high number of unsolicited submissions which have, so far, been well received. Informing the bank account holder concerned that a mutual legal assistance procedure is in place compromises the potential confidentiality of the foreign investigation and in the event of an appeal, the timeliness of the assistance provided. This problem is only partially mitigated by the fact that it is possible to temporarily prohibit account holders from being notified or conditionally hand over evidence ("dynamic mutual assistance").

29. MROS sends many information requests to its foreign counterparts and uses the information obtained to reinforce its analysis. It also responds to requests in a timely manner. In this context, it may request information from a financial intermediary on behalf of a foreign FIU but only if the financial intermediary has previously submitted an STR or has a link with an STR received by MROS.

This condition limits the effectiveness of MROS co-operation. Ad hoc mechanisms involving law enforcement authorities or FINMA can mitigate this limitation in some cases but remain unusual due to the procedures required. The same limitation applies to requests regarding beneficial owners.

30. FINMA receives a large and growing number of information requests from abroad. In most cases it responds to them diligently, although the procedures that apply for queries concerning customers of financial intermediaries can delay the release of information. FINMA also issues requests to its foreign counterparts on subjects associated with AML/CFT. With regard to the joint supervision of foreign financial groups with branches in Switzerland, the assessors note the recent modification of Swiss law, which is intended to increase the scope of information that can be accessed by the authority in the country of origin, and encourage the Swiss authorities to apply the new legislative provision in such a way as to facilitate effective group supervision.

D. Priority Actions

31. On the basis of these general conclusions, the priority actions recommended for Switzerland are as follows:

- Supervisors should strengthen their controls of compliance with reporting requirements, with sanctions for institutions in violation.
- Supervisors should align their approaches to risks and control procedures for high-risk institutions supervised by FINMA or OARs, such as fiduciaries.
- Supervisors should ensure they issue proportionate and effective sanctions for serious violations of supervision law by financial intermediaries through binding measures other than findings decisions or corrective measures.
- The recent initiative to collect statistics should be continued in order to measure the results of the work of law enforcement and investigation authorities and adjust prosecution measures if necessary.
- Switzerland should reinforce its analysis of ML/TF risks associated with the use of cash and legal persons. On the basis of this analysis, authorities should produce and implement suitable actions for managing and controlling risks.
- In order to strengthen international cooperation in AML/CFT, the Swiss authorities should take the measures required to ensure the confidentiality of mutual assistance requests and remove the limits on the scope of information that MROS can exchange.
- The Swiss authorities should ensure that sanctions for ML and TF offences are sufficiently dissuasive.

Compliance and Effectiveness Ratings

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate, Low)

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Substantial	Moderate	Moderate	Moderate	Moderate	Substantial
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - TF investigation & prosecution	IO.10 - TF preventive measures & financial sanctions	IO.11 - PF financial sanctions	
Substantial	Substantial	Substantial	Substantial	Substantial	

Technical Compliance Ratings (C - compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

R.1 - assessing risk & applying risk-based approach	R.2 - national cooperation and coordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions – terrorism & terrorist financing
LC	LC	LC	LC	LC	LC
R.7 - targeted financial sanctions - proliferation	R.8 - non-profit organisations	R.9 – financial institution secrecy laws	R.10 – Customer due diligence	R.11 – Record keeping	R.12 – Politically exposed persons
C	PC	C	PC	C	LC
R.13 – Correspondent banking	R.14 – Money or value transfer services	R.15 – New technologies	R.16 – Wire transfers	R.17 – Reliance on third parties	R.18 – Internal controls and foreign branches and subsidiaries
LC	C	LC	PC	LC	LC
R.19 – Higher-risk countries	R.20 – Reporting of suspicious transactions	R.21 – Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 – DNFBPs: Other measures	R.24 – Transparency & BO of legal persons
PC	LC	LC	PC	PC	LC
R.25 - Transparency & BO of legal arrangements	R.26 – Regulation and supervision of financial institutions	R.27 – Powers of supervision	R.28 – Regulation and supervision of DNFBPs	R.29 – Financial intelligence units	R.30 – Responsibilities of law enforcement and investigative authorities
LC	LC	LC	LC	C	C
R.31 – Powers of law enforcement and investigative authorities	R.32 – Cash couriers	R.33 – Statistics	R.34 – Guidance and feedback	R.35 – Sanctions	R.36 – International instruments
LC	LC	PC	LC	PC	LC
R.37 – Mutual legal assistance	R.38 – Mutual legal assistance: freezing and confiscation	R.39 – Extradition	R.40 – Other forms of international cooperation		
LC	LC	LC	PC		

MUTUAL EVALUATION REPORT OF SWITZERLAND

Preface

32. This report summarises the anti-money laundering and countering the financing of terrorism (AML/CFT) measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Switzerland's AML/CFT system, and recommends how the system could be strengthened.

33. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country authorities, and information obtained by the evaluation team during its on-site visit to the country from 25 February to 11 March 2016. The evaluation was conducted by an assessment team consisting of:

- Mr Diego BARTOLOZZI, Senior Administrative Officer, Financial Information Unit, Bank of Italy;
- Ms Céline BERNHARDT, Senior Expert, Specialist Supervision Division, Financial Conduct Authority, United Kingdom;
- Mr Claude LEFRANÇOIS, Senior Counsel, International Assistance Group, Justice Canada;
- Ms Florence MERCIER-BAUDRIER, General Inspector – Head of Mission, Prudential Supervision and Resolution Authority, France;
- Mr José Luis REAL MORENO, Assistant-General Deputy-Director, Department for the Inspection and Supervision of Capital Transactions, Ministry of the Economy and Competitiveness, Spain.

34. The team was supported by the FATF Secretariat represented by Mr Vincent SCHMOLL (Deputy Executive Secretary), Ms Anne-Françoise LEFEVRE (Policy Analyst) and Mr Olivier KRAFT (Policy Analyst). The report was reviewed by Mr Emmanuel MATHIAS, International Monetary Fund and Ms Catherine TERRIER, European Commission.

35. Switzerland previously underwent a FATF Mutual Evaluation in 2005, conducted according to 2004 FATF Methodology. The 2005 evaluation and the 2009 follow-up report have been published and are available on the FATF website (www.fatf-gafi.org).

36. That mutual evaluation concluded that the country was Compliant (C) with 11 Recommendations, Largely Compliant (LC) with 21 Recommendations, Partially Compliant (PC) with 13 Recommendations and Non-Compliant (NC) with 3 Recommendations. Recommendation 34 (R 34) was deemed non-applicable.

37. Switzerland achieved C or LC for 11 out of the 16 core or key recommendations, and a rating of PC was given for the former R 5, R 13 and Special Recommendation IV (SR IV) (Core Recommendations), and the former SR I and SR III (Key Recommendations). For this reason, Switzerland was put on the FATF regular follow-up process. In 2009, the Plenary decided that

Switzerland's compliance level with the Core Recommendations was LC, but that the measures taken to comply with the Key Recommendations were insufficient. Given the progress achieved by Switzerland on other Recommendations rated PC, the Plenary used the flexibility the procedures give it and placed Switzerland on the biennial monitoring process.

CHAPTER 1. ML/TF RISKS AND CONTEXT

1

38. Switzerland (also known as the Swiss Confederation) is in Western Europe and shares borders with Germany, Liechtenstein, Austria, Italy and France. It has a population of over 8 million and a surface area of 41 290 km². The capital is Bern. There are four language communities in Switzerland: German-speaking, French-speaking, Italian-speaking and Romansh-speaking. In 2015, Switzerland's gross domestic product (GDP) stood at CHF 639 billion⁵ [USD 647 billion/EUR 584 billion].

39. Switzerland is a federal state. It is divided into 20 cantons and 6 half cantons, each divided into local districts (*communes*). The cantons are sovereign authorities and have responsibility for all matters that do not come under the jurisdiction of the Confederation. Responsibility is shared in police and justice matters, as well as in economic and social matters. The cantons are responsible for applying not only their laws and regulations, but also those of the Confederation (notably the Civil Code, the Code of Obligations and the Criminal Code). The responsibilities of the Confederation have, however, been extended in respect to ML/TF over the last twenty years (see below, "Law enforcement authorities and prosecution authorities").

40. In Switzerland, power is divided between the three branches of the state, the executive, the legislature and the judiciary. At the level of the Confederation, legislative power is exercised by the Federal Assembly, which is made up of two chambers: the National Council, formed by representatives of the people, and the Council of States, which represents the cantons. Executive power is exercised by the Federal Council, which has seven members and oversees the Federal Administration. Switzerland has a long tradition of direct democracy and attaches great importance to its citizens' right to participate in government, as demonstrated in consultation procedures, access to information and popular voting.

ML/TF Risks and Scoping of Higher-Risk Issues

a) ML/TF risks

41. Switzerland undertook an NRA, the results of which were published in June 2015. This section summarises the conclusions drawn by the Swiss authorities based on this NRA report. According to the report, Switzerland is affected by financial crime and is an attractive location for laundering assets acquired as a result of offences committed outside Switzerland. The major threats in the financial sector in terms of predicate offences are fraud and breach of trust, corruption and belonging to a criminal organisation. The highest risk has been identified at the level of private banks (*banques de gestion de fortune*) and universal banks which operate on the international markets, independent asset managers, lawyers and notaries, fiduciaries and providers of money or value transfer services (MVTs).

⁵ Federal Department of Finance [*Département fédéral des finances* (DFF)], October 2015. *The financial market in Switzerland: Key figures*.

42. Swiss authorities see the risk level as moderate for all the sectors subject to Switzerland's anti-money laundering law [*Loi sur le Blanchiment d'Argent* (LBA)]. However, depending on the sector analysed, there are differences in the risk level. Thus, the highest risk has been identified in the sector of universal banks. Nonetheless, the AML/CFT measures implemented do significantly reduce the vulnerabilities and, according to the Swiss authorities, this leads to the conclusion that the risk is adequately controlled. The same applies in the following sectors: private banking, asset managers, the legal professions, fiduciaries and providers of money or value transfer services.

43. The insurance, gaming and credit and leasing services sectors are exposed to a low level of threat, while the other sectors (retail banking, securities traders, dealers in precious metals, foreign exchange transactions, payment transaction services) are exposed to a moderate level of risk. According to Swiss authorities, the measures designed to prevent and mitigate the risks of ML/TF to which these sectors are subject are appropriate to manage the risks identified.

44. The NRA concludes that the risk relative to TF is limited for Switzerland. The identified risk could, however, become more significant, particularly if the networks that finance terrorism begin to make more systematic use of so-called alternative money transfer methods, such as hawala. According to the authorities, the financial intermediaries most at risk with regard to the financing of terrorism are banks, MVTS and credit services. The sums of money involved are usually small.

45. Switzerland considers that, overall, the legislative measures implemented for the sectors subject to the LBA are an adequate response to current ML/TF risks. The authorities are nonetheless of the opinion that further improvements can be made in the operational implementation of the legislation, and have recommended eight measures to this end. These include improving dialogue between the public and private sectors and developing systematic statistical record-keeping.

46. The NRA also analysed six sectors which are not subject to the LBA: the real estate sector, NPOs, cross-border cash transfers, free ports, trade in works of art and (proprietary) commodities trading. The authorities consider that there are potential risks of ML/TF in these sectors but concluded that the system implemented generally controlled the risks. Recommendations for improvements were nonetheless proposed, including tighter supervision over foundations and more consistent inspections to be carried out in free ports.

b) Country's Risk Assessment and Scoping of Higher Risk Issues

47. In its NRA published in June 2015, Switzerland presented, for the first time, a consolidated and cross-sector analysis of the threats and vulnerabilities in the country, which gives an overall and specific assessment of ML/TF risk. These studies were carried out within the framework of the GCBF, a permanent body that was set up by the Federal Council at the end of November 2013 and mandated to co-ordinate AML/CFT policy matters within the Federal Administration. As such, the GCBF is tasked with ensuring ongoing assessment of ML/TF risks and proposing, where needed, any changes to the AML/CFT system required to reduce these risks.

48. The NRA process was based on a broad and open approach and was performed adequately. The analysis is based on both quantitative data (mainly STRs) and qualitative data (e.g. information supplied by various federal and cantonal institutions, as well as by the private sector). The Report

draws on input from all the authorities involved in AML/CFT (police and the FIU, the supervisory authorities of financial intermediaries, law enforcement and prosecution authorities, customs, etc.), as well as from selected representatives of the private sector.

49. While there are some reservations regarding the information on which the study was based⁶, the conclusions of the NRA are, overall, reasonable. The nature and the level of the risks for those sectors subject to the LBA have been examined and assessed, and generally seem to reflect the reality of the risks encountered. Certain business sectors which are exposed to ML/TF risks but which are not covered by the LBA have also been identified and analysed. This means that Switzerland has a relatively complete overview of the risks it faces. Some sectors however do not seem to have been taken into account to the extent required. In particular, this is the case for the use of cash (and especially of high-denomination banknotes), prepaid cards not connected to bank accounts and the involvement of Swiss financial intermediaries in setting up linked offshore companies. Also, the ramifications of the exposure of the trade in works of art sector to the risks of ML or TF have not been adequately analysed.

50. In their preparatory work, the assessors identified a number of subjects requiring particular attention. To this end, they analysed the NRA prepared by the Swiss authorities and studied the available information on the legal and institutional environment in particular, as well as the context of ML/TF in Switzerland, including any points that were potentially particularly vulnerable. The list of points below, which takes up the points in the scoping note, was submitted to the Swiss authorities prior to the evaluation team's on-site visit and was discussed in depth with the Swiss contacts during the visit:

- Management and control of ML/TF risks in the banking sector, and particularly in cross-border private banking: AML/CFT measures implemented by banking institutions and independent asset managers, in particular for business relationships with links in foreign countries; measures to prevent the aggravated tax offence; international co-operation activities;
- Organisation and governance of the AML/CFT supervisory system: steering, co-ordination and monitoring by (Financial Market Supervisory Authority - FINMA) of the tasks conferred upon OARs, particularly those exposed to the highest risk such as lawyers/notaries, and audit firms;
- Corporate structures and their exposure to ML/TF risks: the AML/CFT regime relative to "domiciliary companies" used for the purposes of asset management by a wealthy and often foreign customer base; the role and involvement of intermediaries such as fiduciaries and lawyers/notaries;
- Financing of terrorism: measures implemented in view of the increasing terrorist risk and the risks that have been identified; systems applicable to NPOs and prepaid cards;

⁶ See Chapter 2, IO 1

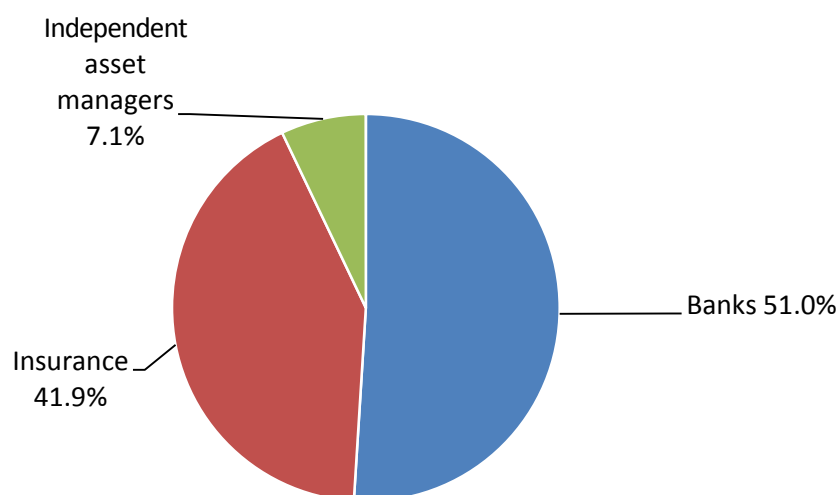
- Aspects relative to specific sectors: dealing in precious metals, and sectors not subject to the LBA: free ports and art dealing;
- Using, holding and transporting cash: risks relating to the extensive use of cash in Switzerland and to storing and cross-border transport of cash.

Materiality

51. The Swiss economy is primarily geared toward the service sector (approx. 72% of jobs) and this is dominated by banking, insurance, tourism and the public sector. The industrial sector is nonetheless an important pillar of the Swiss economy, with key industries including chemicals, capital goods (machine tools, mechanical equipment), watch-making, food and construction. The Swiss economy is also a strong export economy, with foreign trade accounting for approximately two thirds of its GDP. The European Union (EU) is Switzerland's most important trading partner (59.7% of exports, 78% of imports). The prevalence of small and medium-sized enterprises (SMEs) has always been characteristic of the structure of the Swiss economy (over 99% of companies in Switzerland have fewer than 250 employees expressed in full-time equivalents).⁷

52. The banking sector plays a significant role in the Swiss economy. In 2015, while the financial sector generated 9.5% of Switzerland's gross added value, the banking sector accounted for approximately half that figure, followed by the insurance sector (41.9%) and independent asset managers (7.1%). The financial sector accounts for 5.6% of jobs, with a little over half of these in the banking sector. A large proportion of those working in the sector are based abroad.⁸

Graph 1. Swiss Financial Sector's Contribution to GDP in 2015



Sources: FSO; SECO – Annual GDP and its components, production-based approach; ZHAW

⁷ Report on the National Evaluation of the Risks of ML and TF in Switzerland (NRA), p. 15

⁸ NRA, p. 15

53. Switzerland is also a major international financial centre. Thanks to the country's economic and political stability, applicable tax and the recognised technical expertise of its private asset management professionals, it is an extremely attractive financial centre. Banking secrecy also contributed for a long time as a factor in this attraction. In 2014, total private assets under management by the Swiss financial sector amounted to CHF 6 656 billion⁹, corresponding to around 4.1% of private assets under management worldwide. The sector also stands apart due to its significant share in cross-border private banking. In 2014, the amount under management stabilised at USD 2 400 billion (CHF 2 377 billion), corresponding to around a quarter of total worldwide assets managed by private banks. Between 2013 and 2015, around 50% of securities deposited in Swiss banks belonged to foreign customers.¹⁰

54. Among DNFBPs subject to the LBA, those which exercise fiduciary activities account for the largest proportion (1 007 on 31 December 2015). They act as the formal and actual executive boards of Swiss or foreign domiciliary companies. They are generally firms which specialise in this activity or which also provide accounting/tax advice services. Lawyers and notaries also provide these services (836 at the end of 2015). At the end of 2014, there were 150 trustees exercising activities which are subject to the LBA in Switzerland.

55. Cash is widely used as a payment method in Switzerland, including for paying monthly bills (e.g. rent, gas and electricity bills) or for consumer goods such as cars. The total value of Swiss banknotes in circulation is CHF 67 billion, and 62% of this (CHF 42 billion) is in the form of CHF 1 000 notes. The Swiss National Bank (*Banque Nationale Suisse* - BNS) states that this high proportion of large denominations indicates that banknotes are used – to a considerable degree – as a store of value as well as for payment transactions.¹¹

56. According to an academic source¹², the underground economy was worth an estimated CHF 30.7 billion [*USD 31 billion / EUR 28 billion*] in 2015, i.e. 6.5% of GDP (compared to an average of 18.3% in the EU). Switzerland provides favourable conditions for declared work and the use by businesses of the solutions provided within the legal framework, mainly thanks to its generally healthy economy and moderate corporate tax.

Structural Elements

57. The structural elements needed to ensure an effective AML/CFT system are present in Switzerland. It is a very politically stable country and is committed at high level to developing policy

⁹ Swiss Bankers Association (2016), *The Financial Centre: Engine of the Swiss Economy*, www.swissbanking.org/en/financial-centre/20130715-fp_motor_der_schweizer_wirtschaft_en.pdf

¹⁰ NRA, p. 58

¹¹ Swiss National Bank (nd), *Banknote circulation*, www.snb.ch/fr/i/about/cash/id/cash_circulation

¹² Emerald Insight (2015), *Shadow economy and tax evasion in the UK*, www.econ.jku.at/members/Schneider/files/publications/2015/JournalofMoneyLaunderingControl.pdf and Schneider, Friedrich (2015), *Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2015 : Different Developments*, www.econ.jku.at/members/Schneider/files/publications/2015/ShadEcEurope31.pdf

dealing with AML/CFT issues. Switzerland has stable and accountable institutions. It is governed on the basis of the rule of law and has a competent and independent judicial system. Switzerland therefore has the framework required to develop and implement its AML/CFT measures.

Other Contextual Factors

58. Switzerland has been actively involved in recent years in combating international tax evasion and strengthening co-operation in tax matters in general. In 2009, it adopted the OECD international standard relative to the exchange of information upon request. Switzerland has used this as the basis for adapting and extending its network of agreements regarding double taxation. In 2013, it signed the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters and adopted the law implementing the Foreign Account Tax Compliance Act (FATCA). In 2014, Switzerland committed to implement the Global Forum on Transparency and Exchange of Information for Tax Purposes standard of automatic exchange of information relating to financial accounts. It has since adopted various measures to implement this commitment. In the same year, it established the aggravated tax offence relative to direct tax as a predicate offence for ML.¹³

59. The co-operation agreement signed in 2013 by Switzerland and the US Department of Justice¹⁴ has resolved disputes regarding tax evasion by US citizens in which Swiss banks have participated. Total fines paid by Swiss banks amount to nearly USD 5 billion. Since 2011, several cases of international corruption widely covered in the media have involved Swiss financial institutions. In two cases - Petrobras and 1MDB, 24 banks located in Switzerland were the subject of investigations. FINMA conducted enforcement procedures against 9 of these¹⁵.

60. Since its last mutual evaluation in 2005, Switzerland has strengthened its AML/CFT legal and operational framework, in particular with the adoption of the Federal Act for Implementing the Revised FATF Recommendations in December 2014, (see Section 5.2.2.1. of the NRA).

61. The banking sector has been consistently consolidated in the last few years, especially in the case of private banking, against a background of macroeconomic issues (e.g. low interest rates) and non-economic problems, such as the issue of tax compliance in cross-border business activities. These structural changes have also been speeded up through takeovers by various institutions in a bid to strengthen their market position.¹⁶

62. With regard to macroeconomics, two relatively recent factors have led to a loss in profitability for the banks: the application of negative interest rates on sight deposit account balances at the BNS (-0.75%) since January 2015, and the rise in the strength of the Swiss franc against the euro in the last five years. Many private banking players have also had to deal with higher costs to ensure tax

¹³ NRA, p. 20

¹⁴ Federal Council (2013), *Switzerland and United States sign joint statement to end tax dispute between Swiss banks and United States*, www.admin.ch/gov/fr/start/dokumentation/medienmitteilungen.msg-id-50049.html

¹⁵ See Chapter 6, IO 3

¹⁶ FINMA 2015 Annual Report

compliance. These factors are likely to increase pressure on the banks and lead them to take greater risks, especially in the general economic downturn and a highly-competitive global market.¹⁷ In this context, together with other factors such as the lack of growth in the European market, private banking players may turn more to customers from emerging countries who do not wish to concentrate their assets in the Euro zone alone.

63. In addition, the number of other major players in private asset management (independent managers, fiduciary lawyers) has fallen due, in some cases, to closing business (linked to a generation of professionals going into retirement) and to a concentration of intermediaries (500 fewer independent asset managers between 2012 and 2014 according to FINMA figures consulted by the evaluation team) dealing with increasing management costs, mainly due to the introduction of tighter AML/CFT requirements and changes in the area of tax compliance in cross-border activities. There is also, in particular among lawyers who provide fiduciary services, a move toward outsourcing these activities as more specialised firms open. Some professionals in fact wish to establish strict boundaries between "traditional" activities and financial intermediation activities, in light of the reputational risks associated with the latter.

64. In this context and to stand up to foreign competition, the Swiss financial sector is prompted to develop a new business model, primarily by offering its customers a new range of more innovative products and services, in particular drawing on digital technology. One example of this is the use of virtual money (*bitcoin*), regarding which studies have been initiated by the Swiss authorities in partnership with university researchers¹⁸. Such innovation may well raise new problems relative to AML/CFT.

a) AML/CFT strategy

65. **The overall development strategy for Switzerland's financial centre is based on promoting the country's economic and financial stability and protecting the integrity of the financial sector.** AML/CFT policy is therefore an integral part of the development strategy for the financial centre, and focuses on four areas: prevention, suppression, recovery and restitution of assets.

66. On 18 September 2015, the Federal Council adopted a national strategy to combat terrorism¹⁹. One of the objectives of this strategy is to stop any TF originating in Switzerland. To this end, the strategy defines a number of areas for development: updating the legal bases for preventing and suppressing TF and examining the need to adopt additional measures; strengthening co-operation with financial intermediaries and NPOs with a view to detecting, preventing and suppressing TF; implementing international commitments regarding combating terrorism and TF.

¹⁷ Based on data in the FINMA Annual Reports for 2012, 2013, 2014 and 2015.

¹⁸ [Rapport du Conseil fédéral sur les monnaies virtuelles](#), June 2014

¹⁹ (2015), *Stratégie de la Suisse pour la lutte antiterroriste*, www.admin.ch/opc/fr/federal-gazette/2015/6843.pdf

b) *Legal and institutional framework*

67. Switzerland's legal framework for AML/CFT is defined at federal level and set out in the Anti-Money Laundering Law [*Loi sur le Blanchiment d'Argent* (LBA)] of 10 October 1997. The LBA was amended by the so-called "FATF Law" of 12 December 2014, to bring it into line with the revised Recommendations of 2012²⁰. Criminal offences relative to AML/CFT are defined solely at federal level, in the Swiss Criminal Code [*Code Pénal* (CP)] or in specific laws such as the Federal Law on the Implementation of International Sanctions and the Federal Law of 12 December 2014 banning the groups "Al-Qaida" and "Islamic State" and related organisations.

68. Switzerland's institutional framework relative to AML/CFT is mainly based on the following institutions:

Interdepartmental Coordinating Group on Combating Money Laundering and the Financing of Terrorism (GCBF)

69. The GCBF was set up by the Federal Council at the end of 2013. It is tasked with co-ordinating AML/CFT measures within the Federal Administration. In particular, it carries out an ongoing assessment of ML/TF risks, thereby identifying new threats, and proposes any measures needed to reduce these risks. The GCBF comes under the direction of the Federal Department of Finance [*Département fédéral des finances* (DFF)], more specifically under the State Secretariat for International Financial Matters [*Secrétariat aux questions financières internationales* (SIF)]. It is made up of representatives of the Federal Customs Administration [*Administration fédérale des douanes* (AFD/DFF)]; the Federal Office of Police [*Office fédéral de la police* (fedpol)], which includes the FIU, the Federal Office of Justice [*Office fédéral de la justice* (OFJ)], the Federal Gaming Board [*Commission fédérale des maisons de jeu*, part of the Federal Department of Justice and Police (*Département fédéral de justice et police*)]; the Swiss Federal Intelligence Service [*Service de renseignement de la Confédération*, part of the Federal Department of Defence, Civil Protection and Sport (*Département fédéral de la défense, de la protection de la population et des sports*)]; the Directorate of International Law (*Direction du droit international public*), the Sectoral Foreign Policies Division [*Division Politiques extérieures sectorielles*, part of the Federal Department of Foreign Affairs (*Département fédéral des affaires étrangères*)]; the Swiss Financial Market Supervisory Authority (FINMA) and the Office of the Attorney General of Switzerland [*Ministère public de la Confédération* (MPC)].

*The Swiss Financial Market Supervisory Authority (FINMA)*²¹

70. FINMA came into being on 1 January 2009 as a result of merging together the Swiss Federal Banking Commission [*Commission fédérale des banques* (CFB)], the Federal Office of Private Insurance [*Office fédéral des assurances privées* (OFAP)] and the Anti-Money Laundering Control

²⁰ The Federal Council (nd), *Federal Act on Combating Money Laundering and Terrorist Financing*, <https://www.admin.ch/opc/fr/classified-compilation/19970427/index.html>

²¹ Abbreviated from the German *Eidgenössische Finanzmarktaufsicht* - <https://www.finma.ch/fr>

Authority [*Autorité de contrôle en matière de lutte contre le blanchiment d'argent* (AdC LBA)]. The legislature thus transferred financial market supervision to a single, integrated authority.

71. FINMA's core activity is the prudential supervision of banks, securities traders, insurance companies and institutions subject to the law on collective investment schemes (fund administrators and managers). FINMA is responsible for protecting creditors, investors and policyholders, and for ensuring that Switzerland's financial markets function effectively. As part of its supervisory activities, FINMA also ensures that the players under its authority comply with AML/CFT requirements on a continuing basis.

72. FINMA also supervises 12 OARs in charge of AML/CFT regulation of other financial intermediaries.²²

Law enforcement authorities and prosecution authorities

73. While the Confederation alone has legislative responsibility for AML/CFT matters, the responsibility for law enforcement matters are shared between the Confederation and the cantons, each of which has its own police force, prosecution authorities and courts. The Criminal Procedure Code [*Code de procédure pénale* (CPP)] came into effect on 1 January 2011. It integrates the procedural regulations at the level of the Confederation and the cantons, and thus replaces the 26 cantonal procedure codes and the federal procedure, which co-existed up until 2011. The CPP sets out the principle upon which the cantonal law enforcement authorities have jurisdiction to prosecute and bring to trial offenders as defined under federal law, unless the law explicitly attributes this responsibility to the Confederation. This means that the jurisdiction of the federal judicial authority has gradually been extended in order to deal with increasingly complex and international forms of crime, particularly regarding AML/CFT. Since 2004, the Federal Criminal Court (*Tribunal pénal fédéral* - TPF) has been the ordinary judicial authority of the Swiss Confederation in criminal affairs. The Federal Supreme Court (*Tribunal fédéral*) is the highest court dealing with matters which come under cantonal and federal jurisdiction. It is at the same time a constitutional judicial authority and, as the court of last instance, a court of appeal and the Supreme Court which rules in the different areas of federal law (criminal, administrative, civil, etc.).

The Financial Intelligence Unit (FIU)

74. The Swiss FIU is MROS, the *Money Laundering Reporting Office-Switzerland*, which is part of the Federal Office of Police (fedpol, the *Office fédéral de la Police*) (See Annex, R 29).

²² See Section on *Institutional supervision and regulation*

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c) *Financial Institutions and Designated Non-Financial Businesses and Professions (DNFBPs)*Table 1. **Financial Institutions and DNFBPs Subject to the LBA.**

Type of financial institution and DNFBP subject to the LBA	Number (2014)	AML/CFT regulatory authority
Banks	275 including: - 18 foreign banks - 47 private banks	FINMA
Collective investment fund administrators	44 + 151 managers	FINMA
Investment companies (open- end investment companies, collective investment limited partnerships and closed-end investment companies)	1 498	FINMA
(Life) insurance companies	21	FINMA or OAR-ASA
Securities traders	58	FINMA
Gaming houses	21	CFMJ
Companies providing consumer credit, mortgage credit, factoring, credit related to business transactions and financial leasing	192	FINMA or OAR
Providers of money or value transfer services	63	FINMA or OAR
Issuers of means of payment (credit cards and travellers' cheques)	408	FINMA or OAR
Dealers in banknotes and coins	101	FINMA or OAR
Dealers in precious metals	11	FINMA or OAR
Bureaux de change	124	FINMA or OAR
Asset managers	3 101	FINMA or OAR
Fiduciaries	1 007	FINMA or OAR
Lawyers/Notaries	958	OAR

Source: information provided by the Swiss authorities

75. The characteristics of supervised entities listed below should be noted:

- **Banks** - The number of banking institutions has steadily fallen in Switzerland in recent years, mainly due to restructuring within the sector²³. The total balance sheet for all Swiss banks was CHF 3 042 billion [USD 3 081 billion/ EUR 2 779 billion] at the end of 2014, up by 6.8%²⁴. The two

²³ See Section entitled *Materiality*²⁴ Swiss Bankers Association (2015), *Baromètre bancaire 2015*, http://shop.sba.ch/1100003_f.pdf

largest banks - which play a major role in the Swiss financial system and which operate at international level in all segments of banking activity - accounted for 48% of this total²⁵. Another distinctive characteristic of Switzerland's financial centre is its highly international aspect²⁶. There are two financial centres - Zurich and Geneva - whose competitiveness and capacity place them among the world's top fifteen financial centres²⁷.

- **Providers of MVTs** - Providers of services specialised in the transfer of money and value are the major players in money transfer services in Switzerland. In the last few years, competition between the players in the sector has led to greater market concentration on the largest companies. In 2013, 14 service providers worked via networks of agents, linked by a principle of exclusiveness. Since 2012, the number of points of sale available at newsagent kiosks has increased, rising to over 2 000 in 2013.

Over 85% of financial movements in this sector were transfers made from Switzerland to another country, in most cases to countries that do not have banking services for the fast and reliable transfer of funds. In general, the average sum transferred is between CHF 400 and CHF 600 [between USD 405/EUR 365 and USD 608/EUR 548], and has tended to fall since 2012. In spite of this, the total volume of transactions made has increased, confirming that there is sustained demand for this type of service in Switzerland (up from CHF 3.2 billion in 2012 to CHF 3.7 in 2014).²⁸

- **Issuers of means of payment** - Prepaid cards are provided by issuers which tie them to a bank account based on a partnership with one or more banks, or by financial intermediaries / agents, two-thirds of which form part of a network of providers of MVTs; or they are anonymous non-rechargeable cards purchased with cash from retailers who are also agents subject to the LBA in all other cases.
- **Trade in precious metals** - Switzerland is a major centre for trading in precious metals, especially in gold, accounting for two-thirds of global trade and 40% of global refining capacities concentrated in Swiss refineries²⁹. Four of the world's nine leaders in the sector concentrate a very large share of their activities in Switzerland. Unlike Swiss-based trading in other precious metals, the gold traded and refined in Switzerland actually transits physically through the country. Nine of the eleven Swiss traders exercise industrial refining activities and financial intermediation activities where the finished product - mainly gold ingots - is sold to central banks, banks, and institutional investors, thus entering the financial system. The other two are exclusively involved in trading precious metals.

²⁵ Swiss Bankers Association (2016), *The Financial Centre: Engine of the Swiss Economy*, www.swissbanking.org/en/financial-centre/20130715-fp_motor_der_schweizer_wirtschaft_en.pdf

²⁶ See Section entitled *Materiality*

²⁷ NRA, p. 16

²⁸ NRA, p. 91

²⁹ NRA, p. 101

- **Commodities traders** - Commodities trading (sources of energy, metals and agricultural commodities) is subject to the LBA where trading is done for the account of a third party. Switzerland plays a central role in this trade: with a 20% share of the world market, the 11 companies which own three-quarters of the market are located in Switzerland or have their head office or a major regional branch there. In 2013, turnover in the commodities sector was estimated at more than CHF 800 billion [*USD 810 billion/EUR 731 billion*], achieving an annual increase since 2011 of between 5 and 7%, stabilising at a high level by international standards.³⁰
- **Asset managers** - In Switzerland, independent asset managers share a highly diversified customer base. They manage assets worth around CHF 600 billion [*USD 608 billion/EUR 548 billion*], accounting for around 11% of the total asset management market. Most asset management companies are SMEs, with 75% employing between one and five people. In two-thirds of cases, they have fewer than a hundred customers.
- **Asset management** consists in selecting, buying and selling securities or other investment instruments, on a professional basis, for the account of a customer, in line with a wealth protection or growth strategy agreed in advance with the customer. To this end, the customer issues a power-of-attorney under which the asset manager opens an account with a financial institution. The asset manager takes charge of managing the customer's financial assets and represents the customer's interests before the entities responsible for the operational and technical aspects of asset management (account management, execution of orders, delivery-versus-payment of securities, acting as a depositary), where these entities include banks, securities dealers or those involved in collective investment schemes. Independent asset managers may occasionally provide consulting services in areas other than investment strictly speaking, such as advice on tax matters, insurance or succession planning.³¹

This category also includes:

- **Fiduciaries**, acting as executive boards of Swiss or foreign domiciliary companies

Fiduciaries perform a very diverse range of activities, only some of which are subject to the LBA. Those which are covered by the LBA include the financial aspects of setting up and/or administration of domiciliary companies and/or trusts, on behalf of a mainly foreign wealthy private customer base. Fiduciaries often have branches based outside Switzerland, as highlighted by FINMA in its supervisory approach for these entities (Concept de surveillance). It states that, of the 65 financial intermediaries exercising fiduciary activities and which are directly supervised by FINMA, around 50% have branches outside Switzerland, while 40% are offshore companies with no operational business activity. The business relations of these foreign branches are monitored from Switzerland by the fiduciary which is under the direct supervision of FINMA. Where foreign branches do exercise operational business activities, the measures

³⁰ NRA, p. 120

³¹ NRA, p. 74

relative to branches and subsidiaries belonging to a group apply (see Annex, R 18). The number of fiduciary firms which are subject to the LBA in light of their financial intermediation activity has fallen significantly in the last few years (e.g. 1 347 in 2014 and 1 007 in 2015). The size of the firms subject to the LBA can vary considerably: they may be lawyers exercising fiduciary activities very much as a secondary service to their “traditional” activity (see below) or large firms which have international networks and provide integrated consulting services on tax, asset management and accounting matters.

- **Lawyers and notaries** who perform financial intermediation in addition to their traditional professional activities.

So-called “traditional” activities of lawyers and notaries are not subject to the LBA since they are protected by professional secrecy. Only their financial intermediation activities are subject to the LBA. The division between these activities may be unclear, particularly in the case of preparing transactions for a customer, and notably in relation to setting up corporate legal structures.

Box 1. The meaning of the term *financial intermediaries* in the AML/CFT system

In Switzerland, all the sectors and entities subject to the AML/CFT regulatory system are deemed “financial intermediaries”³², whether their primary activity is directly related to the financial sector (as in the case of asset managers, for example) or not (as in the case of precious metal dealers). The term “financial intermediary” thus encompasses “financial institutions”, as defined in the Glossary of the FATF Recommendations and most activities and sectors listed as DNFBPs³³.

In this context, the analysis of the FATF Recommendations relating to *financial institutions* will examine the obligations imposed on “FINMA financial intermediaries” (banks, securities traders, insurance companies and entities subject to the law on collective investment schemes and certain directly supervised financial intermediaries - IFDS) and on certain categories of “financial intermediaries in the para-banking sector” whose activities come within the FATF definition of “financial institutions”, for example, institutions which provide consumer credit, providers of money or value transfer services, firms managing credit cards and travellers’ cheques, asset managers, *bureaux de change*, investment consultants/managers, and securities portfolio managers. The examination of the measures applicable to DNFBPs will focus on the obligations imposed on casinos and on the categories of “non-banking financial intermediaries” whose activities come within the FATF’s definition of “DNFBPs”, i.e. dealers in precious metals, lawyers, notaries and providers of MVTs.

³² With the exception of “traders”, see Art. 2 para. 1 b. LBA

³³ Some shortcomings were found, see R 22.

d) *Preventive measures*

76. The LBA is the source text setting out the preventive measures which financial institutions and DNFBPs are required to apply in Switzerland. The provisions of the LBA as amended in 2014 to bring it into line with the revised FATF Recommendations entered into force in several stages, with the last provisions coming into force on 1 January 2016.

77. The implementation provisions of the LBA are set out in the FINMA AML/CFT Ordinance of 3 June 2015 (OBA-FINMA)³⁴. The OBA-FINMA applies to financial intermediaries placed under FINMA supervision - banks, securities traders, insurance companies and entities subject to the law on collective investment schemes - and to financial intermediaries which opt to be directly supervised by FINMA (IFDS)³⁵.

78. The rules regarding implementation of the due diligence requirements to be applied by banks and securities traders are specified in the Agreement on Due Diligence [*Convention relative à l'obligation de diligence des banques* (CDB 16)]³⁶. The CDB 16 is a self-regulation system initiated by the banks and to which the regulatory measures set out in the OBA-FINMA explicitly refer (Art. 35). The provisions of the CDB 16 are thus an integral part of the regulatory framework applicable to banks and securities traders.

79. FINMA adopts circulars to specify the rules regarding implementation of the legislation relative to the financial markets (Art. 7 para. 1 subpara. b LFINMA). These circulars are an integral part of the regulatory scope of supervision, and failure to comply with them is liable to sanctions, as confirmed by a previous court decision taken by the Federal Supreme Court³⁷.

80. The LBA implementation measures relative to other financial intermediaries are set out in the LBA regulations relative to OARs to which they are affiliated³⁸. These regulations fulfil the conditions to be deemed *enforceable means* as defined by the FATF: they contain requirements which are clearly stipulated and are understood as such; they have been approved by a competent authority, FINMA; sanctions are provided for in the event of any failure to comply with the requirements therein.

³⁴ Le Conseil fédéral (2015), *Ordonnance de l'Autorité fédérale de surveillance des marchés financiers sur la lutte contre le blanchiment d'argent et le financement du terrorisme dans le secteur financier*, <https://www.admin.ch/opc/fr/classified-compilation/20143112/index.html>

³⁵ See Section on *Institutional supervision and regulation*

³⁶ Swiss Bankers Association (2016), *Convention relative à l'obligation de diligence des banques* (CDB 16), http://shop.sba.ch/1000020_f.pdf

³⁷ Federal Supreme Court, Judgment 2C_345/2015, 24 November 2015 www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm

³⁸ See Section on *Institutional supervision and regulation*

Scope of application of preventive measures

81. The AML/CFT Ordinance of 11 November 2015 (OBA) sets out the specific requirements regarding the activity of a professional financial intermediary. It especially focuses on activities which give the professionals involved the power to hold assets on deposit or to assist in the investment or transfer of such assets (Art. 7 OBA and Art. 2 para. 3 LBA). Such professionals are not therefore subject to the LBA provided that they restrict their activities to preparing for or carrying out transactions without being involved in preparing or carrying out the financial aspects of those transactions. These situations are, however, explicitly referred to in the FATF Recommendations (R 22 (d)). This means in particular that acts related to setting up companies, legal persons and legal arrangements, in which lawyers, notaries or fiduciaries may be involved without being parties to transactions such as transfers, are outside the scope of the LBA.

82. In addition, the real estate sector is not covered as such by the LBA. Real estate agents are not therefore considered to be financial intermediaries in respect of any of their real estate dealings (R 22 (b)), except when they are transferring or paying the selling price funds to the vendor.

83. Last, dealers in precious stones only have to comply with the LBA when they receive cash payments of more than CHF 100 000 [USD 101 296/EUR 91 340]. This threshold is higher than that of USD/EUR 15 000 set by the FATF (R 22 (c)).

84. Since 1 January 2016, the LBA has provided for a special regime for “dealers/merchants”, i.e. commercial businesses which accept cash payments of over CHF 100 000 [USD 101 296/EUR 91 340]. They are now required to check the identity of their customer, or the customer's representative, and to identify the beneficial owner. Where the transaction appears unusual or if the dealer/merchant has any suspicions of ML/TF, the dealer/merchant must make further clarifications with regard to the customer. Dealers/merchants are also required to notify MROS of any suspect transactions.

85. FINMA may also take into account specific characteristics of the activities of financial intermediaries by granting some leniency with regard to the requirements, depending on the level of risk involved (Art. 3 para. 2 OBA-FINMA). Simplified due diligence requirements are thus provided for issuers of means of payment for transactions under a certain limit (Art. 12 OBA-FINMA OBA-FINMA). It does seem that the limited conditions under which the simplified measures are applicable are in a position to contain the low risk of ML/TF identified, except with regard to the exemption from the requirement to provide certification of authenticity for copies of identity documents (Art. 12 para. 2 OBA-FINMA). These concern relationships conducted by correspondence which do not require a delegation agreement with an authorised bank in Switzerland, and there is a component of documentary fraud inherent in this type of financial service. In addition, the authorised limits are inadequate given the structuring of transactions used in particular with TF.

e) *Legal persons and arrangements*Table 2. **Legal Persons in Switzerland**

Type of Legal Person	Number Registered
Public companies (SA)	206 040
Limited liability companies (SARL)	159 580
Co-operatives	9 247
Partnerships limited by shares (SCA)	9
Investment companies with variable capital (SICAV)	10
Associations*	7 961
Foundations	17 282

* only the largest associations which are legally required to register are included. A survey carried out in 2008 estimated that there were 90 000 associations which are not required to register their existence³⁹.

Source: Federal Office of the Commercial Register, 2015 (document provided during the on-site visit)

86. “Domiciliary companies” as defined in AML/CFT legislation (Art. 2 subpara. a OBA-FINMA) do not have a specific legal form provided for in either the Civil Code or the Code of Obligations. Such structures can take a very diverse range of forms, as reflected in the definition (e.g. companies, foundations, trusts). They can also be foreign structures. In 2012, 8 604 bodies corporate, co-operatives and foundations enjoyed the benefit of the special cantonal tax status for domiciliary companies (Art. 28 para. 3 LHID). The key characteristic of domiciliary companies is that they have no operational activity: they do not carry out any commercial or manufacturing activity or any other activity as a commercial enterprise. The definition also provides the financial intermediary with indicators that help determine whether the customer is a domiciliary company, such as a lack of premises or staff (Art. 63 para. 2 of the OBA-FINMA). Domiciliary companies are widely used by a wealthy client base for the purposes of asset management. The special cantonal tax status applicable to domiciliary companies (limited to bodies corporate, co-operatives and foundations⁴⁰) will be abolished with the corporate tax reform which should enter into force on 1 January 2019 or 2020.

87. There are no legal arrangements as such under Swiss law. Nonetheless, Switzerland's ratification of the Hague Convention on the law applicable to trusts and on their recognition, in 2007, does allow for foreign trusts to be recognised, under civil law. There are no other similar legal arrangements in Switzerland. A *fiduciary contract* is a bilateral relation under Swiss law, similar to a mandate or agency contract. In this contractual relationship, the assets and rights entrusted by the

³⁹ Bernd Helmig et al.: *Der dritte Sektor in der Schweiz. Länderstudie zum John Hopkins Comparative Nonprofit Sector Project*, 2010, quoted in the NRA, p. 110

⁴⁰ See Art. 28, para. 3, LHID.

principal become part of the agent's assets, rather than separate assets. This means, for instance, that in the case of the agent's bankruptcy, the entrusted assets will be considered as part of the agent's bankruptcy assets. The separation of assets is the main difference between the Swiss *fiduciary contract* on the one hand and the trust, *fiducie* or *Treuhand* referenced in the FATF Recommendations on the other hand.

f) Institutional arrangements for supervision and oversight

88. In Switzerland, two authorities are responsible for supervision regarding the LBA:

- FINMA, which is responsible for:
 - Direct supervision of implementation of the LBA by:
 - Financial institutions over which FINMA exercises prudential supervision, i.e. banks, securities traders, insurance companies and management boards of funds subject to the law on collective investments. In the case of insurance companies, FINMA has delegated responsibility for AML/CFT supervision to an OAR (OAR-ASA, see below);
 - Intermediaries which are not subject to prudential supervision because of the type of activity they perform, but which opt to come under direct supervision by FINMA with regard to the LBA as "directly supervised financial intermediaries" (IFDS), for example, providers of money or value transfer services and dealers in precious metals⁴¹. At the end of 2014, there were 259 IFDSs registered with FINMA.
 - Supervision of self-regulatory bodies (*organismes d'autorégulation* - OARs) to which certain categories of supervised organisations must be affiliated unless they have opted to be directly affiliated to FINMA. This mainly includes professionals and companies in the para-banking sector - asset managers, fiduciaries, providers of payment services and lawyers, etc.

This is "directed self-regulation" where the legislator has mandated responsibility to the OARs for specific issues (Art. 25 of the LBA) and FINMA is tasked with supervising implementation.

Governed by private law, OARs are structures which must be recognised by FINMA. This requires that they issue regulations (approved by FINMA) specifying the due diligence obligations with *which* their affiliates must comply, that they oversee compliance with these rules and that they ensure that the persons and bodies they instruct to carry out controls are independent and professionally qualified. If an OAR fails to meet with these conditions, FINMA can issue a warning and then withdraw its recognition.

⁴¹ List of DSFIs: <https://www.finma.ch/fr/surveillance/direkt-unterstellte-finanzintermediaere--dufi/>

Twelve OARs are recognised by FINMA⁴².

Table 3. The 12 Self-Regulatory Bodies (OARs)

OAR	Type of affiliate	Number of affiliates		
		31.12.2012	31.12.2013	31.12.2014
The Financial Services Standards Association (<i>Verein zur Qualitätssicherung von Finanzdienstleistungen</i> , VQF)	All types of non-banking sector financial intermediary	1 492	1 348	1 270
Swiss Federal Railways (<i>Chemins de Fer Fédéraux</i> , OAR CFF)	Bureaux de change	7	7	7
OAR of the Swiss Association of Asset Managers (<i>Association Suisse des Gérants de Fortune</i> , ASG)	Asset managers	876	850	815
OAR of the Fiduciaries of the Canton of Ticino (<i>Organismo di Autodisciplina dei Fiduciari del Cantone Ticino</i> , OAD FCT)	Fiduciaries	539	499	469
OAR of the Swiss Bar Association and the Swiss Notaries Association (OAR of the <i>Fédération suisse des avocats et de la Fédération suisse des notaires</i> , OAR FSA/FSN)	Lawyers/Notaries	953	917	871
Association Romande des Intermédiaires Financiers (ARIF)	All types of non-banking sector financial intermediary	442	448	419
OAR of the Association Suisse des Sociétés de Leasing (SLV)	Leasing companies	49	51	46
PolyReg General OAR	All types of non-banking sector financial intermediary	1 032	1 020	1 025
OAR of asset managers (<i>Organisme d'Autorégulation des Gérants de Patrimoine</i> , OAR-G)	Asset managers	494	535	503
OAR of the Union Suisse des Fiduciaires (OAR FIDUCIAIRE SUISSE)	Fiduciaries	553	538	509
OAR of the Swiss Association of Investment Companies (<i>Schweizer Verband der Investmentgesellschaften</i> , OAR SVIG)	Investment companies	18	22	23
OAR of the Swiss Insurance Association (<i>Association Suisse d'Assurance</i> , OAR-ASA)	Insurance companies	18	25	24
Total number of Financial Intermediaries affiliated to an OAR		6 473	6 260	5 981

Source: FINMA

⁴² List of OARs: <https://www.finma.ch/fr/autorisation/organisme-d-autoregulation-oar/>

- The Federal Gaming Board [*Commission fédérale des maisons de jeu (CFM)*]⁴³, in charge of supervising implementation of LBA requirements by casinos.

89. FINMA delegates “ordinary” AML/CFT controls to audit firms (or auditors), mainly for reasons related to its organisation and the use of its own resources. Audit firms are mandated by supervised organisations and perform on-site inspections based on instructions from FINMA. The audit firms in turn come under the authority of the Federal Audit Oversight Authority [*Autorité fédérale de surveillance en matière de révision (ASR)*], which was set up in 2007. The ASR has three roles: it licenses audit firms and individual auditors, primarily based on training, professional practice, reputation (specific licenses are issued for auditing services required under financial market legislation); it supervises a proportion of audit firms, in fact, since 2015, only those tasked with auditing financial institutions supervised by FINMA (not those which audit those professionals subject to supervision by OARs); and it collaborates with the national and international authorities and partners. Ten audit firms are licensed to audit banks and eight to audit IFDSs⁴⁴. In 2015, measures were adopted with a view to establishing stricter requirements regarding auditors’ areas of responsibility and independence.

90. OARs can also task audit firms to perform audits on their members. They keep a list of audit firms (licensed by the ASR) and licensed audit managers, from which their members select an audit firm to perform AML/CFT audits.

g) International co-operation

91. International co-operation is particularly important for Switzerland, given the amount of foreign capital in the Swiss financial system and the significant risk of money laundering related to offences committed outside Switzerland. According to the available statistics, most co-operation related to ML is undertaken with neighbouring countries (Germany, France, Italy and Liechtenstein), other European countries (mainly Belgium, Spain, the Netherlands and the United Kingdom), and with Brazil and the United States.

92. The OFJ’s International Legal Assistance Division is the central authority with responsibility for dealing with mutual legal assistance requests in criminal matters. With regard to responsibility for responding to requests, any authority responsible for prosecuting offences can, in principle, execute a request for mutual assistance from a foreign authority. Responsibility for responding to requests is shared as under national criminal law, that is, the cantons have responsibility by default. The federal law enforcement authorities can therefore only be called on to respond to a request for mutual assistance if explicitly delegated to do so by the OFJ, provided that the offences described in the request come within their responsibility under national law (e.g. ML committed for the most part outside Switzerland).

⁴³ www.esbk.admin.ch/esbk/fr/home.html

⁴⁴ ASR (2015), *Rapport d’activité 2015*, <https://www.rab-asr.ch/docs/Taetigkeitsbericht/rab-tb2015-f.pdf>, p. 37

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- The level of understanding of ML/TF risks in Switzerland is significant and generally consistent among the competent authorities. The first national risk assessment in June 2015 made a significant contribution to this understanding. The private sector was involved in this assessment.
- Switzerland established a framework for national AML/CFT co-ordination and co-operation, led by the GCBF. All competent authorities are involved in this group, which is responsible, among other things, for identifying, on an ongoing basis, the risks to which the country is exposed.
- The risk assessment as a whole has yielded good results, even if the sources used - essentially STRs - do not allow fully taking into account emerging or growing risks that have not yet aroused suspicions of ML/TF on the part of financial intermediaries. The assessment identified the threats and vulnerabilities of the sectors covered by the LBA, as well as other economic sectors not covered but presenting risks, which reflects a comprehensive and realistic vision of the risks.
- Switzerland has had a risk-based approach since the late 1990s, which led it to introduce or tighten AML/CFT measures, mainly to address the high level of risk associated with the banking sector. Generally speaking, the Swiss authorities' objectives and activities factor in the identified risks. Switzerland pursued this approach in the 2015 national risk assessment.
- The risks associated with the use of cash in ML and TF do not appear to have been given sufficient consideration.
- The authorities recognise the risks of TF in Switzerland. However, some systems that could potentially be used for TF purposes (for example "alternative" money transfer networks such as *hawala*, or prepaid cards) were not analysed in depth, so the preventive measures remain inadequate.

Recommended Actions

- Switzerland should implement the measures set out in the NRA to strengthen the current AML/CFT system, focusing on the real estate, NPO and cross-border wire transfer sectors.
- In its ongoing efforts to address risks, Switzerland should broaden its approach, which has been mainly based on observed, proven risk phenomena, and give greater consideration to emerging phenomena that could generate risks. It should also upgrade its figures on risky sectors so that it has sufficient basic information to assess the risks. The background to the assessment would also benefit from indicators from the BNS.

- Switzerland should conduct additional studies and include the risks associated with the tax regime and the use of cash in its national risk assessment.
- Switzerland should take steps to ensure that the AML/CFT risks associated with the art trade can be controlled, including by expanding the quantitative data on this sector.
- Concerning the risks of TF, Switzerland should step up its analysis of certain aspects so that it has an overview of the risks to which it may be exposed, and more specifically the hawala systems and the prepaid card sector.

93. The relevant Immediate Outcome for this chapter is IO 1. The relevant Recommendations for the effectiveness assessment in this section are R 1-2.

Immediate Outcome 1 (Risk, Policy and Co-ordination)

Country's understanding of its ML/TF risks

94. **The level of understanding of ML/TF risks in Switzerland is significant and generally consistent among the competent authorities.** The national risk assessment published in June 2015 is a significant contribution to this understanding. Switzerland was already analysing its ML and TF risks before 2015, but on a sector-specific basis and, in some cases, by authorities acting individually. The 2015 analysis was the first to consolidate the analyses of ML/TF threats and vulnerabilities across the various authorities concerned. The report points out that Switzerland remains attractive for laundering assets that are the proceeds of criminal offences committed outside Switzerland. The main predicate offences posing a threat are fraud, embezzlement, corruption and membership of a criminal organisation.

95. **Switzerland does not limit itself to examining only those business sectors covered by the LBA, thereby demonstrating a realistic vision of its areas of vulnerability.** The 2015 report identified the threats and vulnerabilities both for sectors covered by AML/CFT legislation and for other economic sectors not covered but presenting risks. The choice of sectors not covered by AML legislation (the real estate sector, non-profit organisations, cross-border currency transfers, free ports, the art trade or proprietary commodities trading) was based on their economic importance and the attention some of these sectors have attracted in recent years, mainly as a result of their implication in ML or TF-related cases.

96. **To assess the risks, the authorities used an approach that was both quantitative and qualitative, and which provided an overview of the risks.** To analyse sectors already covered by the LBA, the authorities used the quantitative data from STRs, which served as a starting point for the assessment. In addition to this information, for sectors not covered by the LBA, the analysis was based on qualitative information and, where appropriate, figures supplied by the various authorities and the private sector. The STRs were therefore supplemented, adjusted or corrected by information from other sources. These can include the regulators' or supervisory authorities' knowledge of the business sectors; business practices; sentences and convictions, or information supplied by the MPC and the cantons on proceedings and investigations in progress, and dismissal or decisions not to pursue handed down by the courts.

97. Input for the qualitative approach was also obtained by consulting representatives of the private sector, including banks, money and asset-transfer service providers, fiduciaries and the main OARs.

98. **The combined quantitative and qualitative approach followed allowed the authorities to consider the risk factors in sectors not covered by AML legislation and identify gaps in their knowledge.** Additional research and measures are in progress or planned in a number of areas (such as legal persons, fraud, corruption and commodities trading⁴⁵). As a standing co-ordinator of AML/CFT matters, the GCBF will continue identifying priority areas and high-risk situations during this work.

99. **Overall understanding of the risks is good, but certain limits to the assessment approach have been noted.** For example, to identify the real threat, the analysis relied mainly on STRs, as well as on MROS databases. STRs are a useful data source for identifying ML/TF threats, but there are only 13 061 of them in all for the years 2006-2015, which limits the initial material for analysis⁴⁶. They are also biased towards phenomena that have already been reported and do not take a forward-looking view of risks.

100. Moreover, cross-border financial flows are identified as channels for ML/TF. In this respect, the national risk assessment examines cross-border currency transfers and presents the measures taken recently to ensure greater transparency of cash transactions in excess of CHF 100 000. However, details of the volumes of the financial flows and their origins and destinations - which are useful indicators for analysing these movements and are available from the BNS - were not examined during the risk assessment. Moreover, the indicators derived from the national balance of payments statistics (e.g. economic sectors' financial transfers) or from the BNS's banknote circulation were lacking to support the national risk assessment⁴⁷. Finally, the assessment does not address the question of the use of cash as a ML/TF risk factor, even though one of Switzerland's defining features is the very widespread use of cash, mainly for cultural reasons⁴⁸, including the use of high-denomination banknotes.

101. **The authorities understand the main types of terrorism present in the country⁴⁹ and recognise the potential risks of TF** associated with these types or with terrorist organisations outside Switzerland. However there was no in-depth analysis of the nature and extent of some of the resources that could be used by terrorists or those who support them. Regarding alternative money-transfer networks known as *hawala*, for example, the authorities note that there is no evidence that these service providers are present in Switzerland. According to the investigations and prosecutions conducted by the Swiss judicial authorities, these "alternative" money-transfer service providers were nevertheless involved in several TF cases (see IO 9). For its part, FINMA did not identify any

⁴⁵ For commodities trading, see recommended measures to strengthen the transparency of the sector in the NRA, p. 7 (point 8) and 124

⁴⁶ In its 2015 annual report (published in April 2016), FINMA asked banks to be more diligent in reporting suspicions transactions and customer relationships to the authorities. See Chapter 5, IO 4

⁴⁷ See Chapter 3, IO 6

⁴⁸ See Chapter 1

⁴⁹ See Chapter 4, IO 9

cases of *hawala* in the 512 investigations of unauthorised activities conducted in 2015⁵⁰. Switzerland is aware of the risks associated with these systems, however, and continues to actively search for them.

102. Another area that does not appear to have been sufficiently analysed, given the TF risks, is prepaid cards. In Switzerland, prepaid cards are generally issued by financial institutions and connected to bank accounts. However, some of these cards (roughly one-third of them, according to industry stakeholders) are issued by electronic payment service providers and available from retailers. Sales of these cards are subject to certain provisions (e.g. capped amounts, low values, restrictions on the transactions that can be carried out), but there is no obligation on the retailer to verify the card purchaser's identity. Although they are non-rechargeable, these cards can be purchased in large numbers by a single person or a group of criminals and used to buy goods and services over the internet as a means of TF.

103. **Switzerland places its risk assessment in the context of the changing tax regime** and points out the initiatives it has taken to combat international tax evasion. However, Switzerland has not yet examined the risks associated with this tax aspect (i.e. in particular the fraud or concealment committed by non-Swiss nationals with regard to the tax obligations in their own country) in order to assess the risks with which the Swiss financial system must contend.

104. Lastly, the assessment does not specifically examine Swiss financial intermediaries' involvement in setting up offshore domiciliary companies⁵¹.

105. **The general approach described above and the results of this first national risk assessment represent major progress in identifying and achieving shared understanding of risks by the national authorities.** The GCBF, as a framework for co-operation and exchange between the parties involved, ensures that the analysis is ongoing and shared.

National policies and activities to address identified ML/TF risks

106. **Switzerland has had a risk-based approach since the late 1990s, which has led it to introduce or tighten AML/CFT measures, especially for sectors deemed to be very high-risk, such as the banking sector.** For example, the AML/CFT regulatory provisions that came into effect in 2003 already obliged banks criteria for higher risks. The banking supervisor also required the banks to set up an AML system tailored to address their specific risks. Moreover, FINMA's supervisory approach of the banks (*Concept de surveillance*), using a risk-based approach, has been in application since 2012. The risk-based approach used today is more dynamic because the type and extent of the checks are determined by the financial institutions' risk profiles, and the results of the checks have an impact on the institution's risk factors review. The AML/CFT regulations and supervision applied to the banking sector reflect the high level of risk associated with this sector.

107. **There is a co-ordinated process for dealing with the AML/CFT risks identified, but there should be a broader range of measures available.** Generally speaking, the risk assessment looks at whether the legislative and institutional provisions are in place and apt to suitably reduce the

⁵⁰ Finma (2015), *Rapport annuel 2015*, available at https://issuu.com/finma/docs/finma-jb_2015_fr?e=11311553/34721149

⁵¹ See Chapter 7, IO 5

ML/TF risks detected. It also recommends eight operational measures to reinforce the current AML/CFT system. They aim to step up dialogue between the public and private sectors, expand and systematise statistics, and take targeted action in the real estate sector, foundations, free ports and commodities. However, the approach used for addressing risk seems to remain anchored predominantly in the existing legal framework. Switzerland should broaden this perspective in the ongoing process of analysing and dealing with risks. The establishment of the GCBF's working groups, including the operational subgroup, should make it possible to factor in the specific issues for certain sectors and the need for urgent action in certain areas, decide on the priorities for action, draw up short, medium or longer-term plans for awareness-raising, prevention and sanctions in the various sectors, and allocate resources.

108. Generally speaking, the Swiss authorities factor the identified risks into their objectives and activities. This is particularly true of the authorities in charge of AML/CFT supervision in the banking sector (see Chap. 6, IO 3). The risks are also taken into account in the law enforcement authorities' priorities, specifically in the strategy of the Federal Department of Justice and Police for the period 2015-2019.

109. Concerning the treatment of the risks identified for certain sectors in particular:

- *Art sector:* the national risk assessment report acknowledges the existence of AML/CFT risks associated with the art trade, in which Switzerland is one of the leading marketplaces. There are measures in place to check the origin of cultural goods, under the supervision of the Federal Office of Culture. When works of art are stored in free ports, the latter are under obligation to identify the owners and document the origin of the art works. On the other hand, the origin of the assets used to purchase the goods is subject only to the new provisions for dealers/merchants regarding cash payments above CHF 100 000) stipulated by the LBA⁵², though certain auction houses seem to apply a stricter ceiling of CHF 10 000. However, these risk-reduction measures apply only to cash purchases of goods. They cannot establish any overall transparency in the art market, which appears necessary given the risks mentioned in the assessment report. Measures should therefore be taken to ensure greater transparency by all of the stakeholders concerned.
- *Real estate sector:* the risk assessment rates the ML/TF risk in this sector as medium. Real estate agents are already covered by the new provisions on merchants, which govern cash payments in excess of CHF 100 000. The assessment recommends setting up the planned national land register as soon as possible, listing the identity of Swiss and non-Swiss natural and legal persons that own property in Switzerland. Moreover, the real estate sector, as such, is not covered specifically by the LBA. As a result, real estate agents are not considered financial intermediaries for all of their activities in the real estate trade, but only when they transfer or pay the amount of the sale price to the seller at the buyer's instruction (see R 22). Measures must be taken to put an end to this deficiency.

110. Other sectors examined by the national risk assessment present ML/TF risks that can only be effectively managed and controlled by initiatives that are not, strictly speaking, AML/CFT measures:

⁵² See Chapter 5, IO 4

- Precious metals sector: the assessment report identifies ML/TF risks in the precious metals sector, concerning both the acquisition of these metals by criminal or illegal methods and the use of precious materials to launder assets. Apart from AML measures and the requirements laid down by the Central Office for Precious Metals Control, which issues the licences to the foundries⁵³, most of the sector's stakeholders seem to apply voluntary measures to reduce the risks associated with their counterpart⁵⁴. On the other hand, there do not appear to be any binding measures to ensure that the threat of smelted products being used for ML is controlled, even if this threat is limited by the fact that the majority of the customers of precious metals dealers are institutional stakeholders.
- Trade in commodities⁵⁵: the NRA points out a risk of ML/TF in connection with acts of corruption committed in the countries in which the raw materials are extracted, and recommends greater transparency in the companies involved in extraction. Against this backdrop, Switzerland carried out a study⁵⁶ that suggests measures to make transactions more transparent and readily traceable, and to make companies more accountable so that commodities traders will ensure that extraction operations are carried out in accordance with the applicable international standards. These suggestions have been written into the draft revision of the law on limited companies currently being developed by the Federal Council.

Exemptions and application of enhanced and simplified measures

111. The 2015 national risk assessment and the latest assessments (e.g. on safety deposit boxes or NPOs) concluded that there was no need to amend the AML/CFT legal framework on exemptions or the application of enhanced or simplified measures.

112. The majority of supervisors state that the risk assessment's results and findings confirmed the analysis and risk level of the sectors under their responsibility. This holds for FINMA in particular, with respect to the areas under its supervision. Adjustments were made for a number of para-banking sectors (for example, foreign exchange transactions were deemed to be less of a risk than initially thought), but no major difference was noted.

113. Simplified due diligence obligations are carried out for issuers of means of payment for transactions under a certain limit⁵⁷. The restrictive conditions in which the simplified measures are applicable appear adequate to limit the low ML/TF risk identified, except for the exemption from the requirement to provide certification of authenticity for copies of identity documents. The authorised limits are inadequate, given the common practice of structuring, especially in the financing of terrorism (see R 1 and 10).

⁵³ See Chapter 6, IO 3

⁵⁴ See Chapter 5, IO 4

⁵⁵ Only propriety commodities' trading is concerned, since third-party trading is covered by AML/CFT legislation.

⁵⁶ "Commodities" interdepartmental platform, *"Background report on commodities"*, 27 March 2013.

⁵⁷ See Chapter 1

Objectives and activities of competent authorities

114. **Switzerland is constantly adapting its AML/CFT system to factor in the competent authorities' experience of risk. The operational activities of the authorities involved in the area of ML/TF (MROS, MPC, FINMA) also reflect an ongoing effort to address risk⁵⁸.**

115. For example, in 2011, during the Arab Spring⁵⁹, the Federal Council adopted ordinances freezing the assets of persons from Egypt, Libya and Tunisia. FINMA then took steps to check these person's Swiss bank accounts. This shows how national policy decisions to address a potential ML risk are translated into operational activities for full effect. Moreover, the adoption in December 2015 of the Illicit Assets Act (IAA) also factors in the authorities' experience in freezing assets under the earlier Restitution of Illicit Assets Act (RIAA). More specifically, the IAA provides an explicit legal basis for asset freezing operations such as those adopted by ordinance in 2011, based on the Constitution.

National coordination and cooperation

116. **Switzerland has set up a national AML/CFT co-ordination and co-operation framework.** The framework is structured by the GCBF. All relevant competent authorities are involved in this group, which has been tasked with coordinating AML/CFT policy issues, including the ongoing assessment of ML/TF risks. Other mechanisms at policy and operational levels also provide for national co-operation and co-ordination. Switzerland also has specialised interdepartmental groups on subjects related to AML/CFT (security, terrorism, politically exposed persons (PEPs), corruption, terrorist travellers, commodities) (see R 2).

117. The GCBF includes three standing technical working groups that carry out operational tasks in risk assessment, information exchange and coordination, and the processing of terrorist lists.

118. **There is effective co-operation between the authorities at federal and cantonal levels in prosecution matters⁶⁰.** The entry into force of a common Criminal Procedure Code for the Confederation and the cantons in 2011 clarified the scope of AML/CFT responsibilities and facilitated cooperation between federal and cantonal authorities, on one hand, and among cantonal authorities on the other. The broadening of the Confederation's scope of responsibility in organised crime, TF and white-collar crime (Art. 24, CPP) makes it possible to devote greater resources to complex cases.

119. **In the effort to combat the financing of proliferation, the State Secretariat for Economic Affairs (SECO) is the competent authority for implementing the United Nations Security Council's financial sanctions imposed on Iran and North Korea, and exercises this responsibility satisfactorily.** SECO can ask the authorities and stakeholders concerned for assistance with carrying out its tasks as and when necessary.

⁵⁸ See Chapter 3, IO 6 and 7; Chapter 6, IO 3

⁵⁹ See Chapter 6, IO 3

⁶⁰ See Chapter 3, IO 7 and Chapter 4, IO 9

Private sector's awareness of risks

2

120. **The private sector representatives interviewed⁶¹ during the on-site visit were familiar with the NRA.** Some of them also said they had discussed its findings with FINMA or their OAR.

121. **Some of the private sector representatives interviewed had been asked to help assess the risks and/or belong to the private sector outreach group set up by the GCBF.** This group includes AML/CFT experts from the various sectors covered, such as banking and insurance. It is a permanent platform devoted to exchanging points of view on trends in existing or emerging ML/TF risks, and investigating and reducing these risks. The first meeting, held in November 2015, identified future working topics, such as the various types of TF, correspondent banking relationships, PEPs, etc. The GCBF's decision to set up this outreach group has helped the authorities identify shortcomings in communication with the private sector and step up efforts to raise private sector awareness of ML/TF matters.

122. FINMA holds an annual conference that gathers the entities subject to the LBA, OARs, audit companies and law enforcement authorities. The conference aims to raise awareness and inform stakeholders about AML/CFT requirements, and includes a workshop on risks. The results of the national risk assessment were presented at the November 2015 conference.

123. The Federal Gaming Board (FGB) holds regular meetings with gaming houses' ML/TF officers. In 2015, three meetings were held to present the findings of the national risk assessment.

124. MROS has also helped disseminate the results of the risk assessment. In 2014 and 2015, it delivered over 70 talks for entities subject to the LBA, during which it presented the national report.

125. The Swiss authorities have published various other reports, including the MROS Annual Report on money laundering, the fedpol report on combating crime, the FINMA Annual Report 2014 and Enforcement report. These are good examples to raise private sector practitioners' awareness of ML/TF risks in Switzerland.

Conclusion

126. The Swiss authorities' sound overall understanding of ML/TF risks should be pointed out. The national risk assessment is a major step forward in identifying and understanding these risks, which prompted the establishment of the GCBF. Switzerland has taken steps to control and reduce some of the risks identified, but must continue its efforts to ensure that all of the risk factors are addressed in the assessment and that all of the areas are covered by adequate measures. **Switzerland has achieved a substantial level of effectiveness for Immediate Outcome 1.**

⁶¹ Except one stakeholder in a low-risk sector

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6 (Financial intelligence ML/TF)

- MROS uses all the powers at its disposal to analyse STRs. More specifically, it relies on a large number of databases, administrative legal assistance at the national level, co-operation with its counterparts in other countries, and additional information from financial intermediaries, including those that did not file an STR.
- MROS's analysis makes a useful, timely contribution to ongoing investigations and has also helped detect new cases of ML and TF. The Office of the Attorney General of Switzerland (MPC) and certain cantonal prosecution authorities have specialised units that assist in using financial intelligence in complex cases. However, feedback from law enforcement authorities to MROS and the departments responsible for controls of cross-border cash transportation (Federal Customs Administration) is not complete.
- MROS does not make full use of the computer resources available, in particular with regard to database management and dissemination to the cantonal authorities. Another problem from the point of view of confidentiality is the indication of the origin of STRs when cases are forwarded to the law enforcement authorities.
- MROS co-operation with other national authorities is generally good. However, the authorities responsible for controls of cross-border cash transportation and the supervisory authorities (Financial Market Supervisory Authority, FINMA and OARs) appear to be contributing little to the collection of information and financial intelligence.

Immediate Outcome 7 (ML investigation and prosecution)

- Swiss authorities demonstrate a clear commitment to prosecute ML and have set up two specialised units within the MPC for that purpose: a unit that centralises the processing of MROS reports ("ZAG") and a department that provides prosecutors with economic and financial expertise.
- Complex, large-scale investigations have been conducted at both federal and cantonal levels, including cases involving predicate offences committed outside Switzerland. A large number of ML convictions have been obtained in recent years, including all of the types of laundering listed by the FATF, though it is not possible to fully determine the extent to which ML cases prosecuted at cantonal level are actually consistent with the country's risk profile.
- Law enforcement authorities provided examples of highly complex cases, including successful

cases of identifying and dismantling sophisticated ML networks.

- Given the difficulty of obtaining a ML conviction in certain cases in which the perpetrator is abroad, Switzerland resorts to a number of alternative measures, such as spontaneous sharing of information, delegating prosecution to a foreign country, opening criminal administrative proceedings or carrying out an ancillary or independent confiscation.
- The authorities described a number of cases in which relatively heavy sentences had been handed down, but they also provided examples in which the ML sentences were purely monetary or in which the custodial sentences were relatively short. The data provided, though more complete at federal level, did not provide an overview of the length of sentences or whether they were proportionate and dissuasive.

Immediate Outcome 8 (Confiscation)

- Swiss authorities make wide use of the seizure mechanism to temporarily and in a timely manner deprive criminals of the proceeds and instrument of the offences.
- Swiss authorities make confiscation a priority, including when a conviction for ML cannot be obtained. This policy results in the confiscation of large sums and in restitution and sharing procedures at international level. For instance, Switzerland seized and confiscated large sums in cases involving large-scale corruption by potentates.
- From the data provided, however, it is not possible to tell whether, at cantonal level, confiscation involves all of the predicate offences identified as high risk in the NRA. Moreover, it was not clear whether the confiscation of cross-border currency transfers was used as a dissuasive penalty in the event of false declarations at the border.

Recommended Actions

Financial intelligence

- Supervisory authorities should make a greater contribution to MROS's collection and use of information and financial intelligence by ensuring that they systematically report to MROS any suspicious cases that come to their knowledge in the course of their operations.
- MROS should use more quantitative sources to carry out its strategic analyses in using its existing databases, and the authorities could reconsider the possibility of adding other types of reports to MROS.
- The Federal Customs Administration (AFD) should step up its efforts to collect information by obtaining more information about cross-border currency transportation and reporting any suspicious cases detected to MROS.
- Based on the experience of centralised STR processing in the ZAG, cantonal prosecution authorities should step up and accelerate STR processing, including by receiving computerised

STRs from MROS.

- Law enforcement authorities should give MROS and the Federal Customs Administration more feedback about the action taken on the cases referred to them.
- Confidentiality requirements should be tightened by removing any mention of the source of the STRs in cases forwarded to the prosecution authorities.
- MROS should set up a computer system that automatically enters STRs in its database and automatically consults the other databases available.
- Given the steady increase in MROS's workload, the authorities should ensure that the office's human resources are maintained at an adequate level to cope with it.

ML investigations and prosecutions

- Cantonal law enforcement authorities should ensure that more investigations are undertaken on offences directly involving the risks identified in both criminal conduct (in particular corruption) and sectors at risk.
- Swiss authorities should take steps to make sentences heavier. This might involve, for example, setting a mandatory minimum sentence for ML, making the courts more aware of the dissuasiveness of longer prison sentences and more selective use of summary judgments by prosecution authorities.
- Swiss authorities should keep statistics on the number and type of investigations, prosecutions and convictions for money laundering, and on the underlying predicate offences.

Confiscation

- Cantonal authorities should confirm the priority given to confiscations by stepping up their efforts. They should also keep statistics on the number of seizures and confiscations, and on the underlying predicate offences.
- Switzerland should make it possible for the AFD to impose dissuasive sanctions such as fines to punish false declarations and failure to declare currency in excess of the maximum amounts on request at border posts. A mechanism should be introduced to track the outcome of cases in which there was a seizure and which the AFD referred to the prosecution authorities.

127. The relevant Immediate Outcomes for this chapter are IO 6-8. The relevant Recommendations for the effectiveness assessment in this section are R.3, R.4 and R.29-32.

Immediate Outcome 6 (Financial Intelligence)*Use of financial intelligence and other information*

3

128. Switzerland's FIU, MROS, has access to a large body of financial intelligence and other useful information through databases (see Annex, R 29) and mutual administrative assistance. It also has its own database, known as *GEWA*.

129. **MROS makes efficient use of databases but should continue the work underway to upgrade its computer systems.** The databases are queried to analyse each report received by MROS. However the MROS computer system cannot automatically incorporate data from the STRs received into *GEWA*, nor can it be used to run a consolidated query on all of the available databases. Having to key in data manually and then run searches in a large number of databases makes MROS analysts' work harder and more time-consuming. There are currently plans to upgrade the computer system so that data can be processed automatically, from MROS's receipt of the STRs through to their referral to the competent authorities.

130. MROS also makes use of its power to request further information from the reporting institution and, since November 2013, from other entities subject to the LBA when necessary for the purposes of analysis (155 requests in 2014; 172 in 2015). The information thus obtained is used for ML and TF investigations (see Box 2 below).

Box 2. Use of further information requested from an entity during an MROS analysis

Analysis of the account statements appended to an STR in connection with a case of fraudulent bankruptcy abroad showed MROS that the recipient of one of the transactions in question was a third-party financial intermediary in Switzerland. Under Art. 11a § 2 and 3, LBA, MROS requested the latter to furnish information. The additional information received showed a link between the company that filed for the fraudulent bankruptcy (the originator) and the beneficiary, which is the company's sole shareholder and the alleged offender. This finding was decisive in the decision to refer the case to the competent law enforcement authority. The latter opened criminal proceedings following the MROS report.

131. **MROS also relies on international cooperation to obtain the financial intelligence necessary to analyse STRs received.** The number of information requests (Table 4) corresponds to the frequency of predicate offences committed abroad. In 2015, MROS made 579 requests abroad concerning 2 144 people, which is an appropriate proportion in comparison with the number of STRs analysed.

Table 4. Information Requests Sent to Foreign Counterparts

Year	Number of STRs	Number of requests sent abroad	Percentage	Number of natural or legal persons concerned
2012	1 585	521	33%	1 066
2013	1 411	426	30%	1 471
2014	1 753	545	31%	1 624
2015	2 367	579	24%	2 144

Source: MROS

132. **Insufficient use is made of information about cross-border currency transportation.** At the time of the on-site visit, MROS did not have direct access to the customs databases or, more specifically, to the RUMACA database, which contains the information about declarations of cross-border currency transportation and ancillary offences.⁶² Although this information can be requested from the AFD under mutual administrative assistance arrangements (Art. 29, LBA), MROS does not seem to use this type of intelligence. Furthermore, even if the law allows the AFD to send MROS unsolicited data from the RUMACA database (Art. 8 of the Ordinance of 11 February 2009 on the control of cross-border traffic of cash), this does not happen in practice. Instead of sending the information directly to MROS, the AFD reports the suspicious cases to the police authorities, which can, in turn, inform MROS.

133. Apart from the databases accessible to MROS, the federal and cantonal police authorities also have access to the national visa information system (ORBIS) and RUMACA. Although the police authorities do not have access to STRs, they can obtain the necessary information through their co-operation with MROS. Other financial information (in particular information held by the financial intermediaries) can only be obtained as part of a criminal investigation and with the authorisation of the prosecution authority, based on the principles of criminal procedure.

134. **The AFD has information about the goods stored in duty-free warehouses ("free ports") and open customs warehouses.** Free ports give the customs authorities inventories listing goods deemed to be sensitive⁶³, along with their owner, whereas open customs warehouses are required to maintain a full inventory of all of the goods stored there. The information in question is used for targeted checks (for example, on cultural goods) and can be made available to the national and foreign competent authorities.

135. **The MPC has acquired an efficient procedure with which it can rapidly process STRs and make consistent use of financial intelligence, and which is used to train federal prosecutors.** The MPC set up a new procedure in 2014 to improve the use of financial intelligence

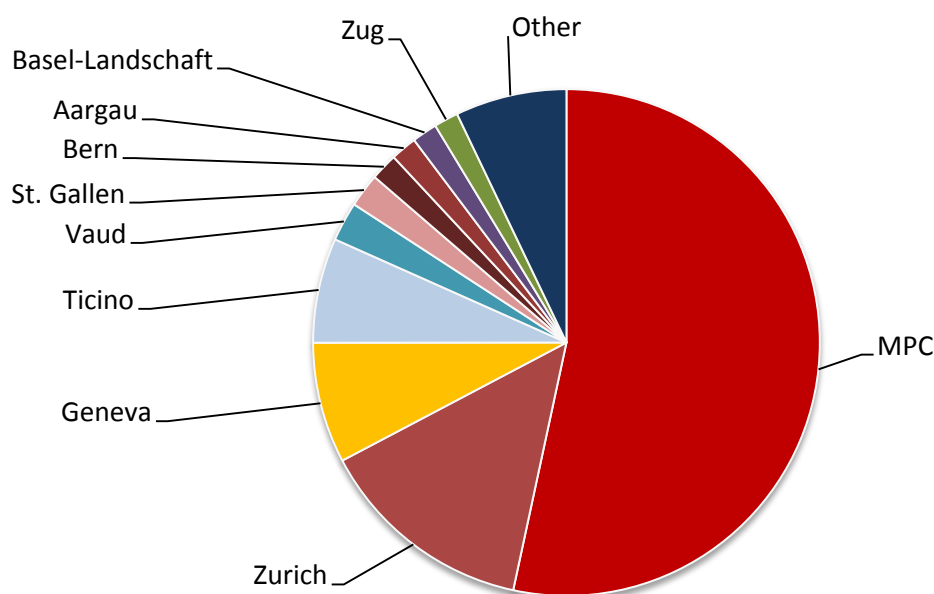
⁶² The new Article 110e § 3 letter a clause 2 of the Customs Act, which came into effect on 1 August 2016 (after the on-site visit), now gives MROS direct access to the RUMACA database.

⁶³ See List included in Annex 2 of the Customs Ordinance of 1 November 2006 (RS 631.01)

sent in by MROS. Each new STR is processed by a central processing unit (the ZAG) made up of the Attorney General and the Deputy Attorney Generals, Federal Prosecutors specialised in ML, and representatives of the MPC's Mutual Legal Assistance Division. When a new STR is received, the ZAG Secretariat first checks whether the STR is directly related to a case in progress, in which case the STR is forwarded to the prosecutor concerned. If there is no direct connection, a prosecutor is appointed to carry out a preliminary analysis of the STR, if necessary with support from economic analysts. The ZAG meets twice a week (or more often if necessary) to examine the preliminary analyses and decide whether to open criminal proceedings. Because it was only recently set up, the ZAG's results, from the viewpoint of the use of financial intelligence, cannot be accurately measured yet.

136. Given the proportion of STRs forwarded to the cantons (see Graph 2), it is essential that the cantonal prosecution authorities are able to process STRs efficiently. While certain mechanisms seem to be in place (a prosecutor is appointed to take charge of each new STR as it comes in), the cantonal prosecution authorities could assess their ability to make rapid, well-founded, consistent decisions on the STRs received, against the ZAG experience.

Graph 2. **Proportion of STRs Forwarded to the Respective Federal and Cantonal Prosecution Authorities in 2015**



Source: MROS

137. Furthermore, in January 2016, the MPC and FINMA concluded a memorandum of understanding (MoU) for collaboration between the two authorities. It covers reciprocal communication of established facts, co-ordination of searches and procedures, and the exchange of intelligence and documents. Despite being adopted only recently, this MoU has already facilitated

appropriate use of financial intelligence in a number of ML cases as well as for supervising financial intermediaries.

STRs Received and Requested by Competent Authorities

138. **MROS mainly receives two types of STRs: mandatory STRs**, based on "reasonable suspicion" of AML/CFT and submitted by financial intermediaries under Art. 9 § 1 LBA, **and optional reports**, which financial intermediaries are entitled to report in the event of a "mere suspicion", under Art. 305^{ter}, CP⁶⁴. The law also provides for reports to MROS by dealers/merchants who accept cash payments in excess of CHF 100 000 [USD 101 296 / EUR 91 340] and these dealers/merchants' auditors, and financial intermediaries' supervisory authorities (FINMA, CFM), OARs).

Table 5. Suspicious Transaction Reports Received by MROS, 2006-2015

Branch of financial intermediary	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
Banks	359	492	573	603	822	1 080	1 050	1 123	1 495	2 159	9 756
Money transfer companies	164	231	185	168	184	379	363	74	107	58	1 913
Trustees	45	23	37	36	58	62	65	69	49	48	492
Wealth managers / Investment advisers	6	8	19	30	40	27	49	74	40	45	338
Insurance companies	18	13	15	9	9	11	9	19	11	12	126
Lawyers and notaries	1	7	10	11	13	31	12	9	10	6	110
Credit card companies		2	2	10	9	10	22	14	9	13	91
Casinos	8	3	1	5	8	6	6	8	9	3	57
Credit, leasing, factoring and forfaiting operations	8	4	1	11	1	5	1	4	3	7	45
Securities traders	1	5	1		1	1	3	10	3	6	31

⁶⁴ See Chapter 5, IO 4 and Annex, R 20

Branch of financial intermediary	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
Commodities and precious metals brokers		2	5	2	4		1	1	10	3	28
Currency trading	1			5	6	7		5			24
Other financial intermediaries	1	2		1	4	2	4	1	3	5	23
OARs	3	1		4		1			2		11
Bureaux de change	2	1	1	1		3				1	9
Authorities	2		1						2		5
Investment fund distributors		1								1	2
Total	619	795	851	896	1 159	1 625	1 585	1 411	1 753	2 367	13 061

Source: MROS

139. Generally speaking, the competent authorities believe that the STRs received are of good quality and help them exercise their functions, either by adding important information to proceeding in progress or by prompting new investigations (see Box 3). According to feedback given to MROS (see Graph 3), which concerns nearly 60% of the reports forwarded in the last 10 years, over 50% of them led to the initiation of criminal proceedings.

Box 3. How STRs Help Detect Cases of ML and TF

Example 1:

The MPC received some 60 reports from MROS about alleged charges of corruption in Brazil involving the semi-state-owned company Petrobras. Since April 2014, the MPC has opened nine criminal investigations for suspicion of ML in connection with corruption charges.

The investigations conducted by the MPC revealed over 300 business relationships with over 30 banking institutions in Switzerland, through which the corruption payments examined by Brazil probably transited. The beneficial owners of the accounts, generally opened on behalf of domiciliary companies, were Petrobras executives, the heads of subcontractor companies, financial intermediaries and, directly or indirectly, Brazilian or foreign companies that paid kickbacks. The MPC froze assets worth a total of USD 400 million in Switzerland.

Example 2:

A non-Swiss financial institution was able to establish a connection between a particular person, "X",

and terrorist activities. The institution informed its agent in Switzerland, a financial intermediary, and told the agent about the connection between X, who was a customer of the Swiss intermediary, and another person suspected of involvement in planning terrorist attacks. In all 80 transactions (for a total of around CHF 20 000) ordered by X from eight different places and in favour of 11 different recipients were reported to the financial intermediary. Moreover, X was the recipient of 61 transactions (for a total of around CHF 25 000) originating in eight different countries and ordered by 21 different people. The financial intermediary's searches and clarifications confirmed that X was at the centre of a money transfer network, but were unable to confirm whether or not it was linked to terrorist activities. The financial intermediary submitted a report to MROS.

Because the information was held by a non-Swiss financial institution, MROS did not have direct access to the documentation setting out the full background to the transfers made from international institutions. However, MROS exchanged information with a foreign counterpart and conducted searches in the various databases at its disposal. In addition to the customer originally reported, MROS identified another 26 people, including one legal person, involved in the transfers. In part, the searches on these people revealed connections with jihadist circles and criminal activities. Based on the information held by the agent in Switzerland and the results of the above-mentioned analyses, MROS deemed that the transfers could have or appear to have been used, at least in part, to finance terrorism. Accordingly MROS transferred the case to the competent law enforcement authority, three days after having received the STR. The Swiss criminal proceeding is still in progress, but, in the meantime, the main suspect has been arrested for suspected support for a terrorist organisation by the law enforcement authorities in the country in which he was located.

140. Greater use could be made of STRs to detect new ML cases. Some law enforcement authorities interviewed on site pointed out that financial intermediaries often forwarded STRs too late, making the subsequent investigations and seizure or confiscation measures less effective (see Chapter 5). In this respect, it should be noted that the majority of STRs come from external information sources (the media, or requests from national or international judicial authorities) (see IO 4 below). In 2015, almost all of the ML cases opened by the MPC were based on STRs forwarded by MROS. However, according to the statistics provided, only 17% of the STRs (i.e. 64) had no connection whatsoever with proceedings already in progress. After an initial analysis by the ZAG, 48 STRs prompted fresh proceedings to be opened. According to the authorities interviewed on site, STRs play a more important role in detecting new ML cases at cantonal level. However this information has not been confirmed by statistics.

141. The relatively small number of reports submitted to MROS by the supervisors (FINMA and OARs) shows that the latter's contribution to collecting financial intelligence is limited. The STRs submitted by supervisors seem marginal at present (16 between 2006 and 2015 out of a total of over 13 000 STRs), as Table 5 above shows. There are insufficient checks on whether financial intermediaries observe their obligation to report⁶⁵, and failures to meet this obligation are not systematically and immediately reported to MROS as provided for in Art. 16 § 1 LBA. In view of

⁶⁵ See Chapter 6, IO 3

the observations made concerning the lack of STRs by financial intermediaries in Switzerland, this situation reflects a problem (see IO 4).

142. Checks on cross-border transportation of currency allow the Federal Customs Administration (AFD) to obtain relevant declarations. The AFD is responsible for checking cross-border transportation of currency and to this end can question people crossing the border, depending on the declaration system (all travellers must state whether they are transporting an amount in excess of CHF 10 000 if they are checked, see R 32). Customs checks are carried out on a sampling basis after adjustment for the risks involved, based on red flag indicators. These indicators take the following factors into account: traveller's nationality, departure country and general behaviour. If there is a suspicion of ML/TF, the customs office seizes the cash and hands it over to the police, who are competent to handle the remainder of the proceedings. According to the statistics provided, the AFD recorded 201 cases of cross-border transportation of currency in excess of CHF 10 000 in 2015. Of these, 83 were cases of undeclared currency (only one of which was at an airport) and 118 were cases of declared currency. These cases resulted in 70 seizures, including 23 cases in which the traveller was also handed over to the police.

143. The AFD estimates that nearly 700 000 people cross the border into Switzerland per day and an enormous number of land border checkpoints remain permanently unoccupied. The AFD factors in the risks when it carries out checks at the border or inside the country (mobile customs patrols). However, the rate of requests for information at the border remains limited (between 2% and 5% for simple requests for information and between 0.5% and 1% for controls). In this respect, it would be desirable to step up customs checks, in particular by increasing the number of staff employed to collect customs declarations, in order to increase the amount of information collected on cross-border movements of currency and bearer negotiable instruments, and to detect suspicious cases.

Operational needs supported by FIU analysis and dissemination

144. MROS's operational analysis of STRs is based primarily on information collected by the following means: consulting the available databases (see above); sending additional queries to the entities subject to the LBA; co-operating with federal, cantonal and communal competent authorities (and in particular the police); sending queries to foreign counterparts under international cooperation arrangements.

145. At the end of its analysis, MROS determines whether there appear to be sufficient grounds for opening criminal proceedings. If so, the STRs are forwarded to the competent prosecution authority. If not, they are archived, but remain accessible for 10 years for analysing subsequent STRs. Where an STR is made on the basis of the reporting obligation, the decision to forward or archive the report must be made by the statutory deadline of 20 days after the STR's receipt. In compliance with MROS internal instructions, the same deadline applies for STRs made on the basis of the right to report, even if there is no statutory deadline for analysis in this case.

146. The percentage of STRs forwarded to law enforcement authorities has steadily declined in recent years and stood at 70.8% in 2015. Assuming that the quality of the STRs received by MROS has remained generally stable, this trend suggests that MROS is making better use of its power to "filter" reports to meet law enforcement authorities' requirements.

147. Law enforcement authorities believe that the operational analysis carried out by MROS is useful. In addition to the STR(s) and the relevant documents and bank statements, the law

enforcement authorities receive a report setting out MROS's analysis. According to the authorities interviewed on site, the operational analysis carried out by MROS is of good quality and adds useful information to the STRs, obtained from either financial intermediaries or through co-operation with foreign FIUs. Given the number of predicate offences committed abroad, the inclusion of intelligence supplied by foreign authorities in MROS's analysis (see above Table 4) meets the operational needs of the competent authorities.

148. MROS uses an electronic platform to send STRs to the MPC, which ensures that the process is both fast and confidential. However, STRs are sent to the cantonal law enforcement authorities by post or fax: communication could be improved by using IT mechanisms.

149. The need for a financial intermediary to inform another financial intermediary of an STR when this is necessary to freeze funds can impede the freezing measure's effectiveness.

As soon as MROS forwards an STR to the law enforcement authorities, it has to inform the reporting entity of the fact. The entity is then under obligation to block the assets concerned for five working days. If necessary, the financial intermediary may inform another financial intermediary so that the latter can freeze the assets (Art. 10a § 2, LBA). Although this authorisation is intended for situations in which the author of an STR (for example, a wealth manager) is unable to freeze the assets, this mechanism remains optional for both the intermediary that submitted the STR and the intermediary that holds the funds. The former has no legal obligation to inform the latter immediately, while the latter has no legal obligation to freeze the assets. To guarantee the effectiveness of asset freezing, MROS should be able to request the financial intermediary that is able to freeze the funds to do so, just as MROS is responsible for requesting additional information from a financial intermediary when this is necessary for analysing an STR.

150. MROS's strategic analyses have been used, among other things, for national risk assessments, but they are based on a limited number of quantitative sources. MROS made a major contribution to the national risk assessment conducted in 2015, by co-ordinating the work of the subgroup responsible for the assessment within the GCBF. At the time of the on-site visit, MROS had one full-time employee in strategic analysis (and was in the process of recruiting another employee). Apart from the national risk assessment, in May 2013 fedpol published a report on money laundering in the real estate sector, based on the analysis of 41 cases derived from STRs and police information. Another study on legal persons, a collection of typologies and trend analyses, is currently in progress.

151. In general, the strategic analyses carried out by MROS are based mainly on the STRs received and on other data directly accessible from the FIU (in particular data from the police archives). Any missing data is then obtained by sending out questionnaires to various public sector authorities and private sector representatives. However the analyses carried out to date do not seem to take sufficient account of other sources of quantitative data and especially financial data (for example, data on the financial flows entering and leaving Switzerland). In this respect, the authorities should consider allowing MROS to make more extensive use of national macroeconomic databases, such as the balance of payments databases or other data available to the supervisors or the BNS, such as the use of cash or the originating and destination countries of bank transfers). Alternatively, the authorities could bring in other forms of reports, not related to a suspicion transaction (e.g. currency transaction report). The new Art. 29 § 2, LBA (which became effective on 1 January 2016) gives MROS extensive access to all of the information available from the Swiss authorities (federal, cantonal and municipal). If applied effectively, it could increase the data available.

Co-operation and exchange of information/financial intelligence; confidentiality

152. MROS and the competent authorities other than the prosecution authorities co-operate on an ongoing basis, as prescribed in Art. 29 LBA. More specifically, MROS answers a number of requests for information sent to it by other authorities (see below Table 6).

Table 6. **Information requests submitted by Swiss Authorities under Mutual Administrative Assistance Arrangements and to which MROS replied**

2010	2011	2012	2013	2014
21	41	59	62	58

Source: MROS

153. **If applicable, MROS sends potentially useful information to FINMA.** From 2011 to 2014, MROS reported to FINMA 14 cases of alleged violations of due diligence or suspicious transaction reporting obligations.

154. Although the law provides for extensive reliance on mutual administrative assistance, it was impossible to conclude, from the data provided, that this mutual assistance had produced results. Furthermore, there is insufficient direct exchange of information between MROS and the AFD.

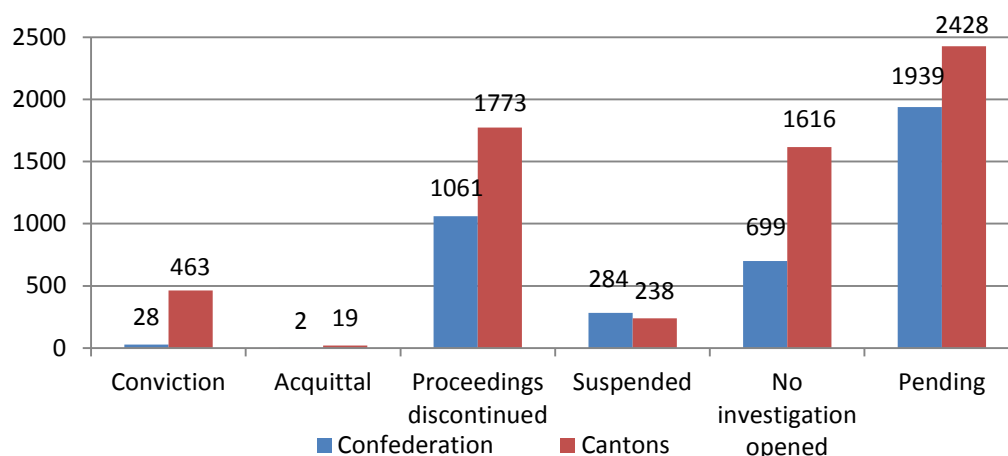
155. As a result of being associated with fedpol, among other factors, MROS has very good co-operation with the police (both federal and cantonal). It also has very good relations with the prosecution authorities (both MPC and in the cantons), which are its partners in its everyday operations. This co-operation can be seen not only in everyday operational contacts but also in periodic meetings or formal exchanges of intelligence. Co-operation with the other authorities is good, within the limits mentioned above with regard to co-operation with the AFD.

156. The LBA asks prosecution authorities to inform MROS without delay of the decisions it has made on the STRs forwarded to it by MROS. However, the statistics supplied by MROS (see Graph 3) show a lack of feedback on many of the STRs forwarded (40% over the past 10 years), and especially for STRs forwarded to the cantonal authorities. MROS is aware of the lack of feedback from the courts, but the awareness-raising measures are starting to have results and MROS should pursue its efforts in the matter.

157. At the time of the on-site visit, MROS's staff included 18 full-time equivalents (out of a planned total of 23) and an annual budget of CHF 3 million [*USD 3.04 million/EUR 2.74 million*] (excluding real estate). According to the authorities interviewed on site, this seems to meet its requirements. Given the steady increase in MROS's workload, the authorities should ensure that the office's human resources are maintained at an adequate level to cope with it.

158. The measures designed to guarantee the confidentiality of the information sent by MROS seem adequate, mainly because MROS uses secure networks (for communication with the police and MPC) or is in direct contact with the authorities concerned.

Graph 3. Status of STRs forwarded to Law Enforcement Authorities (2005-2014)



Source: MROS

159. There are still reservations about whether the confidentiality of STRs' origin is adequately protected. Although the information forwarded by MROS to the prosecution authorities (and which may potentially be passed on to the defence during subsequent proceedings) does not give the name of the natural person responsible for the STR, nor that of the MROS employee responsible for its analysis, it does include the name of the financial intermediary that submitted the STR. The disclosure of this information may deter the financial intermediaries and therefore has an impact on the reporting system's effectiveness. Plans are currently being made to modify the MROS computer system to address this issue.

Conclusion

160. Competent authorities receive and use financial intelligence and other information appropriately. The shortcomings observed concern minor aspects and the necessary improvements are moderate. **Switzerland has achieved a substantial level of effectiveness for Immediate Outcome 6.**

Immediate Outcome 7 (ML Investigation and Prosecution)

ML identification and investigation

Priority given to combating ML and staffing levels

161. The strategy of the MPC for the period 2016-2019 defines ML as a priority issue. The on-site interviews confirmed that combating ML was also a priority for at least some of the cantons. The specialised ML units within the MPC and the prosecution authorities of the three cantons with the highest white-collar crime rates (the cantons of Geneva, Ticino and Zurich) have sufficient staff (36 prosecutors and 19 legal experts in the MPC's case).

162. Moreover, **the priority given to ML has prompted the establishment of two specialised units within the MPC**: the ZAG, which centralises the processing of MROS reports and decides whether to examine the matter (see IO 6 above), and the FFA (Forensic Financial Analysis) unit, which provides prosecutors with economic and financial expertise. Given that the ZAG was set up relatively recently, it is too early yet to make any definitive assessment of its results in terms of prosecutions. It is nevertheless a good practice, which, according to the authorities, has already optimised resources, improved the way proceedings are conducted (because a strategy is drawn up right from the beginning of the proceeding) and led to an increase in the spontaneous sharing of information with foreign authorities.

163. The FFA has existed, under different names, for some years. The FFA tracks financial flows and analyses evidence relating to business structures or instances of white-collar crime (corruption, misconduct or fraud). The information provided by the FFA helps pinpoint the evidence required to guide subsequent searches, the taking of witness statements and requests for mutual assistance. Some cantonal prosecution authorities have their own economic and financial analysts or use outside experts.

Breakdown of cases between federal and cantonal authorities

164. The general responsibility for ML proceedings lies with the cantonal judicial authorities. Federal jurisdiction is recognised in cases where the ML offences have been to a substantial extent committed abroad (Art. 24 § 1 letter a, CPP), or if they have been committed in two or more cantons with no single canton being the clear focus of the criminal activity (Art. 24 § 1 letter b, CPP). These jurisdiction rules account for the percentages of convictions obtained respectively by the MPC and the cantonal law enforcement authorities (see Table 7).

Table 7. ML Convictions under Art. 305^{bis} CP, according to the Competent Law Enforcement Authorities (2009-2013)

	Number of convictions	Percentage
MPC	36	3.4%
Law enforcement authorities in the cantons of Bern, Basel-Stadt, Geneva, Ticino, Vaud and Zurich	714	66.5%
Other cantonal law enforcement authorities	323	30.1%

Source: National Risk Assessment

165. The jurisdiction rules for ML matters are designed to centralise resources at Swiss federal level for international cases. White-collar crime represents around 60% of the MPC's workload. This degree of concentration is a factor for efficiency and has enabled the MPC to develop specialised units. In some cases, establishing the competent prosecution authority (MPC or prosecution authority of one of the cantons) may require further analysis. However, jurisdiction issues have no impact on the effectiveness of ML proceedings insofar as Switzerland specifies that ongoing

proceedings or investigations are not to be held up while the question of jurisdiction is being resolved.

ML identification and investigation

166. The law enforcement authorities carry out a large number of ML investigations, the majority of which were prompted by an MROS report (see Table 8). The remaining investigations are initiated in response to requests for mutual assistance, police reports, information and complaints filed by members of the public, and reports from other federal and cantonal authorities.

Table 8. Origin of ML Investigations in 2014

Number of ML proceedings opened at the MPC and in the cantons	Based on MROS reports	Based on other sources	Total
MPC	72	16	88
Cantons	184	173	357
Total	256	189	445

Source: statistics from the MPC and the Swiss cantons, with the exception of Appenzell Innerrhoden, Ticino and Zurich

167. When the prosecution authority has sufficient information, it can on its own and automatically initiate a preliminary investigation into ML (see Box 4). The prosecutors interviewed on site said that the threshold of suspicion for opening proceedings was relatively low ("there is a reasonable suspicion that an offence has been committed", Art. 309 of CPP), which facilitates the use of all means of investigation. The prosecution authority from one canton said that proceedings were opened whenever a request for mutual assistance was received in order to carry out the necessary checks. The practice of opening proceedings on their own initiative, which is more frequent in some prosecution authorities than others, reflects a certain proactivity on the part of the authorities in prosecuting ML.

Box 4. Proceedings Opened at the Initiative of the Prosecution Authority in the Case of Oleksandr and Viktor Yanukovich

Following the events in Ukraine that led to the president's deposition, the prosecution authority in Geneva immediately took the initiative of opening proceedings for aggravated money-laundering involving the former president, his son and their companies in Geneva. The investigation was opened on 26 February 2014, and the authorities were able to seize CHF 3 million [USD 3.04 million/EUR 2.74 million]. In agreement with the Swiss Federal Department of Foreign Affairs, the seized funds were released on numerous occasions to pay salaries and company tax, with the result that only CHF 900 000 are still seized to date. Details of the bank accounts were transferred through MROS to the Ukrainian authorities to facilitate a future request for mutual assistance.

168. MPC statistics indicate that proceedings are not systematically opened, however (Table 9). It should be noted that around 80% of its money laundering investigations are prompted by STRs forwarded by MROS (see IO 6). A large percentage of incoming cases finished in a decision not to proceed in 2014 and 2015, but this is due, at least in part, to a more selective approach on the MPC's part in the proceedings it opens, aimed at focusing its resources on cases with higher chances of success. The number of investigations opened by the MPC has been on the rise since 2012. Even in the event of a decision not to proceed, the prosecution authorities regularly take the initiative of forwarding cases to a foreign authority (see IO 2).

Table 9. MPC Decisions on Incoming ML Cases

	Number of decisions not to proceed	Number of new proceedings opened	Percentage of decisions not to proceed
2012	13	83	13.5%
2013	8	86	8.5%
2014	35	88	28.4%
2015	62	96	39.2%

Source: MPC

169. The MPC can also open preliminary proceedings and instruct the Federal Criminal Police (PJF) to carry out in-depth research in the matter to determine whether a preliminary investigation should be opened. In 2014, 212 PJF employees were involved in 115 investigations related to ML (this included providing support for the investigations in the form of IT investigators, surveillance, analyses, a special task force, etc.).

170. The MPC has a follow-up system for investigations, which entails quarterly interviews between the prosecutor in charge of the proceedings and the Attorney General or one of the Deputy Attorney Generals. This system helps guarantee the consistency of the MPC's overall strategy in ML matters, adjust strategy to results in investigations, and reveal any shortcomings. In the Petrobras case (see IO 6 above), for example, the follow-up process revealed a need to allocate greater resources to the investigation.

171. Federal and cantonal task forces have been set up to deal with particularly complex and voluminous ML cases, such as the "Behring" fraud case or the so-called "Virus" case (see Box 16). The task forces are made up of MPC prosecutors and employees, who have the necessary skills to ensure that the investigations are carried out properly, run smoothly and are completed in a reasonable timeframe.

The importance of mutual legal assistance

172. Given Switzerland's economic context, the authorities stress the importance of international mutual legal assistance for national investigations. All of the ML cases handled by the MPC are international insofar as the financial flows systematically transit through foreign countries. The proportion is lower for the cantons, but the cases handled by the specialised units of the prosecution

authorities in Geneva, Ticino and Zurich are often international, especially when the predicate offence took place abroad and the money laundering in Switzerland. The MPC systematically sends requests for mutual assistance to foreign counterparts to establish both the financial flows and transfers involved in the ML and the circumstances forming a predicate offence for the ML (see Box 5, and IO 2 for statistics on the requests for mutual assistance).

Box 5. The "Anglo Leasing" case

Companies headquartered in Switzerland are suspected of involvement in the Kenyan "Anglo Leasing" case, and assets are thought to have been transferred to Switzerland. The MPC opened proceedings against three people in April 2009 following a report from MROS.

The MPC has since been able to identify and freeze bank accounts in Switzerland. The findings of the analysis of the financial flows and their transnational aspect led the MPC to send requests for mutual legal assistance to England, Scotland and Jersey, which returned a large amount of useful information.

The MPC also asked Kenya for mutual legal assistance to help it furnish proof of a predicate offence abroad. The alleged payment of kickbacks to Kenyan government officials to secure lucrative procurement contracts would constitute a predicate offence. In this case, the MPC asked Kenya to forward evidence obtained during the Kenyan criminal proceedings in relation to the "Anglo Leasing" case. The evidence held by Kenya includes the case files supplied by Switzerland in response to a request for mutual assistance. The cooperation of the Kenyan judicial authorities is therefore essential and their contribution is decisive for a successful outcome of the Swiss criminal investigation.

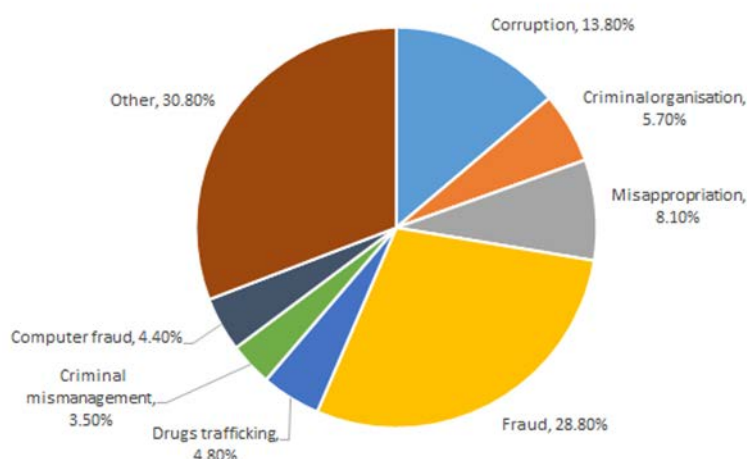
Source: MPC press release on 20 June 2014

173. International mutual assistance has, in some cases, yielded good results (see IO 2 for examples of past cases, such as the so-called "Virus" case). Conversely, the Swiss authorities blame the failures of Swiss proceedings in other cases on the lack of response to requests for mutual assistance. Since the foreign authority's response is essential for adequately establishing the predicate offence or part of the ML that occurred abroad (to establish the paper trail), its absence often results in the Swiss criminal proceedings being dismissed. Other examples of unsuccessful mutual assistance include late responses that arrive after the order dismissing the proceeding has become effective. Even if the Swiss authorities have not provided data that could demonstrate the extent of the problems described, there are examples to illustrate it (see in particular Box 5). To overcome these difficulties, the Swiss authorities are strengthening their contacts with the most useful countries for ML cases, and stepping up their co-operation with Eurojust in order to develop contacts with additional countries. For example, between 2012 and end-2015, a large number of MPC staff made trips abroad for the purposes of mutual assistance, to make progress on outgoing requests for mutual assistance. The MPC has also given examples of transnational cases for which the Swiss authorities agreed on a joint strategy with other countries involved.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

174. During the national risk assessment, Switzerland's threats and risk profile were determined mainly on the basis of the STRs forwarded to MROS (see Graph 4).

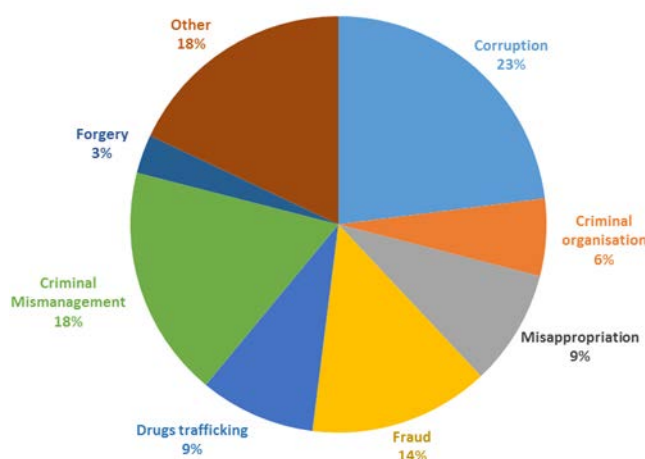
Graph 4. Alleged Predicate Offences in STRs Submitted to MROS 2006 - 2015



Source: MROS

175. The MPC provided statistics on the predicate offences in the ML cases it handled for the period from 2010 to 2015.

Graph 5. Predicate Offences for ML at the Federal Level (2010-2015)



Source: MPC

176. The body of data supplied shows that, even if there is still room for improvement in the way the cantons target certain high-risk offences (such as corruption), the prosecutions are, on the whole, generally appropriate for the risks identified during the national risk assessment. Serious tax

crimes do not appear in the statistics available to date, given that the law that made them predicate offences came into force only on 1 January 2016.

177. In the banking activities identified as particularly exposed to ML/TF in Switzerland, some private bankers have been convicted (see examples of money laundering by omission below) and some banks, including a universal bank, are currently being prosecuted.

Types of ML cases pursued, and convictions

Self-laundering, third-party laundering and autonomous laundering

178. **Money laundering by the author of the offence and money laundering by a third person are both pursued.** Among the prosecution authorities of the three cantons with the most significant role in AML, one estimated that 90% of the ML cases handled included a charge of self-laundering. Of these, 50% also included a charge of third-party laundering. Another prosecutor indicated that the great majority of proceedings are opened when the ML is committed by a third person. A third prosecutor estimated that 10% of the proceedings represented major cases, which might indicate a high percentage of self-laundering. According to MPC statistics, around one-third of the ML convictions handed down in 2015 concerned cases of third-party laundering. Moreover, several examples of complex self-laundering cases were given.

179. **The Federal Supreme Court of Switzerland has recognised a particular form of third-party laundering known as money laundering by omission.**⁶⁶ This case has set a new precedent, under which the legal obligations imposed by AML legislation give the financial intermediary the status of guarantor. In the event of persistent doubt as to the lawful origin of the assets, the financial intermediary must take swift, appropriate action to clarify the situation. It must take the necessary action without delay and, if necessary, refer the matter to the authority. A banker who has not taken the necessary measures dictated by the circumstances may be convicted of money laundering by omission. As it happens, five bankers - former top managers and senior executives of a major Swiss bank - have been convicted. The sentences handed down included suspended prison sentences. According to Swiss authorities, other prosecutions have been initiated on the basis of this precedent.

180. **Examples given and the statistics from the cantons of Geneva, Ticino and Zurich show that, in the majority of cases, the authorities prosecute money laundering as an independent offence, without necessarily prosecuting the predicate offence.**⁶⁷ The approach is applied in particular when the predicate offence lies outside Switzerland's jurisdiction (see following section).

Money laundering linked to predicate offences committed abroad

181. As mentioned above, numerous ML cases in Switzerland concern predicate offences committed abroad. In the cases handled by the MPC, the money laundering offence also includes foreign elements. Switzerland provided several examples of such cases, including complex cases involving numerous countries and transactions.

⁶⁶ Federal Supreme Court, ATF 136 IV 188, 3 November 2010

⁶⁷ Judgement 6B_91/2011 of 26 April 2011

Box 6. Money laundering linked to offences committed abroad

This case was judged by the Federal Criminal Court on 10 October 2013. The Federal Criminal Court convicted six defendants of aggravated ML, fraud, serious criminal mismanagement and forgery of a document (reference SK.2011.24). In short, the court noted that the defendants had removed assets worth USD 150 000 000 from a Czech mining company through an international structure set up from Switzerland and had, at the same time, laundered these assets in Switzerland, by using them primarily to acquire for their own benefit the mining company in question, in which the Czech state held a large holding. Around 100 offshore companies domiciled in Switzerland, the Isle of Man, Cyprus, Liechtenstein, London, Guernsey, the Marshall Islands and the Czech Republic were set up to act as a screen for the defendants and allow them to commit a variety of ML offences (bank transfers, purchase and sale of shares) under fictitious contracts/legal arrangements (in particular umbrella contracts and trusts) and involving assets worth hundreds of millions of francs.

In an additional judgement dated 29 November 2013, the court pronounced the confiscation and a compensatory claim for a total value of CHF 700 million [*USD 709 million/EUR 639 million*] in favour of the Swiss Confederation. Since July 2014, the proceedings have been before the Federal Supreme Court, which has received several appeals concerning the amount and the validity of the confiscation.

182. Generally speaking, it should be noted that many of the perpetrators of transnational money laundering are neither Swiss nationals nor domiciled in Switzerland. This makes it harder to have defendants appear in court in Switzerland, whether for investigations or before the trial court. As a result, it is difficult to prove the subjective aspects of which the defendant is accused (such as knowing that the assets were obtained illegally). A default judgement is nevertheless possible in Switzerland (Art. 366 et seq. of the CPP), if the accused has previously had adequate opportunity in the proceedings to comment on the offences of which he or she is accused. Swiss authorities did not provide data that could be used to gauge the extent of the difficulties encountered as a result of the defendants' absence, nor the measures taken in response (for example, a summons to appear in a foreign court or a safe conduct). They also noted a trend in recent years for foreign defendants to be represented by Swiss lawyers and agree to be heard by the Swiss authorities and in Switzerland, in exchange for the issue of a safe-conduct. This trend helps reinforce the carrying out of the investigation.

Complex investigations into sophisticated networks

183. Data on investigations and prosecutions shows some cases of successfully identifying and dismantling sophisticated ML networks. In the 1MBD and Petrobras cases, the MPC initiated dozens of ML proceedings in which the alleged predicate offence was large-scale corruption resulting in losses amounting to the equivalent of hundreds of millions, if not billions of Swiss francs for Malaysia and Brazil, respectively. Another investigation concerns Uzbekistan nationals suspected of ML in connection with corruption charges. In this case, the Swiss authorities opened their own proceedings, froze the equivalent of CHF 800 million [*USD 810 million/EUR 731 million*] and collaborated, through mutual legal assistance, with 19 other countries. Two of these - the United States and the Netherlands - were able to impose a USD 835 million fine and confiscate the

equivalent of USD 170 million. Swiss authorities provided other, similar examples, in which international ML networks involving various countries in Europe had been effectively identified and dismantled. Swiss authorities also played a part in the international investigation on ML initially reported by the FIFA, in connection with suspicions of criminal mismanagement and embezzlement. Some of these case files involve the use of particularly complex offshore structures.

Convictions

184. Even if it is impossible to determine a conviction rate from the data available, a large number of ML convictions has been obtained in recent years (see Table 10).

Table 10. ML Convictions (Art. 305^{bis} CP) at Federal and Cantonal Level (2010-2015)

Year	Number of convictions
2010	243
2011	192
2012	230
2013	240
2014	300
2015	283

Source: Federal Statistical Office

Prosecutions of legal persons

185. In 2014, two legal persons were convicted of ML in two separate cases, one of which involved charges of fraud and embezzlement. In February 2016, 10 proceedings against legal persons were in progress within the MPC. Three of these proceedings concerned banks. Five proceedings had been opened for ML (predicate offences: corruption of foreign public officials or fraud), one for corruption of foreign public officials and four for ML and corruption of foreign public officials.

186. In September 2015, the MPC set up an internal working group made up of several prosecutors with experience in the economic and ML field and in legal mutual assistance, and the head of the FFA group ("Group 102", in reference to the article of the Criminal Code on prosecuting legal persons). Group 102 maintains consistent doctrine in the prosecution of legal persons (for both the opening of a preliminary investigation and its subsequent conduct). The group ensures that prosecutors are assisted by a superior when they deal with this sort of case, especially if simplified proceedings are initiated. It is also a supervisory body, tasked with ensuring that legal persons do not obtain an overly favourable end result that would not be consistent with the requirements of the criminal prosecution. Although it is only recent, this group is equipped to heighten the effectiveness of the prosecution of legal persons in Switzerland. No similar body appears to exist at cantonal level.

Effectiveness, proportionality and dissuasiveness of sanctions for ML

187. The criminal code provision that punishes ML (Art. 305^{bis}, CP) provides for a prison sentence of up to three years or a financial penalty, and, in serious cases, a prison sentence of up to five years or a financial penalty (see Annex, R 3). The sentences handed down take into account the seriousness of the ML act, the amounts laundered, the time elapsed between the offence and the judgement, and whether it was a repeat offence.

188. Convictions can be handed down at the end of three types of procedure: bringing charges (Art. 324 et seq., CPP), accelerated proceedings (Art. 358, CPP) or a summary judgment (*ordonnance pénale* - Art. 352, CPP, without involvement of a judge). The prosecutor may issue a summary judgment (instead of bringing charges) if the accused has accepted responsibility for the offence or if his or her responsibility has otherwise been satisfactorily established, bearing in mind that the prison sentence may not exceed six months. Some cantonal authorities said that the summary judgment avoided the risk of exceeding the statute of limitations or the handing down of sanctions that were less proportional and dissuasive because of the time elapsed. Other authorities say that these considerations are less important. In any event, summary judgments are the most commonly used procedure.

189. In practice, the sentences applied in money laundering include prison sentences of between two months and four years. However, according to the information provided, the ML offence is combined with other offences such as drug trafficking, embezzlement, etc. in many cases and the sentences issued are often based on all of the offences considered as a whole (and the sentence for ML cannot be separated out). The authorities described a number of cases in which natural persons and legal persons had been sentenced (see Box 7). In some of these examples, the dissuasive, proportional nature of the sentences has not been established.

Box 7. Examples of sentences pronounced for ML*Example 1 (natural person; Judgement SK.2011.26):*

On 31 October 2012, the Federal Criminal Court sentenced the first defendant to a suspended 13-month prison sentence with a two-year probation period and a financial penalty of 20 day-fines (the day-fine was set at CHF 100) for aggravated ML and ML. The second defendant was sentenced to a suspended 16-month prison sentence for ML, with a two-year probation period. These two people were, respectively, the vice president of a company through which he had laundered the money and a managing director of the same company. The first person was accused of laundering USD 840 404.59 in Switzerland and the second person of laundering EUR 3 276 221 and USD 242 000 in Switzerland, by self-laundering.

Example 2 (natural person; ATF 6B_724/2012):

On 24 June 2013, the Federal Supreme Court confirmed the sentence of 360 day-fines for aggravated money laundering imposed on a director of a management company who had laundered, by recklessness, around EUR 15 million from cocaine trafficking between Brazil and Europe.

Example 3 (legal person):

In a fraud case involving several billion USD, an investment company was convicted, by summary

judgment, of aggravated ML and sentenced to pay a CHF 1 million fine and a compensatory claim of around CHF 9 million, plus expenses. The fine was paid.

Example 4 (natural person; Judgement JTCO/15/2013):

In the so-called "Virus" case, the Geneva Criminal Court convicted the two defendants of aggravated money laundering and sentenced them to, respectively, a suspended two-year sentence and a suspended three-year sentence. Nearly CHF 4 million were also confiscated. The defendants were accused of laundering the proceeds of cannabis trafficking through compensatory operations between France, Switzerland and Morocco.

190. Moreover, the Swiss authorities say that the sanctions may have dissuasive collateral effects, such as the effects on the ability of the people concerned to enter into or continue banking relationships in Switzerland, or to pursue operational activities or administrative procedures, more specifically in taxation matters. However, the assessors have only limited information to corroborate such statements (see below, "Implementation of alternative methods"). Even if taking these collateral effects into account, their extent still varies considerably with the circumstances, and a longer prison term should normally be considered more dissuasive. In addition, the sentences handed down are intended to have a dissuasive effect, not only on the accused but also on a broader level, to reduce this sort of crime rate as far as possible. As a result, the collateral effects alone cannot justify the relatively low level of the sanctions.

191. Independently of the cases mentioned, **the level of the sanctions and their dissuasive nature cannot be evaluated without fuller data on the sentences handed down for ML in general.**

Use of alternative measures

192. When a criminal conviction for ML is not possible, the MPC systematically examines whether it has enough evidence to order an ancillary confiscation within the framework of the criminal procedure, or even a confiscation that is independent of a criminal procedure. Moreover, one of the objectives of opening an investigation is to immediately freeze assets with a view to their subsequent confiscation. Based on previous court decisions, in practice, the level of evidence deemed sufficient for a confiscation is slightly lower than that required to convict a natural or legal person of ML. The link with the predicate offence must be based on sufficient likelihood, since it is less restrictive to demonstrate the subjective aspects of the ML offence. This approach is all the more important as Switzerland is one of the world's leading financial marketplaces with major capital holdings (see also IO 8 below).

193. Ancillary confiscations are pronounced in connection with a summary judgment (Art. 352 et seq., CPP), a dismissal ordinance (Art. 319 et seq., CPP) or a judgement (Art. 324 et seq., CPP). According to the authorities, sometimes summary judgments are not challenged when the guilty parties prefer to surrender the amounts confiscated rather than continue the proceedings in court (see Box 8 and IO 8).

Box 8. Confiscation in a case where the ML offence has not been demonstrated

In June 2008, the MPC opened criminal proceedings for ML against SIM Junior. SIM Junior is the son of SIM Senior, arrested on 13 June 2008 in Spain by the Spanish authorities, along with 18 other people, in connection with an investigation conducted by the Spanish judicial authorities.

SIM Senior was suspected of being at the head of a foreign criminal organisation and being involved in ML, blackmail, murder, document forgery and trafficking in cobalt and tobacco, arms and drugs. The MPC suspected SIM Junior of laundering, including in Switzerland, part of the funds acquired illegally by his father (around CHF 60 million) through companies.

Following its investigations, in April 2012 the MPC issued an order dismissing the proceedings, since it had been unable to demonstrate the ML offence. Under Art. 320 § 2, CPP, it nevertheless ordered the confiscation of an amount of USD 2 315 165.60 in favour of the Swiss Confederation.

194. The Swiss authorities also make use of plea bargains. In February 2015, proceedings were opened against a universal bank for aggravated money laundering following the so-called "Swissleaks" revelations. After a preliminary investigation, a plea bargain took place with the bank, which agreed to pay CHF 40 million to compensate for the harm done and reimburse the profit made. The case was dropped.

195. Independently of any conviction for ML, it is not infrequent for ML investigations to reveal suspicions in relation to the essential element of the offence in Art. 305^{ter} CP (lack of due diligence in financial operations (§ 1) and possibly right to report to MROS (§ 2)). This aspect is automatically analysed by the prosecution authority, independently of the proceedings for ML. As at 11 March 2016, eight proceedings initiated for this motive were pending within the MPC.

196. If the investigations reveal insufficient or no signs of a predicate offence abroad, or if the State in which this predicate offence was committed does not co-operate with Switzerland, law enforcement authorities forward the information obtained from the ML investigations to the foreign State under Art. 67a EIMP (transmission of evidence and information on a voluntary basis; see IO 2 below). Swiss authorities also use the possibility of delegating criminal proceedings abroad. In the Petrobras case, for example, Switzerland submitted requests for delegation of criminal proceedings to the Brazilian authorities.

197. Moreover, when the MPC gains knowledge, through its proceedings, of facts that could warrant opening criminal administrative proceedings, it communicates these facts to the competent authorities (the tax authorities and FINMA, for example). By way of illustration, in 2014 the MPC sent 60 ML reports to other authorities, such as the tax authorities and FINMA. From 2013 to 2015, the Federal Tax Administration (AFC) opened 12 criminal proceedings on the basis of reports from the MPC and cantonal prosecution authorities (four of which concerned ML). Certain examples show that FINMA also followed up on such reports.

198. Swiss authorities seem to make use of alternative measures to convictions. More specifically, confiscations are ordered in a number of cases without a conviction, reflecting an intention to discourage money laundering by depriving criminals of the proceeds of their crime.

Conclusion

199. Swiss authorities give priority to investigations and prosecutions and have the means to undertake large-scale investigations. Broadly corresponding to high-risk predicate offences, a large number of ML investigations and prosecutions have been carried out, spanning every type of ML identified by the FATF and resulting in a large number of convictions. These investigations and prosecutions include numerous examples of complex cases, including very complex cases of sophisticated ML networks that the authorities have been able to identify and dismantle. In many cases, though, the sentences handed down do not seem to be sufficiently proportionate and dissuasive. **Switzerland has achieved a substantial level of effectiveness for Immediate Outcome 7.**

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

200. The seizure and confiscation of the proceeds and instrumentalities of crime and property of an equivalent value are a priority of the authorities interviewed, in particular of the law enforcement authorities, especially at federal level and in Geneva, and of the competent authorities in mutual legal assistance.

201. **In investigations with an international scope, law enforcement authorities systematically search for any assets associated with the offences.** Both at the beginning and in the course of proceedings, they conduct investigations to this end. The possibility of making a subsequent confiscation is a major factor in the decision whether or not to open a preliminary investigation. For the reports sent by MROS to the MPC, this process is formalised and centralised by the ZAG unit (see IO 6 and 7 above), which analyses the facts more specifically from the confiscation angle.

202. Right from the beginning of the investigation, the prosecutor systematically performs or requests analyses of the financial flows from the analysis centre (the FFA unit, in the case of the MPC) or the police, to consolidate the suspicions of ML/TF and the possibilities of further seizures and confiscations. To this end, the prosecution authorities search for other non-detected assets that could be related to the charges under investigation. These searches are carried out both in Switzerland and abroad by means of requests for mutual legal assistance.

203. **The law enforcement authorities make extensive use of seizure to protect the possibility of future confiscation.** The sums seized at the MPC's initiative are substantial (see Table 11 below). Moreover, the funds seized by the prosecution authority in Geneva totalled over CHF 1 billion at the time of the on-site visit. On receipt of an STR, the prosecution authority has five days to order a seizure after the automatic freezing measure triggered by the receipt of an STR from MROS. Failing a decision to seize, the freezing measure on the assets is lifted. While some stakeholders thought that the allotted timeframe was too short, the majority of the authorities interviewed seemed to think that the time allowed was sufficient to decide on an interim measure such as seizure pending confirmation of the suspicions. Reporting tables on all of the assets seized are drawn up every half-year.

Table 11. Assets Seized by MPC (statement as of February 2016)

Bankable assets	CHF 5.6 billion
Cash	CHF 32 million
Real estate	CHF 67 million
Valuables	CHF 79 million
Unlisted securities	CHF 68 million
TOTAL	CHF 5.846 billion [USD 5.9 billion/ EUR 5.3 billion]

Source: MPC

204. Asset seizure is a particularly high priority when the perpetrator of the offence is abroad and only the assets are in Switzerland. These circumstances prompt law enforcement authorities to focus and direct their resources to seizure, then confiscation of assets in Switzerland.

205. Another two measures are used to deprive criminals of the proceeds and instrumentalities of crime: the compensatory claim (which makes it possible to confiscate property of an equivalent value) and reversal of the burden of proof when it concerns assets belonging to a person that participated in or supported a criminal organisation (Box 9).

Box 9. Confiscation of property alleged to be within a criminal organisation's power to dispose

In May 2011, based on a report from MROS, the MPC opened an ML case against a person known as "EXAMPLE". EXAMPLE had been convicted in Russia for acting as part of criminal organisation, corruption, murder and terrorism. The judgement had become effective. However, during the period covered by the sentence, EXAMPLE was the beneficial owner in Switzerland of a banking relationship. Blocking measures were ordered on EXAMPLE's banking relationships.

Despite the investigations conducted by the MPC, the ML offence could not be proven and the ML proceedings were closed in May 2012.

However, insofar as EXAMPLE had received a conviction for being part of a criminal organisation in Russia and that the money deposited on his accounts in Switzerland had been acquired during the period covered by the sentence in Russia, these assets were likely to stem from EXAMPLE's involvement in a criminal organisation. The MPC therefore ordered the confiscation of all of the assets deposited in the blocked accounts in Switzerland, amounting to around USD 600 000, and allocated part of this sum to EXAMPLE's victims in Russia as compensation.

206. To be able to carry out more seizures and confiscations, the MPC set up a specialised unit in 2011 made up of four employees, the Judgement Execution and Asset Management Unit. Among other things, the unit's tasks include implementing the confiscation ordered by the court or by the MPC, liquidating the securities and objects, recovering the compensatory claims assigned to the government, and collecting the expenses incurred in the proceedings.

207. Some data was provided concerning the AFD's efforts to seize or temporarily hold non-declared or incorrectly declared money, though only for 2015 (see below). However, the AFD has only subsidiary responsibility for confiscating money, which is handled by the prosecution authority, if applicable.

208. To sum up, **seizure and confiscation are major objectives for the Swiss authorities responsible for dealing with ML**. For the MPC, because of the mandatory federal responsibility, the majority of the confiscations ordered concern ML. At national level, Switzerland does not seem to have the data necessary to calculate the relative proportion of confiscations stemming from ML and those stemming from predicate offences.

Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

Confiscation based on Swiss law

209. **The amounts confiscated are high** (Table 12).⁶⁸ Depending on the case, the decision to confiscate can be made by either a court or a prosecution authority (by summary judgment or following a dismissal). The MPC and the prosecution authorities in the cantons of Geneva, Ticino and Zurich supplied statistics for the years from 2011 to 2015. Swiss authorities were unable to supply figures on the actual recovery of the sums in question. However, because the amounts confiscated (which were mainly kept in bank accounts) had usually been seized beforehand, it was not generally difficult, in principle, to recover them, and their recovery corresponded, time wise, to the decisions handed down.

Table 12. **Confiscation of Assets, in CHF (2011-2015)**

Year	Federal Level		Cantons of Geneva, Ticino and Zurich
	Assets confiscated (including compensatory claims)	Number of confiscation orders, including restitutions	
2011	64 653 386.22	19	2 319 075
2012	32 585 577.39	14	3 194 825
2013	46 740 182.70	39	71 451 573
2014	52 132 314.00	12	387 988 724
2015	129 511 346.75	12	57 429 397
Total	325 622 807.06 [USD 330 million / EUR 297 million]	84	522 383 594 [USD 529 million / EUR 477 million]

Source: MPC and cantonal prosecution authorities (data for the canton of Ticino is incomplete)

⁶⁸ Apart from the confiscations shown in the table, it should be noted that a confiscation and a compensatory claim for a total value of CHF 700 million [USD 709 million/EUR 639 million] had been handed down in the case described in IO 7. However, because an appeal has been lodged against this confiscation, it is not shown in the table.

210. This table includes confiscation carried out following investigations that revealed major international corruption cases and contribute to the global initiative to fight this activity.

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Box 10. Examples of confiscations resulting in international restitutions

Example 1: Conviction for criminal mismanagement and ML

In judgements made on 11 July and 27 October 2008 (SK.2007.12), the Federal Criminal Court convicted a Swiss business lawyer for criminal mismanagement and ML, and ordered confiscation of CHF 1 001 583 [USD 1 014 563 / EUR 914 845] and compensatory claims of CHF 52 343 940 [USD 53 million/ EUR 48 million]. In connection with this case, the sum of CHF 52 343 940 was returned to the Aeroflot company in Russia, which suffered damage as a result of the offences committed in Switzerland.

Example 2: Restitution of assets to the Federal Republic of Nigeria

In an order dated 11 October 2014, the prosecution authority of the canton of Geneva confiscated some USD 380 million from various companies controlled by the Abacha family, deemed to be a criminal organisation. These funds had been seized in 2006 in Luxembourg by order of the prosecution authority in Geneva.

The repatriation of the funds to Geneva and their confiscation followed the conclusion in July 2014 of a comprehensive agreement between the Federal Republic of Nigeria and the Abacha family. This agreement set out the principle of confiscating the assets seized and allocating them to the Federal Republic of Nigeria. It also provided for the Federal Republic of Nigeria to drop its complaint against Abba Abacha.

Among other things, the confiscation order stipulates that the funds returned to the Federal Republic of Nigeria will be monitored by the World Bank under arrangements yet to be finalised. Until the monitoring system is operational, the funds will remain in the hands of the Geneva justice system.

Based on Article 53 CP, which provides for charges to be dropped when the accused repairs the damages as far as possible, the prosecution authority subsequently dismissed the proceedings, which had been in progress since 1999 and, in the end, were focused solely on Abba Abacha. The latter, who served 561 days in detention awaiting trial between 2004 and 2006, was denied any compensation on this account because of the proven existence of a criminal organisation.

Example 3: Restitution of assets to Brazil

On the grounds of information from MROS, the MPC opened criminal proceedings in 2003 against Brazilian nationals who were the holders or beneficial owners of various accounts in Switzerland. Several requests for mutual legal assistance were sent to the Brazilian authorities. Thanks to evidence supplied by the latter, in 2008 the MPC was able to close the proceedings and confiscate assets worth USD 19.4 million. That same year, the Brazilian authorities, who had also opened proceedings for the same charges (Operation Anaconda), requested and obtained full restitution of the confiscated assets.

211. Some assets are confiscated abroad at the request of the Swiss law enforcement authorities, based on an internal procedure. In 2014, CHF 13 053 573 [USD 13.2 million/EUR 11.9 million] were

seized abroad at the request of the MPC and the cantons, and CHF 1 679 985 [USD 1.7 million/ EUR 1.5 million] were confiscated.

212. On the basis of an independent confiscation, assets can be confiscated in the absence of criminal proceedings in Switzerland. For example, on 28 August 2015, the prosecution authority in Geneva independently confiscated USD 950 000 from cocaine trafficking in Spain.

Seizures and returns under mutual legal assistance arrangements

213. Apart from the confiscation ordered under domestic law, Switzerland assists in executing seizure and confiscation orders based on foreign criminal proceedings.

214. Article 18 of EIMP provides for interim measures in response to a request from a foreign State that meets the required conditions. If the Swiss authority concerned (either cantonal or federal) authorises the preliminary request to this end, it will be able to freeze an account temporarily for a set period, pending a full request for mutual assistance. In practice, this period seems to be sufficiently long to avoid losing assets.

215. Once a request has been received, the freezing measure or seizure can be maintained for an extended period, taking into account both the holder's interests and those of the requesting State and Switzerland's international obligations. Previous court decisions show that this period can, in some cases, be as long as 10 years. This lengthy seizure period can encourage foreign defendants to conclude agreements with the law enforcement authorities in these countries so that the funds frozen in Switzerland can be transferred to the foreign State. With the consent of two account holders, CHF 120 million [USD 122 million/ EUR 110 million] were transferred to the Brazilian State during the Petrobras case (a further CHF 64 million have been transferred since early 2016).⁶⁹ As a result, even when it would be possible to order a confiscation in Switzerland, it is sometimes deemed more effective to support proceedings abroad aimed at confiscating the same assets.

216. The assets are returned when a confiscation is ordered abroad (see Table 13)

Table 13. Examples of Assets Returned by Switzerland under Art. 74a EIMP (2009-2014)

Claimant State	Amount in CHF	Offence	Executing authority
Luxembourg	1 100 000	Embezzlement	MPC
Russia	8 312 557	Money laundering	Prosecution authority, Basel-Stadt
USA	500 000	Fraud	OFJ
Philippines	4 170 000	Fraud	Prosecution authority, Geneva
USA	14 761 776	Fraud	OFJ
Italy	3 260 000	Fraudulent bankruptcy	Prosecution authority, Ticino

⁶⁹ <https://www.news.admin.ch/message/index.html?lang=fr&msg-id=56605>.

Claimant State	Amount in CHF	Offence	Executing authority
USA	15 000 000	Fraud	OFJ
Russia	55 000 000	Fraud	MPC
Netherlands	1 980 000	Drugs	Prosecution authority, Schwyz
Colombia	286 000	Fraud	Prosecution authority, Geneva
Germany	1 800	Fraud	Prosecution authority, Schwyz
Italy	840 530	Usury	Prosecution authority, Basel-Stadt
Slovakia	200 000	Corruption	Prosecution authority, Zurich
Luxembourg	1 000 000	Embezzlement	MPC
Germany	994 960	Fraud	Prosecution authority, Geneva
Germany	264 836	Drugs	Prosecution authority, Zurich
Brazil	4 800 000	Fraud	Prosecution authority, Geneva
Thailand	47 534	Fraud	Prosecution authority, Ticino
Germany	13 000	Fraud	Prosecution authority, Zurich
Finland	128 800	Fraud	Ticino

Source: OFJ

Freezing prior to criminal proceedings

217. In recent situations of a change of government in various countries, Switzerland carried out preventive asset freezing in the absence of criminal proceedings. The freezing measures in question were imposed by a Federal Council ordinance on the basis of constitutional provisions.⁷⁰ This exceptional preventive measure makes it possible to freeze assets pending a possible formal request for mutual legal assistance from the countries concerned (see Table 14). In the event of a request, the freeze can subsequently be replaced by a seizure, under the EIMP act.

⁷⁰ Since 2015, the Federal Act on the Restitution of Illegally Obtained Assets held by Politically Exposed Persons (adopted on 18 December 2015) gives the process an explicit legislative framework and provides for this type of asset freezing when certain conditions are met.

Table 14. Assets Frozen by a Federal Council Ordinance

	Entry into force	Amount frozen
Ordinance establishing measures against certain persons from Tunisia	19 January 2011	USD 60 million
Ordinance establishing measures against certain persons from the Arab Republic of Egypt	2 February 2011	USD 600 million
Ordinance establishing measures against certain persons from Ukraine	26 February 2014	USD 70 million

Source: Federal Department of Foreign Affairs (DFAE)

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

218. The AFD controls currency at the borders in application of the Ordinance on the control of cross-border cash movements (see Annex, R 32).

Table 15. Cash Declared or Detected at the Border in Excess of CHF 10 000
[USD 10 130 / EUR 9134]

Number of cases								Amount involved	
Year	Incoming	Outgoing	In-country	By road	By air	By rail	Total	Total	Average
2013	247	42	3	41	244	7	292	36 620 027	125 411
2014	263	23	28	70	217	27	314	30 882 373	98 351
2015	152	23	26	80	95	26	201	17 036 938	84 760

Source: AFD

219. **Little information is available on the confiscation and sanctions imposed in connection with cross-border cash transfers.** The AFD can temporarily seize cash if it suspects ML/TF in order to hand it over to the law enforcement authorities (police and, to a lesser extent, the competent prosecution authority). The AFD is not competent for confiscation as such however (see Box 11). In 2014, the AFD seized the equivalent of CHF 772 705 (47 cases), of which CHF 55 460 (8 cases) had to be returned at the end of the criminal proceedings. However, the authorities did not provide data about the amounts confiscated at the end of the seizure. In the absence of border controls between Switzerland and Liechtenstein, this remark also holds for suspicious cases observed by the AFD at the Austria-Liechtenstein border. Responsibility for prosecuting these cases lies within the competence of the criminal procedure authorities in Liechtenstein (see Annex, R 32).

Box 11. Funds Seizure at Border Leads to Judicial Seizure and Criminal Proceedings for ML

In 2009, two passengers in a vehicle were controlled at the border between Switzerland and France: the AFD seized EUR 120 000 in cash and referred the case to the MPC, which immediately ordered the judicial seizure of the sum in a case linked to support for a criminal organisation (terrorism); the case is still being investigated.

220. In 2014, the AFD started confiscating vehicles that had been modified to incorporate hiding places for drugs or drug money. At end-June 2015, 31 vehicles had been confiscated. In nine cases, the criminal proceedings were conducted to their conclusion and the vehicles were subsequently destroyed.

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

221. The examples of confiscation described by the authorities concern offences deemed to be high-risk, specifically fraud, criminal mismanagement and corruption. The statistics supplied by the MPC for ML confiscation ordered between 2011 and 2014 for the whole of the Swiss Confederation are commensurate with high-risk ML activities, in particular for two offences: corruption (29%) and criminal organisations (10%).

Conclusion

222. As shown by the substantial figure for seizures, Swiss authorities see confiscating criminal assets as a major priority and take timely steps to this end. Several confiscations are the culmination of large-scale investigations, and the total amount confiscated is high. The seizures and confiscations are generally consistent with the identified risks and some are significant achievements in the global anti-corruption effort. However, the effectiveness of confiscations with regard to breaches of the rules on cross-border cash transportation has not been demonstrated. **Switzerland has achieved a substantial level of effectiveness for Immediate Outcome 8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- The Counterterrorism Strategy for Switzerland of September 2015 recognises the importance of countering terrorist financing. As a result of recent events in neighbouring countries, federal resources devoted to countering terrorism and TF have been increased (including within MROS). These resources are in addition to existing co-ordination mechanisms at federal level and within the cantons, which allow the effective and sustained exchange of information between the competent authorities about counterterrorism and, in this context, TF.
- The Office of the Attorney General of Switzerland (MPC) takes the necessary steps to understand the financial aspects of terrorism-related investigations. To date, there has been one conviction for terrorist financing. However, there have been convictions for other types of support, and a number of proceedings are in progress for participation in and/or support for terrorism.

Immediate Outcome 10

- Large sums of money have been frozen in application of sanctions based on United Nations Security Council (UNSC) Resolutions 1267 and 1373. Additionally, the Federal Council ordinance of 4 March 2016 on the automatic adoption of UNSC sanctions lists introduced an effective system for giving immediate effect to designations declared by the competent UN committee on the basis of Resolution 1267.
- The tax authorities and the authorities responsible for supervising foundations monitor the activity of certain NPOs and the use of their funds. However, the authorities have not adopted a targeted approach to TF risks and are not conducting any outreach in the sector. The NPOs' self-regulatory initiatives only partially fill the gaps in understanding and managing TF risks in the sector.

Immediate Outcome 11

- The ordinance of 4 March 2016 gives immediate effect to the UNSC's lists concerning the financing of proliferation. In addition to the control and authorisation of products subject to the licensing scheme or the reporting requirement, the State Secretariat for Economic Affairs (SECO) offers support to financial intermediaries and other sectors (industry, transport services, etc.) to raise their awareness to the threat of proliferation, and to facilitate the implementation of international sanctions.
- CHF 12 million [USD 12.2 million/ EUR 11 million] have been frozen in Switzerland on the basis of sanctions against Iran. However, the checks performed by the financial intermediaries'

supervisors on the implementation of financial sanctions concerning proliferation are limited.

Recommended Actions

TF investigation and prosecution

- Swiss authorities should check that dissuasive sanctions are imposed especially where it is established that a person supporting a terrorist organisation acted with intent and out of solidarity with the organisation.
- Swiss authorities should fully exploit the potential offered by changes to Swiss law for infiltrating terrorist and TF networks.
- Swiss authorities should continually check that their approach to terrorism and TF is tailored to the growing risks in Europe.

TF preventive measures and financial sanctions

- The authorities should step up their outreach to NPOs to raise their awareness to the risks of misuse for TF purposes, possibly in co-operation with existing private initiatives, and also to certain financial intermediaries in the non-banking sector that are particularly vulnerable in this area, such as small institutions carrying out funds transfers.
- The NPOs' supervisors should determine which categories of NPO are at risk of terrorist financing and the threats they are exposed to so that their targeted approach can be adjusted.

PF financial sanctions

- The financial intermediaries' supervisors should strengthen measures to detect any failure to meet requirements related to targeted financial sanctions as regards PF (see IO 3, which looks at measures related to targeted financial sanctions in respect of TF).

223. The relevant Immediate Outcomes considered and assessed in this Chapter are IO 9-11. The Recommendations relevant for the assessment of effectiveness under this section are R 5-8.

Immediate Outcome 9 (TF Investigation and Prosecution)

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

TF risk profile for Switzerland

224. According to the national risk assessment, there are two main forms of potential terrorist financing threat for Switzerland: raising of funds and other assets from residents to finance terrorist activities and using the financial sector to collect assets from different sources abroad for forwarding to recipients abroad who will use them for activities serving terrorist purposes. The potential threat

of terrorist financing therefore mainly concerns the financing of terrorist activities abroad, using the Swiss financial sector for transit.

225. Swiss authorities have identified three main types of Islamist terrorism in Switzerland (though on a small scale): people travelling to war zones to take part in the activities of terrorist organisations (“jihadi travellers”), people supporting terrorist organisations on the Internet (particularly “Islamist apologists”), and terrorist networks linked particularly to the recruitment and travel of jihadists.

226. During the on-site visit, the Swiss authorities asserted that the distribution of the Swiss population (small communities in which people know one another) means that Switzerland does not have the same vulnerabilities as some other countries.

Investigation and prosecution

227. **Swiss authorities have launched prosecutions in response to an increase in the number of jihadi travellers.** The MPC launches a criminal investigation (in accordance with Art. 2 para. 3 of the Law banning the groups “Al-Qaida” and “Islamic State”, which came into force on 1 January 2015) as soon as the departure or stay of a prospective jihadist in a war zone is confirmed. Criminal proceedings are in progress in more than 20 cases, and MROS has stepped up the spontaneous sharing of information in the fight against TF, particularly with its French counterpart following the Paris attacks in November 2015. Apart from the mandates given to the Federal Criminal Police [*Police judiciaire fédérale* (PJF)], the MPC informs MROS whenever a new investigation is launched; MROS finds any links with STRs and spontaneously forwards this information to its foreign counterparts.

228. Swiss authorities have reported several cases of financing of terrorist organisations abroad, which illustrate the main terrorist threats identified in the national risk assessment:

- An investigation in progress concerning the organisation Liberation Tigers of Tamil Eelam LTTE. This investigation concerns the raising, movement and use of funds. In particular the fund-raising relied on fraudulent applications for consumer credit. The prosecution is for fraud and ML and, on a subsidiary basis, for support for a criminal organisation.
- An investigation concerning the raising, movement (*hawala*) and use of funds destined for the Horn of Africa. The investigation was originally based on TF allegations. Even though the person who made the financial transactions was identified, it could not be identified that the funds were destined for a terrorist organisation.
- An investigation opened on the basis of the new law banning the groups “Al-Qaida” and “Islamic State”. This investigation (currently in progress) is looking at the raising, movement and use of funds suspected of supporting foreign fighters.
- An investigation launched among other things for TF where the TF was considered to be subsidiary to financial support for a criminal organisation⁷¹. The finance in this investigation concerned the *hawala* system.

⁷¹ Federal Criminal Court, SK. 2013.39.

229. One conviction for TF has been obtained to date (see below Box 14). Several investigations are under way into what could be described as TF, though the individuals concerned may sometimes be prosecuted for crimes other than TF (Art. 260^{quinquies} and 260^{ter} CP). The investigations and prosecutions generally reflect the identified risks.

TF identification and investigation

Detection of TF

230. Criminal proceedings linked to terrorism or TF launched by the MPC (34 in 2014) are identified either as a result of financial intermediaries reporting their suspicions to MROS (2 in 2014), or as a result of monitoring by the Swiss intelligence service [*Service de renseignement de la Confédération* (SRC)] or the police in the course of preliminary investigations (31 in 2014), or on the basis of requests from abroad for mutual legal assistance (1 in 2014).

231. Between 2005 and 2014, a total of 130 suspicious business relationships were reported. MROS thus receives on average 13 reports of suspected TF per year. The average value of the sums concerned is around CHF 250 [*USD 253/EUR 228*], reflecting the fact that TF does not generally require high levels of financial resources.

Table 16. **Status of STRs Forwarded by MROS in Relation to TF 2005 - 2014**

Inadmissible	38
Pending	42
Discontinued	9
Suspended	11
Trial	1
Total	101
Reports not forwarded	29

Source: MROS

232. One key aspect of MROS' work in this area is international collaboration. As soon as foreign elements are involved, MROS contacts the foreign counterparts concerned, including by spontaneously sending them information. If the people involved in the suspicious transactions are domiciled abroad or have fled the country, communicating this information can lead to their arrest, followed by their prosecution in Switzerland or abroad. For example, a case like this occurred in 2015 (see Box 12).

Box 12. Spontaneous Communication Abroad Followed by Prosecution in Switzerland

In the summer of 2015, MROS received a report concerning a young person who had left his home in Switzerland 24 hours earlier. Alerted by the person's parents, the bank noticed that two withdrawals had been made in the meantime, first in Paris and then in London. In the hour following receipt of the report, MROS alerted the French and British FIUs, as well as the intelligence service, the Federal

Criminal Police (PJF) and the MPC. As a result of close collaboration between MROS and its British counterpart, the young person was arrested five hours later at a London station. The person was repatriated to Switzerland in the hours that followed and prosecuted under the Al-Qaida Law by a cantonal youth court.

233. Most terrorism-related cases are based on reports from the SRC and the PJF, which cooperate with foreign authorities (especially through the Police Working Group on Terrorism). Cooperation between the MPC and the SRC has been strengthened in the last few years and seems to be delivering satisfactory results. Since the signature of an MoU, the SRC can give the MPC both confidential information and information in official reports, which can be used in court proceedings (see Box 13). The use of the SRC's reports in court cases and the protection of sources have been validated by the Federal Criminal Court and the Federal Supreme Court.

Box 13. Collaboration between the SRC and the MPC/PJF

An official report by the Analysis and Prevention Service [*Service d'analyse et de prévention (SAP)*], now the SRC, on 17 December 2007 initially raised suspicions about two Iraqi nationals accused in particular of providing support to the Al-Qaida terrorist network by running a web platform containing terrorism-related content. Their defence argued that criminal proceedings were launched in the absence of any evidence, solely on the basis of the report in question and that, as a result, the information it contained could not be used under any circumstances, and nor could the evidence gathered subsequently.

The Federal Criminal Court did not agree (see judgment of 2 May 2014), declaring in essence that the SAP's report was a summary of information issued by an official service responsible for foreign relations for the purpose of obtaining information from the internal and external security service. In the MPC's view, the information provided sufficient justification of suspicion of organised crime. Given that it was a Swiss official report, one can assume that the information it contained was obtained lawfully. There is nothing to indicate that the SAP obtained the information unlawfully. The MPC could therefore – and was obliged by law to – launch an investigation by the PJF and carry out the necessary investigations. The accusation was therefore well founded and the evidence gathered on this basis could be used, except if a time limit in the specific case prevented this. The Federal Criminal Court's reasoning was confirmed by the Federal Supreme Court on 27 January 2016.

234. Additionally, operational meetings between the PJF, the MPC and the SRC are held every week. Information about current or new cases is exchanged during these meetings. This communication is effective in that it allows discussion of cases at every investigative stage, even before criminal proceedings are launched. The SRC also sends weekly status reports to the MPC.

235. As stated in the TC annex (R 5), Art. 260^{quinquies} CP and, to a lesser extent, Art. 260^{ter}, require a link between the financing and a potential terrorist act or activity in cases that are not covered by the Law banning the groups “Al-Qaida” and “Islamic State”. The Swiss courts have interpreted this link fairly broadly in the context of Art. 260^{ter} (see judgment SK.2007.4 of the Federal Criminal Court). In the case of Art. 260^{quinquies}, the requirement is stricter because of the wording, which makes

express reference to the financing of a terrorist act. So far that does not seem to have had any impact in practice, but if a "lone wolf" case should occur where there is no link with Al-Qaida or Islamic State, the potential for prosecution on the basis of the financing of these organisations would be limited in the (fairly unlikely) scenario that a link with an actual act could not be established.

Investigation and prosecution

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236. Countering terrorism and TF generally has an international aspect and is therefore a matter for the federal authorities. However, there are more cantonal police officers than federal judicial police officers, and they have a presence throughout the whole country. They therefore have responsibility for a certain amount of diligence locally. Federal co-operation with the cantons is made easier by a network of cantonal contact points.

237. The MPC has a specialist counterterrorism unit with five members (two clerks, two assistant prosecutors and one federal prosecutor). This specialist unit can be strengthened if extra resources are needed, with other staff from within the division to which it reports, increasing its total workforce to 32 staff (including clerks, assistant prosecutors and prosecutors). The unit is supported by specialists, particularly one researcher specialising in Middle East affairs, and by the FFA on financial analysis.

238. Three PJF criminal investigation departments conduct counterterrorism investigations under the direction of the MPC (36 staff/status as at March 2015). Two of these departments support terrorism prosecutions at the investigation stage and the third, a multidisciplinary unit (police officers, analysts, IT experts), works mainly on identifying new cases. Every investigation launched is the subject of consultation between the MPC and the PJF. The strategy and prioritisation of operations are regularly reviewed.

239. On 11 March 2016, the MPC was conducting 41 proceedings (36 full investigations and five preliminary investigations) for belonging to and/or supporting a criminal organisation (Art. 260^{ter} CP) linked to terrorism, approximately 50% of which were also launched for support for a group targeted by the Law banning the groups "Al-Qaida" and "Islamic State" (Art. 2, para. 1 and 2). The MPC has observed that TF accounts for around a third of terrorism investigations. Most terrorism-related cases generally concern propaganda for terrorist organisations and support for those organisations, particularly through jihadi travellers.

Table 17. **Proceedings in Progress as at 11 March 2016 Related to Terrorism or TF**

Type	Number of cases	Number of accused
Organised jihadi networks	14	21
Online propaganda and glorification of terrorism	23	25
Jihadi travellers	14	19
Financing	6	20
Kidnappings	1	(0) unknown
Attacks	1	0

Source: MPC

240. According to Swiss authorities, identifying the specific role played by the people financing terrorism depends on a number of factors (e.g. financing method, supported organisation). If these people are domiciled in Switzerland, there is a higher chance that their specific role can be identified. The people who made the financial transactions were able to be identified in the four cases described above (para. 228).

241. During the on-site visit, Swiss authorities mentioned that, in the last two years, Swiss law has changed to allow the infiltration of terrorist organisations by the public agencies concerned (Art. 285a ff), but this investigative method remains to be fully exploited.

Mutual legal assistance

242. Switzerland has received a number of mutual legal assistance requests on terrorism and TF: 4 in 2011, 13 in 2012, 11 in 2013, and 24 in 2014 (source: OFJ)⁷². Five of the mutual legal assistance requests concerned TF and came from Germany and Turkey (2011), the Netherlands and the United States (2012) and Denmark (2013). All were executed except one, which is in the process of execution.

243. The MPC maintains close contacts with the countries concerned by this. For example, an operational working agreement was signed with the United States in 2006 to facilitate the exchange of information and mutual legal assistance. In particular, it allows US investigators to be part of joint investigation teams. The agreement was implemented in 2015 as part of the MPC's proceedings against a terrorist cell in Switzerland⁷³. The most recent example of international co-operation on counterterrorism is the arrest of 13 alleged radical Islamists in co-ordination with several European countries, the European Union (EU) and Eurojust, during which Switzerland carried out searches of the suspects' homes. The case did not involve evidence of TF.

National cooperation

244. In addition to co-operation between the law enforcement authorities, there is also co-operation with other authorities on countering TF, particularly the State Secretariat for Migration [*Secrétariat d'État aux migrations* (SEM)] (exchange of information on persons likely to commit crimes), the Federal Department of Foreign Affairs [*Département fédéral des affaires étrangères*] (regular exchange of information on the transposition of international regulations into Swiss law), and the tax authorities (e.g. request for tax declarations where a company is suspected of TF or of supporting a criminal organisation). The adoption of the 2009 ordinance on cross-border cash movements also enables the customs authorities to play a potentially greater role in countering TF. The seizure by Franco-Swiss customs of a large sum of money suspected of being linked to TF (see IO 8, Box 11) was immediately reported to the PJF. Having obtained a warrant from the MPC (which also immediately opened an investigation), the PJF questioned the person concerned within two hours of them being stopped by the AFD.

⁷² The OFJ has only recorded mutual legal assistance requests under "terrorism" since 12 January 2012 and under "terrorist financing" since 29 July 2011. Several cases concern more than one offence. Only one offence (the most serious) is counted in the statistic in question.

⁷³ According to the Swiss authorities, the case resulted in the conviction of the accused for involvement in or support for Islamic State. The judgment was not available for consultation.

245. Since 2014, the TETRA (TErrorist TRAvellers) Task Force has coordinated the action of the various authorities involved in countering terrorism and terrorist financing, including MROS. An operational subgroup of TETRA handles current cases and information is exchanged on an almost daily basis between its members. Some 70 cases of alleged terrorist activities were being assessed at the time of the on-site visit.

4 *TF investigation integrated with – and supportive of – national strategies*

246. An expressly stated aim of the Counterterrorism Strategy for Switzerland adopted in September 2015 is to prevent Switzerland-based TF.

247. According to the MPC, TF is considered from the outset in every terrorism investigation. In cases of travel to a war zone, for example, the authorities use banking reports (by asking to see the traveller's bank statements) to determine the sources of finance. In one case investigators noticed that a person had taken out a loan of CHF 10 000 to finance their travel. However, given the low cost of the travel (around CHF 300), in the majority of cases people have paid for their own travel or funded it through social networks.

248. Because the information supplied does not distinguish between investigations/proceedings for terrorism and for TF, it is not clear whether the various agencies' activities with regard to TF are well integrated into a more general terrorism-related strategy. There is nothing to suggest that the activities of the police and prosecution authorities with regard to TF have identified any terrorist groups, but a small number of terrorist support networks have been discovered and criminal prosecutions have been undertaken as a result.

Effectiveness, proportionality and dissuasiveness of sanctions

249. The sentence for TF is five years in prison (see annex, R 5). However, as there has only been one conviction for TF (see Box 14), the general proportionality and dissuasiveness of the sentences handed down cannot be assessed. It is also noted that one of the people convicted in the case described below was acting out of conviction in support of the terrorist goals of the organisation they supported. From this point of view, suspended sentences do not appear to be dissuasive.

Box 14. Sentence handed down for terrorist financing

In its judgment of 21 June 2007 (SK.2007.4), the Federal Criminal Court sentenced X for supporting a criminal organisation, public provocation to commit crime or violence, representation of violence and for having supplied information on the manufacture, concealment or carriage of explosives or poison gases, and Y for support for a criminal organisation and collusion in the representation of violence.

X was sentenced to 24 months in prison (six months custodial and 18 months suspended for a probationary period of three years), reduced by 22 days for time spent in custody. Y was sentenced to six months in prison, reduced by ten days for time spent in custody.

The MPC's investigations, begun in 2004, concerned the creation by X of websites containing information on Islam, mainly in Arabic, and discussion forums; Y, who was X's wife, was the administrator of one of these websites.

In particular the websites contained messages calling for kidnappings, attacks and threats, mainly posted by organisations closely linked to Al-Qaida, as well as Islamist messages and images of the torture and killing of humans, and they also allowed participants in the discussion forums to exchange information especially about combat techniques and the making of explosives.

Alternative measures used where TF conviction is not possible (e.g. disruption)

250. The Swiss authorities gave examples of alternative measures against people accused of supporting terrorist organisations (rather than TF in the stricter sense).

251. Under Art. 48 of the Law on Nationality, people with dual nationality can be stripped of their citizenship if their conduct seriously damages Switzerland's interests or reputation. The measure has not been used so far, but the SEM has launched proceedings to strip a person suspected of having joined a terrorist organisation in Syria of their citizenship.

252. An investigation into support for a terrorism-related criminal organisation was launched by the MPC in 2012 against a refugee who had been granted asylum in Switzerland. The accused had gone abroad to fight alongside a terrorist group. The Swiss authorities then issued a decision banning him from re-entering Switzerland, and removing his refugee status and withdrawing his right of asylum.

253. Lastly, the authorities gave the example of a person intercepted while travelling to a war zone. Due to the absence of any contact with a terrorist organisation, the person was not prosecuted but was put into a de-radicalisation programme.

Conclusion

254. In the context of terrorism investigations, the Swiss authorities give priority to TF. Although there has been only one conviction to date for TF through material support, there are a number of investigations and proceedings under way. The necessary human resources are available and are deployed for this purpose. The sentence for the sole conviction for TF was not as proportionate or dissuasive as might have been expected. **Switzerland has achieved a substantial level of effectiveness for Immediate Outcome 9.**

Immediate Outcome 10 (TF Preventive Measures and Financial Sanctions)

Implementation of targeted financial sanctions for TF without delay

255. **Switzerland has an effective system for implementing the targeted financial sanctions agreed by the United Nations Security Council on the basis of UNSC Resolution 1267 and subsequent resolutions.** In accordance with the Federal Council ordinance of 4 March 2016 on the automatic adoption of UNSC sanctions lists, any designation by the competent committee is immediately effective in Switzerland. As illustrated by a press release related to a designation adopted on 28 March 2016, this ordinance removes the delay that existed in the past for transposing

certain designations into domestic law⁷⁴. Although the UNSC lists apply immediately, the State Secretariat for Economic Affairs (SECO) continues to maintain a database on its website for information purposes, listing all the entities and persons designated on the basis of UNSC Resolution 1267 and subsequent resolutions.

256. **Switzerland has implemented the foreign lists adopted on the basis of UNSC Resolution 1373** (Executive Order 13224 of the US President and OFAC) **and frozen assets as a result** (see Table 18 below). A new system, relying on the "Lists" sub-group of the GCBF, has also been set up to enable foreign lists to be implemented more quickly (see annex, R 6). However, because to date the system has not been used, its effectiveness could not be verified. Moreover, the system's effectiveness is likely to be diminished by the rules applicable to the freezing of designated persons' assets, particularly the need to impose a seizure order to extend the freezing of assets beyond five days (Art. 10 para. 2 LBA). Freezing assets can signal to the person concerned that they are under suspicion and, if a decision is subsequently made not to order a seizure, this can result in the disappearance of the funds before the country that issued the designation provides further information.

257. To date Switzerland has not proposed any designations on the basis of UNSC Resolution 1267 and subsequent resolutions or made any designations on the basis of UNSC Resolution 1373.

258. See Chapter 5 below concerning implementation of the lists by financial intermediaries, in which there are weaknesses.

Targeted approach, outreach and oversight of at-risk non-profit organisations

259. Whereas radicalisation risks (and, where relevant, the associated financial flows) lead to enhanced monitoring, particularly by the SRC, the authorities have only detected a small number of cases where NPOs have been used for TF purposes. According to the national risk assessment report, analysis of the STRs sent to MROS indicates that NPOs are implicated in 17.4% of STRs concerning TF⁷⁵. The report states that the number of NPOs concerned is small. In additional information given to the assessors, the authorities also state that their knowledge of the abuse of NPOs for criminal purposes and TF, and the *modus operandi*, is "relatively modest" because there have been very few proceedings related to ML/TF.

260. Depending on their legal form and tax status, some NPOs are monitored by the tax authorities and/or the supervisors of foundations (see Annex, R 8). This monitoring aims primarily to make sure the funds of NPOs are actually used for the purposes stated in their statutes. According to Swiss authorities, this monitoring can also identify potential TF activities. Since they have not had enough cases of abuse to identify at-risk categories of NPO, Swiss authorities have taken a targeted approach based either on suspicion of TF (particularly according to information from the SRC) or on a risk matrix based on international typologies. However, the tax authorities and foundation supervisors

⁷⁴ Secrétariat d'Etat à l'économie SECO (2016), *Sanctions: Ordonnance instituant des mesures à l'encontre de personnes et entités liées à Oussama ben Laden, au groupe «Al-Qaïda» ou aux Taliban*, <https://www.seco.admin.ch/seco/fr/home/seco/nsb-news.msg-id-61150.html>

⁷⁵ See IO.9 ("TF identification") concerning the number of STRs sent to MROS in relation to TF.

interviewed on-site did not give any examples to show that this approach has reduced the risks of TF or led to the detection of abuse in the NPO sector.

261. Swiss authorities have not conducted any outreach or training activities in the sector on TF risks. Some self-regulatory organisations are working hard at supervision, outreach and training in the NPO sector, particularly through certification (e.g. ZEWO certification) and the spread of best practices (Swiss Foundation Code). However, these are optional initiatives. Moreover, the self-regulatory organisations do not have any members that are smaller religious NPOs, which could be particularly exposed to TF risks.

Deprivation of TF assets and instrumentalities

262. Large sums of money have been frozen in relation to countering TF, initially on the basis of UNSC Resolution 1267, and latterly on other legal bases.

263. At present, only one account with a balance of CHF 150 000 [USD 151 944 / EUR 137 010] remains frozen on the basis of UNSC Resolution 1267 and subsequent resolutions. In the past, the amounts frozen on the basis of UNSC Resolution 1267 and subsequent resolutions were much higher (as much as CHF 34 million in 2002). Almost all of these assets have been released, either to cover costs permitted in accordance with UNSC Resolution 1452 or as a result of the delisting of names by the competent UN committee. According to the Swiss authorities, it is most unlikely that persons or entities listed by the 1267/1989 Committee or the 1988 Committee still have assets or financial resources that are not frozen in Switzerland.

264. Aside from the sanctions associated with UNSC Resolution 1267, MROS statistics concerning STRs received (see Table 18) indicate that many asset freezes have been imposed under the LBA, i.e. either on the basis of the suspicions of financial intermediaries or on the basis of foreign lists based on UNSC Resolution 1373 (particularly Executive Order 13224 of the US President and OFAC).

Table 18. STRs and Amounts Frozen through of Art. 9 and 10 LBA Related to TF

	Total number of STRs for TF	Reported amount (CHF)	Amount frozen (STR in accordance with Art. 9 LBA; CHF)
2005	20	45 650 766.70	38 414 046.70
2006	8	16 931 361.63	16 929 737.55
2007	6	232 815.04	232 815.04
2008	9	1 058 008.40	1 037 905.40
2009	7	9 458.84	972.19
2010	4	23 098 233.85	23 098 233.85
2011	10	151 592.84	7 582.95
2012	15	7 468 722.50	23 958.00

	Total number of STRs for TF	Reported amount (CHF)	Amount frozen (STR in accordance with Art. 9 LBA; CHF)
2013	33	449 771.68	425 134.68
2014	9	1 038 170.97	1 032 786.30

Source: MROS

265. Apart from administrative freezing based on the relevant UNSC Resolutions, funds used for TF can be seized or even confiscated as part of criminal proceedings. As part of the 23 terrorism-related criminal cases in progress in November 2015, the MPC seized a total of EUR 120 000. The authorities did not submit any data on confiscations linked to terrorist organisations.

Consistency of measures with overall TF risk profile

266. According to its counterterrorism strategy, Switzerland's aim is to prevent "the financing of terrorism. This includes, for example, the use of Swiss financial centres for any terrorism-related transactions or investments, or the accumulation and administration of funds for terrorist purposes." So it is not only a question of preventing Switzerland from being the target of terrorist acts, but also of preventing it from being used as a rear operating base providing financial and logistical support for terrorism.

267. From the TF point of view, there are two main forms of potential threat to Switzerland: fund-raising from residents and the use of the financial sector to transfer terrorism-related funds. The risk of fund-raising requires enhanced awareness in the NPO sector (see above). The implementation of targeted financial sanctions for TF enables action to be taken against the risk of funds transfer. Controlling these risks also requires detailed examination of the risks associated with alternative funds transfer methods, such as undeclared hawala systems (see IO 1).

Conclusion

268. The automatic adoption of UNSC sanctions lists and the large amounts frozen in Switzerland through targeted financial sanctions demonstrate an effective system. Despite these strengths, outreach concerning TF risks in relation to the NPO sector should be improved. **Switzerland has achieved a substantial level of effectiveness for Immediate Outcome 10.**

Immediate Outcome 11 (PF Financial Sanctions)

Implementation of targeted financial sanctions related to proliferation without delay

269. **Switzerland has an effective system for implementing without delay the targeted financial sanctions agreed by the United Nations Security Council on proliferation financing.** As stated above (see IO 10), any designation by the UNSC comes into effect immediately in Switzerland, i.e. financial intermediaries are required to freeze assets as soon as the UN list is modified, without the need for transposition.

Identification of funds or other assets held by designated persons/entities and prohibitions

270. SECO has received several reports from financial intermediaries concerning assets frozen on the basis of the Ordinance instituting measures against Iran (O-Iran). Approximately CHF 12 million [USD 12.2 million/ EUR 11 million] had been frozen as at 15 November 2015. Almost none of the persons and entities concerned were designated by the UNSC but had been sanctioned independently by Switzerland (through the adoption of EU sanctions). SECO has not received any reports of assets frozen on the basis of the Ordinance instituting measures against North Korea (O-DPRK). According to the Swiss authorities, this means that the entities and persons designated in this Ordinance do not have any assets in Switzerland.

271. In addition to the freezing of assets, prior to the application date of UNSC Resolution 2231 Switzerland had also introduced systems for the prior reporting and authorisation of fund transfers exceeding a certain threshold where an Iranian person or entity was the beneficiary or originator⁷⁶. SECO has processed more than 5 000 authorisations and reports, which confirms the system's effectiveness at preventing proliferation-related financial transactions from taking place. No equivalent system exists for transfers where a North Korean person or entity is the beneficiary or originator.

272. Suspicious transaction reports sent to MROS are a source of information enabling the authorities to identify funds used for PF even where there is no link with a designated entity or person. MROS has received four cases involving a total of seven reports and 20 business relationships linked to Iran and/or proliferation, including in cases with no link to a designated person, which shows that enhanced due diligence does not rely solely on SECO's lists (see Box 15).

Box 15. Report of PF suspicions with no link to a designated person

A bank had a business relationship with a company involved in helicopter manufacture. According to a press article, a person who had sold war materiel to Iran (telescopic sights and dual-use equipment) had been arrested. This person was a signatory on the above-mentioned account, prompting the financial intermediary to check some details, particularly the transactions that had been made on the account. Doubts emerged in connection with funds credited to the account and the bank reported the business relationship to MROS. Following analysis, MROS referred the case to the MPC, which launched proceedings and, within 48 hours of the referral to MROS, had ordered the safe-deposit boxes held by the customer to be frozen.

FIs and DNFBPs' understanding of and compliance with obligations

273. SECO raises awareness of the various bodies concerned (producers of strategic goods, insurance, banks, carriers) to the risks of proliferation and PF. The measures taken include, in particular, annual meetings to discuss changes and trends in proliferation nationally and internationally, and the authorities' practices in relation to the export control scheme and relevant

⁷⁶ Before January 2014: CHF 10 000 [USD 10 130/EUR 9134] for reports and CHF 50 000 [USD 50 648/EUR 45 670] for authorisations. From January 2014: CHF 100 000 [USD 101 296/EUR 91340] for reports and CHF 500 000 [USD 506 480/EUR 456 700] for authorisations.

international sanctions. The most recent meeting, the content of which can be viewed on SECO's website⁷⁷, was held on 4 November 2015. SECO has also prepared a list of risk indicators for financial intermediaries (e.g. customers that are exporters, unusual quantities, unusual payment terms, delivery address). In practice, SECO is regularly contacted by financial intermediaries when they have doubts about the compliance of a transaction. In response to an increase in applications for permits, SECO has set up a non-objection letters scheme for non-controlled goods that do not require authorisation.

274. The SRC, working with specialist cantonal police services, conducts outreach on the risks of PF as part of the Prophylax prevention programme⁷⁸.

275. Despite these outreach measures, knowledge of the requirements concerning PF varies according to sector, as shown by the interviews conducted on site with financial intermediaries. Although the questionnaires designed to collect information about the customer (*know your customer*, KYC) and to monitor business relationships generally include a heading on financial sanctions, implementation of the requirements is inadequate.

Competent authorities ensuring and monitoring compliance

276. **According to Swiss authorities, the most important part of countering PF is controlling exports. Switzerland has thus established satisfactory co-ordination and collaboration between the authorities concerned when sensitive assets for proliferation are frozen.** Switzerland has effective IT tools, including the ELIC electronic authorisation platform, for processing SECO authorisations (approximately 3 500 authorisations and 5 200 reports examined in 2015) and for involving the competent authorities and economic operators directly affected (export industry, carriers, airlines, insurance companies, lawyers, trustees). In 2015 SECO reported to the MPC six cases where the Law on Embargos or the Law on Goods Control had been broken. However, none of these offences had a financial component.

277. **Unlike exports, the requirements related to targeted financial sanctions are not fully monitored.** FINMA believes that banks specialising in trade finance have not yet fully implemented the controls, which by nature are complex because they require individual scrutiny of transactions before they are carried out. Moreover, identifying dual-use assets requires specific in-house skills that they often do not have. FINMA is planning to carry out specific prudential checks of the operation of the systems set up by these banks. However, so far the authorities have not identified adequate measures for detecting failures to meet the requirements associated with targeted financial sanctions concerning proliferation. FINMA says that it has introduced additional audit points into the 2016 audit programmes⁷⁹. However, they will have to be adapted to the sanctions

⁷⁷ Secrétariat d'État 1a l'économie SECO (2015) *Seminaire sur le contrôle des exportations 2015*, https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/exportkontrolltagung.html

⁷⁸ Service de renseignements de la Confédération SRC (2015), *Prophylax*, www.vbs.admin.ch/content/vbs-internet/fr/verschiedene-themen-des-vbs/die-nachrichtenbeschaffung-des-bundes/wirtschaftsspionage-in-der-schweiz.download/vbs-internet/fr/publications/servicederenseignement/SRC-Prophylax.pdf

⁷⁹ Chapter 6, IO. 3.

related to proliferation and must be more thoroughly implemented so that they are not merely a box-ticking exercise. FINMA explains that these new audit points will provide a general assessment and will be followed up with more extensive checks where intermediaries are found to be deficient.

278. SECO carries out detailed checks when it receives information about a possible violation. If the violation is proven, SECO's legal department launches criminal proceedings on the basis of criminal administrative law. In the last few years, several individuals and companies have been sentenced to pay fines for failing to meet a reporting or prior authorisation requirement.

Conclusion

279. The outcome is achieved to a large extent; moderate improvements are required concerning audits of financial intermediaries. **Switzerland has achieved a substantial level of effectiveness for Immediate Outcome 11.**



CHAPTER 5. PREVENTIVE MEASURES

*Key Findings and Recommended Actions***Key Findings**

- Overall, the larger financial intermediaries understand their ML/TF risks. The ability of financial intermediaries in the para-banking and non-banking sectors to identify their ML/TF risks varies. Fiduciaries in particular, especially smaller ones, do not seem to understand fully the nature or level of their risks.
- Financial intermediaries put their customers into risk categories in order to apply appropriate measures. However, for some major players in private banking, a high-risk area, the categorisation appears inadequate. Moreover, the members of some non-specialist OARs use the criteria laid down by LBA regulations without adapting them to reflect the specific nature of their customers and their activities.
- In general, financial intermediaries meet their obligations as regards record-keeping and customer due diligence. They apply enhanced measures in higher risk situations, particularly those involving politically exposed persons (PEPs). Financial intermediaries have also defined measures for implementing the requirements introduced by the 2014 FATF Law, including to ensure that new customers are in compliance with their tax obligations.
- The process of reviewing existing customers in the banking sector is unsatisfactory overall. The failure to bring all bank customer portfolios into compliance with current due diligence requirements weakens financial intermediaries' risk-based approach.
- The agents of MVTs providers are only allowed to make money or value transfers for one financial intermediary that is authorised by FINMA or a member of an OAR. This measure strengthens the AML/CFT system against the higher risk associated with cross-border money or value transfers.
- The number of STRs has tended to increase. However, reporting by financial intermediaries is limited, occurring mainly when there are grounded suspicions of ML/TF. Financial intermediaries are not putting into practice the broader interpretation of the reporting requirement promoted by Swiss authorities.
- Financial intermediaries have their own internal control structures which ensure their AML/CFT systems are reviewed by an independent unit, except in the case of smaller intermediaries, particularly fiduciaries with locations abroad. Financial groups have AML/CFT policies that apply to all entities within the group.

Recommended Actions

- To ensure appropriate risk mitigation measures are taken, supervisors should require financial intermediaries to strengthen the risk criteria they apply to their customers, taking account of the specific nature of different customer categories and particularly the distribution channel used, the nature of links with higher risk countries, and the underlying risks of the customer's sector of activity. They should also require that in high-risk sectors (e.g. private banking), financial intermediaries with a large number of customers use a sufficiently detailed series of risk categories for appropriate measures to be applied to all customers.
- The commitment by financial intermediaries to reporting suspicious transactions should be increased by strengthening controls and sanctions against institutions that fail to do so. The authorities should also clarify the legislative distinction between the *right* to report and the *requirement* to do so (see R 20). Financial intermediaries should also ensure an STR is submitted wherever there is an alert that cannot be cleared after enhanced scrutiny of r unusual or suspicious transactions has taken place.
- The supervisors should set very clear objectives for all categories of financial intermediary to review all existing business relationships, including legacy assets, to check their compliance with current customer due diligence requirements, particularly on the origin of the funds, the beneficial owners and PEP status. Directives should target higher-risk sectors as a priority, i.e. private banking and fiduciaries involved in setting up international legal arrangements. The supervisors should also provide guidelines to financial intermediaries on regular and ongoing reviews of existing customer profiles, since an event changing a customer's situation is not enough to trigger a review.
- So that the activities of lawyers, notaries and fiduciaries related to the creation of legal persons and legal arrangements in particular are subject to customer due diligence requirements, Switzerland should extend the LBA to the non-financial activities carried out by these financial intermediaries, which are covered by the FATF standards.
- Competent authorities should check that fiduciaries operating through foreign branches or partnerships with foreign intermediaries have a correct understanding of their responsibility linked to the creation of corporate structures. To this end, supervisors should also require financial intermediaries to establish an appropriate risk management policy in view of the requests their customers make for corporate structures, taking account in particular the risks associated with the accessibility to information about structures registered in foreign countries.
- Switzerland should report on the effectiveness of new measures introduced by the FATF Law adopted in December 2014, which entered into force on 1 January 2016, and particularly the measures related to dealers/merchants ("*négociants*") and to the identification of beneficial owners of "operational" companies.
- FINMA should formalise the conditions on the basis of which information about customers may

be shared within financial groups active in Switzerland, for transparency purposes and to ensure the practices of all groups are the same.

- Supervisors should check that, when bank transfers are made, an independent verification is performed to ensure the data concerning the originator is correct and complete so as to ensure the operational risk is fully managed, particularly in establishments processing messages manually.

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280. The relevant Immediate Outcome considered and assessed in this Chapter is IO 4. The Recommendations relevant for the assessment of effectiveness under this section are R 5-23.

Immediate Outcome 4 (Preventive Measures)

See Box 1 in Chapter 1 (p. 27) explaining the concept of "financial intermediary" in the Swiss AML/CFT system, which includes the concepts of financial institution and designated non-financial businesses and profession (DNFBP).

281. Not all sectors subject to the LBA have the same weight or risk level in Switzerland. In their examination of the application of preventive AML/CFT measures by those subject to AML/CFT legislation, the assessors therefore did not give the same weight to all sectors and placed greater emphasis on analysis of the largest and higher risk sectors, i.e. the banking and private banking sectors as a priority.

Understanding of ML/TF risks and AML/CFT obligations

282. Financial intermediaries active in the banking sector and larger financial intermediaries generally have a good understanding of the ML/TF risks they are exposed to. These elements of risk concern not only their own activities (e.g. private banking, fund transfers, fiduciaries), but also their customers' characteristics (e.g. geographical areas where they are resident or with which they have financial relationships, PEPs, complex corporate/legal arrangements) or their business sectors (e.g. trade in gold and precious metals, commodities).

283. Financial intermediaries in the para-banking and non-banking sectors are less consistently able to identify the ML/TF risks to which they are exposed. In the **fiduciary sector** in particular, there is some reticence about accepting that the activity has a high risk level, since it is perceived as being managed by the preventive measures in place. Those interviewed believe that the high risk is due solely to a minority of professionals who are involved in complex corporate/legal arrangements linked with foreign countries. In the light of the information gathered during the on-site visit to the authorities and professionals, it appears that not all fiduciaries operating through branches or through partnerships with foreign intermediaries when setting up offshore entities have a proper appreciation of their responsibility linked to the creation of corporate structures.

284. Asset managers also believe that the high risk level assigned to their activity should not be taken at face value, particularly where the activity does not have a cross-border dimension and consists purely of management, without any ancillary fiduciary-related mandates. Moreover,

according to the professionals interviewed, the existence of a double level of customer due diligence by the depository bank and the third party manager also reduces the risk.

285. The high risk levels observed in the gold and precious metals sector seem to be understood by part of the sector. The representative interviewed stated that his restrictive criteria for picking suppliers from among listed industrial companies and rigorously selected artisanal mines (e.g. respect for local communities, the environment, safety of workers) enable him to reduce the risks connected with his counterparties. He also preferred direct relationships with no intermediaries and excluded activities in higher-risk countries. However, the assessors wonder how well the risks are understood by the sector as a whole in Switzerland; the on-site interviews established that varied approaches were taken by market players.

Application of risk mitigating measures

286. Financial intermediaries put their customers into risk categories in order to apply proportionate risk mitigating measures. They are subject to a legal requirement introduced in January 2016 to conduct a formal assessment of their risks. The assessors observed during on-site interviews that work was in progress but that not all financial intermediaries had completed their risk analyses.

287. Financial intermediaries generally had defined risk criteria appropriate to their activities. The basic criteria are usually taken from regulations (OBA-FINMA) or the LBA regulations of the OARs: registered office or residence of customers, geographical presence of the establishment, PEP status, segment of customer base, products and services offered. Some intermediaries make a distinction between single criteria, which on their own cause a customer to be categorised as higher risk (e.g. customers who have been criminally prosecuted in a financial case or whose activities are in a sensitive area) and combined criteria, two of which must be met in order for the customer to be categorised as higher risk (e.g. national of or residence in a higher-risk country, initial contribution of more than CHF 20 million). All the private banks interviewed use the value of a customer's assets as a criterion. They take the view that illicit funds are easier to hide in larger rather than smaller amounts of assets acquired legitimately.

288. However, some information raises reservations with a potential impact on the customer's classification and therefore whether the measures applied to mitigate risk were appropriate. For example, the distribution channel criterion, and particularly the inherent risk posed by asset managers supplying business, was not taken into account in the classification of the depository bank. In addition, the methodology used to classify higher-risk countries sometimes seems perfunctory, and substantial links between a customer and a country that is not their country of nationality or residence do not always feature in the indicators used. Consequently, the number of higher-risk customers of some establishments is inconsistent with the preponderance of customers linked to higher-risk countries. For example, one bank had categorised only 10% of its customers as higher-risk even though most of its customers had special links with high-risk geographical areas. Some establishments were also found not to be taking account of the underlying risks associated with the customer's sector of activity – in addition to their geographical location – particularly in the case of very high-risk sectors (e.g. the arms trade). This criterion could, for example, be weighted when drawing up the customer's risk profile. At the time of the on-site visit, the risk of the aggravated tax offence did not seem to have been taken on board by financial intermediaries when deciding which

were higher-risk countries. FINMA reports that this point will be included in AML/CFT audits as from the summer of 2016.

289. **In the case of some major private banking players with a large number of customers, the binary risk categorisation used (normal/high) seems inadequate.** A given risk category should contain relatively similar risk profiles so that the risk management and transaction monitoring measures applied are appropriate to all customers in that category. This cannot be the case where there is a large number of customers but only two categories (normal/high). The members of some OARs use the criteria laid down by the LBA regulations without adapting them to reflect the specific nature of their customers and their activities (e.g. some members of VFQ and Polyreg).

290. **Some risk mitigating approaches deserve to be highlighted.** If a customer has a high ML/TF risk and some of their activities may be covered by the LBA, in some cases the bank holding their account may require them to join an OAR in order to give the bank better protection against the customer's risks (e.g. some fiduciaries voluntarily join OARs for this reason). Moreover, in the MVTs sector, the agents of service providers are only allowed to make money or value transfers for one financial intermediary that is authorised by FINMA or a member of an OAR. This measure, imposed by regulations (Art. 2 para. 2 subpara. b. 5. OBA) strengthens the AML/CFT system against the higher risk associated with cross-border money or value transfers.

291. Transaction monitoring measures are generally proportionate to the risk level of customers because the monitoring system is directly linked to the customer risk indicators. They are also proportionate to the fixed sum thresholds of the alert scenarios, which are different for different risks except in the case of certain intermediaries (see para. 287).

Application of CDD and record-keeping requirements

292. **Financial intermediaries apply customer due diligence and record-keeping measures that, generally speaking, meet requirements.** For particularly high-risk activities (e.g. commodities trading), the institutions interviewed apply enhanced procedures with several systematic lines of defence to identify customers and to monitor and clarify transactions. The institutions working with intermediaries to initiate or manage relationships with customers state that they conduct due diligence on these intermediaries, i.e. the agents of providers of fund transfer services, independent asset managers and other business providers for private banks, and agents and brokers of insurance companies, despite the reported reticence where the intermediaries are operating as independent professionals.

293. **Due diligence is not carried out for all acts involved in preparing for the creation of legal persons because the activities that constitute financial intermediation, performed by service providers for companies in general, including lawyers, notaries and fiduciaries, are limited** (see R 22). The LBA covers activities that give the professional involved the power to control or invest in assets (Art. 7 OBA and Art. 2 para. 3 LBA). Lawyers, notaries and fiduciaries are therefore not covered by the LBA where their work is limited to preparing their customers' transactions and does not include preparing for or executing the financial part of those transactions. This means in particular that acts related to the creation of companies, legal persons and legal arrangements, in which they may be involved without formally preparing or being parties to transactions such as transfers, are outside the scope of the LBA. This restriction is important, particularly in view of the

activities of lawyers and fiduciaries in setting up corporate structures, especially those domiciled in non-cooperative countries.

294. The dealer in gold interviewed applies CDD measures to all counterparties, not just to the supply chain within mining companies. To manage reputational risk, he mostly buys from listed, and therefore transparent, industrial companies. In addition, concerning checks on mining conditions, he applies the rules recommended by the London Bullion Market Association, which can be used to check compliance with requirements on human and fundamental rights and environmental protection.

295. **There are very diverse practices in the banking sector for updating information about existing customers and, where appropriate, their change in risk level; overall the practices are not satisfactory. The large banks interviewed adopt a risk-based approach.** Generally, higher risks are reviewed annually. Reviews are also triggered by an event changing the customer's situation where the customer contact has knowledge of this, or by negative information reported in the press or by a third party, or where unusual events are noticed during transaction monitoring. Some major institutions active in retail banking, with large numbers of customers, also follow this rule for reviewing low risks. This is very inadequate. Transaction monitoring systems include alert thresholds set at a high level for customers classified as lower risk. Movements of significant amounts through their accounts will therefore not necessarily trigger an alert leading to a risk level review.

296. Moreover, **the absence of reviews of existing clients ("legacy assets") as new CDD requirements are introduced increases the risk** that some customers classified as low risk actually have higher risk characteristics. The need to review legacy assets is all the more pressing given the large non-resident component of Swiss institutions' customers, who have substantial assets and have had a relationship with the institution for many years. The revelations during the Arab Spring that Swiss bank accounts had been opened by dignitaries who had acquired the status of PEP during their banking relationship show what an important matter this is for Switzerland.

297. **The institutions interviewed stated that they were uncompromising about checking the source of new customers' funds.** They told the assessors that they require documents to certify the origin of funds (e.g. will, contract of sale of a building, shares in a commercial company). The corroborating evidence accepted varies depending on the risk. For example, for foreign customers, financial intermediaries contact local people with a financial or commercial relationship with their customer or seek assistance from external investigators. Financial intermediaries appear to exercise prudence in this area and indicated that they do not agree to start relationships with new customers if the source of funds cannot be established with a sufficient degree of certainty. Institutions involved in private banking experience greater problems with legacy assets held for very many years, particularly where they have been acquired through external growth (buying an asset manager) and were constituted when requirements concerning the source of the funds were less strict or were applied differently by the third party asset manager. It is a commercially sensitive matter and it is technically difficult to obtain the documentation proving the origin of the funds. Despite the efforts made, it therefore seems to be the case that the origin of funds cannot be established for all the assets held by financial institutions. Moreover, the financial intermediaries interviewed generally have not indicated having terminated relationships with these customers or applied enhanced measures to contain the existing risk.

298. **Financial institutions generally check that fiscal regularity of the assets** they accept. They ask customers to sign a declaration and, depending on the risks (especially their domicile for tax purposes), they carry out enhanced checks. They thus obtain information direct from the tax advisers who declared that the customer's tax information was in order and check the reputation of these people. They can also analyse themselves all the customer's tax requirements and request evidence of the corresponding declarations. Some large private banking institutions have a unit specialising in tax within their compliance department, which can issue recommendations on whether to accept a customer following analysis of their tax situation.

299. Financial intermediaries have also defined measures as a result of the introduction of the aggravated tax offence as a predicate of ML on 1 January 2016. They have launched programmes to review business relationships identified as potentially non-compliant with the tax rules of the customer's country of origin, on the basis of electronic checks.

300. **Financial intermediaries implement measures to check that they know who their customers' beneficial owners are.** Beneficial owners are identified on the basis of a customer declaration if the customer him/herself is not the beneficial owner. The financial intermediary checks the plausibility of the information provided, in line with the risks and the customer's particular situation. They rely on their own knowledge of the customer's business, public information, and if necessary information provided by external companies. If the intermediary is a fiduciary or an independent asset manager, they also often refer to information held by the bank. Like the situation in other countries, where legal persons and legal arrangements are created abroad, Swiss financial intermediaries depend on the information available in the country of origin, which can pose an obstacle to accessing the necessary data.⁸⁰ Financial intermediaries state that they manage to identify the beneficial owner in the majority of cases. When they are unsuccessful, they state that they reject the relationship/transaction. The casinos report 51 cases where a transaction was rejected under those circumstances in 2012, 42 cases in 2013 and 26 in 2014. However, this does not always lead to a report to MROS.

301. Where corporate schemes or structures, or complex legal arrangements are involved, the financial institutions interviewed also said that they exercised caution. They insist on understanding the point of using the particular structure set up, which must make sense in the customer's specific situation. If there are any doubts about the reasons for using a particular structure, its organisation or the identity of the beneficial owner, the financial intermediaries prefer not to enter into a business relationship; this is also the case where they do not manage to identify a natural person. However, the assessors were not provided typologies of cases where the financial institutions would reject a relationship or conversely any explanation of the structures that would have a particular purpose in view of the customer's profile. None of the establishments interviewed provided any information about facts that, according to their risk management policy, would constitute grounds for rejecting a relationship, especially based on the accessibility of information from the country where the structures were domiciled.

302. **Almost all financial institutions have an automated tool for monitoring their customers' transactions, which can detect unusual transactions. However, the weaknesses in control over**

⁸⁰ See Chapter 7, IO 5

the configuration of these systems limit the effectiveness of these tools⁸¹. Compliance departments conduct an annual review of the scenarios, configured to reflect the nature of the transactions, the customer's risk level and the operating profile of the accounts. The alert handling processes described by the institutions always involve periods of time for clarifying the situation and raising the issue to a higher level (from the customer contact to the compliance department) if no response is given or the response is unsatisfactory. Where information collected as part of an enhanced scrutiny process has not resolved the alert, some institutions place the customers concerned on a watch list, which means that for a limited period every transaction is monitored by the compliance department. One of the purposes of this list is that the compliance department reviews it regularly and decides whether or not an STR should be submitted to MROS. However, it emerged from the on-site interviews that STRs rarely originate from this list. Similarly, in institutions without a watch list, the vast majority of alerts not resolved following enhanced scrutiny do not prompt an STR.

303. Transparency measures for cash payments have been introduced, but their effectiveness could be reduced by the high threshold applied to them. Cash payments are very common in Switzerland, even for large sums of money⁸². To give these transactions a certain amount of transparency, the FATF Law of December 2014 established a special CDD scheme for dealers/merchants receiving cash payments of more than CHF 100 000 [USD 101 296/EUR 91 340]. In particular, they must identify their customer and the beneficial owner(s). So dealers/merchants can now choose either to receive cash payments of more than CHF 100 000 themselves by applying these CDD requirements, or have this type of payment made through a financial intermediary. This measure came into force on 1 January 2016 and it is therefore difficult to measure its effectiveness. During the on-site interviews, problems were mentioned that were related to the practical arrangements to be made by dealers/merchants potentially affected. The threshold of CHF 100 000 (approximately USD 101 296/EUR 91 340) seems very high, even for Switzerland, for ensuring transparency and limiting the use of cash usually associated with this type of measure.

Application of EDD measures

304. Financial intermediaries apply enhanced measures in situations with higher risk, particularly those involving PEPs or complex corporate/legal arrangements. The start of business relationships with higher risk customers is generally approved by the compliance department and, in the case of PEPs, subject to authorisation by a member of the executive body or the most senior management level.

Politically exposed persons

305. **The financial institutions and DNFBPs interviewed take a cautious attitude to PEPs.** As part of their risk-based approach, some institutions go further than required by Swiss law and extend the higher risk scheme to national PEPs and the management of international sports

⁸¹ See Chapter 6, IO 3

⁸² See Chapter 1

organisations. Most banks also include local PEPs in their definition and have various different ways of managing them, as part of a risk-based approach. This attitude towards PEPs is due to the reputational risk at stake, particularly with foreign PEPs in connection with their country of origin. FINMA's action in this area on both supervision and enforcement, especially more recently in the context of the Arab Spring and as a result of the asset-freezing ordinances issued by the Federal Council in 2011⁸³, has led to a further strengthening of financial intermediaries' preventive action in relation to PEPs and a tightening of the measures adopted⁸⁴.

306. As a general rule, the status of PEP is determined by researching public information sources and lists prepared by external service providers, as well as from external companies doing specific research in the case of foreign customers. This approach corresponds to the minimum procedures required by Federal Supreme Court case-law⁸⁵. The customer database is examined regularly (daily in the case of the largest institutions) using a tool that recognises the names of PEPs (e.g. Worldcheck) and follow-up is provided by the compliance department, which conducts the necessary clarifications.

Correspondent banking services

307. Business relationships with customer financial institutions using correspondent banking services are the subject of appropriate enhanced due diligence measures from the moment the relationship begins. The major Swiss universal financial institutions that have locations abroad centralise the process of entering into relationships with customers which are financial institutions within a department at their head office in Switzerland. Identification and KYC (know your customer) of the prospective financial institution are documented using research procedures on both the bank (e.g. governance, local reputation, customer base, geographical establishments) and its appetite for risk. An interview with the target bank's compliance department can also take place. A special committee chaired by the executive body decides whether the relationship may be established. Payable-through accounts are banned by the internal rules of some institutions. Monitoring of transactions by the correspondent bank is based on variances from the usual traffic volumes, whether the countries of origin or destination are higher risk, messages accompanying wire transfers that indicate suspicious transactions, and the processes set up to cope with variations from the standard profiles, or the existence of quicker alerts for higher-risk customers.

Targeted financial sanctions

308. **Financial intermediaries implement special measures to meet their obligations in terms of financial sanctions linked to terrorist financing, but there is still progress to be made.** Customer databases are regularly checked against the lists of the State Secretariat for Economic Affairs (SECO) and also the EU, OFAC and UN using external tools (e.g. Worldcheck), but in

⁸³ See Chapter 3, IO 8.

⁸⁴ See Chapter 6, IO 3.

⁸⁵ Judgment of the Federal Supreme Court 6B_729/2010, 8 December 2011, c. 3.5.5 and the references mentioned.

many cases the frequency is insufficient. Financial intermediaries in the para-banking sector and smaller financial intermediaries are generally less well equipped and rely on the bank or on external service providers to conduct these checks. The names of beneficial owners, owners of controlling interests, those close to/families of PEP customers are also checked due to the reputational risks associated with customers who may be subject to sanctions. In general, checks of the implementation of requirements in relation to targeted financial sanctions should be strengthened to improve compliance in this area⁸⁶.

5

New technologies

309. The members of some OARs (ARIF, Polyreg and VQF) carry out activities involving the use of new technologies that are the subject of particular attention from FINMA. The requirements placed on them by the FATF Law came into force on 1 January 2016 and it is therefore difficult to demonstrate their effectiveness. However, FINMA has already worked with the OARs over the last few years to ensure their members involved in the use of new payment methods (*bitcoins*) undertake adequate customer due diligence.

Higher risk countries

310. All the financial intermediaries interviewed said that the countries listed by FATF were on their lists of higher risk countries. However, the consequences of a customer being linked with one of these countries are not always correctly applied (see above).

Wire transfers

311. The financial institutions interviewed that are involved with wire transfers said that procedures were in place to ensure the originator information on the transfer order was correct. In most institutions, there is an automatic function for filling in the wire transfer message field reserved for the originator with the data in the information system. On this basis, the assessors are not convinced that an independent check is carried out to ensure the data on the originator is correct and complete, guaranteeing that the operational risk is fully managed. This reservation also applies to smaller establishments which process the messages manually.

Reporting obligations and tipping off

312. Financial intermediaries have two channels available for reporting suspicious transactions⁸⁷. They can use the “right” to communicate (Art. 305^{ter} CP) if they have just a mere suspicion, i.e. if they have some indications suggesting an irregular transaction (e.g. transaction of an unusual type and amount involving parties in higher risk countries), or if they have “a probability, a doubt, or even an uneasy feeling about continuing a business relationship”⁸⁸.

⁸⁶ See Chapter 6, IO.3

⁸⁷ See Technical Compliance Annex, R.20

⁸⁸ MROS 2012 Annual Report, p. 10.

313. Financial intermediaries are also subject to a reporting requirement where there is a grounded suspicion (Art. 9 LBA), i.e. if the degree of certainty that the transaction is linked to ML/TF is high and they have tangible evidence of this (e.g. production of forged documents and evidence of fraud). The Swiss authorities have clarified their expectations in this regard, opting for a broad interpretation by stating that financial intermediaries are required to submit a report “where they cannot rule out the possibility that assets are of criminal origin”⁸⁹. This interpretation is confirmed by case-law of the Federal Criminal Court from March 2015⁹⁰.

314. In 2015 for the first time, the total number of reports made on the basis of the right to report exceeded the number based on the requirement (58.6% compared with 41.4%)⁹¹, which suggests that financial intermediaries are starting to apply the authorities' broad interpretation concerning reporting. Most of the reports made on the basis of the right came from the banks.

315. **Financial intermediaries must do more to report suspicious transactions**, despite a substantial overall increase in 2015 in the number of reports (2 367 in 2015 compared with 1 753 in 2014, i.e. up 35%)⁹². This increase is mainly due to the banks (reports up by 44%, or 2 159); in the other sectors reporting fell overall. However, there is scope for even greater progress in the banking sector, especially for applying a more flexible notion of suspicion. FINMA's senior management agreed with this analysis during the on-site visit⁹³. Financial intermediaries explained that this figure was due to the requirement level they apply to the acceptance of new customers and the high standard of CDD when entering into a relationship. However, the number of reports made as a result of negotiations being broken off preceding the launch of a business relationship for ML/TF reasons was not particularly high (7 reports in 2015⁹⁴). The financial intermediaries also state that they prioritise quality of reporting: a large proportion of their reports is forwarded to the prosecution authority by MROS⁹⁵. They particularly emphasise the need for grounded suspicion, which requires a sufficient amount of certainty as to the suspiciousness of the transaction. However, in the case of suspicions that are not entirely grounded, although progress has clearly been made (more than half of STRs in 2015 were made on the basis of the right to report), financial intermediaries are not making sufficient use of the right to report even though it is available to them. The dual legal regime (right and obligation) for STRs affects the understanding and interpretation by financial intermediaries of the circumstances in which there is a requirement to report suspicions to MROS (see R 20). Outreach actions by the Swiss authorities to explain their broad approach to the right to report, in addition to the contribution made by the courts' case-law (see R 20) on widening the scope

⁸⁹ MROS 2007 Annual Report, p. 3.

⁹⁰ Federal Supreme Court, 4A_313/2008, 27 November 2008; Federal Criminal Court, SK.2014.14, 18 March 2015. This case-law was confirmed by the Federal Supreme Court on 24 May 2016 (ATF B 503/2015).

⁹¹ MROS 2015 Annual Report, p. 10.

⁹² See Chapter 3, IO.6, Table 3.2.

⁹³ Approach confirmed publicly since then; see [FINMA press release of 7 April 2016](#) – FINMA “asks the banks to rethink how they report suspicious transactions and client relationships to the criminal prosecution authorities”.

⁹⁴ MROS 2015 Annual Report, p. 12.

⁹⁵ See Chapter 3, IO 6.

of the requirement (Art. 9 LBA) have therefore not entirely borne fruit. The legislative framework should be clarified to explain more clearly the distinction between the right and the requirement to report and to prevent the same level of suspicion from being covered by both legal provisions.

316. It also emerged from the interviews with financial intermediaries that reporting a suspicious transaction is seen as a recognition of failure in the implementation of customer due diligence and transaction monitoring, which those interviewed felt could cast serious doubt on the integrity and due diligence of the institution concerned. A culture change among Swiss financial intermediaries in this area is to be encouraged.

317. STRs are often submitted by financial intermediaries too late. Most reports are made on the basis of external sources of information such as press articles (34%)⁹⁶ or requests by national or international judicial authorities. The proportion of reports that originate in alerts raised by the monitoring systems of the financial institutions themselves remains small and is on the decrease (18% in 2014 and 7% in 2015). In practice it seems that, before submitting a report, financial intermediaries often wait for external information, e.g. in the media, that confirms a situation detected as potentially problematic. This raises questions over the degree of analysis in relation to alerts, the review of unresolved alerts following enhanced scrutiny by a unit of highly qualified experts within the compliance department, or indeed the standard of alert system configuration.

318. **The number of failures to meet the reporting requirement seems to be underestimated.** FINMA and the OARs, which are subject to a subsidiary requirement to report to MROS, only made 16 reports between 2006 and 2015⁹⁷. Moreover, during the on-site visit, it was noticed that some financial institutions had a significant number of alerts raised by their transaction monitoring tools that had not been resolved following enhanced scrutiny/further clarification. This number, which is often much higher than the number of STRs made, prompts questions about whether there has been a possible failure to meet the reporting obligation. Audit companies very rarely mention breaches of the obligation to report grounded suspicions and say nothing about the use of the right to report a simple suspicion which could have been used by the financial intermediary. FINMA plans to intensify the enhanced auditing of these aspects from 2016⁹⁸.

319. **Where responsibility for submitting a report to MROS lies with a collegial body, this body should make decisions in complete independence.** Switzerland mentions the case of a private bank engaged in cross-border activities which had internal rules stating that the decision to report lay with a due diligence committee. The assessors felt that, depending on the composition of the body making suspicious transaction reporting decisions and its decision-making rules, business lines could exert excessive influence over the decision as to whether to report. FINMA states that it has added an extra audit point to the AML/CFT audit programme for 2016.

320. **Abolishing the automatic freezing of assets during MROS' analysis period and the requirement to execute the orders of customers to whom the suspicion relates helps to remove the risk of direct or indirect disclosure to the customer that a report has been made**⁹⁹.

⁹⁶ MROS 2015 Annual Report, p. 27

⁹⁷ See Chapter 3, IO.6, Table 3.2

⁹⁸ See Chapter 6, IO.3

⁹⁹ See Chapter 3, IO.6

However, the requirement to notify customers of the existence of information issued by a foreign criminal authority could potentially mean that the financial intermediary informs its customer of proceedings launched against them abroad and indirectly reveals the STR made in Switzerland. Some of the financial intermediaries interviewed mentioned a case where they had had to tell their customer about a request for mutual legal assistance concerning them in a criminal matter abroad, despite the report to MROS being accompanied by a non-disclosure obligation.

Internal controls and legal/regulatory requirements impeding implementation

321. Financial intermediaries have an independent department responsible for compliance.

In the larger financial institutions and DNFBPs, the independent compliance function is generally performed at head office by a business unit also in charge of legal affairs. Its manager reports directly to the executive body. In smaller DNFBPs, it is the compliance manager, who is sometimes someone from outside the company. The compliance departments of the institutions interviewed have unlimited access to information. They make sure the tasks involved in the preventive management of AML/CFT risks are carried out and are part of the institution's internal control structure. In some institutions interviewed, evidence of collaboration with the compliance department is considered as part of annual performance appraisals and therefore plays a part in determining the variable component of customer relationship officers' remuneration. This approach is a useful way of encouraging staff to contribute to financial intermediaries' AML/CFT policies.

322. Financial intermediaries under the authority of FINMA have set up internal control structures which ensure their AML/CFT system is reviewed by an independent unit. For other financial intermediaries, this internal control function does not seem to be clearly established.

323. Financial groups have AML/CFT policies that apply to all entities within the group.

However, there is still some uncertainty about the control exerted by fiduciaries over their foreign branches, especially when these are in offshore financial centres. Groups' locations abroad have local teams that report to the head office's compliance department. Internal and external audits of the foreign entities regularly check up on compliance with the group's internal directives and local regulations¹⁰⁰.

324. Swiss groups and the Swiss entities of international groups can generally undertake consolidated monitoring of customer transactions involving several of the group's entities.

It is up to the subsidiaries/branches to inform the central compliance department of their ML/TF risks. Where necessary, the central department must distribute information about the customers to the entities concerned. In the absence of a universal "third party" database, the generally compartmentalised structure of Swiss banking groups' information systems in principle prevents consolidated monitoring by the compliance department at head office of a single customer in a business relationship with several of the group's entities. However, this access restriction is limited because the computer servers of foreign subsidiaries are often located in Switzerland. Some Swiss entities of international groups are subject to internal transparency requirements applicable within the group, which require the circulation of certain information about (suspect) customers. They mentioned the creation of information-sharing systems approved by the supervisors both in Switzerland and in the country where the head office is located. For the purposes of transparency

¹⁰⁰ See Chapter 6, IO 3.

and to ensure the same practices are followed by all financial groups active in Switzerland, FINMA should formally establish the conditions under which these information-sharing practices may be implemented, including where the head of the group is a foreign financial institution. High risk customers, and particularly PEPs, are often required to sign waivers of their right to banking secrecy in order to allow the group's entities to share their information about these customers.

325. Because of very strict local laws, particularly on data protection, it can be the case that local entities are prohibited from disclosing their STRs even to the head office's compliance department. A list of "persona non grata" is often made available on a secure, shared website run by the compliance department. It is used to alert the compliance managers within subsidiaries and branches of customers with a bad reputation, without breaching the confidentiality of the STR issued by the entity that entered their name on the list.

Conclusion

326. Financial intermediaries as a whole implement preventive measures that are proportional overall to their risks, but there are improvements still to be made, particularly in the classification of risks by certain sectors. Financial intermediaries as a whole are not sufficiently engaged regarding the need to submit STRs. **Switzerland has achieved a moderate level of effectiveness for Immediate Outcome 4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- The risk-based approach implemented by FINMA is generally satisfactory. The approach used by certain OARs does not adequately take differing levels of risk into account, for example as concerns the fiduciaries that are linked to the creation of offshore structures.
- FINMA's supervision ensures close and continuous control of financial intermediaries and allows for an intensification of the measures as needed. FINMA's authority is recognised by financial intermediaries it directly supervises and by the OARs. This ensures compliance with its remedial measures in the majority of cases.
- The possibility of sanctions affecting the ability to carry out activities as a financial intermediary is feared by the profession. However, the conditions for these sanctions and how often they are actually imposed on financial institutions or their management found responsible for serious violations of AML/CFT aspects of the supervisory law reduce the potentially dissuasive character of such sanctions.
- The mechanism for ensuring the fit and proper conduct of natural and legal persons allows the probity of financial institutions and their directors who hold an investment or control, or the beneficial owners, to be certified.
- The management, co-ordination and follow-up of FINMA's controls of the OARs are generally satisfactory. However, a discrepancy was noted in the approach to risks and the controls of the financial intermediaries in the same sector which may be directly supervised to FINMA or affiliated with an OAR. This is particularly the case for MVTs providers, which are considered to be a high ML/TF risk.
- Measures were recently adopted to reinforce the requirements for the qualification and independence of audit firms which effectively inspect the financial intermediaries. However these new requirements do not impose a regular rotation of the audit firms. In general, the ordinary controls carried out by the audit firms are of an essentially formal character and the material weaknesses are not always revealed fully. FINMA nonetheless provides for a systematic review of the quality of the reports. The OARs do not carry out similar checks of the quality of the reports on their affiliates.
- Awareness-raising on suspicious transaction reporting among financial intermediaries appears to have had limited results so far. The controls and the sanctions by the supervisory authorities in this area remain insufficient and have not increased reporting. FINMA is aware that this is a point for improvement and attention for the supervision and inspection programmes.

Recommended Actions

- FINMA should require that audit firms substantially intensify and prioritise checks on STR reporting as called for in the audit point on this aspect introduced in 2016. It should also apply sanctions to institutions which fail to comply. The OARs should adopt a similar approach.
- To reinforce the sanctions regime, particularly with regard to the financial intermediaries most at risk, the competent authorities should sanction serious violations of the supervisory law by coercive measures other than simple findings decisions or injunctions to comply with the law. The individual sanctions imposed should moreover be systematically published, possibly in an anonymous manner. FINMA should also set a sanctions scale for the OARs.
- FINMA should intensify its supervisory reviews and ensure that the intensity and the depth of the checks carried out by audit firms are able to detect insufficient implementation of AML/CFT measures by financial intermediaries. In this connection, Switzerland should consider the issue of FINMA resources and those of the audit firms in order to ensure that adequate supervision is provided for all supervised entities, particularly those most at risk.
- The OARs should review their approach to the inspections based on risks in order to ensure that their nature, their methodology and their scope are tailored to the risks. A greater convergence in the approach to risks and inspections should be applied between FINMA and the OARs in order to ensure that inspections and oversight are appropriate for all financial intermediaries in a single sector (for example, fiduciaries).
- Switzerland should continue taking steps to further reinforce the independence of audit firms. It should also take measures to improve the quality of the controls carried out by audit firms on the affiliates of OARs, and the performance of their tasks should be subject to quality control by an independent authority.
- The supervisory authorities should refine the definition of the risk profile for certain of the entities under their supervision and particularly consider in this connection fiduciaries when they have branches established abroad, issuers of pre-paid cards that are not connected with bank accounts, the OARs with affiliates from different business sectors (which themselves should ensure that the risk criteria that they apply are differentiated on the basis of the activities carried out by their affiliates).
- FINMA should require that audit firms carry out in-depth and critical checks of the methodology applied for the categorising risks, as well as the systems for monitoring transactions and the criteria of these systems.
- Supervisors should provide periodic information to financial intermediaries concerning the AML/CFT inspection reports, by category or sector of activity, in order to clarify expectations regarding the implementation of AML/CFT obligations.

327. The relevant Immediate Outcome for this Chapter is IO 3. The relevant Recommendations for the evaluation of the effectiveness in connection with this section are R 26-28 and R 34-35.

Immediate Outcome 3 (Supervision)

See Box 1 in Chapter 1 (p. 27) for details on the concept of “financial intermediary” in the Swiss AML/CFT system, which covers the notions of financial institution and designated non-financial businesses and professions (DNFBPs).

Implementation of measures preventing criminals and their accomplices from holding or becoming beneficial owners of a significant participation or control of financial institutions or DNFBPs, or occupying a management position.

328. **FINMA uses the “garantie d’activité irréprochable” mechanism to ensure that managers, shareholders and board members of financial institutions are fit and proper.** At the time of applications for licensing of financial institutions as well as at the time of changes of managers or significant shareholders, FINMA applies this fit and proper test. The mechanism ensures that managers, significant (10%) shareholders or the persons who may exercise significant influence over the management of a financial institution have the appropriate personal and professional qualifications. FINMA examines in particular an extract from the court record, a declaration attesting that the persons are not subject to a procedure in progress or terminated in Switzerland or abroad. It thus verifies the existence of other roles or qualified investments held by these persons. For foreign persons, FINMA works in collaboration with the authorities of the country or countries in question. This procedure applies to all financial intermediaries directly supervised by FINMA – banks, securities traders, funds management, investment companies, insurance companies – as well as directly supervised financial intermediaries¹⁰¹ and OARs.¹⁰²

329. Criteria for fitness and properness are also applied throughout the activity of an institution under the supervisory law. Thus, when an AML/CFT inspection or a procedure subject to the CDB¹⁰³ brings to light an incident or an irregularity that may activate the fit and proper test (for example, an organisational failing in the area of AML/CFT), FINMA establishes the responsibilities in the institutions and declares the removal of a person from any managing functions. A recent case of a prohibition to practice for a period of 4 years following a serious violation of the due diligence obligations was mentioned to the assessors.

330. This approach allows FINMA to have an overall and continuous view of the natural persons and legal persons, including the aspects which are not strictly part of its supervision. Practice and case law show that the fitness and properness criteria are applied in a broad manner. Thus, an establishment that has failed in its obligations under the FATCA law¹⁰⁴ or which has participated in

¹⁰¹ See Chapter 1

¹⁰² See Chapter 1

¹⁰³ See Chapter 1

¹⁰⁴ *Foreign Account Tax Compliance Act*, [Loi fédérale sur la mise en œuvre de l'accord FATECA entre la Suisse et les États-Unis](#), 672.933.6

tax violations committed by foreign customers in connection with the provision of cross-border services will see its status as “fit and proper” brought into question. FINMA adopted 16 decisions concerning fit and proper tests in 2014 and 12 in 2015.

331. FINMA also maintains a watch list of persons whose fit and proper status has been questioned as a result of controls or indications received from third parties, or against whom measures for removal were declared. This file is accessible to a restricted number of managers at FINMA and only contains the data that are relevant for determining fitness and properness. It complies with strict rules for the processing of data. The elements appearing in this data base are examined when a fit and proper test is requested.

6

332. **The OARs verify that their affiliates have a good reputation.** In particular, they have access to the extracts from the court records through FINMA. The affiliation conditions appearing in the articles of association of the OAR or in its LBA regulations generally require that the affiliates, their management, board members and employees and the persons who hold a significant participation in their share capital have a good reputation and are fit and proper. In 2015, VQF refused four requests for affiliation on this basis, and Polyreg refused two. Changes made in the management of the affiliate and/or its shareholding are notified to the OAR (for example, within 30 days for Polyreg¹⁰⁵) or indicated in the LBA annual report of the affiliates (for example, OAR G¹⁰⁶). The fact that the changes made no longer allow the institution to meet the condition of “respectability” (“*honorabilité*”) or good reputation constitutes a basis for exclusion from the OAR.

333. **The shareholders, rights holders and management of enterprises trading in gold and precious metals are subject to requirements of respectability and fitness and properness criteria under the same conditions as other financial intermediaries, for their activities relating to the LBA.** On the other hand, in their industrial foundry activities, the dealers are not required to verify the conditions for the extraction of metals and the possible violations of the rules that apply to these operations, whether they relate to the prevention of corruption or the use of metals with criminal origins, or connected with ethics or the environment. However, the dealers voluntarily apply due diligence measures with regard to their suppliers.¹⁰⁷

334. **The authority responsible for the verification of casinos, the Federal Gaming Board (CFMJ),¹⁰⁸ undertakes intensive checks of the “good reputation” and the “fitness and properness” of directors,** management or persons exercising control over or holding a participation in a casino at the time of a concession application and on a permanent basis thereafter.¹⁰⁹ It thus ensures the legal origin of the funds contributed by the applicant and the participation holders. The CFMJ considers that the principal ML risk in casinos derives from the shareholders and it is thus particularly vigilant in supervising these aspects.

¹⁰⁵ PolyReg Association Générale d'Autorégulation (nd), *Déclaratoin des mutations*, www.polyreg.ch/f/formulaire/mutation.html

¹⁰⁶ OARG (2015), *Rapport de Révision 2015*, http://www.oarg.ch/images/stories/pdf/Rapport_de_revision_2015-2101.pdf

¹⁰⁷ See Chapter 5, IO 4

¹⁰⁸ See Chapter 1

¹⁰⁹ See Technical Compliance Annex, c. 28.1

335. FINMA issues injunctions against service providers operating an activity outside of the law (38 decisions in 2014), particularly in the sector of the transmission of funds. The procedures are carried out rapidly (3 or 4 months) and the case law of the Federal Supreme Court which rules on appeals is generally favourable to this.

Verification of a continuous understanding of the ML/TF risks in the financial sectors and in all of the other sectors

336. FINMA has an overall, continuous, objective and realistic vision of the ML/TF risks which affect the financial sector and the vulnerable aspects on which to act in order to contain these risks. FINMA's management recognises that Switzerland is, in relative terms, significantly exposed to ML/TF risks because of the characteristics of the Swiss market, which is open to international exchanges and to the major worldwide groups, and the weight of its financial sector. Cross-border private banking is the most exposed area. Moreover, over recent years, the general ML/TF risk has increased due to various factors, particularly the diversification of the customer base of financial institutions, the broadening of the range of target countries or the places from which business flows originate, with an increase in the volume of business coming from emerging countries which include a high number of PEPs. FINMA also finds that the AML/CFT approach of certain financial institutions in Switzerland has not changed at the same speed or in proportion to the change of the risks associated with their customers. In particular, the quality and the depth of the due diligence carried out have not always progressed to reflect the level and the nature of the risks encountered. Since 2011, several international corruption cases reported by the media and which are in progress have concerned Swiss financial institutions. The cases demonstrate in particular these shortcomings. Thus, in two cases, Petrobras and 1MDB, a total of 24 banks established in Switzerland were subject to investigation, and FINMA opened enforcement proceedings, (see above) against 9 of these. For FINMA, this development ought to result in a more proactive approach for inspections, with prior identification of the highest risks.

The approach of FINMA with regard to banking and other financial institutions

337. In order to implement this proactive approach to inspections, in 2013 FINMA introduced a system of classification of financial institutions directly under its responsibility on the basis of their ML/TF risk. This integrated and centralised methodology was set out in a document outlining the supervisory approach (*Concept de surveillance*) that was updated in 2014. The classification relies on a matrix that combines the *inherent* risk (gross risk incurred) and the *coherent* risk (capacity to manage risks) calculated in particular on the basis of the results of inspections. FINMA then allocates an overall risk score which allows it to classify the entity into one of three risk categories: low, medium and high. This classification is dynamic and is reviewed at least once each year at the time of the inspection, or more often if a particular development justifies this, such as a change of management or strategy. For example, FINMA announced the recent change of classification for a bank, rating it as high risk because it presented several irregularities that had not been resolved since 2013, including failings in the information system that did not allow the customer advisors to have an overall view of the relationship with their customers, and because of weak internal controls.

338. The overall approach of FINMA demonstrates a detailed understanding of the risk factors and the fact that they are taken into account to analyse the individual situations of

financial institutions. On the basis of the information that was communicated to the assessors, particularly concerning the score of the banks that were met, the results appear to reflect the overall reality of the risks of these institutions. However, the assessment of banks classified as having an overall low risk calls for reservations since for certain of these banks, this level of risk is due to factors such as a remediation plan in progress, yet these same banks have a high proportion of customers connected with geographic zones at risk.

Table 19. **Classification of Banks and Securities Traders by Category of ML/TF Risk**

6

Low overall risk: 125 financial intermediaries

- 0 universal international banks
- 14 cross-border private banks¹¹⁰
- 3 domestic private banks
- 99 retail and commercial banks
- 9 securities traders that only practice trading on their own account
- 0 securities traders that practice trading for third parties

Medium overall risk: 190 financial intermediaries

- 2 universal international banks
- 103 cross-border private banks
- 24 domestic private banks
- 26 retail and commercial banks
- 0 securities traders that only practice trading on their own account
- 14 securities traders that practice trading for third parties with deposits held by a bank / not holding the deposits themselves
- 21 securities traders that practice trading for third parties, holding the deposits themselves

High overall risk: 14 financial intermediaries

- 1 universal international bank
- 10 cross-border private banks
- 1 domestic private bank
- 1 retail and commercial bank
- 1 securities trader

Source: FINMA (2016)

339. FINMA communicates once each year with the financial institutions concerning their prudential rating, with a general indication of their scores regarding AML/CFT. In the case of high

¹¹⁰ The 14 cross-border private banks classified as low risk are in gradual cessation of activity ("run off").

risk, a formal communication is made to the entire management of the institutions in question. They then know that they are subject to reinforced monitoring by FINMA, which presents the measures expected in order to be released from this process.

340. **In order to refine the assessment of the inherent risks and to better define the profile of the institutions, certain improvements may be considered:** even though this is a secondary factor, the per capita GDP does not appear to be a relevant indicator to measuring the ML/TF risk of a country, particularly with regard to the risk of corruption. Concerning the sectoral risks, the classification of a private bank should take into account the highest underlying risks of the business development agents, which are independent managers, as compared to the model in which the bank works with its own business managers. This element must be taken into account in the Swiss context because of the weight of the private banking sector and the exposure of this sector to ML/TF risk.¹¹¹

The approach of FINMA with regard to directly supervised financial intermediaries (IFDSs)

341. FINMA also undertakes a classification according to the risks of financial intermediaries that have chosen to be directly supervised by it (IFDSs).¹¹² The classification on the basis of inherent factors relies on a weaker granularity comprised of two levels of risk (higher risk, normal risk). This approach is justified since the IFDSs are often single activity institutions whose risk factors are thus less numerous.

Table 20. **Classification of FINMA Directly Supervised Financial Intermediaries (IFDSs) by ML/TF Risk Category (June 2015)**

Supervision category: heightened risks	155
IFDSs presenting a heightened risk: - money transmitter - exchange operations - fiduciary activities (organ activities, trustee, holding of estate securities as a fiduciary) - asset managers whose clients are located outside of the EU (as from the 3rd quarter of 2013) - new payment methods (electronic currency, money transfer via the internet, mobile payments)	
Supervision category: normal	89
IFDSs that do not present heightened risks and IFDSs that do not operate as professionals independently of the commercial activity	
Total	244

Source: FINMA

¹¹¹ FINMA indicates that since the on-site visit, the concept of supervision has been adapted (June 2016) and this element has been included in the risk categories.

¹¹² Independent wealth managers, fiduciary activities, money and securities transmission services, currency exchange offices, credit services – particularly consumer credit – and traders in precious metals, see the concept of supervision, July 2015.

342. **As concerns the inherent risks, for certain activities appearing under higher risks, the business model may be taken more into account.** For example, certain fiduciaries have locations established abroad and in particular in offshore markets, which may be used for tax concealment or for ML resulting from criminal activities. As concerns the issuers of pre-paid cards, the risk must also be differentiated between the issuers whose cards are connected to a bank account on the basis of a partnership with one or several banks and the issuers of anonymous cards purchased in cash from dealers/merchants.

343. **FINMA has a dynamic approach to inherent risks,** and it indicated for example that it would soon re-evaluate the ML risk of suppliers of electronic payment methods on the basis of its experience. It appears to FINMA that the risk associated with these new payment methods may be considered as reduced because of the quality of the documentation offered, as compared with the transactions in cash (with the exception of pre-paid cards not linked to bank accounts, see above).

344. A rating system taking into account the *coherent* risks leads the IFDSs to be classified in three categories: Rating 1 (the highest risks) – 48 IFDSs, Rating 2 – 51 IFDSs and Rating 3 (the lowest risks) – 145 IFDSs. The coherent risk is determined on the basis of the results of the controls or major changes occurring in the organisation of the institution or in its development. For example, a provider of money transfers was recently placed in a higher category because it works with a large network of agents and is undertaking a full reorganisation of this network.

The approach of FINMA with regard to the OARs

345. **FINMA undertakes a classification of the OARs according to risk. The classification of OARs with affiliates from different business sectors should be specified in order to take into account the sectors at higher risk, for example lawyers or fiduciaries.** The 12 OARs are classified in 3 principal categories (low, average or higher risks). In 2015, 3 were classified as low risk, 4 as average risk, 5 as high risk, of which 2 were classified at very high risk (“acute”) The annual classification is based on the number and the structure of the affiliates, the inherent risk of the affiliates (according to the analysis of the various categories of activities recorded for the IFDSs and presented in Table 6.2. above), as well as the assessment of FINMA of the supervision policy and the organisation of the OAR itself. This assessment results from the presence of qualitative indicators that may reveal acute risks, such as a flagrant change in the structure of the members or deficiencies in the organisational structure of the OAR. FINMA should plan how the final rating of “generalist” OARs should reflect the presence as well as the proportion of affiliates that present heightened risks, particularly because of their intrinsic risk, such as lawyers or fiduciaries.

The approach of the OARs with regard to their affiliates

346. **The OARs have put in place procedures and risk classification criteria that are specific to each of them and which allow them to have a general view of the risk exposure of their affiliates.** The general practice of the OARs is to rely both on the conclusions of the annual AML/CFT audits and on their own assessments in order to classify the affiliates by risk level. Of the eight OARs met on site, only one had not yet categorised its affiliates by risk level and the processing was under way for one other.

347. **Insufficiencies were noted in the criteria for assessing the risks of the affiliates.** The eight OARs that were met have processes for classifying the various risks and developed various risk scales: 4, 3 or 2 levels. The more detailed risk segmentations (4 levels) are used by OARs whose affiliates are the most homogeneous and which apply risk criteria that take into account the various methods of exercising the activity, i.e., OAR ASG (wealth managers) and OAR-ASA (insurance). Several OARs have very heterogeneous types of affiliates (for example, providers of money transfers, wealth managers, lawyers, fiduciaries), which leads them to apply broad risk criteria that are common to all of the affiliates, which does not allow them to satisfactorily recognise the risks that are intrinsic to each category. This may limit the knowledge of risks by the OARs. One of the OARs applies 2 levels of risk, with one half of its affiliates classified as high risk. This situation demonstrates a weakness in the scaling of the risk categories that rely on insufficiently diversified risk factors and does not allow for a satisfactory approach to the verification by risks.

348. **The application of a shared approach to risks and supervision by FINMA and the OARs for financial intermediaries in the same sector, which may be directly supervised by FINMA or affiliates of an OAR, must be intensified.** The assessors noted the efforts made by FINMA to promote for the OARs the principles of good classification of risks. The still insufficiently harmonised application of these principles may be prejudicial to a shared and continuous understanding of the risks, which factors may lead to increased exposure to these risks, and to correctly controlling them. For example, a greater convergence is necessary for independent asset managers or fiduciaries, which are sectors considered to be particularly exposed to risks, especially when the customers are foreign or when they carry out activities by means of foreign branches (for example, OARs G and ASG, VQF, Polyreg, for the wealth managers). In addition, the fact that a single authority does not have a view of the entire sector has an impact on the shared approach to risks. This is the case, for example, for determining the total number of Swiss fiduciaries having establishments abroad.

The control, depending on the risks, of the degree of compliance by the financial institutions and the DNFBPs, and their AML/CFT obligations

Control of the financial institutions and the IFDSs by FINMA

349. **The implementation of the risk-based approach for the organisation and conduct of the AML/CFT controls by FINMA is generally satisfactory.** The overall level of AML/CFT risk presented by a financial institution determines the context of the supervision by FINMA, its frequency and its intensity, as well as the nature of the supervision instruments that are used.

350. The range of supervision instruments includes the ordinary annual controls (known as “audits”), which consist of an examination based on documents and an on-site visit, and which are entrusted to an audit firm (see below). The supervision instruments of FINMA thus include additional audits, which may be conducted by a third party (“*Chargé d’audit*”) in order to examine an audit point in depth, as well as supervision interviews carried out by FINMA. FINMA may carry out the controls on site using its own means, on the basis of an in-depth audit programme (a supervisory review). For banks, securities traders, fund managers and investment companies, the AML/CFT controls take place in the context of the prudential supervision carried out by FINMA. The AML/CFT aspect is thus one part of the more general examination to which financial institutions are subject annually. This annual LBA/prudential audit provides a global vision of the financial institutions, particularly with regard to the general governance functions, the business policies or the risk appetite and thus allows FINMA to make a continuous assessment of the ML/TF risk.

351. FINMA entrusts the conduct of the “ordinary” AML/CFT controls to audit firms for reasons that are essentially connected with its organisation and the use of its own resources. The audit firms carry out their tasks according to the instructions of FINMA. The same audit firm is responsible for the prudential and AML/CFT controls. When the audited institution is a financial group, the audit firms are mandated for a consolidated control of all of the establishments of the group, in Switzerland and abroad. Audit instructions are sent to the domestic entities of the audit network in order to ensure a homogeneous review of all of the establishments of the group. Measures were recently adopted which appear to improve the requirements for the qualification and independence of the audit firms which carry out the controls.¹¹³ They maintain the rule of rotating the “principal auditor” (the partner of the audit firm who signs the report) every 7 years, without accompanying this with measures addressing the audit firms themselves, such as for example a regular rotation of the mandates for these firms. They now prohibit a financial intermediary that performs financial or accounting audit (or “review”) activities from carrying out AML/CFT audits.

352. FINMA’s instructions to the audit firms carrying out AML/CFT controls vary in scope and intensity on the basis of the risks of supervised institutions. The audit firms undertake an independent assessment of the risks of the institution under audit when preparing their work. This analysis is compared with that of FINMA in order to ensure that the views converge. FINMA establishes a standard audit programme on an annual basis¹¹⁴ that is identical regardless of the level of risk of the institution under audit. This audit programme was shared with the assessors and covers the spectrum of the AML/CFT obligations. For each financial intermediary, FINMA specifies specific controls which are added to the standard programme and level of sampling of the files to be examined. The various elements are subject to an annual critical review (the auditor attests that there is no element allowing him/her to conclude that there are irregularities), replaced by a more in-depth audit every 3 years (the auditor gives a positive assurance of the lack of irregularities). Certain aspects are however subject each year to an in-depth audit which involves carrying out sampling of a group of files selected randomly, for example the application of due diligence measures with regard to the customers, particularly with regard to higher risks.¹¹⁵ In addition, on the basis of an analysis of the risks inherent in the activity of the audited entity and its control risks, the frequency and the scope of the basic audit may be increased.

353. Following their work, the audit firms submit a report which includes the LBA aspects. They also complete an “LBA form” which contains the 11 headings of the standard audit programme. This tool allows FINMA to have a useful data base in order to have an overall view of the tendencies revealed by the controls. The statistical data of FINMA, which were consulted by the assessors, show that of the 336 audits conducted in 2014, 58 irregularities were noted (37 in 2013 and 41 in 2012). This figure appears to be low, even though the tendency is upwards. From the interviews conducted during the on-site visits, it emerges in fact that the controls by the audit firms are essentially of a formal nature (for example, insufficient clarifications, missing documentation) and are intended to assess whether the audited institution took the necessary steps to satisfy the LBA obligations in an appropriate manner.

¹¹³ See Chapter 1

¹¹⁴ FINMA Circular 2013/3

¹¹⁵ 2016 Audit Programme

354. The exchanges with the institutions that were met – audit firms and financial intermediaries – also showed that the audit firms do not always undertake a critical analysis of the quality of the information system or the methodology for classifying the risks. This affects the assessment that they make with regard to the customer files selected randomly in each risk category.

355. In addition, it emerged from the on-site interviews that the controls carried out every 3 years regarding the transaction monitoring systems are insufficient, particularly with regard to the calibration of the criteria used in order to detect unusual transactions. Moreover, until the end of 2015 no control concerning the actual implementation of the screening of financial sanctions and asset freezing lists was provided for in the standard audit programme. The assessors however noted that in 2014 and 2015, specific reviews were carried out in this area with a sampling of banks. The insufficient results from these reviews with several institutions led FINMA to include controls of the asset freezing mechanisms in the standard audit programme for 2016. Three additional audit points appear in the 2016 control programme.¹¹⁶ Essentially formal, they do not require in-depth investigations concerning the effectiveness of the mechanism and the quality of the processing of alerts. FINMA indicated that these new audit points will provide a general assessment and will be followed by extended controls of intermediaries with significant deficiencies.

356. **Finally, the checks of files by sampling with regard to the reporting obligations carried out on a three-year basis until the end of 2015 appear to be insufficient.** In effect, the auditor does not refer to the number of alerts that are not closed by the institution after additional clarifications. The assessors thus observed with regard to a large financial institution that 380 unresolved alerts had been recorded without any shortcomings in the reporting obligation being noted by the audit firm.¹¹⁷ On the whole, the number of irregularities with regard to the reporting obligation found by the audit firms during the year 2014 on the basis of the tool for assessing the of the entry forms amounted to 4. As from 2016, FINMA will carry out controls with regard to this obligation on an annual basis. Such an approach based on intensified controls and effective sanctions appears to be essential at this stage in order to follow up on awareness-raising carried out by MROS and FINMA.

357. **Supplementary controls are applied for the institutions most at risk.** For medium- and high-risk institutions, FINMA defines additional actions, either a supplementary audit to widen the scope of the elements reviewed (for example, verifying whether the irregularities found during the previous year's review concern other areas of activity), or a targeted audit (with an auditor that FINMA itself assigns) concerning important points, for example, in 2011, at the time of the movements connected with political developments in North Africa (the "Arab Spring"), for a more in-depth analysis of the PEP customers of 20 banks, or recently, in connection with the Petrobas case and the aspects connected with corruption. FINMA may also carry out controls on site using its own resources (supervisory reviews), which allow it to conduct in-depth and exhaustive controls with regard to the entire AML/CFT mechanism. These may take several months and in certain cases, they may be initiated without advance notice for the financial institution. The number varies from one year to the next (3 in 2012, 10 in 2013 and 4 in 2014) and FINMA plans to intensify these in 2016.

¹¹⁶ See Chapter 4, IO 11

¹¹⁷ See also Chapter 5, IO 4

The supervisory reviews to which the assessors had access on site show the quality and the depth of the work carried out by FINMA.

358. To a certain extent, the irregularities noted by the controls conducted by the audit firms appear to be addressed in the actions taken by FINMA. In addition, FINMA reviews the quality of the audits and rates the audit firms for each of their mandates (supplementary audits or targeted audits). The audit firms retained by FINMA supervised intermediaries are also subject to supervision by the Federal Audit Oversight Authority (the ASR).¹¹⁸ Nonetheless the implementation of controls by the audit firms must be reinforced, under the close supervision of FINMA, because of the importance of the results in determining the risks and thus the intensity of the supervision to be applied. **The question of the resources of the audit firms and those of FINMA must be addressed in order to ensure that adequate resources are at the service of all intermediaries subject to the LBA.**

The controls of the OARs by FINMA

359. **FINMA is also implementing an approach based on risks for the controls of the OARs.** The periodicity of its control actions as well as the scope and the depth of the measures change, depending on the risk categories of the OARs. For example, the annual audit will be standard, in-depth or intensive depending on the risk level. The number of supervision interviews also varies, with a minimum of one each year. The practice of providing assessment letters, which inform the OARs of the general assessment made by FINMA and the areas of improvement to be made, is annual for the OARs most at risk. FINMA also determines annual topics for oversight, for example virtual currencies and means of payment. FINMA requires all of the OARs to report their key figures (i.e., new affiliations/withdrawal of members, complaints by third parties, supervision activities, number of sanctions, etc.).

360. **Other than the risk profiles of the OARs, which determine the supervision measures to be implemented, FINMA has identified priority aspects that guide its activities with regard to the OARs.** It has thus determined a three-part approach to the risk:

- The risk of independence connected with the quality of the governance and the fact that the majority of the members of the management body of the OAR (the “Committee”) must be independent from the affiliates. FINMA thus validates the appointments to the Committees and it may refuse a member, for example because of non-professional activities that are too close to the interests of the OAR. FINMA thus remains attentive to the movements of the affiliates within the OARs or the declaration of sanctions, for which the slowness or absence may be useful signals;
- The risk of regulatory arbitration and the use of the LBA regulations as a “marketing” instrument. FINMA must therefore approve the regulations. For the new regulations, FINMA established checklists of points to be addressed and conducted discussions with the OARs concerning the formulation of certain requirements;

¹¹⁸ See Chapter 1

- The risk of supervision arbitration, which requires that FINMA be able to perform direct controls over the OARs and oversee the changes in affiliates.

361. **The definition of these lines of action allows FINMA to focus its activities and to optimise the allocation of its resources and to ensure close and continuous supervision of the OARs.** The interviews that took place at the time of the on-site visits showed that, in the great majority of cases, there is an ongoing and regular relationship between the OARs and FINMA and that it is not limited to an annual visit at the time of the control. FINMA expects significant cooperation from the OARs, which are however concerned for their autonomy. Tensions may sometimes arise and blocking points may appear that could have an impact on the expected co-operation from the institutional point of view.

362. The control of the OARs is carried out in principle by FINMA itself. The exception that the FSA/FSN OAR enjoys, which FINMA does not directly control, because of the protection of professional secrecy of lawyers/notaries, does not appear to be justified and is in contradiction with the measures set by FINMA to manage the risk of arbitration of supervision of the OARs. In fact, by definition the financial intermediation activities of lawyers/notaries cannot be subject to professional secrecy. Under these conditions, FINMA appoints an external auditor to conduct the controls of this OAR.

363. FINMA cannot act directly with the affiliates of the OARs nor can it act in the place of the OAR with regard to the affiliates. However, in an increasing number of cases (10 in 2011, 43 in 2012, 47 in 2013 and 71 in 2014 – the figures transmitted by FINMA and consulted by the assessors), FINMA communicates information to the OARs concerning a financial intermediary that it has received from a customer, the police or a third party and asks them to take the necessary measures. FINMA thus contacted an OAR following notification by a third party, asking it to undertake verifications of an affiliate that conducted transfers without performing the required due diligence.

The controls of the OARs with regard to their affiliates

364. **The application by the OARs of the risk-based approach is imbalanced, particularly because the intensity of the controls is not sufficiently differentiated according to the risks.** The majority of the OARs take the risks into account for the frequency of the controls (for example, Polyreg, ARIF, FSA/FSN). However, in general, the nature and the level of the risks do not impact the scope of the controls.

365. The majority of the OARs rely on audit firms accredited by the ASR, in accordance with legislative requirements,¹¹⁹ in order to carry out their controls. The others review their affiliates themselves (such as VQF) and if necessary with the assistance of a third party expert (such as OAR FCT). In 2014, 2 905 audits of the affiliates of the OARs were carried out by external companies and 1 729 by the OARs' own auditors. Some thirty supplementary audits were carried out, according to FINMA figures to which the assessors had access (for example, OAR G).

¹¹⁹ See Chapter 1

366. The control cycle depends on variable criteria according to the various OARs, but they are to a certain extent related to the AML/CFT risk. Certain OARs (such as OAR ASG) have instituted the rule of an annual control during the first three years of affiliation and then less frequently if the results do not show any major failing; others authorise their affiliates to space out the controls if two consecutive controls have not shown any inadequacy and if the OAR has carried out a risk analysis that shows a low ML/TF risk (such as Polyreg, OAR-ASA, ARIF). Finally, others use the criterion of the number of customer files (such as OAR FCT, OAR FSA/FSN). This purely quantitative criterion is applied to a random selection of files (outside of the cases subject to follow-up supervisory measures) and is insufficient to satisfy an approach which must take the risks into account. In the intermediary years, the affiliates are required to submit an annual AML/CFT report that is analysed by the OAR.

367. In terms of the scope of the controls, the most widespread practice is that of a standard review to which supplementary requests are added depending on the results of the last controls (such as Polyreg) or the ad hoc controls (such as OAR G). The sampling rates of the files are variable depending on the OARs, but 10% represents an average indicator that was observed. Audit procedures should provide for the possibility for the auditor to set the selection criteria for the files to be sampled in order to take into account the nature and the level of the risk of the audited entity. As concerns, for example, the control carried out by the OAR with regard to lawyers or notaries, a criterion for selecting files such as that for domiciliary companies registered in countries at risk should be applied. In addition, depending on the OAR with which they are affiliated, the controls and the oversight are not equivalent for the financial intermediaries in the same sector, for example the providers of money transfer services or fiduciaries that are exposed to ML/TF risks of the same nature and the same level, which is prejudicial to controlling the ML/TF risks. The assessors recognise the efforts made by FINMA to harmonise the application of the risk-based approach to the OARs, but they consider that greater convergence is necessary.

368. The majority of the failings revealed by the OARs that the assessors met are failings related to insufficient formalisation in the know-your-customer documentation. The number of deficiencies is however generally low (for example, VQF – 71 failings out of 517 controls). In general, the controls often rely on checklists and standard forms prepared by the OARs and appear to be of an essentially formal nature. The qualitative dimension appears to be the most often lacking. The approach of the reports by the audit firms should be improved on this point. They must be encouraged to accompany the formal and qualitative results of the audits with more substantial assessments concerning the nature of the practices implemented by the affiliates, the impact that these have on their risk control and the adjustments to be made. In addition, contrary to the rule applicable to the audit firms acting with regard to the FINMA supervised intermediaries, the audit firms of the OARs are not subject to controls by the ASR. Measures should be taken in order to reinforce the “quality assurance” of these audit firms.

The effective, proportionate and dissuasive character of the corrective actions and/or sanctions that are applied

The approach of FINMA with regard to financial intermediaries

369. **FINMA imposes corrective actions on the financial intermediaries that it directly supervises following the annual control procedures by means of the supervisory action it can take** (see above). This consists of supervision interviews organised systematically either after examining the audit report, the supplementary audits (widening of the standard audit) or one-off audits (in order to clarify specific points), or supervisory reviews. In the context of the supervision, FINMA may also issue injunctions to comply with the law, intended to eliminate the irregularities found in the application of the AML/CFT obligations. This may concern formal violations of AML/CFT obligations (for example, the absence of the customer's address in several files), but also serious violations of the supervisory law which do not always result in an enforcement procedure (see below). Such a measure does not appear to be proportionate to the demonstrated seriousness of the failing discovered which relates to objective criteria of violating the provisions. These various means of supervision may be combined and/or used successively in order to put an end to the deficiency. FINMA sets the timeframes and verifies that the recommended measures are indeed applied, if necessary for all of the customers.

370. The intensive monitoring team of FINMA may take action when this is necessary and go on-site sometimes for several months.

371. **The scope of these supervision instruments allows the measures to be intensified in order to respond to the deficiencies that are noted.** The authority of FINMA is recognised by the financial intermediaries. This allows it to ensure compliance with its remediation measures in the majority of cases. FINMA thus indicates that 26 of the 41 irregularities calling for follow-up that were noted in 2012 were resolved within the year, and in 2013, 28 of 41.

372. FINMA may also choose enforcement, which results in binding decisions that are subject to appeal, in order to sanction violations of the AML/CFT obligations. This procedure assumes that there are indicators of a possible violation of the supervision law connected with the AML/CFT obligations (for example, the failure to comply with due diligence obligations, the failure to comply with the reporting obligation and a violation of the OBA-FINMA). In order to decide on the appropriateness of opening an enforcement action, FINMA relies on a matrix that combines the interest of undertaking a procedure (such as the risks for the investors and the correct operation of the market) on the one hand, and the seriousness of the violation (such as systematic and repeated infringements or the performance of unauthorised activities) on the other hand. The primary objective of the procedure is to ensure compliance with the law.

373. At the end of the enforcement procedure, the measures that may be ordered include, possibly cumulatively, an injunction to comply with the law, the appointment of an investigation monitor who shall be charged with overseeing the implementation of the injunction on site, a decision of findings, limits on the activity, the confiscation of any earnings acquired, a prohibition to practice, the withdrawal of authorisation, liquidation, or the publication of a decision. Swiss authorities indicate that injunctions to comply with the law are systematically accompanied by a reprimand/notice. Monetary sanctions are not provided for (R 27).

374. **FINMA has reinforced its enforcement activities** during recent years, but the number of suspended procedures led to **questions concerning the duration of the procedures and thus the effectiveness of the sanctions imposed**. In 2014, 128 enforcement procedures were opened, 124 were closed and 107 were ongoing, compared to, respectively, 24, 12 and 14 in 2010.¹²⁰

375. **The sanctions imposed in the enforcement context appear to be insufficient with regard to the seriousness of the violations that were found, and thus are not dissuasive**. Of the 10 examples of cases that led to enforcement measures communicated by Switzerland¹²¹, 5 procedures led to a decision of finding despite the presence of a serious violation of the supervision law and 5 others led to restrictive measures (withdrawal of authorisation, liquidation, prohibition to practice, confiscation). The assessors note also that in 2011, in the case known as the “Arab Spring”, three establishments were subject to enforcement procedures with regard to their failings connected to the identification of politically exposed persons that led to accepting funds with doubtful origin. Decisions of findings of serious violations of the supervision law, with the obligation to reimburse the procedure costs, were adopted. In 2013, one bank, via which funds transited in the amount of CHF 400 million belonging to people close to a politically exposed person, was sanctioned by a measure to limit its activity, with a prohibition to accept PEP customers for a period of three years and a re-definition of the identification and acceptance procedures for business relations with PEPs, with monitoring by an external auditor.

376. FINMA indicates that it prefers measures to prohibit or restrict activities for the dissuasive effect that is in principle high, because they have an effect on the development of financial intermediary activities and on their reputation. The interviews on site have shown that the possibility of sanctions that may affect the ability to carry out activities as a financial intermediary, for both natural persons and legal persons, is feared by the professionals. These sanctions are cited in FINMA’s report on the enforcement activity that has been published annually since 2014¹²² and which presents all of the decisions declared, in an anonymous manner. The visible and potentially educational character of these measures should be reinforced by a “real-time” publication that is accessible on the internet site of FINMA and which would accentuate transparency, without however systematically naming the persons in question. In addition, FINMA indicates that the actions to ensure fit and proper conduct and the prohibition to practice that weighs on the personal capacity of the bank directors and employees to perform functions in financial institutions are also effective sanctions. However, it was not possible to determine whether the exclusion measures adopted before the end of the on-site visit, in the context of tests for fitness and properness, were applied to the bank directors and employees involved in major cases of a serious violation of the supervision law with regard to AML/CFT or if they resulted in the criminal investigations cited above. Switzerland indicated, however, that six procedures were recently opened against the banks as well as their directors involved in the 1MDB and Petrobras cases. Since Switzerland relies on plea

¹²⁰ FINMA Table of Statistics, August 2015 – The number of procedures opened also includes preliminary investigations which will not necessarily lead to action, as the subject entity may have waived its authorisation, been liquidated or a criminal complaint has been substituted for opening a procedure.

¹²¹ Examples of cases published in the FINMA *Enforcement Report*, cited in the Swiss contribution for IO 3, p. 59.

¹²² Finma (nd), *Transparency in enforcing the law*, <https://www.finma.ch/en/documentation/finma-publications/reports/enforcement-reports/>

bargaining with banks in a certain number of cases,¹²³ it appears to be essential to ensure that that directors of financial institutions are subject to effective administrative sanctions. Generally, the too numerous stages prior to the sanctions diminish the potentially dissuasive character of this.

377. In addition, the fact that violations classified as serious by FINMA do not systematically lead to sanctions for financial intermediaries, but result in findings or obligations to restore the legal order, constitutes a weakness of proportionality and thus impacts the dissuasive and effective character of the Swiss regime. In fact, the enforcement procedure may result in a decision of findings that is generally joined by the appointment of an auditor. FINMA announces a diversified range of restrictive measures, but the frequency and the proportionality of the measures actually declared are insufficient.

378. In parallel with the actions of FINMA, the Supervisory Commission on the CDB 16¹²⁴ may declare sanctions for failings with regard to due diligence obligations. The Commission is an independent body of the Swiss Banking Association (“Swissbanking”). All of the banks on the Swiss market signed the CDB 16 (except for one that is in liquidation) and thus agreed to be subject to the Commission’s sanctions.

379. The Commission may bring a case itself, for example, following a press article or a bank may bring a case denouncing itself following the conclusions of an audit, or by the auditor itself. In addition, FINMA informs the Commission when it opens a procedure against a bank and the Commission may then decide to open a case as well. Eight to nine cases are opened each year. An independent investigator conducts the case (9 months) and proposes to the Commission whether to close the matter or issue sanctions. The report of the investigator is sent to FINMA and may serve as evidence in the enforcement procedure. The decisions of the Commission are not public, but the information frequently circulates among the professionals. The Commission may only issue monetary sanctions for which the amount depends on the seriousness of the violation, for example, the systematic character of the violation or the intention on the part of the bank to circumvent the rules, and the financial power of the bank. In 2014, it imposed fines in the amount of CHF 30 000 [USD 30 388 / EUR 27 402] to CHF 250 000 [USD 253 240 / EUR 228 350] on 9 different banks. At the beginning of 2015, a fine in the amount of CHF 1 million [USD 1.01 million / EUR 0.91 million] was declared. The CDB 16 can only sanction the bank, as a legal entity. FINMA however may also process the case from the point of view of the liability of natural persons, with regard to fit and proper conduct.

380. The sanctions of the Commission complete the range of sanctions that may affect banks in Switzerland. There are nonetheless limits in the practice, particularly the absence of a public character for the individual decisions, which reduces the dissuasive character, and the fact that its scope is restricted to the due diligence obligations.

The approach of FINMA with regard to the OARs

381. FINMA prefers using dialogue to resolve possible difficulties with the OARs. This approach turns out to be effective because of the great capacity of persuasion and influence

¹²³ See Chapter 3, IO 7

¹²⁴ See Chapter 1

that it possesses with these organisations, which is confirmed by all of the OARs that were met. With regard to the OARs, FINMA possesses all of the supervisory and enforcement measures that it can use against the financial intermediaries. The OARs should also be subject to a recognition procedure by FINMA, which may also decide whether to withdraw this recognition and thus prohibit them from exercising their activity. This prospect acts as a very strong incentive for the OARs to observe the recommendations of FINMA, which are considered to be injunctions to be followed. FINMA, for example, envisioned placing an OAR under supervision and withdrawing its recognition because it considered that the re-election of its Committee threatened the correct operation of the OAR and the supervision of the affiliates. The OAR thus decided to replace the members of the Committee. Moreover, during the on-site interviews, FINMA reported a case of a formal procedure launched against one OAR in connection with the text of an LBA regulation, resulting in a court decision against the OAR. These practices remain exceptions.

382. In the majority of cases, when there is a problem with an OAR, FINMA undertakes a dialogue, organises supervision interviews, if needed in the presence of the enforcement services when the intensification of the measures is necessary and solutions are found by this method. For example, in the case of an OAR which accepted assets from new members in the area of payment methods, FINMA considered that the supervision of the OAR was insufficient, particularly since it did not have experience in this area. During the supervision interview, with minutes, FINMA encouraged the OAR to convince these members to join an OAR with more experience in the sector or FINMA.

The approach of the OARs with regard to their affiliates

383. **The OARs all have a procedure for monitoring the audit reports** that are judged to be insufficient or defective with regard to the implementation of the AML/CFT obligations. An audit of FINMA concerning the year 2014 shows that the monitoring of the reports is done by computerised means, according to a coherent and efficient procedure. In the event of minor failings, the monitoring measures decided by the OAR lead to a corrective action within a required timeframe (for example, OAR G, OAR Fiduciaire, OAR FCT) and this point leads to an audit in the following year. More serious irregularities are submitted for decision to a disciplinary body and lead to an injunction to comply with the law, an additional audit or a sanction procedure.

384. **The sanctions declared by the OARs are not generally of a nature to ensure compliance with the AML/CFT obligations and avoid violations.** According to the information provided by FINMA, the number of sanctions declared by the OARs against their affiliates is in fact low, even though it has increased since 2010 with 158 sanctions declared, compared to 217 in 2014 (for approximately 6 000 OAR affiliates at the end of 2014¹²⁵). In 2014, these sanctions were distributed as follows: 117 fines, 33 warnings/reprimands, 27 exclusions. It is noted that certain OARs have never declared sanctions for events connected with AML/CFT. The examination of a certain number of sanctions decisions and the lists of the sanctions imposed by the OARs shows that identical violations are sanctioned differently from one OAR to another, for example, the violation of the obligation to provide an annual report will be sanctioned by a warning and/or a fine which may go up to CHF 1 800. This heterogeneous range of sanctions may play a role in the choice of affiliation with an OAR. In addition, in an OAR where the maximum fine is CHF 100 000, an affiliate that has

¹²⁵ See Chapter 1

poorly assessed its risks and violated its obligation to report and block assets may be fined CHF 60 000 [USD 60 778/EUR 54 804], which appears to be an insufficient sanction. Moreover, there are cases where serious negligence is recorded and are sanctioned by relatively light fines (CHF 1 000) because the affiliate has remedied its shortcomings. Also, the affiliates of the OARs that were met indicate that they fear a possible withdrawal of their authorisation to perform financial intermediary activities. However, it appears that the exclusions declared by the OARs concern more the lack of co-operation by the affiliates and the payment of membership fees rather than issues directly connected with AML/CFT requirements.

Impact of supervisory actions on compliance

385. The Swiss authorities recently implemented new practices and supervisory tools, and have contributed to reinforcing the professionalism and the expertise of the entities responsible for supervision. These innovations appear to reinforce the impact of the supervisory actions on the level of compliance of the financial institutions, even if they have not entirely borne fruit and weaknesses are still noted:

- The annual requirement of some form of report on the implementation of the AML/CFT obligations, whether this is an annual report, a self-certification or an audit, for all entities subject to the LBA – financial institutions or DNFBPs – is a positive measure. This also incites the supervised entities to maintain a high level of engagement with regard to the questions of risk monitoring and the prevention of abuses for ML/TF purposes. It also allows the supervisory authorities to collect information and data concerning the measures that are applied.
- The conceptual and methodological framework of the organisation of supervision, by using audit firms and/or by using the resources of FINMA, favours an overall continual process of supervision over financial intermediaries. It appears to offer favourable conditions to increase the intensity of controls over the supervised entities and for guaranteeing that the results of these controls and the corrective actions produce effects on the level of compliance of the entities subject to the LBA.
- Since 2012, FINMA possesses an IT tool in which the results of the LBA data entry forms completed by the auditors are recorded. This database allows access to comparative information concerning compliance levels of financial intermediaries and the irregularities that have been found, for a single category of players, within a single domain or for a specific audit point, and to assess the changes from one year to the next. This tool is a useful instrument to facilitate the management of the supervision by FINMA, the updating of the risk score of the financial institutions and the preparation of future audit programmes. It can also detect in advance the intermediaries that may present problems and thus contribute to improving their compliance levels.
- In general, FINMA remains vigilant and critical with regard to the audit reports.¹²⁶ Moreover, the fact that FINMA itself may conduct supplementary audits creates a positive tension for the work

¹²⁶ In connection with the conclusions and recommendations of the Financial Sector Assessment Programme (FSAP) conducted by the IMF in 2014.

of the auditor. The reinforcement of the quality of the audits should over time produce effects on the compliance level of financial intermediaries. However, thought should be given to the limit on the independence of the auditors that may be represented by the audit firms being remunerated by the audited financial intermediary itself.

- FINMA has deployed efforts to reinforce its interaction with the OARs and to establish a culture of dialogue with these organisations. Even if there is still progress to be made, the professionalization of the OARs has improved, which may over time reinforce the compliance level of affiliates.

6 *Promoting a clear understanding of AML/CFT obligations ML/TF risks*

386. **In general, the supervisory authorities rely on various supports to favour good understanding by the financial sector of the AML/CFT obligations.** The supervisory authorities particularly use their internet sites where information concerning supervision is available (authorisations, legal bases, documentation, news, etc.). FINMA organises information sessions for specialised audiences such as the entities subject to the LBA or audit firms on the occasion of the publication of new regulatory provisions. Once each year it leads a conference on the topic of AML/CFT, which is attended by the representatives of the OARs, the financial intermediaries as well as the representatives of the various authorities participating in AML/CFT (criminal authorities, MROS, the Federal Customs Authority, the CFMJ). Workshops and presentations on current topics are organised (for example, at the 2015 edition: presentation of the national risk assessment, the concept of “controlling person” and its practical application, tax offences as a predicate for ML). In addition, FINMA publishes an annual activities report, as well as, since 2014, an annual report on the enforcement activity. This publication presents anonymized cases, as well as statistics concerning investigations and procedures.

387. FINMA and all of the OARs thus regularly organise seminars or training sessions (that are occasionally mandatory), or participate in events intended to inform and sensitise the entities subject to the LBA with regard to the AML/CFT rules and their scope for professional practices, and the expectations in terms of supervision.

388. The CFMJ regularly organises meetings with the ML/TF managers of the gaming houses. In 2015, three meetings were thus organised in order to present new developments in 2015, particularly the revision of the LBA and the OBA-CFMJ, and the conclusions of the national risk assessment report.

389. **The supervisory authorities do not provide information concerning the overall results of AML/CFT audits.** This practice would allow them to show favourable developments achieved at sectoral level or categories of financial intermediaries, as well as the points that need improvement. Moreover, in this connection a specific accent could be placed on the obligations to report suspicious declarations in order to sensitise the entities subject to the LBA further with regard to their obligations in this area, particularly by using the examples of anonymized cases.

Conclusion

390. The supervision by FINMA is generally of a satisfactory level, but improvements are still needed particularly at the level of the sanctions that are available and applied. In addition, the risk-based approach applied by the OARs is still insufficient, particularly for the sectors most at risk, such as the fiduciaries. Efforts are thus expected in order to reinforce the conduct and follow-up of controls by audit firms and the sanctions applied in the case of violations. These weaknesses weigh on the overall rating. **Switzerland has achieved a moderate level of effectiveness for Immediate Outcome 3.**



CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- Domiciliary companies were identified some time ago by the Swiss authorities as a factor that increased ML/TF risks. The NRA however does not propose any in-depth analysis of the mechanisms by which the use of domestic domiciliary companies or legal persons created in Switzerland in general may be abused and used fraudulently for ML/TF purposes. The respective roles of private management banks, their foreign affiliates and lawyers/ fiduciaries linked to the creation of domiciliary companies abroad also does not appear to be sufficiently assessed by the authorities.
- Swiss legal persons comply with general obligations of transparency which constitute a basic protection against their use for ML/TF purposes. The measures applicable to small associations, for which the ML risk cannot be excluded from the outset, appear to be insufficient.
- Switzerland has adopted measures during recent years intended to reinforce the transparency of legal persons: companies must maintain a register of their shareholders/ partners and their beneficial owners, including for companies with bearer shares. The impact of the measures with regard to bearer shares has already been observed in the records of the registry of commerce.
- In general, the records of the registry of commerce appear to be accurate and reliable and they constitute the basic reference used by the financial intermediaries. In addition, the responsible persons with the registries of commerce demonstrate due diligence and take the necessary steps to ensure that the records remain up to date.
- The range of sanctions available for failings regarding reporting obligations appear to have a sufficiently severe character to be dissuasive for legal persons, which may particularly explain the limited number of sanctions actually made. However, the dissuasive character of the applicable sanctions appears to be insufficient, since there are no sanctions of a criminal or administrative nature in the case of shortcomings regarding the reporting obligations.
- Information concerning the beneficial owners of legal persons created in Switzerland is accessible to the competent authorities, provided that such information is available. With regard to legal arrangements, competent authorities have access to information concerning the beneficial owners, including by means of international co-operation.
- The assessors were not able to assess the effectiveness of the new provisions on the transparency of legal persons that were introduced by the Act of 12 December 2014 and entered into force only on 1 July 2015.

Recommended Actions

- Switzerland should undertake a targeted analysis of the ML/TF risks of legal persons created in Switzerland in order to assess the appropriateness of the measures in place to manage and control the identified risks and possibly to adopt the additional measures that may be needed.
- This study should also examine the risks connected with establishments in offshore markets or in uncooperative countries and the role of financial intermediaries linked to the creation of these arrangements (particularly private banks and fiduciaries), with regard to the legal persons created in Switzerland.
- Switzerland should report on the effectiveness of the new provisions introduced by the FATF law of December 2014 and in particular the measures relating to bearer shares and the maintenance of registers by the legal persons of the beneficial owners.
- Switzerland should put in place a regime of sanctions that are sufficient to dissuade the failure to observe obligations to declare the acquisition of bearer shares or beneficial owners.

391. The relevant Immediate Outcome for this Chapter is IO 5. The relevant Recommendations for the evaluation of the effectiveness in connection with this section are R 24-25.

Immediate Outcome 5 (Legal Persons and Arrangements)*Public availability of information on the creation and the types of legal persons and arrangements*

392. **Information concerning legal persons is accessible to the public.** In addition to the provisions of the Civil Code and the Code of Obligations,¹²⁷ information concerning the creation and the types of legal persons existing in Switzerland is provided to the public by the Secretary of State for the Economy (the SME portal)¹²⁸ and the Federal Office of the Registry of Commerce (OFRC),¹²⁹ and the Cantonal offices of the registries of commerce with which the legal persons must be registered.¹³⁰ In addition, specific information concerning foundations appears in the pages of the

¹²⁷ Conseil Fédéral (nd), *Recueil systématique du droit fédéral (RS)*, <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>

¹²⁸ Portail PME pour petites et moyennes entreprises (nd), *Caractéristiques des différentes formes juridiques*, www.kmu.admin.ch/kmu/fr/home/savoir-pratique/creation-pme/differentes-formes-juridiques.html?lang=fr

¹²⁹ Office fédéral de la justice (nd), *Les registres du commerce en Suisse*, www.zefix.ch/zfx-cgi/hrform.cgi/hraPage?alle_eintr=on&pers_sort=original&pers_num=0&language=2&col_width=366&amt=007

¹³⁰ See for example, the internet site of the Office of the Registry of Commerce of the Canton of Bern www.jgk.be.ch/jgk/fr/index/direktion/organisation/hra/formulare_merkblaetter/formulare_merkblaetter6.html

site of the Federal Department of the Interior dedicated to the Federal Supervisory Board for Foundations.¹³¹

393. Swiss law does not recognise legal arrangements as such. The ratification of the Hague Convention on the law applicable to trusts and their recognition by Switzerland in 2007 nonetheless allows for the recognition of foreign trusts from a civil law point of view. In Switzerland there are no other similar legal arrangements. Swiss law does not prohibit a natural person from holding assets on behalf of a third party. A fiduciary contract is a bilateral relation under Swiss law, which in the absence of specific regulations, is governed by the rules of mandate or agency contracts (Article 394 et seq. CO). In this contractual relationship, the assets and rights entrusted by the principal become part of the agent's assets, rather than separate assets. This means, for instance, that in the case of the agent's bankruptcy, the entrusted assets will be considered as part of the agent's bankruptcy assets. The separation of assets is the main difference between the Swiss *fiduciary contract* on the one hand, and the trust, *fiducie* or *Treuhand* referenced in the FATF Recommendations on the other hand.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal persons created in the country and how they may be or are misused for ML/TF purposes

394. Numerous sources indicate that the Swiss authorities have identified legal persons as vulnerable to ML/TF risks. The national risk assessment mentions the involvement of legal persons, particularly domiciliary companies,¹³² as a ML/TF risk factor. It also specifically examines the involvement of non-profit organisations and commercial companies in the TF context and concludes that there are vulnerabilities. The report also notes the risks of abuse of foundations, which may be reduced by reinforcing their supervision.

395. In addition, MROS regularly illustrates cases of the use and the diversion of legal persons for money laundering purposes through typologies published in its annual report. Between 2009 and 2013, nearly half of the cases presented in these typologies concerned legal persons. 40% of the STRs made by lawyers and notaries concern a domiciliary company for which the beneficial owner is a customer from abroad. Moreover, MROS reports a substantial number of requests by national administrations and foreign FIUs concerning at least one legal entity. Previous and ongoing investigations by the criminal prosecution authorities also indicate that legal persons are used for ML/TF purposes in Switzerland. In February 2016, 10 federal cases were in progress against legal persons and 9 of them had been opened for ML. Moreover, on the initiative of the Office of the Attorney General of Switzerland (MPC), prosecutors and legal experts in the economic and ML areas are working on establishing a common doctrine for the criminal prosecution of legal persons and improvement of the quality of the suspicions ("Group 102").¹³³

396. The assessment and the understanding of the vulnerabilities however appear to be partial and incomplete. The authorities that have the information do not appear to have shared it for a detailed and consolidated study that would allow the types of legal persons and the scenarios

¹³¹ Département fédéral de l'intérieur (nd), *Autorité fédérale de surveillance des fondations*, <https://www.edi.admin.ch/edi/fr/home/das-edi/organisation/services-specialises/autorite-federale-de-surveillance-des-fondations.html>

¹³² See Chapter 1

¹³³ See Chapter 3, IO 7

that favour ML/TF to be determined. For example, domiciliary companies were, identified some time ago by the Swiss authorities as a factor that increases ML/TF risks. In this connection, their involvement in a business relationship is cited by the national risk assessment as one of the complexity criteria that may facilitate the concealment of assets of criminal origin and their beneficial owners. The report indicates that, in the same manner as trusts and foundations, domiciliary companies “conceal the transparency of the economic background of the capital flows associated with a given business relationship and thus reduce the probability of identifying the real beneficial owners of the assets involved.”¹³⁴ The report however does not propose any in-depth analysis of the mechanisms by which domiciliary companies are abused and diverted for ML/TF purposes, particularly with regard to their locations in offshore markets or non-cooperative countries. Finally, the authorities also do not appear to sufficiently assess the respective roles of private banks, their foreign affiliates and lawyers linked to the creation of domiciliary companies abroad.

397. Swiss authorities are nonetheless aware of the need to have a complete view of the exposure of all legal persons to ML/TF risks. A study is underway for this purpose. It should clarify the mechanisms which allowed the creation and use of legal persons to be misused for ML/TF purposes in order to assess whether measures to control this that are currently in place are appropriate and the possible improvements or adjustments to be made in order to contain the risks more effectively.

398. Swiss authorities also indicated that work is in progress concerning the establishment of electronic court records for businesses.¹³⁵ This initiative should be encouraged since it would be a useful reference for the financial intermediaries, giving them access to eventual court decisions made regarding potential customers or commercial partners. Moreover, it will allow the authorities to have access to consolidated data to better understand the criminal activity of legal persons, particularly in terms of ML/TF and underlying offences and to determine appropriate measures to prevent and punish such activity.

Mitigating measures to prevent the misuse of legal persons and arrangements

399. Swiss legal persons observe the general obligations of transparency. These measures constitute basic protection against the use of such legal persons for ML/TF purposes. In particular, commercial companies and foundations must register with the cantonal registry of commerce in order to obtain legal status. The basic items of information (name and company name, members of the management bodies or the board of directors) concerning the legal persons are accessible to the public. The cantonal registries are connected and access to the information is made by a single portal¹³⁶ which thus gives access to the information held by all of the cantonal registries. Companies must also maintain a register of their shareholders/ partners. In addition, a natural person authorised to represent the company individually and who is domiciled in Switzerland must be

¹³⁴ Report on the National Risk Assessment of Money Laundering and Terrorism Financing in Switzerland, p. 43

¹³⁵ Report on the National Risk Assessment of Money Laundering and Terrorism Financing in Switzerland, p. 23

¹³⁶ www.zefix.ch

recorded in the registry. A power-of-attorney or a commercial mandate given to this person is not sufficient; the person must be able to carry out acts in the name of the company. Thus, in all cases there is a natural person in Switzerland who is responsible for compliance with the rules to which the legal persons are subject, including the transparency requirements.

400. **Moreover, since 1 July 2015, companies must maintain a register of their beneficial owners.** The person domiciled in Switzerland who represents the company must have access to this register. Swiss authorities expect companies to have put their registers in place no later than their annual general assembly, in principle by 30 June 2016. Therefore, the effectiveness of this measure could not be evaluated by the assessors.

401. **Also since 1 July 2015, transparency measures concerning bearer shares have been introduced.** The holders and the purchasers of bearer shares must declare themselves to the company or via a financial intermediary. According to Swiss authorities, these measures result in the de facto elimination of these securities since only the holders of bearer shares that have been registered with the company may exercise the corporate and asset rights connected with their shares. The company must also maintain a list of the holders of these shares. If the participation reaches or exceeds 25% of the share capital or the votes, the purchaser must also declare the beneficial owner of the shares. The impact of these measures on bearer shares has already been noted in the records of the registry of commerce: a comparative analysis over the same period in 2014 and 2015 shows that the portion of new limited liabilities companies in which the share capital is composed of registered shares increased from 73% to 81% (1 543 companies of the 1 902 new registrations). In parallel, the number of companies that decided to convert their bearer shares to registered shares increased by 75%.

402. These new provisions were explained and communicated by various means to the sectors interested, and in particular to the legal practitioners who are often involved in the acts relating to the management of commercial companies (for example, lawyers, notaries, fiduciaries). The Federal Office of the Commercial Registry (OFRC) also disseminated information to cantonal authorities and practitioners in order to facilitate the implementation of the new measures and to explain the effect of this on company law.¹³⁷

403. **There is no basic transparency for all of the entities of the non-profit sector, particularly small organisation that are, however, vulnerable to abuse for TF purposes.**¹³⁸ Foundations must be recorded in the commercial registry. Since the adoption of the FATF law of December 2014, this also includes religious and family foundations even though they have until 2021 to comply.

¹³⁷ Département fédéral de justice et police (2015), *Les incidences en droit des sociétés de la loi fédérale sur la mise en œuvre des recommandations du Groupe d'action financière révisées en 2012*, www.vd.ch/fileadmin/user_upload/themes/economie_emploi/entreprises/registre_commerce/fichiers_pdf/Communication_OFRC_1-2015_-_24_juin_2015.pdf et *Inscription au registre du commerce des fondations ecclésiastiques et des fondations de famille*, www.vd.ch/fileadmin/user_upload/themes/economie_emploi/entreprises/registre_commerce/fichiers_pdf/Communication_OFRC_3_15_.pdf

¹³⁸ See Chapter 4, IO 10

404. In addition, while “large” associations must be recorded in the registry, there is no obligation for small associations that have no commercial activity. According to Swiss authorities, in the majority of cases, this concerns micro-structures that have strictly local operations. The risk that small cultural or humanitarian associations transferring funds to conflict zones may be used for TF purposes cannot be excluded. However, Swiss authorities consider that the “real” risk these types of institutions represent is low.¹³⁹ Nonetheless, measures should be adopted in order to allow greater visibility with regard to these structures and avoid the exploitation of this vulnerability. Swiss authorities indicate that the basic information concerning these types of associations is available from the financial intermediaries which, when they open an account, must carry out due diligence concerning their identification and the identification of their beneficial owners. Moreover, small associations are also subject to controls by the tax authorities and monitoring by the investigative services (SRC, see IO 10), but the transparency is limited to these authorities and not available to the financial institution that would be approached to carry out a transaction or to open an account for the association. In addition, the publication of the audited accounts is made on a voluntary basis – such as the ZEWO initiative¹⁴⁰ – which, according to the information obtained on site, principally concerns larger structures.

405. **The risk of the abuse of legal persons is taken into account in preventive due diligence measures applicable by the financial intermediaries.** The complexity of the structures involved in the business relationship, particularly the use of domiciliary companies, whether Swiss or foreign, is one of the criteria of higher risk of the OBA-FINMA (see R 10). The financial intermediaries that were met indicate that they have adopted a prudent approach with regard to corporate schemes/legal arrangements which involve, in particular, domiciliary companies established in Switzerland.¹⁴¹ They make an effort to understand the utility of the structure that has been put in place, in the specific context of the customer. By undertaking a verification of the origin and the economic justification of the funds, they review the elements supporting/confirming the declarations provided by the customer. If a doubt exists on the reasoning for the structure or its organisation, the financial intermediaries prefer not to enter into a relationship. One private bank thus refused to open an account for a non-resident individual who declared to be the beneficial owner of a domiciliary company that owned a building that it had just acquired with a view to resale after carrying out work. A verification of the origin of the funds used to finance the real estate asset showed that these came from a loan by a natural person who originated from the same country as the prospect. As the bank could not determine the source of the funds for the loan or the reason for the lender not to appear in the transaction, it decided not to continue the relationship.

Timely access to adequate, accurate and current basic beneficial ownership information on legal persons created in the country

406. **Swiss competent authorities have mechanisms that allow them to request information concerning legal persons created within the country.** For example, the prosecution authorities

¹³⁹ See Chapter 4, IO 10

¹⁴⁰ See Chapter 4, IO 10

¹⁴¹ See Chapter 5, IO 4

use available investigative measures in the context of criminal proceedings.¹⁴² As for FINMA, it can solicit the information needed to carry out its supervisory activities from anyone who holds information and not only from all of the financial intermediaries under its supervision.¹⁴³ In both cases, these powers apply to obtaining basic information and information concerning the beneficial owners of the legal persons.

407. Basic information available on legal persons appears to be reliable and up to date. The registry of commerce is the reference for public access to this information. Only a limited number of acts concerning the creation and the operation of the company need to be authenticated by a notary (the creation and modification of the articles of association, dissolution); however, the employees at cantonal registries are responsible for verifying the accuracy of all records. Certain aspects, such as the domiciliation of a business with a domiciliation agent (such as a fiduciary) are subject to particular vigilance by the authorities. The domicile of the natural person who is indicated will thus be subject to verification with the cantonal population office, and the registration is refused if the information turns out not to be accurate. A letter of acceptance of this domiciliation must be provided by the natural person. The Federal Office of the Registry of Commerce is responsible for the legal verification of the registrations (such as the acquisition of assets, mergers/acquisitions, restructurings) and thus carries out a validation of the ultimate quality of the information. Thus, measures are in place to ensure that the records contained by the registry correspond with the statements made and that they comply legally with requirements. Companies are responsible for signalling any change in their records, which are updated on average within 4 days following the notification, and the deleted records remain visible.

408. According to Swiss law, recording of information in the registry of commerce is accompanied by legal effects that promote accuracy and updating of the records by the companies. For example, if a change is not recorded, it may not be enforced with regard to third parties; a change in legal status can only take effect if it is recorded (see R 24). Moreover, the website of the registry of commerce receives on average about 40 000 visits each working day. This high frequentation forces companies to update their data “in real time” and encourages users to report errors or omissions to the registry. During the year 2014, nearly 174 000 registrations for limited companies (SA, SARL and SC) were recorded by the registry of commerce. Approximately 80% of the actions concerned updates,¹⁴⁴ which shows the number of modifications made by companies to ensure that the records in the registry reflect their actual situation.

409. Competent authorities obtain reliable information concerning the beneficial owners to the extent this is available. In the context of its investigations or prosecutions, the prosecution authorities request information from banks in order to determine whether there is a banking relationship and, in this connection, to obtain information concerning the beneficial owners of the customer. This assumes, however, that there is a concrete indicator that the person in question holds or controls an account with the institution(s), which limits the access to information concerning the beneficial owners (see c. 31.3). When, on the other hand, the bank accounts of the company are

¹⁴² See Chapter 3, IO 7

¹⁴³ See Article 42a LFINMA, Chapter 5, IO 3

¹⁴⁴ The remaining 20% concern the registration of new companies (~13%) and the striking of existing companies (~7%) – Information from the Swiss authorities, Nov. 2015

known, the prosecution authorities may directly access the documents for opening the accounts in digital form, particularly the Form A, with the bank that holds the account. These data are transmitted within a period of 10 days,¹⁴⁵ without the accountholder's necessarily being informed. The prosecution authorities may also now request the list of beneficial owners held by the company itself. As this measure is in the process of being implemented, it is difficult to assess its effectiveness.

410. In the context of its investigations concerning possible violations of the due diligence obligations with regard to the LBA, FINMA may request that banks provide information and banking documents concerning the beneficial owner(s) of the accounts. This information is held by the bank in connection with its due diligence record keeping obligation (see R 11). In general, FINMA obtains this information within 10 working days.¹⁴⁶ Regarding information required by FINMA following requests by foreign authorities on beneficial owners of legal persons established in Switzerland, see Chapter 8, IO 2.

411. Up to now, the financial intermediaries have played a central role in the identification of the beneficial owners of the legal persons. Interviews during the on-site showed that in the majority of cases and in any event when legal persons created in Switzerland are concerned financial intermediaries consider that they can identify the beneficial owner(s). They also indicate that they adopt a very prudent approach with complex company schemes/legal arrangements and do not enter into business relations when a natural person cannot be identified as the actual beneficial owner of the company. It should be noted, however, that until 1 January 2016, the legislative framework required the financial intermediaries to identify the beneficial owners only in the case of doubt as to whether the customer was acting on his/her own account, or in the case of higher risks, in particular with domiciliary companies. The identification of the beneficial owners of existing companies thus did not constitute a systematic obligation, and the information concerning the beneficial owners thus may not be available in a certain number of cases (see R 10).

412. The obligation now placed on companies to themselves maintain a register of beneficial owners is a useful advance for improving the reliability of the information obtained by the representatives from customer companies in the due diligence process. Financial intermediaries should however continue to verify as required to ensure that the declarations produced by their customers correspond to reality. Moreover, the local representative of companies registered in Switzerland is itself required to inform the authorities of the identity of beneficial owners.

Timely access to adequate, accurate and current basic beneficial ownership information on legal arrangements

413. Competent authorities can obtain information concerning the beneficial owners of trusts from the trustees in Switzerland. Trustees who act as fiduciaries for these arrangements in Switzerland are financial intermediaries subject to all of the obligations which come with this status, and they are not subject to professional secrecy in this capacity (see R 10 and 25 in particular). The

¹⁴⁵ Recommendations of the Conference of Public Prosecutors of Switzerland concerning the production in digital form of banking documents, 20 November 2015 http://www.ssk-cps.ch/sites/default/files/empfehlungen_ssk_el.aktenedition_17122015_fr.pdf

¹⁴⁶ Decision of the Federal Banking Commission, 23 January 2008, Bull. CFB 51 p. 70, (41) <https://www.finma.ch/FinmaArchiv/ebk/f/publik/bulletin/pdf/bull51.pdf>

trustees met during the on-site indicated that in nearly all cases these arrangements are subject to enhanced due diligence since they are considered to be higher risk. This means, therefore, carrying out – under the regime applicable before 1 January 2016 – the systematic identification/ verification of the beneficial owners. The trustees who were met mentioned that the material verification of requested additional clarifications has been largely reinforced over recent years, including by banks.

414. For legal arrangements active in Switzerland that were created abroad, competent authorities also have access to information concerning their beneficial owners by means of international co-operation. Swiss authorities (the prosecution authorities; FINMA) have the powers necessary to seek this information from the foreign authorities.

415. To a certain extent, the Swiss authorities depend on information available in the country of origin, and this may constitute an obstacle to obtaining the necessary data. A limited number of countries currently have in fact a registry of beneficial owners, and the transparency of the parties involved in legal arrangements is therefore not ensured in all countries. In general, however, and unless this information is not available at the national level, Swiss authorities indicate that they obtain the requested information, particularly by means of the direct contacts that the Swiss financial intermediaries establish with the customer, and this allows them to obtain additional clarifications.

416. From the on-site interviews, the assessors noted a strong determination by the Swiss authorities to maintain the integrity of the financial market, as is demonstrated by the initiatives adopted over recent years in terms of reducing banking secrecy or the proactive combat against tax offences, for example. Swiss authorities should thus take all steps to ensure that existing portfolios of banks are in accordance with the high standards that Swiss legislation requires today, in particular with regard to the identification and verification of the beneficial owners of all of their customers that are legal arrangements, in a systematic manner as from entering into relations as well as during the relationship. Offshore arrangements with an international dimension involving fiduciaries and foreign intermediaries should be a priority. Swiss authorities should also verify that these same financial intermediaries do not offer their customers either directly or in connection with their foreign institutions any advisory services for the structuring of legal arrangements in offshore markets for the purposes of tax concealment or ML, by having other persons of the group or foreign banking partners be involved in maintaining the account. Moreover, the due diligence measures should be imposed for intermediaries which rely on banks to approach customers. Finally, Swiss authorities should ensure that banks are equipped to make an adequate assessment as to whether they should start or continue a business relationship with such a customer, considering his/her risk profile.

Effectiveness, proportionality and dissuasiveness of sanctions

417. The range of sanctions available for failing to observe reporting obligations appears to be sufficiently severe to be dissuasive for legal persons. The failure to comply with the transparency rules for legal persons incurs civil, administrative and/or criminal sanctions applicable to the shareholders, board members and the company itself (see c. 24.13). With regard to the recording with the registry of commerce, Swiss authorities indicate that in the large majority of cases, information is obtained without the use of sanctions. The registries of commerce have in fact the power to require the persons in question to provide new information, which leads to the regularisation of the situation in a majority of cases. The Registry of Commerce of Geneva thus

indicates that it handles approximately 900 procedures each year by means of summons: for organisational failings (i.e., a failure to comply with the legal requirements concerning the organisation of companies, particularly those concerning the existence and the composition of the structures mandated by law¹⁴⁷), for addresses that are no longer valid or companies without assets or activity. The percentage of regularisations is approximately 60%, and the procedure results in a liquidation or an automatic striking of the company in 40% of the cases. At the time of the regularisation, the companies pay the costs related to the summons in addition to the registration fees.¹⁴⁸ The imposition of fines is very rare, as the recovery of these fines would be problematic for all of the companies that are abandoned (liquidation and automatic striking).

418. In addition, the registries of commerce and the civil courts in 2015 undertook the automatic striking from the registers of 3 215 legal persons, of which 1 097 were SAs and 1 045 were SARLs, because of shortcomings in their organisation or the failure to communicate information that should have been recorded. A limited number of criminal sentences were declared by the courts for false information provided to the registries of commerce: 6 in 2014, 3 in 2013 and 6 in 2012.

419. The recent entry into force of measures concerning registers for bearer shares and for beneficial owners does not yet allow judging the effectiveness of the applicable sanctions. However, the legal uncertainty in which the companies are placed if they do not comply with these obligations and the consequences of the acts carried out irregularly (for example, the revocation of the decisions of the general assembly, the obligation to reimburse the amounts paid or received unduly, the obligation to remedy damages caused) plays, according to Swiss authorities, a significant role in forcing companies to comply with their obligations. It was not established whether sanctions have been imposed against companies that do not maintain a register of shareholders/ partners. Moreover, criminal or administrative sanctions are not foreseen for shareholders who do not declare the acquisition of bearer shares or beneficial ownership, which limits the dissuasive aspect of the applicable sanctions that lead to the loss of the rights connected with the shares.

Conclusion

420. Switzerland has adopted measures intended to reinforce the transparency obligations of legal persons, but the recent entry into force of these provisions and the insufficient identification and analysis by the authorities of the risks connected with legal persons do not allow determination as to whether these measures are appropriate and sufficient. **Switzerland has achieved a moderate level of effectiveness for Immediate Outcome 5.**

¹⁴⁷ Message of the Federal Council concerning the revision of the Code of Obligations of 19 December 2001, FF 2001 2949, p. 3028.

¹⁴⁸ Art. 12 of the Order on fees in connection with the Registry of Commerce.

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

Mutual Legal Assistance

- Switzerland has a complete apparatus of legislation, agreements (consisting of the numerous treaties to which it is party) and administration for mutual legal assistance and experiences a high level of activity in incoming and outgoing requests. It provides effective mutual legal assistance concerning the seizure and return of assets. According to the comments of other delegations, Switzerland's responses to requests for mutual legal assistance are satisfactory overall and obtained without undue delay.
- The spontaneous sharing of information with foreign authorities is an effective tool for cooperation that is used to start investigations abroad and/or to formulate requests for mutual legal assistance. Switzerland is very active in this area and shares information spontaneously more often than it receives such information. The incoming requests also constitute a significant source for ML investigations that have been opened in Switzerland.
- In general, the bank account holder targeted by a mutual legal assistance request, and any other person with an interest considered sufficient, is notified before transmission of the requested information. This has the effect of compromising the foreign investigation if confidentiality is required and, in case of appeal in the name of the person notified, to prolong processing times for completing the request. The problem is only partly compensated by the possibility, in certain cases, of temporarily prohibiting such notification, and even to provide evidence conditionally ("dynamic mutual legal assistance").
- More generally, the results and limits of mutual legal assistance cannot be measured accurately without complete data, particularly for requests sent or handled by cantonal authorities.

MROS

- The Money Laundering Reporting Office Switzerland (MROS) sends numerous requests for information to its foreign counterparts and uses the information to improve its analysis.
- MROS responds to requests without undue delay. It may also request information from any financial intermediary on behalf of an FIU, but only if the financial intermediary has previously made an STR or presents a link with an STR received by MROS. Not being able to contact financial intermediaries without a previous STR limits the effectiveness of the cooperation granted by MROS. Appropriate mechanisms involving law enforcement authorities or FINMA compensate for this limitation in certain cases, but they are exceptional. The same limitation applies to requests concerning beneficial owners.

FINMA

- The Swiss Financial Market Supervisory Authority (FINMA) makes limited requests to its foreign counterparts on issues relating to AML/CFT. It receives a large, and growing, number of requests for information from abroad. It responds with diligence in most cases, even if the procedure applicable for a request concerning the customer of a financial intermediary can delay delivery of the information.
- The assessors note the recent modification of Swiss law, which is intended to increase the extent of the information accessible to the home country supervisory authority during on-site inspections, in the framework of shared supervision of foreign financial groups with institutions in Switzerland.

8

Recommended Actions*Mutual Legal Assistance*

- The Swiss authorities should take all measures required to better ensure the confidentiality of incoming requests and related requests from abroad.
- The Swiss authorities should maintain accurate data concerning the number of refusals for mutual legal assistance and processing times, both for incoming and outgoing requests, so that they can evaluate the results on these points, identify the difficulties and, if necessary, take the necessary measures to improve them.

MROS

- In the case of a request from a foreign authority, the Swiss authorities should expand the powers of MROS so that it can obtain, for a foreign counterpart, information from financial intermediaries in the absence of an STR in Switzerland.

FINMA

- In the framework of shared supervision of financial groups with institutions in Switzerland, the Swiss authorities are encouraged to apply the new legislative provision in such a way as to facilitate effective group supervision through, in particular, the access by foreign supervisory authorities to a sampling of individual files selected on the basis of criteria that they have established and to personal information found there.¹⁴⁹

421. The relevant Immediate Outcome for this chapter is IO 2. The relevant Recommendations for evaluating the effectiveness in the framework of this section are R 36-40.

¹⁴⁹ Swiss authorities indicated that this practice has been applied since the on-site visit.

Immediate Outcome 2 (International Co-operation)

422. Since Switzerland is a major financial centre, particularly for managing foreign private assets (with a total value equivalent to USD 2 400 billion under management, or approximately 26% of the world market), it has long collaborated in international mutual legal assistance. The Swiss authorities have observed in their risk assessment that most predicate offences for ML are committed abroad, which makes mutual legal assistance indispensable for criminal prosecution. Mutual legal assistance may be granted either on the basis of an agreement or on the basis of domestic law (Federal Act on International Mutual Assistance in Criminal Matters, EIMP).

423. In addition, given the central role of the banking sector in Switzerland and the significant presence of institutions belonging to foreign financial groups in the country, often associated with neighbouring countries, the cooperation of FINMA with its counterparts is essential. It should provide foreign supervisors with an overall vision of the implementation of AML/CFT measures by the groups and to intervene if irregularities are observed.

Providing constructive and timely MLA and extradition

Mutual Legal Assistance

424. Within the Federal Office of Justice (OFJ), the international mutual legal assistance division for criminal matters is the central authority in Switzerland for mutual legal assistance and extradition. It consists of 45 persons in 4 units. The statistics indicate that Switzerland receives approximately 2 000 legal assistance requests every year, of which 10% concern ML. The number of requests has continued to grow over the last six years.

Table 21. **Requests for legal assistance in obtaining evidence from 2009 to 2014**¹⁵⁰

Year	2009	2010	2011	2012	2013	2014
Total number of requests for all types of offences	1825	1991	2182	2133	2231	2259
Requests related to ML	190	195	220	217	243	253

Source: OFJ

425. Depending on the issue, requests for mutual legal assistance are carried out by OFJ (2-3%), cantonal authorities (85-90%), or the MPC. The MPC has set up a unit of 10 legal experts that specialises in international mutual legal assistance. This unit primarily receives requests that are not related to an on-going national investigation. It also supports prosecutors responsible for executing other requests. At the cantonal level, the requests are carried out by unit responsible for ML cases.

¹⁵⁰ In accordance with bilateral treaties, prosecution authorities are authorised to transmit and receive certain requests for mutual legal assistance directly without using the OFJ as an intermediary. While a copy of these requests should be forwarded to OFJ shortly after receipt or transmission, the actual number of requests may be greater than the statistics provided.

426. It is important to note that requests for mutual legal assistance received by Switzerland constitute, after reports from MROS, the second most frequent basis for opening a criminal investigation for money laundering in Switzerland. For example, the authorities of one canton indicated to the assessors that they systematically open a case upon receiving a request for mutual legal assistance except when there has already been a conviction in the country making the request.

427. The delegations who provided comments concerning mutual legal assistance received from Swiss authorities have generally noted its good quality, except for the issue of confidentiality discussed below. In the past the Swiss authorities have authorised the presence of foreign authorities during the execution of legal assistance requests, which may be considered a factor for increased effectiveness. Recently, OFJ has assigned one of its agents to Eurojust to strengthen co-operation with members of the European Union.

Box 16. Examples of mutual legal assistance granted by Switzerland

Example 1: “Ndrangheta” case

In June 2006, Italian law enforcement authorities voluntarily informed the MPC of the presence in Switzerland of various persons belonging to a branch of the “Ndrangheta”, an organisation active in the illegal drug trade. This announcement resulted in the opening of a criminal procedure in Switzerland for criminal organisation and drug-related offences. The Swiss authorities put in place various measures, including installing listening devices in vehicles and residences and wiretapping of telecommunications.

In addition, to the extent to which the Swiss and Italian sections were interlinked, a joint investigation team was set up. The joint investigation team provided immediate and mutual transmission of important data for the criminal proceedings; the long-term presence of a representative of the Italian authorities in Switzerland; the participation of an Italian representative in the first hearing of the defendants in Switzerland and the immediate use of intelligence thus acquired for arrests in Italy.

In Switzerland, the four defendants were sentenced in 2009 to prison for periods ranging from one and a half years to 10 years and seven months.¹⁵¹

Example 2: the “Virus” case

A national procedure was opened in Geneva after legal assistance requests were received from France which reported money laundering from drug trafficking between Spain and France. The investigation found that drug money was laundered through clearing operations between France, Switzerland and Morocco.

Searches were performed with French authorities on 10 October 2012. Arrests were also made in France and Switzerland.

A bank employee and an asset manager respectively received a suspended sentence of two years and a sentence of three years, including six months without remission, for aggravated money laundering. This procedure also resulted in the confiscation of CHF 3 539 000 [*USD 3.6 million/EUR 3.2 million*], EUR 304 060 and USD 183 053.

¹⁵¹ The investigation concerned only predicate offences (art. 260^{ter} CP on criminal organisations and Law on Narcotics), and not ML.

428. **Switzerland provides effective mutual legal assistance for the seizure and return of assets** (see Chapter 3, IO 8 above).

429. Switzerland has also received and carried out a certain number of requests for mutual legal assistance concerning terrorism and TF (see Chapter 4, IO 9 above).

Processing times and refusal

430. OFJ has software for managing and tracking cases (Pagirus). The priority for handling cases is determined by taking into consideration the following factors: involvement of politically-exposed persons in widely publicised affairs, possibility of a seizure or return of assets valued at more than CHF 10 million, serious offences that jeopardise the Swiss financial centre or public order and deadlines in the framework of foreign procedures. The priority cases are subject to a check every three months. OFJ sometimes carries out the exchanges incrementally when the case is especially urgent (art. 79a EIMP). For example, incremental transmission of evidence was applied in the FIFA and Petrobras cases.

431. Because of the small amount of statistical data available, it is not possible to verify whether Switzerland grants mutual legal assistance without undue delay. The federal authorities estimate that the average time for a request transmitted to the cantons is five months, and ten months for requests carried out by the MPC, which are generally more complex (due to the type of offences concerned). They do however stress the limited value of such a general average given that mutual legal assistance varies considerably in volume and complexity. Independent of the overall duration, the comments provided by other countries in the context of the evaluation are rather favourable and contain few reservations about processing time for requests.

432. The OFJ does not currently have detailed information concerning the number of refusals, even if measures have been taken to resolve this lack of data. In general, most refusals concern a problem with dual criminality (especially concerning taxation) or the lack of ties between the acts in question in the foreign country and the measures requested in Switzerland ("*fishing expedition*"). Any refusal has only a relative effect and does not prevent the requesting State from repeating its request at a later time. Thus, certain requests for mutual legal assistance have been made again (and carried out) after criminalisation of certain acts such as foreign currency manipulation. The minor weaknesses noted with regard to the offence of TF (R 5) could have an effect on the effectiveness of mutual legal assistance given that the condition of dual criminality is not met for certain acts (e.g., financing of a terrorist with no connection to one or more terrorist acts).

Confidentiality

433. **In their comments on co-operation with Switzerland, several delegations expressed a concern about maintaining the confidentiality of transmitted requests for mutual legal assistance (and thus the related investigations).** In particular, the concern relates to requests for mutual legal assistance which involve obtaining documents from a financial intermediary in Switzerland.

434. Once it has received a request from criminal law enforcement authorities, the financial intermediary is contractually obligated to inform the customer concerned of the matter. In practice,

financial intermediaries inform their customer of the fact that in choosing a domicile in Switzerland (including through a lawyer in Switzerland), he/she may obtain access to the request for mutual legal assistance and contest the mutual legal assistance measure. The right to be notified extends as well to any person with an interest considered sufficient with regard to the requested investigative action. Nevertheless, according to an order of the Federal Criminal Court, “the person targeted by the foreign law enforcement procedure” has the right to be notified or to appeal relevant decisions only if the person him/herself is subject to such a measure.¹⁵² Notification of the customer is expressly authorised by EIMP (art. 80n), unless the request of the law enforcement authorities is exceptionally accompanied by a prohibition from notifying the customer (for a renewable period of six months). The responses given by various authorities to justify this prohibition varied, but it appears that in most cases a simple request by the State requesting secrecy was not sufficient.

435. Apart from any prohibition imposed on the financial intermediary, the authorities will inform the customer at the latest before the final decision on the procedure (art. 80m EIMP). The result of such a notification, which ensues from the constitutional right to be heard, is lifting the confidentiality of the request for mutual legal assistance, which may have, among others, an effect that is unacceptable for certain States when an investigation is ongoing. It is important to note that persons targeted by Swiss national investigative measures relating to their bank accounts do not have the right to be notified since financial intermediaries are prohibited from informing them. Even when the investigation concerned is not confidential, the possibility of appeal may slow down the mutual legal assistance procedure. The statistics provided by the authorities however indicate that appeals against the mutual legal assistance requests are rarely accepted by the Federal Criminal Court (see Table 22). In addition, the defendants waive their right to appeal in 40-50% of cases, which results in the evidence being transmitted immediately.

Table 22. Appeals before the Federal Criminal Court concerning mutual legal assistance

	2007	2008	2009	2010	2011	2012	2013	2014	2015
Withdrawn	8	12	18	9	9	21	7	10	6
Inadmissible	35	28	47	44	31	42	51	40	31
Rejected	42	57	77	85	67	58	111	80	89
Total negative	85	87	142	138	107	121	169	130	126
Accepted in part	10	12	11	14	12	16	10	9	7
Accepted	2	4	5	11	11	17	8	12	8
Total positive	12	16	16	25	23	33	18	21	15
Grand total	97	113	158	163	130	154	188	151	141

Source: OFJ

¹⁵² See Federal Criminal Court, 2 November 2015, consid. 2.4
http://bstger.weblaw.ch/pdf/20151125_RR_2015_132.pdf

436. The Swiss authorities recognise that notifying the customer can slow down the proceedings, and even, in certain cases, present an obstacle to mutual legal assistance. In partial response to this difficulty, an exceptional procedure has been developed for situations where the requested mutual legal assistance would be useless once the holder is notified, in particular when it concerns monitoring of mail and telecommunications (art. 18 EIMP). The “dynamic mutual legal assistance” procedure followed for some of these requests provides that the information obtained will be transmitted to the requesting State without informing the account holder if the State commits to not using the information as evidence before Switzerland has informed the State that the mutual legal assistance requested has been definitively granted. At the time of the site visit, the Federal Supreme Court was deliberating the case of an appeal brought by a party affected by such a measure. The scope of the Federal Supreme Court order will probably be limited to cases where a supervisory measure has been requested (in contrast to other measures for mutual legal assistance such as those for obtaining bank documents).

Extradition

437. While Swiss authorities received numerous requests for international searches, extradition and delegation of proceedings from 2009 to 2014 (see Table 23), they do not have accurate figures concerning the number of refusals. However, the authorities consulted estimate that approximately 10% of these requests were refused, mainly due to the refugee status of the persons. A smaller number of refusals are justified by respect for basic rights or due to Swiss nationality. Since 95% of requests to Switzerland to open a criminal case are not preceded by an extradition request, the high number of these requests is not the result of requests for extradition that have been refused.

Table 23. Number of international requests for search, extradition and opening a criminal case addressed to Switzerland from 2009 to 2014

	2009	2010	2011	2012	2013	2014
Requests made for extradition to Switzerland						
- total	353	360	338	357	413	362
- concerning terrorism and TF (2011-14)			2	12	9	7
Search requests made to Switzerland	22452	20968	22088	20000	21862	24940
Requests for Switzerland to open a criminal case	88	84	81	55	65	111

Source: OFJ

438. Of the delegations who have shared their experience in co-operating with Switzerland, a certain number have found that the Swiss extradition process can be complex given its approach concerning dual criminality and Switzerland's practice of not extraditing its nationals. The FATF Recommendations allow countries to require dual criminality for extradition and to refuse to extradite on the basis of nationality. Swiss authorities indicate that more than 90% of requests do not concern Swiss citizens, since other countries are aware that Switzerland does not extradite its citizens. In the very rare cases in which a State requests the extradition of a Swiss citizen,

Switzerland asks the country to withdraw its request – or refuses it – while suggesting that it delegate its criminal procedure or execution of the prison sentence to Switzerland.

Seeking timely legal assistance and extradition for ML, associated predicate offences and TF

Mutual legal assistance

439. **The statistical data provided by the authorities shows that Switzerland frequently requests mutual legal assistance** (see Table 24). Given the international exposure of Switzerland's financial industry, mutual legal assistance is a critical element in a large number of criminal cases in Switzerland. To be more precise, according to Swiss authorities, mutual legal assistance is often indispensable for demonstrating the illicit origin of funds when the predicate offence for ML was committed abroad.

8

Table 24. **MLA Requests (for Evidence) Made by Switzerland 2009-2014**

Year	2009	2010	2011	2012	2013	2014
Total number of requests for all types of offences	1 172	880	794	859	867	1 060
Requests related to ML	180	189	151	164	178	188

Source: OFJ

440. The statistics provided cannot be used to determine accurately how many outgoing requests for mutual legal assistance concern predicate offences listed in the FATF glossary. The authorities provided a table that details cases of mutual legal assistance by offence but does not specify the predicate offences related to requests for ML and makes no distinction between requests that are outgoing (from Switzerland) or incoming (from abroad). However, interviews with authorities during the on-site showed that Switzerland had sent requests for mutual legal assistance for predicate offences targeted by FATF.

441. Swiss authorities maintain that the failure or the excessively slow manner in which its mutual legal assistance are fulfilled is a significant factor explaining why it is impossible in many cases to obtain a conviction for ML, especially when the predicate offence was committed abroad, or to identify the predicate offence in order to perform a seizure (see para. 173). While a few examples were provided, the extent of this problem could not be quantified through other objective data.

442. To date, no active request for mutual legal assistance has been made concerning TF.

*Extradition*Table 25. **Swiss Requests for International Search, Extradition and Delegation of Criminal Prosecution 2009-2014**

	2009	2010	2011	2012	2013	2014
Extradition requests	173	151	177	185	216	259
Search requests	227	246	173	202	251	288
Requests to delegate prosecution	177	178	196	171	224	218

Source: OFJ

443. As with mutual legal assistance, the Swiss authorities argue that it is very difficult in the context of prosecution for ML to obtain the participation of defendants (or witnesses) located abroad. The authorities in the mutual legal assistance division could not specify the number of extradition requests for ML that Switzerland has transmitted abroad, but they noted that requests of this type are very rare.

Spontaneous information sharing

444. The legislative measures on international mutual legal assistance provide for the spontaneous sharing of information with a foreign authority (see art. 67 EIMP, Annex R 37). Such exchanges are related to transmissions sent by FIUs in the framework of the Egmont Group and can be done even without an open case in Switzerland. For example, when law enforcement authorities in Switzerland believe that information brought to their attention (normally via MROS) is insufficient to open criminal proceedings and thus pronounce it inadmissible, they have the option of transmitting the relevant information to the country or countries that may be concerned. The authority can use the transmitted information only as part of its preliminary investigation, unless it makes a formal request for mutual legal assistance. This practice has been increasing in recent years. In 2014 there were 35 instances of spontaneous information sharing.

445. **The results of spontaneous information sharing are positive up to now.** According to Swiss authorities, spontaneous information sharing has produced concrete results, occasionally causing the countries concerned to transmit to Switzerland a request for mutual legal assistance which subsequently results in prosecution abroad and, in certain cases, conviction (see Box 17). With the assessors, Switzerland shared several highly publicised cases, including the Montesinos case which Switzerland initiated by spontaneously providing information to Peru in 2000.

Box 17. Example of spontaneous information sharing resulting in opening a criminal investigation abroad

In May 2013, MROS transferred a case to the Geneva prosecution authority (MP-GE) concerning Mr X, a resident of country A, suspected of having embezzled nearly USD 4 million from his employer in 2012. On issuing a seizure order to the Swiss bank which had communicated the case to MROS, the

MP-GE learned that the money was transferred to bank Y from country B in 2012 to the account of an offshore company. Since the money was no longer in Switzerland, the MP-GE then spontaneously transferred the information to country A through OFJ.

In May 2014, OFJ received an assistance request from country A, which it forwarded to MP-GE, for an official transmission of information available to MP-GE since country A had opened an investigation into Mr X.

In October 2014, OFJ sent MP-GE an assistance request from country B (the country where bank Y is located and which had received the funds transferred from the Swiss bank,), and country B on this basis in turn requested mutual legal assistance from Switzerland to obtain information and block assets located in a second Swiss bank. Nearly USD 3 million initially from the first Swiss bank to bank Y were re-transferred in 2012 to the second Swiss bank on the instructions of Mr X, beneficial owner of the offshore company the holder of the account in country B.

MP-GE then ordered seizures at the second Swiss bank in accordance with the request for mutual legal assistance from country B. Nevertheless, the seizures revealed that a large part of the money had again left Switzerland in the meantime, except for approximately USD 500 000 which was seized and is currently the subject of discussions between OFJ, country A and country B with a view to its restitution to country B.

Requests for other forms of international co-operation concerning ML, associated predicate offences and TF

FINMA

446. **FINMA regularly makes requests to its foreign counterparts concerning AML/CFT but in a limited fashion:** 40 requests for administrative assistance primarily concerning the United Kingdom, Liechtenstein, Germany and France were formulated in 2014. There were 45 requests in the first nine months of 2015. Most did not strictly concern AML/CFT but rather unauthorised activities in Switzerland in nearly two-thirds of cases or behaviour (cases involving Euribor and currency trading) which is unusual or could constitute market abuse. For AML/CFT, FINMA cites the example of an information request relating to a person who sought authorisation to carry out financial intermediation activities in Switzerland and about whom there were suspicions concerning his professional reputation and the fitness and properness of his past business activity.

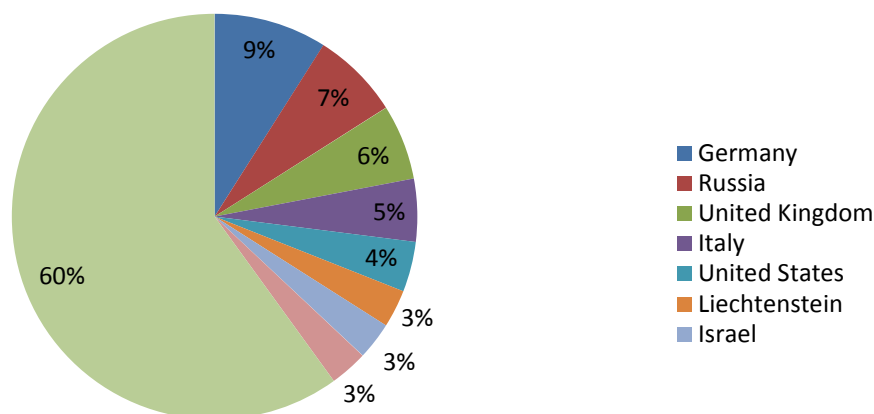
447. In the framework of the consolidated supervision of Swiss institutions, FINMA regularly carries out on-site controls on subsidiaries of Swiss banking groups directly or through the intermediary of audit firms.

448. **FINMA sends information reports spontaneously to its foreign counterparts in a limited number of cases** and when serious problems are detected (e.g. very insufficient quality of the customer profile or unsatisfactory controls of transactions). It relies on the accountability of the financial intermediaries as well as the information that they send to the parent company and that reaches the supervisors in the home country. It prefers using the platform offered by colleges of supervisors to transmit information to its counterparts.

MROS

449. **MROS applies its authority in international co-operation in adequate fashion by addressing information requests to foreign counterparts when analysis requires it.** On average, such requests are sent in a third of cases (see IO 6). Most requests were sent to neighbouring countries (Germany, Liechtenstein, Italy) or major financial centres (United Kingdom, United States, and Hong Kong) (see Graph 6).

Graph 6. Natural or Legal Persons targeted in MROS requests by Recipient Country



Source: 2015 MROS Annual Report

450. Information exchange with foreign FIUs occurs through an IT platform provided by the Egmont Group (*Egmont Secure Web*) which ensures the confidentiality of the information exchanged. In rare cases, MROS has exchanged with FIUs that were not members of the Egmont Group. MROS then verified compliance with conditions of confidentiality and security using FATF reports or those of FATF-style regional bodies (FSRBs) and the experience of other FIUs.

Box 18. Example of international co-operation relating to currency exchange

A person from a country neighbouring Switzerland made a number of visits over several months to a financial intermediary in Switzerland and on each occasion exchanged a considerable number of Swiss coins and old banknotes for a total value of several thousand francs. When questioned by the financial intermediary, the person stated that he bought the coins by weight and came regularly to Switzerland to exchange the coins for banknotes. The compliance department of the financial intermediary was not satisfied with the customer's response and sent him a questionnaire in which the customer was required to declare the origin of the money. The foreign postal authorities returned the letter for the reason that it could not be delivered, which led the financial intermediary to send the case to MROS (art. 305^{ter}, para. 2, CP). Initially, research by MROS found no information suggesting ML. Since the customer was a foreign national without authorisation to remain in Switzerland, the decision was made to request the foreign counterpart concerned whether the person was already in their files and, if so, for what reason. The response given by the foreign counterpart of MROS was decisive: an ongoing criminal case against the individual in the foreign country in question. He was suspected of having participated in several robberies during which large

quantities of coins and old banknotes had been stolen. The STR was transmitted to the cantonal law enforcement authority where the currency exchanges took place and the case was then submitted to the authorities of the neighbouring country.

Source: 2012 Annual Report, MROS, p. 79

451. **Although MROS does not require an international agreement to cooperate, it had signed ten memoranda of understanding (MOUs) with other FIUs at the time of the on-site visit.** According to MROS, some of these agreements extend existing co-operation. Others, including the two most recent MOUs, were signed when required by the law of the other State party required it.

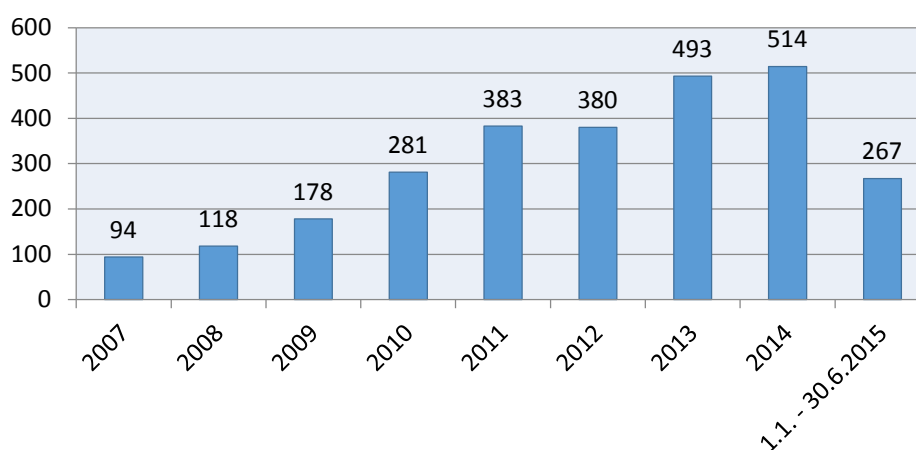
452. MROS may also request information from police authorities of other countries through the international police co-operation of fedpol, by contacting the joint co-operation centres for police and customs in Chiasso and Geneva (33 requests in 2014) or through foreign police attachés in Switzerland (10 formal requests between 2013 and 2015).

Providing other forms of international co-operation for ML, associated predicate offences and TF

FINMA

453. **FINMA receives many requests from foreign supervisors and the number is increasing:** it received 514 requests in 2014, and 267 in the first half of 2015. In 2014, the requests came from 80 foreign authorities, primarily from France (17%), followed by Germany, the United States and the United Kingdom. Authorities in the Near East, Central and South America and Asia represent 14% of requests. FINMA thus comes in third place among all authorities worldwide for total number of requests received for assistance¹⁵³.

Graph 7. **Requests for Administrative Assistance Received by FINMA**



Source: FINMA

¹⁵³ <https://www.finma.ch/en/enforcement/national-and-international-cooperation/>

454. **The high volume is explained primarily by the importance of private banking in Switzerland and the foreign customers.** The requests are handled by a unit of FINMA with a staff of 10 employees of which 6 to 7 are full time. The signing of an international agreement is not a necessary condition for information exchange, but such agreements are made to facilitate relations in the event of increased co-operation, especially when foreign counterparts directly supervise important financial institutions. Switzerland has signed 130 agreements.

455. **It appears that a limited number of these requests are directed related to AML/CFT.** Most requests are related to market abuses which, in the wider sense, are often linked with ML since the funds from these offences are deposited in Switzerland.

456. **FATF delegations who shared their experience in cooperating with FINMA generally considered the exchanges of information satisfactory** and to have taken place in a generally reasonable time frame. **Some delegations nevertheless raised problems that they believe relate to “banking secrecy”, but which actually concern application of the “customer procedure”,** which gives the customer the right to be informed of the transmission of information concerning him prior to the transmission, and grants him a right to appeal before the Federal Administrative Court (art 29 para. 2 Federal Constitution and 44 LPA, see c. 40.1). The Swiss authorities state that this procedure could result in prolonging the time for responding to the foreign authority, but only in certain cases where the procedure is particularly sensitive. They indicate that the average response time is 30 to 40 days but could be as long as eight months if the customer procedure is implemented. At the conclusion of the customer procedure, FINMA transmits all of the documents and information requested by the foreign authority and, if necessary, voluntarily responds to requests from its counterparts. In addition, the Swiss authorities state that most information is provided without a customer procedure having taken place. Nevertheless, if a customer procedure has taken place, up until present, the Federal Administrative Court has upheld FINMA's transmission of information in nearly all cases.

457. **Foreign supervisors also perform on-site controls in Switzerland in the framework of shared supervision of foreign financial groups with institutions in Switzerland.** These missions are essential for supervisors to have a consolidated view of how AML/CFT programmes are applied by the groups and to provide effective supervision. They are all the more important in Switzerland given the international nature of the banking sector. One of the main countries requesting co-operation from Switzerland expressed reservations about this aspect of the co-operation. However recent modifications in the financial market supervision law¹⁵⁴ now give the home country authority access to a sample of individual customer files. According to the message of the Federal Council that accompanies LFINMA of 2014¹⁵⁵, the scope of information that is accessible to the home country authority is limited (see c. 40.15). The selection of the sample of files is performed on a random basis by the Swiss institution being controlled or its audit firm from an anonymised list created using the criteria set by the home country authority. Due to these constraints in the selection of files and the lack of access to the information system of the supervised entity, the home country authority cannot verify the quality of the consolidated supervision of AML/CFT risk by the parent company.

¹⁵⁴ Act of 19 June 2015 on Financial Market Infrastructure

¹⁵⁵ Conseil fédéral Suisse (2014) *Message concernant la loi sur l'infrastructure des marchés financiers*, <https://www.admin.ch/opc/fr/federal-gazette/2014/7235.pdf>

MROS

458. **MROS receives an increasing number of requests for information** (see Table 26), **to which it responds in a timely manner** according to priorities that are set in an internal manual used by analysts (e.g., cases of TF are handled quickly). MROS provides its foreign counterparts all information that it can obtain in the databases it has or that it can obtain in accordance with LBA. The information obtained by foreign counterparts is transmitted to law enforcement authorities (or other competent authorities, as required), after receiving prior approval and without mentioning the source of the information in order to protect its confidentiality.

459. **An important limitation in the effectiveness of international co-operation results from MROS not having the power, in the case of a foreign request, to request information from a financial intermediary unless the latter has previously submitted an STR or has a link with an STR received by MROS.** This limitation, which was also raised by numerous delegations who shared their experience in co-operating with Switzerland, appears particularly important in the Swiss context. Since most predicate offences to money laundering take place abroad, MROS only rarely receives an STR before a request from a foreign counterpart.

460. While mechanisms were implemented in response to this shortcoming, they were applied only in a very limited number of cases and are insufficient to fix it. MROS indicated to the assessors that it uses mechanisms to obtain information even in the absence of any prior STR. Thus, certain cases were transmitted to law enforcement authorities in order for them that they might open criminal proceedings and obtain information in accordance with the provisions of the Code of Criminal Procedure. Other cases were addressed to FINMA so that it could verify whether the financial intermediary concerned had failed in his obligation to communicate and, if so, encourage him to send an STR.

Table 26. Number, Subject and Handling of Requests Received by MROS

Year	Number of Requests	Number of natural or legal persons concerned	Average response time (number of working days)
2004	441	1701	2.3
2005	461	1569	2.7
2006	467	1693	5
2007	368	1510	6
2008	434	1562	4.6
2009	519	1930	6
2010	577	1937	4
2011	564	2174	5
2012	598	2400	6
2013	660	3092	7
2014	711	2968	8
2015	804	3621	8

Source: MROS

Police

461. **Switzerland has a large number of international agreements concerning police co-operation and ten police attachés accredited abroad.** In 2014, the police attachés completed 1 362 missions (involving all types of crime), compared with 1 320 in 2013. In addition, certain types of mutual legal assistance do not require formal requests.

462. The co-operation between Switzerland and Europol has recently intensified, growing from 8 500 operational messages in 2013 to more than 12 000 in 2014. These messages are sent over the secure “SIENA” network. The largest share of cases initiated in SIENA concern crimes involving drugs, fraud and swindling, but some (6% of the total) were linked to ML. In 2014, through Interpol, fedpol (the national Interpol office in Switzerland) received 137 270 messages concerning all types of crime and itself sent 33 243.

463. While joint investigations are rather rare, the Swiss police has participated in negotiated joint investigations with law enforcement authorities respectively from Switzerland and Italy (organised crime) and the United States (terrorism), both of which were productive.

464. **The comments of delegations who shared their experience in police co-operation with Switzerland were generally favourable,** with some making reference to the excellent relationship between their own police forces and those of Switzerland. A small number of delegations were not however satisfied with the extent to which their police could directly obtain information without the need to request mutual legal assistance.

Customs Officials

465. The Co-operation Centres for Police and Customs (CCPD) in Geneva and Chiasso provide support for Swiss, French and Italian law enforcement authorities through information exchange and other forms of operational co-operation. They work closely with fedpol, the Swiss Border Guard and other national and cantonal police services.

466. The Geneva CCPD handled 18 745 requests in 2014 (2013: 18 749), of which 68% were from Switzerland and 32% from France. The Chiasso CCPD handled 7 146 messages in 2014 (2013: 6 400), of which 67% were from Switzerland and 33% from Italy. The services provided by this centre contributed to the success of several investigations, including the arrest of a South American mule trafficking in cocaine on the basis of information supplied by Italy that the centre quickly put to use.

International exchange of basic and beneficial ownership information on legal persons and arrangements

467. For mutual legal assistance, the legal authorities have the same resources at their disposal as those used for national investigations (see above IO 5). This also applies for searches and transmission of information relating to legal persons and legal arrangements. In the absence of a central register for all holders of bank accounts, the judicial authorities can use mechanisms set forth in the CPP (search, production of documents, hearings, etc.). To the extent that the information is obtained by this means, all of it is transmitted to the foreign authorities. The processing times for

requests correspond to the average observed for mutual legal assistance (five months for requests transmitted to cantons and 10 months for requests transmitted to the MPC).

468. The basic information not requiring the use of preventive measures may be requested on the basis of mutual police assistance (public sources, extract from the commercial register, locating and obtaining the address of individuals, registered office, etc., see art. 75a EIMP).

469. FINMA indicates that it systematically requests information from competent foreign authorities to identify beneficial owners of bank accounts for which it requires mutual legal assistance. In case the information is not complete, for example, if it concerns shell corporations, FINMA requires additional information to ensure complete identification of the beneficial owners.

470. In these situations, FINMA relies on information on beneficial owners available in the home country, which may constitute an obstacle for access to the required data. A limited number of countries have now implemented a register of beneficial owners, and the transparency of parties that are involved in legal arrangements is not ensured in all countries.¹⁵⁶

471. In the framework of requests that it receives from abroad, FINMA reports seeking information from financial intermediaries that have all the information on beneficial owners as part of due diligence carried out with their customers. It transmits all of the documents required for complete identification of customers and beneficial owners of legal persons and legal arrangements (forms A, T, or S – see R 10, 24 and 25) to foreign authorities. FINMA indicated that in the framework of international administrative mutual legal assistance, it requested and received information about beneficial owners from 325 financial intermediaries in 2014 and 310 in 2015. In their contributions on international cooperation with Switzerland, the FATF delegations provided few experiences concerning information about beneficial owners.

472. For MROS, the same limitations described above also apply to the possibility of obtaining information about the beneficial owners with regard to legal persons and legal arrangements. Thus, while MROS has free access to information in Swiss commercial registers, and consults them to provide assistance to foreign counterparts, information which is held by legal persons that are subject to obligations to identify beneficial owners can be obtained by MROS only on condition that the legal person in question has already been the subject of an STR in Switzerland.

Conclusion

473. Switzerland provides legal assistance to a large extent, even if the confidentiality of requests remains insufficient. However, the reservation concerning the ability of MROS to obtain information without a prior STR constitute a notable weakness due to the role of this form of international cooperation in the context of Switzerland, especially given its importance as a financial centre. Moreover, at the time of the onsite visit, it was not possible to fully assess the effectiveness of new legislative provisions allowing foreign supervisors to access information in the context of their onsite inspections. **Switzerland has achieved a moderate level of effectiveness for Immediate Outcome 2.**

¹⁵⁶ See Chapter 7, IO 5.

TECHNICAL COMPLIANCE ANNEX

This annex provides a detailed analysis of Switzerland's level of compliance with the FATF 40 Recommendations. It does not describe the country situation or risks, and focuses on the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

This report refers to the analysis carried out under the previous mutual evaluation of 2005. This report is available at the following address: www.fatf-gafi.org.

Recommendation 1 - Assessing risks and applying a risk-based approach

These requirements were added to the *FATF Recommendations* when they were last revised in 2012 and therefore were not assessed under the previous mutual evaluation of Switzerland in 2005.

Criterion 1.1 – In June 2015 Switzerland published its first report on the national evaluation of the risks of money laundering and terrorist financing (ML/TF), prepared by the GCBF. The report identifies the real and potential threats contributing to ML/TF risks in Switzerland. In addition, it evaluates threats and vulnerabilities for each sector covered by the Anti-Money Laundering Act (LBA), as well as sectors which are not currently covered by the legislation concerning anti-money laundering and combating the financing of terrorism (AML/CFT), including real estate, free ports and works of art. The report is based primarily on suspicious transaction reports with the analysis supplemented by qualitative information supplied by various authorities and the private sector. The evaluation of TF risks is more limited due to the lack of transparency in the organisations concerned and the relatively low number of cases, but another study of non-profit organisations (NPOs) was recently performed to examine TF risks in the sector (see R. 8).

The national evaluation report on ML/TF risks is supplemented with numerous other reports analysing these risks, including the annual reports by fedpol and the Money Laundering Reporting Office-Switzerland (MROS), as well as targeted analysis reports (e.g., *Money Laundering in the Real Estate Market* published by fedpol).

Criterion 1.2 – Coordination of risk assessment efforts is the responsibility of the GCBF, which was created by the Federal Council in 2013 (see c. 2.3). The GCBF includes a “risk assessment” sub-group directed by fedpol. According to the GCBF's mandate, the composition of this sub-group may vary according to the specific requirements identified by fedpol on the basis of mandates entrusted by the GCBF.

Criterion 1.3 – The GCBF has the mandate to ensure ongoing assessment of the risks of money laundering and financing of terrorism. In addition, the “risk assessment” sub-group is responsible for ongoing identification of risks on the basis of quantitative and qualitative data. Other risk analyses were performed on an ongoing basis before implementation of the GCBF and publication of the national risk assessment (see c. 1.1).

Criterion 1.4 – The GCBF has the mandate to inform the departments or offices/authorities concerned of the results of its work and to ensure the private sector is informed and consulted in appropriate fashion. Information is made available by the publication of the national risk

assessment, accessible on the Federal Administration website, by the composition of the GCBF, which includes the competent authorities, and by the creation of a permanent private sector contact group.

Criterion 1.5 – The institutional framework for application of a risk-based approach is in place since the GCBF received the mandate of the Federal Council to submit proposals on actions to take for its review, e.g., to mitigate or prevent identified ML/TF risks. Follow-up measures in the national risk assessment were defined and are currently being implemented. There is however no indication of how the level of risk identified for a sector or an activity will determine the distribution, extent and quality of administrative, human or financial resources that these sectors or activities will receive to be able to manage the risks in an adequate manner.

Criterion 1.6 – The financial intermediary is not required to comply with the obligations for due diligence if the business relationship concerns only assets of low value–defined according to the fields to which the relationship applies–and there is no indication of ML/TF (Art. 7a LBA and 11 para. 5 OBA-FINMA). The aspects of the “provision framework” to establish the low risk of ML/TF are less precise than those in the criterion, but Art. 11 para. 5 OBA-FINMA explicitly requires a proven low level of risk.

The low risk of ML/TF is not established for all the exemptions targeted in Art. 11 para 1-4 OBA-FINMA. Certain payment activities without cash which serve exclusively or not for the payment of goods and services (Art. 11 para. 1 subpara. a to c and para. 2 OBA-FINMA, point 4 para. 1 subpara. a to c and para. 2 R ASG), or which are performed with non-rechargeable means of payment (§ 39^{bis} R Polyreg), as well as financial leasing transactions (Art. 11 para. 1 subpara. d OBA-FINMA, point 4 para. 1 subpara. d R ASG) are exempt from certain obligations for due diligence. Limits for transactions apply, and the issuer must have the technical capacities to ensure that there is compliance with amount limits. In addition, accounts have to be opened at authorised banks in Switzerland. “Standard” measures for monitoring transactions also apply (Art. 11 para. 4 OBA-FINMA). For non-rechargeable prepaid cards issued by electronic payment service companies and not connected to bank accounts, however, the low risk of ML/TF (Art. 11 para. 3 subpara. a to c OBA-FINMA) exempting the dealer/merchant from whom they are acquired in cash from verifying the identity of the customer, cannot be accepted, even if they only allow purchasing goods and services from retailers for a maximum amount of CHF 1 500. These anonymous means of payment may be acquired in quantity by one and the same person or a group of persons. They may also authorise transfers between private individuals in the framework of business transactions or cash withdrawals which may be used to finance terrorism, as the conclusions of the risk assessment indicate (pp. 98 and 99).

The Federal Gaming Board (CFMJ) does not apply exemptions.

Criterion 1.7 – The Swiss measures identify the relationships and transactions which are considered in all cases to have high risk (Art. 6 para. 3 LBA, Art. 13 para. 3 subpara. c OBA-FINMA, Art. 14 para. 3 OBA-FINMA, Art. 32 para. 4 R ASG). Financial intermediaries must then apply more stringent measures, including additional clarifications on business relationships or transactions to the extent warranted by circumstances (Art. 6 LBA). FINMA may also take into account specific information related to the activities of the financial intermediaries and ordering more stringent measures

depending on the level of risk involved (Art. 3 para. 2 OBA-FINMA). CFMJ has also stipulated that a one-time deposit greater than or equal to CHF 30 000 [USD 30 389/EUR 27 402] must in any case be considered as a transaction with increased risk (Art. 10 para. 3 OBA-CFMJ).

Based on the conclusions of the national risk assessment, the fact that the customer belongs to the NPO sector should be integrated into OBA-FINMA Art.13 para. 2 (and in the equivalent provisions of the LBA Regulations of OARs) so that it is among the criteria that intermediaries consider in determining whether the relationship presents increased risk.

Criterion 1.8 – FINMA may take account of specific information related to the activities of financial intermediaries by reducing requirements, depending on the level of risk involved (Art. 3 para. 2 OBA-FINMA). Financial intermediaries are not authorised to reduce their level of due diligence in the event of low risk outside the provisions specifically set by OBA-FINMA. Simplified due diligence obligations are thus provided for issuers of means of payment for transactions under a certain limit. They may be exempt from the obligation to possess copies of identification documents for the customer and beneficial owner (Art. 12 para. 1 OBA-FINMA, point 5 para. 1 Annex R ASG). In this case, the restrictive conditions appear adequate to limit the low identified ML/TF risk. On the other hand, with regard to the exemption to provide certification of authenticity for copies of identity documents (Art. 12 para. 2 OBA-FINMA, §16 para. 2 R Polyreg, and point 5 para. 2 R ASG), the conditions appear insufficient given they concern relationships concluded by correspondence and they do not require a delegation agreement with an authorised bank in Switzerland. There is a component of documentary fraud in this type of financial service, and the authorised limits are inadequate given the structuring practices used, including for the financing of terrorism.

The CFMJ does not apply simplified measures.

Criterion 1.9 – The authorities competent for supervising AML/CFT compliance by financial intermediaries –FINMA, OAR or CFMJ (Art. 12, 17 and 25 para. 1 and 2 LBA), see R. 26 and 28– ensure that the latter follow a risk-based approach when implementing these obligations, in compliance with Art. 6 LBA.

Criterion 1.10 – The financial intermediaries under the direct authority of FINMA must perform a risk analysis for ML/TF which takes into account the registered office or the domicile of customers, segment of customers managed, and the products and services offered. The obligation for a regular update (Art. 25 para. 2 OBA-FINMA) exists but will be limited to the extent there is in no explicit obligation to ensure that data obtained within the framework of due diligence remains current and relevant (see c. 10.7 (b)). FINMA is informed of the results of the risk analysis at the same time as it receives the AML/CFT audit report (Annex FINMA Circular 2013/3). In addition, financial institutions must also set the criteria that apply for determining business relationships and transactions with increased risks (Art. 13 OBA-FINMA).

The majority of other financial intermediaries is also required to perform a risk analysis (Art. 42 R OAD FCT, § 2.9.2.3 R SVIG, Cm 66 R ASSL), which for a certain number depends on the size of the covered institution (in general, entities with more than 20 employees - §41 para. 4 subpara. f R Polyreg, Art. 44 para. 5 R ASG, 38 para. 3 OAR G, 77 para. 3 R VQF). It must take into account the registered office or the domicile of the customer, segment of customers being managed, as well as

the products and services being offered. It must be updated regularly. Requirements to inform OARs are not specified.

Casinos must classify their business relationships according to risk, as well as the criteria for detecting business relationships and transactions with increased risk (Art. 9 para. 1 and 3, and 10 para. 1 OBA-CFMJ). The information necessary for the risk assessment and update requirements are not specified.

Criterion 1.11 – The financial intermediaries under the direct authority of FINMA and the casinos must have the board or the highest level of management adopt the internal AML/CFT directives, which provide for the conditions according to which the increased risks must be determined, limited and controlled (Art. 26 para. 2 subpara. h OBA-FINMA and 16 para. 2 and 3 OBA-CFMJ). For FINMA intermediaries, there is a difficulty involving their limited possibilities to identify an increased risk for an existing business relationship, even if monitoring transactions may bring to light useful information (see c. 10.7 (b)). The execution of internal directives is supervised by the specialised AML/CFT unit, or another independent unit, with the agreement of the internal revision body, the audit firm and the managers in the chain of command (Art. 25 para. 1 subpara. a OBA-FINMA, Art. 19 OBA-CFMJ). In addition, management at its highest level or at least one of its members decides on implementation, monitoring and evaluation of regular controls of all business relationships with increased risks (Art. 19 para. 1 subpara. b OBA-FINMA).

Financial intermediaries affiliated with OARs must also adopt internal AML/CFT directives (ex. §41 para. 4 R Polyreg, art. 54 R FSA/FSN, 38 R ARIF) intended to specify the conditions for application of the requirements of the LBA Regulation, approved in certain cases at the highest level by the board or management (ex. Art. 43 para. 3 R ASG, § 2.9.3.1 R SVIG). This requirement can be adapted depending on the size of affiliates of OARs (ex. Art. 36 para. 1 OAR G, 54 para. 3 R FSA/FSN), which complies with the approach of the FATF Recommendations (see c. 18.1). The specialised AML/CFT unit of the entity monitors implementation of the directives (ex. §41 para. 4 R Polyreg).

Criterion 1.12 – Financial intermediaries cannot decide to apply the simplified due diligence measures on their own. They can only do it in the framework set by FINMA (Art. 3 para. 2 OBA-FINMA), see c. 1.8 and 10.18.

This situation is not anticipated in the arrangements for organising casino business activities.

Weighting and Conclusion:

The identified deficiencies essentially concern the insufficiency of the measures implemented at this stage to take into account the results and conclusions of the national risk assessment. In addition, the situations in which the exemptions for due diligence measures are granted or the simplified measures may apply do not always correspond to a low level or lower level of ML/TF risk.

Switzerland is largely compliant with Recommendation 1.

Recommendation 2 - National Cooperation and Coordination

Switzerland was rated largely compliant with these requirements during the third evaluation (para. 1048ff.).

Criterion 2.1 – The integrity of the Swiss financial market is a strategic priority for Switzerland. On-site interviews confirmed that the various sectors involved were taking consistent actions concerning this priority. From a legislative perspective, this approach is seen for example in the simultaneous revision of eight federal laws by the Law of 12 December 2014. Nevertheless, Switzerland does not currently have a national AML/CFT policy that would take into account all the risks identified in the national risk assessment (see c. 1.5). On the other hand, Switzerland has sector strategies that target certain important risks analysed in this report, namely the *National strategy for protecting Switzerland against cyber risks*, the *Strategy of Switzerland concerning blocking, confiscation and recovery of assets of politically exposed persons* (“*potentates*”) and the *Strategy of the Federal Council concerning free ports*.

Criterion 2.2 – Since November 2013, the GCBF is responsible for national coordination in the area of AML/CFT. The GCBF's mandate provides that it will update regularly (at least annually) the Federal Council of its work and, when action is required, submit proposals of measures (for example, in the area of risk assessment, proposals of measures to mitigate or prevent the identified risks).

Criterion 2.3 – Numerous mechanisms at the policy and operational levels, particularly by the GCBF, ensure national cooperation and coordination. According to its mandate, the GCBF is led by the Federal Department of Finance (DFF) and is composed of managers from all the offices concerned. Switzerland also has specialised interdepartmental groups on subjects related to AML/CFT (security, terrorism, politically exposed persons (PEPs), corruption, terrorist travellers, commodities). On the operational level, one of the three technical sub-groups of the GCBF serves as a platform for information exchange and coordination for the authorities responsible for AML/CFT (implementation of AML legislation at the national level, collaboration among national authorities on administrative and law enforcement matters as well as previous court decisions). The competent authorities have legal bases for operational cooperation (e.g. Art. 29 para. 1, LBA, Art. 46 Code of Criminal Procedure, CPP).

Criterion 2.4 – For significant exports of property concerned by the legislation on control of goods, the State Secretariat for Economic Affairs (SECO) decides whether to deliver a permit in agreement with the competent divisions of the departments concerned after having consulted the Swiss Federal Intelligence Service. Since 2014, Switzerland has an interdepartmental group that is responsible for sanctions-related policy issues beyond exports. This group meets two or three times a year, is headed by SECO and includes members who represent the Federal Department of Foreign Affairs, Federal Department of Finance, Federal Department of Justice and Police and the Federal Department of Defence, Civil Protection and Sport, as well as other institutions (such as FINMA) as appropriate.

Weighting and Conclusion:

National coordination and cooperation in AML/CFT are provided by numerous mechanisms. However, despite the existence of sector strategies concerning AML/CFT, a national AML/CFT policy is lacking. The absence of such a policy is an obstacle in the preparation of a complete response to the risks identified.

Switzerland is largely compliant with Recommendation. 2.

Recommendation 3 - Money laundering offence

Switzerland was rated compliant and largely compliant with the Recommendations concerning criminalisation of money laundering during the third evaluation (para. 97ff.). It was noted that the concept of predicate offences in Swiss law did not cover all the designated categories of offences defined by the FATF Recommendations of 2003.

Criterion 3.1 – Article 305^{bis} of the Penal Code (CP) makes it a criminal offence to hinder identification of the source, discovery or confiscation of assets which the perpetrator knows or must assume originate from a crime or an aggravated tax offence. On the basis of previous court decisions, it can be concluded that this article satisfies the requirements of Article 3(1)(b) of the Vienna Convention and Article 6(1)(a) of the Palermo Convention, in that it covers the acts of conversion, transfer, concealment and disguise. According to a 2010 order of the Federal Supreme Court, a financial intermediary may, as part of his role of guarantor, be guilty of ML by omission even if he is not aware of the unlawful origin of the funds at the time of acquiring the funds, which goes further than the requirements of the Conventions cited above.¹⁵⁷ The court decisions provided to the assessors are however insufficient to conclude that, beyond the exception of financial intermediaries bound to perform due diligence, the ML offence fully covers the acquisition, possession or use of the proceeds of a crime consistent with Article 3(1)(c)(i) of the Vienna Convention and Article 6(1)(b)(i) of the Palermo Convention. To the contrary, the Federal Supreme Court indicates in another order that, in certain cases, the possession of proceeds of a crime does not constitute an act of ML.¹⁵⁸

Criteria 3.2 and 3.3 – Switzerland has adopted a combination of approaches to define predicate offences to ML.

First, according to the threshold approach, the scope of predicate offences includes all crimes, defined in Article 10 CP as offences punishable by more than three years' imprisonment. Since 2005, the scope of certain crimes (for example, qualified fraud involving services and contributions, and trafficking in human beings¹⁵⁹) has been expanded, and certain additional acts have become crimes (for example, violation of copyright if the perpetrator acts in a professional capacity, as well as the use of insider information and market manipulation when the financial benefit exceeds 1 million

¹⁵⁷ Federal Supreme Court, ATF 136 IV 188, 3 November 2010.

¹⁵⁸ Federal Supreme Court, ATF 127 IV 20.

¹⁵⁹ Art 14 DPA; Art. 182, CP.

CHF¹⁶⁰ [USD 1.01 million/EUR 0.91 million]) to cover designated categories of offences that were previously not covered.

In addition to crimes, the scope of predicate offences also includes aggravated tax offences since 1 January 2016. The aggravated tax offence corresponds in particular to evasion of direct taxes through the use of forged documents when the tax evaded exceeds CHF 300 000 [USD 303 888/EUR 274 020] per tax period. The category of criminal tax offences constituting predicate offences thus includes aggravated tax offences and aggravated fraud in services and contributions (Art. 14 para. 4 DPA), i.e., criminal offences related to direct and indirect taxation.

Due to the legislative changes described above, Switzerland now has predicate offences in all designated categories of offences in the FATF Recommendations of 2012. According to the Recommendations Glossary, each country may decide, in compliance with its domestic law, how it will define those offences and the nature of any particular elements of those offences that make them serious offences. Consequently, the assessors refrained from an evaluation of the extent of the range of predicate offences within each category, in particular of the thresholds which Switzerland has set for certain predicate offences.

Criterion 3.4 – The previous criminal court decisions indicate that the notion of assets in the sense of Article 305^{bis} CP is extensive and includes all types of property that constitute the proceeds of a predicate offence, as well as their replacement value (which indirectly represents the proceeds of the crime).¹⁶¹

Criterion 3.5 – It is not necessary in Swiss law for a person to be sentenced for a predicate offence in order to be able to prove that property constitutes the proceeds of crime¹⁶².

Criterion 3.6 – ML is also punishable when the predicate offence was committed abroad and is punishable where it was committed, without necessarily being considered as a predicate offence there (Art. 305^{bis} para. 3 CP).

Criterion 3.7 – The perpetrator of the predicate offence (including an accomplice or instigator) may also be sentenced for ML.¹⁶³

Criterion 3.8 – The *mens rea* of ML is recklessness. This element is already met when the perpetrator considers the harmful outcome as possible, but acts nevertheless because he/she accepts the possibility of the outcome and resigns to it, even if he/she deems it undesirable and does not wish it. Recklessness may be inferred from a certain number of external elements, including how the perpetrator acted.¹⁶⁴ The wording of Article 305^{bis} CP (“knows or must assume”) indicates that

¹⁶⁰ Art. 67 para. 2, Copyright Act (LDA); Art. 154 para. 2 and 155 para. 2 of the Law of 19 June 2015 on financial market infrastructure.

¹⁶¹ Judgement 6B 313/2008, 25 June 2008; Federal Supreme Court, ATF 120 IV 365, 19 December 1994; Judgement 1B 421/2011, 22 December 2011.

¹⁶² Federal Supreme Court, ATF 138 IV 1, 8 December 2011; Judgement 6B 91/2011, 26 April 2011.

¹⁶³ 6P.34/2007 and 6S.46/2007, 18 April 2007.

¹⁶⁴ 6B_879/2013, 18 November 2013.

knowledge of the criminal origin of the laundered property may also be inferred from objective factual circumstances.

Criterion 3.9 – ML is punishable by a maximum penalty of three years' imprisonment or a financial penalty. The applicable penalty of imprisonment is five years for serious cases. The maximum amount of the financial penalty is CHF 1.08 million [*USD 1.09 million/EUR 0.99 million*] for a simple or aggravated offence. However, if a penalty of imprisonment is imposed, a financial penalty of up to CHF 1.5 million must also be imposed. The proportionality of the penalties imposed is based on the general part of the CP (Art. 47-49), as well as the range of applicable additional penalties (including the prohibition to exercise an activity if the perpetrator has committed a crime (*crime ou délit*) in the exercise of a professional activity or an organised non-professional activity). In addition, in light of penalties applicable for other offences, the criminal sanctions provided for ML may be considered as deterrent.

Criterion 3.10 – Article 102 CP provides for the criminal liability of companies, defined in this context as legal persons governed by private law, legal persons governed by public law (with the exception of regional public institutions), companies, and sole proprietorships. In the case of ML, the primary liability of the company applies independently of the possibility of punishing the natural persons if the company is found not to have taken all reasonable and necessary organisational measures to prevent the offence in question. The company risks a fine of CHF 5 million [*USD 5.06 million / EUR 4.57 million*]. The fine takes into account the gravity of the offence, the lack of organisation that can be attributed to the company, the damage caused, and the economic capacity of the company. Accessory measures such as the publication of the judgement may also be considered. In addition to criminal sanctions, civil (dissolution of the company and civil liability) and administrative (revocation of licence) measures are applicable. The sanctions thus appear deterrent and proportional.

Criterion 3.11 – The Swiss CP criminalises attempt (Art. 22), instigation (Art. 24) and complicity (Art. 25). The association of people with the purpose to commit a money laundering offence is criminalised when it can be qualified as a criminal organisation in the sense of Article 260^{ter}.

Weighting and Conclusion:

The ML offence in Swiss law meets the vast majority of the criteria. A minor deficiency has however been observed concerning the criminalisation of possessing the proceeds of crime.

Switzerland is largely compliant with Recommendation 3.

Recommendation 4 - Confiscation and provisional measures

Switzerland was rated compliant with these requirements during the third evaluation (para. 154ff.). The relevant legislation has not changed significantly since that time.

Criterion 4.1 – Swiss law provides two procedures for confiscation of assets which are the result of an offence: *ancillary* confiscation (imposed as part of a criminal procedure) and *independent*

confiscation (imposed when no criminal procedure can be launched, including when the offence has been committed abroad¹⁶⁵).

Past court decisions indicate that the concept of “assets” is understood in the broad sense to cover all types of property and that the concept of “result” includes both direct and indirect proceeds of an offence. According to Article 70 CP, assets intended to persuade or reward the perpetrator of an offence are confiscated; according to Article 72 CP, all assets over which a criminal organisation exercises a power of disposition are confiscated. If necessary, confiscation may be replaced by a state compensatory claim of an equivalent amount. Regarding the confiscation of instrumentalities, Article 69 CP provides for the confiscation of objects that served or were intended to serve in committing an offence or that are the proceeds of an offence if these objects compromise the security of persons, moral standards or public order. Certain special laws provide for confiscation of instrumentalities used or intended for use for specific offences (for example instrumentalities intended primarily for illicitly manufactured objects according to the Copyright Act (LDA)). However, the general standard of Article 69 CP submits the confiscation of instrumentalities to the condition that they compromise the security of persons, moral standards or public order, with the clarification that the simple likelihood of danger is sufficient.¹⁶⁶

Criterion 4.2 – If an offence is suspected, the authorities have the regular powers of the law enforcement procedure to identify and track the property subject to seizure. Additional monitoring measures are available if the property is related to an ML or TF offence (see R. 31). If the amount of the values subject to confiscation cannot be determined accurately or if this determination requires disproportionate resources, the judge may seek an estimate (Art. 70 CP).

Authorities can use protective seizure (Art. 263 et seq. CPP) to prevent any transaction, or any transfer or disposition of property subject to confiscation. Article 265 CPP imposes a deposit requirement for the holder of assets that must be seized. In principle, the deposit requirement necessitates providing the person concerned with a summons (thus notification) in advance (Art. 265 para. 3 CPP). However, if there is a risk that announcement of the deposit requirement may cause the measure to fail, the competent authority may order a search and seizure in the sense of Art. 244 and 263 CPP.

Various measures (for example notification of creditors and blocking of bank accounts) are used to prevent the seized assets from becoming subject to acts of disposition. Swiss law does not allow *cancelling* an act of disposition concerning a seized asset. Such an action may nevertheless involve the criminal and civil liability of the owner, and entail replacement of the confiscation with a compensatory claim.

Criterion 4.3 – The rights of *bona fide* third parties are protected against confiscation (Art. 70 para. 2 CP), as well as against the compensatory claim (Art. 71 para. 1 CP).

¹⁶⁵ Art. 69-73 CP, 376-378 CPP.

¹⁶⁶ Federal Supreme Court, ATF 125 IV 185, 11 October 1999.

Criterion 4.4 – CPP gives the law enforcement authority responsibility for keeping the seized objects and assets in an appropriate manner (Art. 266 para. 2 CP). Objects subject to rapid depreciation or expensive maintenance as well as securities and other values traded on a stock exchange or regulated market may be liquidated immediately at auction or over the counter according to the provisions of the Federal Debt Enforcement and Bankruptcy Law of 11 April 1889. A property manager will be responsible for a seized property under the supervision and instructions of the law enforcement authority. An ordinance that went into effect on 1 January 2011 specifies the rules for the placement of seized assets.¹⁶⁷

Weighting and Conclusion:

The confiscation measures are complete, but are only applied to instrumentalities when the latter are of a nature to compromise the safety of persons, moral standards or public order.

Switzerland is largely compliant with Recommendation 4.

Recommendation 5 - Terrorist financing offence

Switzerland was rated largely compliant with these requirements during the third evaluation (para. 136ff.). Weaknesses raised in the evaluation report noted the failure of the CP to cover the financing of a terrorist outside the case of a specific act; and certain rare offences defined in the Conventions covered in Article 2 para. 1 subpara. a of the International Convention for the Suppression of the Financing of Terrorism (TF Convention) did not appear to be covered by the TF offence.

In addition to the various forms of participation in a terrorist act that has been committed, attempted or prepared, Swiss law criminalises the following behaviours from the angle of TF in the absence of such an act:

- the act of collecting or providing funds for the purposes of financing an act of criminal violence intended to intimidate a population or force a state or an international organisation to perform or refrain from any act (Art. 260quinquies CP)¹⁶⁸;
- support (including financial) provided to a criminal organisation in its criminal activity (Art. 260ter CP);
- the act of making human or material resources available to the groups “Al-Qaida” and “Islamic State” and related organisations (Art. 2 Law banning the groups “Al-Qaida” and “Islamic State”).

¹⁶⁷ Ordinance of 3 December 2010 on the placement of seized assets.

¹⁶⁸ Even if article 260quinquies CP refers to the “intention to” finance certain acts, this article applies not only when the perpetrator acts with the intention to finance such acts, but also when he acts *knowing* that the funds provided or collected will be used to commit such acts (without it being necessary to prove the intention).

Criterion 5.1 – The offences cited above are sufficient to suppress numerous forms of TF and largely fulfil the requirements of the TF Convention. The minor deficiency found in this context concerns the scope of acts whose financing is qualified as TF in Swiss law. The financing of terrorist acts targeted in Art. 2, para. 1 subpara. b of the TF Convention is fully criminalised on the basis of Article 260^{quinquies} CP. The financing of acts covered in Art. 2, para. 1 subpara. a of the TF Convention is criminalised largely on the basis of Article 260^{quinquies} CP. The vast majority of these acts necessarily imply criminal violence in the sense of Article 260^{quinquies} CP (defined in a wide sense in case law). However, a limited number of acts targeted by the TF Convention (such as the theft of nuclear material or hindering air traffic) could, depending on the circumstances of the case, be committed without use of violence. Although Swiss law criminalises such acts, financing them is only unlawful when there is recourse to violence (or in case of the involvement of a terrorist organisation based on Art. 260^{ter} CP or the Law banning the groups “Al-Qaida” and “Islamic State”).

Criterion 5.2 – The TF offence as defined in Article 260^{quinquies} CP applies to the financing of one or more terrorist acts and thus does not cover the simple act of intentionally financing a terrorist organisation or a terrorist (regardless of the intention). However, Swiss law punishes certain acts of financing when there is no connection with one or more specific terrorist acts. Article 2 of the Law banning the groups “Al-Qaida” and “Islamic State” criminalises any financing of the relevant groups, regardless of the exact purpose of the financing. This provision complies with the criterion, which requires the removal of a link between the financing act and the terrorist act or preparatory actions. The financing of a terrorist organisation other than the groups targeted by the law mentioned above may be prosecuted on the basis of Article 260^{ter} CP on condition that it relates to the criminal activity of the organisation. According to case law, this supposes that the person providing the funds knows that his contribution may serve to further the criminal purpose of the organisation (by strengthening its potential for harm), or that he foresees and accepts this possibility¹⁶⁹. Case law nevertheless confirm that a connection with a determinable terrorist act is not necessary for a conviction on this basis. In addition, the collection of funds intended to support a terrorist organisation (other than the groups covered by the Law banning the groups “Al-Qaida” and “Islamic State”) is not itself criminalised unless it results in support for the organisation. According to the circumstances, it could however be considered as attempted support. Lastly, in regard to financing of a terrorist for other purposes and which present no link with a terrorist organisation, some forms of support to a terrorist on the run are covered by Art. 305 CP (hindering law enforcement action).

Criterion 5.2^{bis}¹⁷⁰ – Swiss law generally addresses financing of travel by persons in a state other than their state of residence or nationality for the purposes of committing, organising or preparing acts of terrorism, or to participate in, provide or receive terrorist training. Since such travel is most often related to a terrorist organisation, financing of such travel constitutes indirect support that is criminalised by Art. 260^{ter} CP and the Law banning the groups “Al-Qaida” and “Islamic State”. Financing would not be considered criminal in the unlikely hypothesis where the travel would be unconnected to an organisation or any terrorist act.

¹⁶⁹ Federal Supreme Court, ATF128 II 355, cons. 2.4

¹⁷⁰ This criterion was added to the FATF Methodology in February 2016 shortly before the on-site visit.

Criterion 5.3 – The various means of financing included in the offences cited above cover all funds defined by the FATF glossary.¹⁷¹

Criterion 5.4 –

(a) The text of the provisions cited above provides that TF offences require only that the funds have actually served to commit or attempt to commit one or more terrorist acts.

(b) See c. 5.2 concerning the non-compliant requirement of a link with a criminal act or activity for the financing of terrorists (Art. 260quinquies CP) or terrorist organisations who are not targeted by the Law banning the groups “Al-Qaida” and “Islamic State” (Art. 260ter CP).

Criterion 5.5 – The previous court decisions mentioned above concerning ML (see c. 3.8) are based on a general principle set out in Art. 10 para. 2 CPP and could thus also apply to other offences such as TF.

Criterion 5.6 – TF is punishable by a maximum penalty of five years' imprisonment or a financial penalty. This level of penalty corresponds to other offences such as unlawful confinement (Art. 183 CP) and participation in a criminal organisation (Art. 260ter CP). In addition, when there is a causal link between the financing and the commission or attempt to commit a terrorist act, the perpetrator of the financing may be prosecuted as an accomplice and punished according to the applicable provisions (e.g., a penalty of at least ten years' imprisonment in the case of murder). The applicable sanctions thus appear proportionate and dissuasive.

Criterion 5.7 – Article 102 para. 2 CP provides for the primary responsibility of legal persons (see c. 3.10) for the offences of TF prosecuted on the basis of articles 260ter and 260quinquies CP. The company risks a maximum fine of CHF 5 million. The penalties may be aggravated if the terrorist act is committed or attempted.

Criterion 5.8 – Swiss law criminalises a certain number of behaviours connected to the TF offence, such as attempt (Art. 22 CP); complicity (Art. 25 CP), including in an attempt; and instigation (Art. 24 CP), including to an attempt.

Criterion 5.9 – Given that the various offences of TF covered by Swiss law are crimes, they thus constitute predicate offences to ML.

Criterion 5.10 – In the framework of the Law banning the groups “Al-Qaida” and “Islamic State”, the TF offence is characterised by the recipient of the material resources and is thus independent of the place where the perpetrator of the offence is located. The TF offences defined in Articles 260ter and 260quinquies CP do not require that the perpetrator be located in the same country as the one in which the terrorists or the terrorist organisations are located or in which the terrorist acts occurred or are intended to occur. It is sufficient for the act of violence or the organisation receiving the financing to be qualified as criminal on the basis of the principles of Swiss law.

¹⁷¹ Although the Law banning the groups “Al-Qaida” and “Islamic State” refers to “material resources”, this notion is understood to be in contrast to human resources and may also take the form of intangible assets.

Weighting and Conclusion:

Criminalisation of TF is complete with regard to the financing of the groups “Al-Qaida” and “Islamic State” and related organisations. For other TF offences, including financing of terrorists, minor deficiencies can be found in the requirement of a link (at least indirect) between the financing act on one hand and a criminal or terrorist act/activity on the other hand.

Switzerland is largely compliant with Recommendation 5.

Recommendation 6 - Targeted financial sanctions related to terrorism and financing of terrorism

Switzerland was rated partially compliant with these requirements during the third evaluation (para. 170ff.). The main deficiency was found to be the absence of a specific procedure for Switzerland to designate persons in the framework of United Nations Security Council Resolution (UNSCR) 1373.

Criterion 6.1 – To date, Switzerland has not proposed designations to the 1267/1989 Committee or to the 1988 Committee. According to Swiss authorities, the Federal Council would, if required, be competent to propose such a designation in accordance with articles 184 and 185 of the Constitution. The targets of designations are identified by one or more departments of the federal administration after a consultation by all authorities involved in combating terrorism. The mechanism relies on the implicit responsibility of the departments in question and has not been formalised. The Federal Council then determines whether (i) the terrorist motives on which the designation proposal is based are sufficiently solid and substantiated, and (ii) the conditions for invoking Articles 184 and/or 185 of the Constitution are met, i.e. whether the designation is necessary to safeguard the interests of the country or preserve the external and internal security of Switzerland. In the absence of concrete examples, it is not possible to determine whether the standard of proof would be equivalent to “reasonable motives” or a “reasonable basis”. On the other hand, designations of persons or entities do not depend on the existence of a law enforcement procedure. If necessary, the proposal to designate will be submitted to the relevant committee by the Federal Department of Foreign Affairs in accordance with applicable procedures.

Criterion 6.2 – To date, Switzerland has not proposed a designation on the basis of UNSCR 1373. According to Swiss authorities, the applicable mechanism would be the same as that described above (c. 6.1) for the designations proposed to the 1267/1989 Committee or 1988 Committee. Switzerland has implemented a procedure for treating designation requests made by other countries on the basis of UNSCR 1373: after an analysis by the “terrorist lists” sub-group of the GCBF, the Federal Department of Finance (DFF) decides whether there is cause to follow up on the request by taking into account the criteria defined in Article 22a para. 1 and 4 of the LBA. DFF does not respond to a request if it must be presumed that it would result in a violation of human rights or the principles of the rule of law. The information provided in support of the designation is not verified at this initial stage if the designation request explicitly refers to the implementation of UNSCR 1373. However, for a freezing measure taken on the basis of such a designation to be maintained for longer than five days, it is required that the prosecution authority impose a seizure in accordance with the provisions of the Code of Criminal Procedure.

Criterion 6.3 –

(a) The competent authorities (police forces, intelligence service, MROS, State Secretariat for Migration, Customs, etc.) use relevant databases to obtain information to identify the persons and entities who meet the designation criteria.

(b) In general, the Federal Council decides on the basis of a proposal from a department, but it is nevertheless free to decide based on its own assessment of the situation. The measures may be taken without informing the persons concerned in advance.

Criterion 6.4 – The applicable process depends on the UNSCRs concerned.

UNSCRs 1267/1989 and 1988: On 4 March 2016, the Federal Council adopted the ordinance on the automatic adoption of United Nations Security Council (UNSC) sanctions lists, which includes the sanctions based on UNSCRs 1267/1989 and 1988. Since this date, modifications to the UNSC sanctions lists are directly applicable in Switzerland. Previously, the modifications were transposed in Swiss law after an administrative procedure.

UNSCR 1373: Once a designation request made by another country on the basis of UNSCR 1373 has been validated by DFF, a freeze of assets is implemented by notifying the financial intermediaries through FINMA and CFMJ, and, if required, the competent OARs, in accordance with Article 22a of LBA, in combination with Art. 6 para. 2 subpara. d and 9 para. 1 subpara. c, as well as 10 para. 1^{bis} LBA. The efficiency of this system cannot be determined in the absence of any lists received by Switzerland since its implementation. In the past, the financial intermediaries were notified within a period of one day to several weeks. For a designation made by Switzerland on the basis of UNSCR 1373, the freeze would take effect on the day after the relevant decision by the Federal Council (no example to date).

Criterion 6.5 – The applicable process depends on the UNSCRs concerned.

UNSCR 1267/1989 and 1988: Article 3 of the Ordinance of 2 October 2000 states: “The assets and economic resources belonging to natural and legal persons, groups or entities cited in Annex 2 or controlled by the latter are frozen.” The freezing of assets is defined in Article 5 as “hindering any action necessary for managing or using assets, except for normal administrative actions carried out by **financial** institutions.” The actions are examined on a case-by-case basis to determine whether they belong to the category of administrative actions deemed normal with regard to common practice in the field (for example, recovering account management expenses or the collection of dividends).

(a) The definition of freeze does not restrict the scope of persons required to implement it and does not appear to allow prior notification (Art. 5). In addition, the freezing obligation takes effect as soon as a designation is added to Annex 2 of the Ordinance of 2 October 2000 (Art. 3), which automatically adopts the UNSC sanctions lists.

(b) The terms of *assets* and *economic resources* in the sense of the Ordinance of 2 October 2000 cover all types of funds and other property, as well as funds or other property derived from or generated

by the latter. The freezing obligation applies independently of a link with a particular terrorist act, plot or threat, and independently of the direct or indirect nature of the property or the control.

(c) The Ordinance of 2 October 2000 prohibits supplying funds to natural and legal persons designated, or making funds or economic resources available to them directly or indirectly. Although the Ordinance does not include explicit prohibition to provide financial services or services related to the designated natural and legal persons, such a prohibition follows implicitly from the freezing obligation that is imposed on any person offering such services. SECO may grant exemptions to avoid hardship cases (i.e., to cover basic expenses). Although the Ordinance provides for exemptions based on protection of Swiss interests, this motive only applies to sanctions pronounced by countries or organisations other than the United Nations (e.g., the European Union).

(d) The lists in effect are available on SECO's website.¹⁷² The modifications of Annex 2 of the Ordinance of 2 October 2000 are made public through automatic alerts to which any internet user may subscribe, and through e-mails sent to authorities supervising financial intermediaries for forwarding to the financial intermediaries. The general obligations that ensue from such a notification are set out in the Ordinance, but no text defines the conditions for application more precisely, especially concerning the degrees of control.

(e) The Ordinance of 2 October 2000 defines the declarations that must be made to SECO concerning frozen property (Art. 4), including concerning the attempted transactions. These obligations apply not only to financial intermediaries but to any person or institution. In addition, a financial intermediary applying a freezing measure in application of the Ordinance of 2 October 2000 is required to make a declaration to MROS in accordance with the obligation of declaration defined by LBA.

(f) The Embargo Act (LEmb) does not contain a provision protecting the rights of bona fide third parties.

UNSCR 1373: The process for application of designations made by Switzerland on the basis of UNSCR 1373 cannot be verified without examples. Consequently, the following analysis exclusively concerns the process for sanctions imposed on the basis of requests from abroad. Article 10 of LBA requires that a financial intermediary immediately block the assets entrusted to it if it knows or presumes that the data concerning a person or organisation designated in the request of another country on the basis of UNSCR 1373 match those concerning a contracting party, a beneficial owner or an authorised signatory of a business relationship or a transaction.

(a^{bis}) The blocking obligation applies only to financial intermediaries. It is thus not a freeze of "funds and other property", but only economic resources. In addition, the freeze is maintained for a maximum of five working days beginning at the time when the financial intermediary has submitted the information to MROS which, upon analysis, transfers it to the Office of the Attorney General

¹⁷² <http://www.seco.admin.ch/themen/00513/00620/00622/00623/index.html?lang=fr>

(MPC). The blocking measure may then be extended by the MPC on the basis of Criminal Procedure Code provisions concerning seizure.

(b^{bis}) Since the blocking obligation applies only to financial intermediaries, its scope is limited to assets that are entrusted to such a financial intermediary.

(c^{bis}) There is no prohibition against making funds and other goods, economic resources or financial services and other related services available to persons designated in response to a designation request made by another country on the basis of UNSCR 1373.

(d^{bis}) Any new designation is communicated to the financial intermediaries through FINMA or CFMJ, and, if appropriate, the OARs. General obligations that ensue from such notification are set out in LBA.

(e^{bis}) The blocking measure applies as soon as the financial intermediary has communicated information to MROS concerning a designated person or organisation, including in the event of an attempted transaction.

(f^{bis}) The clarifications carried out by the financial intermediaries before the assets are blocked are intended to avoid affecting bona fide third parties. Nevertheless there is no legislation explicitly protecting third parties.

Criterion 6.6 –

(a) Persons and entities affected by the measures based on LEmb, including the Ordinance of 2 October 2000, may request the Swiss authorities of DEFR that they be removed from list. For those subject to measures resulting from a UNSCR, they must contact UN authorities. SECO's website includes a link to the applicable procedures.

(b) For entities subject to measures resulting from a designation made by Switzerland in accordance with UNSCR 1373, the Federal Council is also competent for de-listing, and freezing of assets may thus be repealed. When it concerns a designation by a third country, only the third country may remove the name. However, if the MPC does not pronounce a seizure, the initial freeze is lifted and the business relationship is subject to ongoing monitoring.

(c) In the case where the legal procedure will not be set by a Federal Council ordinance concerning a designation made on the basis of UNSCR 1373, a designated person or entity may request the Federal Department of Finance that his/its designation be subject to an administrative decision that can be challenged before the Federal Administrative Court. No national procedure is provided for examining a designation proposed by another country in application of UNSCR 1373. However, the freezing measure in question is maintained longer than five days only in the event of seizure, and may in that case be contested in accordance with the general provisions of domestic law.

(d)-(e) The SECO website includes a link presenting the focal point mechanism established by UNSCR 1730 and the option of submitting requests for de-listing in the Office of the Ombudsman.

(f) In case of doubt concerning the application of targeted financial sanctions, a financial intermediary or any other person may contact SECO, the supervisory unit designated for ordinances based on LEmb. SECO then verifies whether it concerns the designated person, using various official sources.

(g) As indicated above (c. 6.5(d)), any modification to the list of persons designated on the basis of UNSCRs 1267/1989 and 1988 (including de-listings) is sent via e-mail to the authorities who supervise financial intermediaries and a free automatic alert system. De-listing of a designation made by Switzerland in application of UNSCR 1373 would, if required, be made public primarily in a press release. In the case of a designation proposed by another country in application of UNSCR 1373 and followed by a seizure, the financial intermediaries who have implemented a freeze will be informed whether de-listing entails lifting the seizure.

Criterion 6.7 – In the case of designations made on the basis of UNSCRs 1267/1989, SECO may exempt payments related to projects promoting democratisation or humanitarian activities (Art. 3 para. 3 Ordinance of 2 October 2000), and grant exemptions to avoid hardship cases (Art. 3 para. 4 Ordinance of 2 October 2000). Protection of Swiss interests (Art. 3 para. 4) does not constitute a motive for exemption in the case of UN sanctions (see c. 6.5(c)). For designations made by Switzerland on the basis of UNSCR 1373, exemptions would be set by the relevant ordinance. For foreign designations, there is no provision for exemptions during the initial blocking. In the event of seizure, the rules governing seizure apply.

Weighting and Conclusion:

Since Switzerland has not proposed any designation to date on the basis of UNSCR 1267/1989, 1988 or 1373, the applicable procedures, which are based on the general competence of the Federal Council, can be subject only to a limited evaluation, but appear to be satisfactory overall. Implementation of targeted financial sanctions presents certain deficiencies, including limits in the scope of obligations to freeze for sanctions resulting from a foreign request based on UNSCR 1373.

Switzerland is largely compliant with Recommendation 6.

Recommendation 7 – Targeted financial sanctions related to proliferation

These obligations were added during the revision of the FATF Recommendations in 2012 and were thus not considered in the framework of the third evaluation of Switzerland.

Criterion 7.1 – Switzerland implements targeted financial sanctions to combat the financing of proliferation of weapons of mass destruction (PF) through the ordinance of 25 October 2006 instituting measures against the Democratic People's Republic of Korea (O-DPRK)¹⁷³, and the ordinance of 11 November 2015 instituting measures against the Islamic Republic of Iran (O-Iran), adopted in application of the Embargo Act. Names of designated entities and persons are given in Annex 3 of O-DPRK and Annex 5 of O-Iran. On 4 March 2016, the Federal Council adopted the ordinance on the automatic adoption of the UNSC sanctions lists, which includes sanctions based on

¹⁷³ O-DPRK was replaced with a new ordinance on 18 May 2016. The provisions of the new ordinance are broadly consistent with O-DPRK. Given that the ordinance of 18 May 2016 entered into force after the on-site visit, it could not be taken into account for this report. For ease of reference, it is noted that, subject to certain adjustments, art. 3 para. 1 of O-DPRK corresponds to art. 9 para. 1 of the ordinance of 18 May 2016; art. 3 para. 4 to art. 10 para. 3; art. 3 para. 5 to art. 10 para. 4; art. 4 paras. a, b et c to art. 1 paras. a, b et c; art. 6 para. 1 to art. 16 para. 1; art. 7 to art. 18; art. 8 to art. 19; and Annex 3 to Annex 1.

UNSCRs 1718, 1737 and subsequent resolutions. Since this date, modifications made to the UNSC sanctions lists are directly applicable in Switzerland.

Criterion 7.2 –

(a) The definition of the freeze does not restrict the scope of the persons required to implement it and does not appear to allow prior notification (Art. 4 para. b O-DPRK; Art. 1 para. b O-Iran). In addition, the freezing obligation takes effect as soon as a designation is added to the relevant annexes of O-DPRK or O-Iran (Art. 3 para. 1 O-DPRK; Art. 7 para. 1 O-Iran), which automatically adopt the UNSC sanctions lists.

(b) The definitions of the terms of assets and economic resources cover the types of funds and other types of property targeted by the FATF standards (Art. 4 para. a and c O-DPRK; Art. 1 para. a and d O-Iran). The freezing obligation applies independently of a link with a particular act, plot or threat involving proliferation, and independently of the direct or indirect nature of the property or the control. In addition, the freeze applies with regard to natural persons and entities acting in the name or according to the instructions of natural persons and entities designated according to O-DPRK (Art. 3 para. 1 subpara. b).

(c) O-DPRK and O-Iran prohibit providing assets to persons, companies and entities whose assets are frozen, or making assets or economic resources available to them, directly or indirectly. Exemptions from sanctions imposed in application of relevant UNSCRs may be authorised by SECO to avoid hardship cases; to honour contracts that exist when the sanctions go into effect; or to honour claims in application of a legal, administrative or arbitral decision (Art. 3 para. 4 O-DPRK; Art. 7 para. 3 O-Iran). The protection of Swiss interests does not constitute a motive for exemption in the case of UN sanctions (see c. 6.5(c)).

(d) Financial intermediaries are made aware of any modification of relevant annexes via the supervisory authorities. Modifications are also communicated by email to all persons and entities who subscribe to the automatic alert system.

(e) O-DPRK and O-Iran provide that persons or institutions who keep or manage funds or who have knowledge of economic resources that must be acknowledged to be subject to relevant freeze measures must declare them without delay to SECO (Art. 7 O-DPRK; Art. 8 O-Iran). This obligation also applies to attempted transactions if the economic resources involved meet this condition.

(f) Currently, LEmb and the associated ordinances do not contain a provision protecting the rights of *bona fide* third parties.

Criterion 7.3 – SECO is the competent authority for monitoring the execution of coercive measures provided for by the ordinances (Art. 6 para. 1 O-DPRK; Art. 12 para. 1 O-Iran). The annual audits requested by FINMA also include a specific point on compliance with sanctions. Intentional violation of the provisions of O-DPRK and O-Iran is punishable by a maximum of one year in prison and a maximum fine of CHF 500 000 (Art. 9 LEmb; Art. 8 O-DPRK; Art. 13 O-Iran). The penalty is increased in serious cases and reduced if the perpetrator acts out of negligence. Legal persons are sanctioned in accordance with the measures defined in Article 102 CP.

Criterion 7.4 –

(a) Following the same procedure as that described above in c. 6.6(a) and (d), the Swiss authorities support the persons and entities concerned in their requests for de-listing with the competent UN committees. SECO's website includes a link to the applicable procedures.

(b) According to the same procedure as described above in c. 6.6(f), a financial intermediary or any other person may contact SECO, which will then verify whether it concerns a designated person by contacting various official sources.

(c) Exemptions are possible when the conditions established by the UNSCR are fulfilled (Art. 3 para. 4 O-DPRK; Art. 7 para. 3 O-Iran). If necessary, the competent committees are generally informed after the consultation with the offices concerning the grant of the exemption in question has taken place. Definitive decisions are taken only after the Sanctions Committee's position has been received. Compliance of exemptions relating to existing contracts is analysed below in the context of c. 7.5.

(d) De-listings of designations are communicated according to the same procedure as that described in sub-criterion 7.2(d).

Criterion 7.5 – O-DPRK and O-Iran provide for exemptions to honour contracts in place at the time the sanctions go into effect (Art. 3 para. 4 subpara. b O-DPRK; Art. 7 para. 3 subpara. b O-Iran). These exemptions cover additions to accounts frozen in compliance with UNSCR 1718 or 1737 (sub-criterion (a)), as well as any payment due by a person or entity pursuant to a contract concluded before the designation of such a person or entity in application of UNSCR 1737 (sub-criterion (b)). O-DPRK and O-Iran specify that exemptions are authorised in accordance with the relevant UNSCRs (Art. 3 para. 5 O-DPRK; Art. 7 para. 4 O-Iran). It follows that the limitations defined by the UNSCRs 1718 or 1737 apply to the more general formulation of the ordinances.

Weighting and Conclusion:

All applicable criteria have been met.

Switzerland is compliant with Recommendation 7.

Recommendation 8 – Non-profit organisations¹⁷⁴

Switzerland was rated largely compliant during the third evaluation (para. 1034ff.) since the resources in place to supervise organisations and ensure transparency in this area had been judged insufficient. Since the last evaluation report, the law of foundations has been subject to several revisions, including concerning the obligation to designate an auditor and the applicable accounting law. In addition, the Law of 12 December 2014 extended the commercial registration requirement to include family and religious foundations.

¹⁷⁴ R.8 and its interpretative note were revised by the FATF in June 2016, i.e. after the on-site visit. The revised version will be taken into account during the follow-up process.

In Switzerland, NPOs in the sense intended in the FATF Recommendations generally have the status of association or foundation¹⁷⁵, less frequently that of cooperative or *société anonyme* (public limited company) exercising activities of public utility, i.e., serving the general interest and remaining disinterested¹⁷⁶. Some associations function as “commercial enterprises”, i.e., they pursue a business activity intended to make a profit over the long term (Art. 61 CC), and are not considered NPOs as defined by FATF.

Criterion 8.1 – (a) The national risk assessment published in June 2015 observes that NPOs are “not subject to practically any controls in Switzerland or to any supervisory mechanisms” (p. 106 of English version). A subsequent study concludes that the existing legal bases are appropriate and notes that the conversion of the Authority for Supervision of Foundations (ASF) into an institute is intended to strengthen the supervision of foundations. While the relevance of laws and regulations relating to entities that can be used for TF purposes was examined, the conclusions of recent studies are contradictory and thus uncertain. (b) The information entered into the commercial register (see c. 8.3) provides pertinent details about certain actors in the sector. As of 1 January 2016, 17 170 foundations and 8 296 associations were listed in the commercial register. There is no complete data on the associations because most are not required to be listed in the commercial register (see c. 8.3). According to Swiss authorities, many of these associations are not NPOs as defined by FATF and do not present a high risk of TF because their main purpose is not to collect or distribute funds. However, there is no consolidated data on the number of associations that fall into this category. According to information from umbrella organisations, some 7% of organisations of public utility having the ZEWO quality label are small associations with an international mandate that are not listed in the commercial register. The “large associations” must be listed in the commercial register and relevant information is thus available about this type of entity. (c) Even if the sector has not been evaluated regularly until now according to new methodology, the GCBF now constitutes the institutional framework for such evaluations as illustrated in the research cited.

Criterion 8.2 – To date, Swiss authorities have not conducted any outreach to the NPO sector regarding TF risks. Swiss authorities refer to the initiatives of tax authorities and ASF, but have not demonstrated how these initiatives are designed to improve the understanding of the TF risks in the sector. In the absence of outreach by the authorities, it is possible to note the initiatives taken by the sector itself, including by ZEWO, an independent foundation whose goal is to promote the transparency and integrity of organisations of public utility, as well as by umbrella organisations of foundations. While important, such private initiatives cannot be a substitute for the outreach that the country should conduct or encourage in accordance with the Recommendation.

Criterion 8.3 – The obligation for certain categories of NPOs to be listed in the commercial register is intended to encourage more transparency in the sector. This obligation applies, from 1 January 2016, to all foundations (Art. 52 CC), whose listing must include the members of the board of the foundation, as well as the persons authorised to represent the foundation (Art. 95 ORC). It should

¹⁷⁵ It should be noted that the foundation category includes “classic” foundations, employee pension fund foundations, family foundations and religious foundations.

¹⁷⁶ National risk assessment, p. 110

nevertheless be noted that religious and family foundations set up before 1 January 2016 will have five years to register (Final Title Art. 6b para. 2^{bis} CC).¹⁷⁷ The commercial register requirement also applies to large associations, in line with the criteria of Article 69b of CC (see c. 8.4). In addition, the foundations are supervised by an independent authority (see c. 8.4 (c)).

Criterion 8.4 – The obligations that apply to NPOs vary according to a number of factors, in particular the legal status and the size of the organisation. The following analysis takes into account the rules that apply to associations that exceed two of the following thresholds during two successive accounting periods (henceforth: “large associations”): (1) total balance: CHF 10 million; (2) turnover: CHF 20 million; (3) staff: 50 full-time employees on average per year (Art. 69b CC). According to Swiss authorities, it may be assumed that no association outside the large associations belong to NPOs that represent (i) a significant share of the financial resources controlled by the sector or (ii) a significant share of international activities in the sector, as targeted by c.8.4. However, without precise information about these aspects of the sector, such an assumption cannot be confirmed.

(a) *Conservation of information accessible to the public*: All foundations are required to be listed in the commercial register (Art. 52 CC), and therefore to indicate the purpose of the foundation, all members of the governing body, and persons authorised to represent the foundation (Art. 95 ORC). The obligation to be listed in the commercial register also applies to large associations. The listing of an association must include its purpose, board members, and persons authorised to represent it (Art. 92 ORC). The commercial register is available to the public (www.zefix.ch).

(b) *Publication of annual financial statements*: Even if, according to Swiss authorities, a large number of foundations and associations publish their annual financial statements for reasons of transparency, and, for some of them, to meet one of the conditions for ZEW0 certification, this publication is not required by law and thus remains voluntary.

(c) *Control mechanisms*: Foundations and large associations are required to have an auditor (Art. 83b CC, Art. 69b CC). The auditor is responsible for verifying whether the annual statements and, if applicable, the statements of the group comply with the provisions of the law, statutes and the chosen reference framework; whether the proposal of the board to the general assembly concerning how the profit will be spent complies with the provisions of the law and statutes; and whether there is a system of internal control (Art. 728a CO).

(d) *Assent or registration*: Besides the listing in the commercial register (see (a)), NPOs that benefit from a tax exemption are also registered with the tax authority.

(e) *“Know your beneficiaries and associated NPOs” rule*: In the supervisory framework of ASF, information is requested to verify that the property is used in compliance with its intended purpose (Art. 84 para. 2 CC). An NPO may also be requested to provide such information for due diligence measures carried out by financial intermediaries regarding a business relationship. However, no provision requires that foundations and associations apply a “know your beneficiaries and associated NPOs” rule outside these situations.

¹⁷⁷ The Swiss authorities justify this period by the need to consider the non-professional organisation of the overwhelming majority of these types of foundations and the low risk in terms of TF associated with these types of foundation.

(f) Conservation of information: All legal persons, including foundations and associations listed in the commercial register, are required to keep and maintain their accounts and accounting records as well as the management report and revision report for ten years (Art. 957 para. 1 and 958f CO). The other associations are obliged to keep accounts of income and expenses as well as assets (Art. 957 para. 2 subpara. 2 CO).

Criterion 8.5 – Depending on their geographic field of activity, foundations are supervised by ASF or the regional or cantonal authorities responsible for supervising foundations (Art. 84 CC). Every year, foundations are required to provide the supervisory authority with various documents, i.e. an activity report, annual statements, a report from an independent, outside supervisory unit (*fiduciaire*) and the extract of the report by the foundation board attesting to its approval of the accounts. The list of required documents is transmitted to every foundation when it begins being subject to a supervisory authority. In addition, the auditor is required to submit to the supervisory authority a copy of the audit report as well as all of the significant communications addressed to the foundation (Art. 83c CC). The supervisory authority examines the documents provided to ensure that the property of the foundations complies with the intended use (Art. 84 CC). However, with the exception of the obligation to be listed in the commercial register (see c.24.13), the other obligations set by c.8.4 are not accompanied by sanctions in the event of non-compliance. ASF is currently developing a risk-based approach by classifying supervised foundations according to potential risks.

NPOs that benefit from a tax exemption are also subject to tax audits. The audits focus on the legal requirements, i.e., whether it qualifies as an organisation of public benefit or service, and thus do not cover all obligations covered in c. 8.4. According to Art. 157 of the Ordinance on the commercial register, the offices of the commercial register are expected to research associations that are required to register. A failure to register may result in a small fine (Art. 943 CO), which is not deterrent. Besides, Art. 153 CP provides a criminal sanction for any person who causes an authority to make a false entry in the commercial register or withholds information which is required to be entered in the register. No sanction is foreseen for breach of the other obligations stated in c.8.4.

Criterion 8.6 – The Swiss authorities have powers and mechanisms to investigate and collect information on foundations and associations.

(a) Cooperation, coordination and exchange of information at the national level: ASF collaborates with federal and cantonal authorities in application of Article 50 para.3 of the Law on the organisation of the government and administration. In addition, ASF may solicit the assistance of the Federal Department of Foreign Affairs (DFAE) to obtain intelligence concerning foundations with an international purpose, and have regular exchange with cantonal authorities responsible for supervising foundations. Tax authorities also cooperate and may use official registers and the information of other departments or legal authorities in application of the applicable general provisions (Art. 111 and 112 LIFD; Art. 39 para. 2 and para. 3 LHID).

(b) Access to information relating to the administration and management of a specific NPO: According to Swiss authorities, the supervisory authority may, in accordance with its mandate for supervision (Art. 84 para. 2, CC), require that a foundation under its supervision submit all useful information (documents, accounts, etc.) to ensure that assets are put to a use that complies with the purpose of the foundation. This power is not expressly stated in the law but has been recognised by

case law. NPOs are required to cooperate with authorities (including tax and criminal) in accordance with general provisions of Swiss law. The commercial register may also provide certain information about the administration of the listed NPOs.

(c) Rapid communication mechanisms: The supervisory authorities for foundations inform the MPC whether an activity appears to concern criminal law. In addition, Article 22a of the LPers provides that, notwithstanding the principle of secrecy in tax matters, Swiss federal personnel are required to report to law enforcement authorities, their supervisors or the Swiss Federal Audit Office all crimes (*crimes et délits*) that they became aware of or were notified about while performing their duties. There are equivalent obligations at the cantonal level. The Federal Council has specified in a parliamentary message that the duty to report a crime is triggered by a grounded suspicion.¹⁷⁸ Nevertheless, the requirement of a grounded suspicion does not appear to cover all cases in which there is a suspicion or reasonable motive to suspect that a specific NPO is used for terrorist purposes, as required by c. 8.6.

Criterion 8.7 – Switzerland uses the usual procedures and mechanisms of international cooperation to respond to requests of a third country concerning NPOs suspected of funding terrorism, i.e. the Federal Office of Justice is the central authority for receiving and transmitting requests for mutual legal assistance. The establishment of specific procedures could further clarify the point of contact and the procedures to follow for international requests for information concerning NPOs suspected of funding terrorism or supporting it by any other means.

Weighting and Conclusion:

Although an analysis of the NPO sector was performed following the national risk assessment, measures taken by authorities to supervise and reach out to the NPO sector remain insufficient.

Switzerland is partially compliant with Recommendation 8.

Recommendation 9 – Financial institution secrecy laws

Switzerland was rated largely compliant during the third evaluation (para. 543ff.). The new R. 9 has not modified FATF requirements.

Criterion 9.1 – The professional secrecy of financial intermediaries is based on fundamental rights: the right to a private sphere guaranteed by the Constitution (Art. 13), which may be restricted with regard to the right to protected banking data; the right of the person (Art. 27 CC), which includes the right of the customer to have information provided to banks remain confidential; and the framework for exercising a mandate (Art. 398 para. 2 CO), which requires the discretion of the financial intermediary. These provisions apply in the financial sector in general--banks, insurance companies, money transfer services, etc.

Access to banking information by law enforcement and administrative authorities: Violation of the duty of discretion of financial intermediaries is liable to prosecution (Art. 47 LB and 43 LBVM).

¹⁷⁸ FF 2008 7371, 7424.

Nevertheless, banking secrecy is not absolute and law enforcement and administrative authorities have legal access to banking information (Art. 47 para. 5 LB and 43 para. 5 LBVM) including in investigations into tax fraud and, since 1 January 2016, into an aggravated tax offence. In the framework of its investigations, the MPC may use restrictive measures (Art. 177, 241 and 265 CPP).

In addition, all financial intermediaries subject to LBA must provide FINMA with the information and documents necessary for fulfilling its tasks (Art. 29 LFINMA, see c. 27.3). This provision opposes the refusal of the financial intermediary to respond to the requests of FINMA on the basis of professional or business secrecy (Art. 16 para. 2 LPA and 42a LFINMA).

Exchange of information among Swiss authorities: The professional secrecy of financial intermediaries is not an obstacle to the cooperation of FINMA with law enforcement authorities at the national and cantonal levels (Art. 38 and 39 LFINMA). FINMA may refuse to communicate information but only in special cases (e.g., risk of jeopardising the will of those concerned to cooperate) and only if the public interests of FINMA are involved. To date, such cases remain hypothetical (Art. 40 LFINMA). FINMA, CFMJ and MROS may exchange all the intelligence and information necessary for the application of AML/CFT measures (Art. 29 LBA). MROS also has extended powers to request and receive data from other authorities (see R. 29).

Exchange of information with foreign authorities: If a foreign financial market monitoring authority during direct hearings in Switzerland seeks access to information which is related directly or indirectly to transactions involving wealth management, the negotiation of transferable or investment securities on behalf of customers, or information directly or indirectly concerning investors in collective investment of capital, FINMA itself collects this information and transmits it to the requesting authority (Art. 43 para. 3^{bis} LFINMA).

In required, the financial intermediary who is part of a Swiss or international financial group ensures access to internal control units or external auditors of the group to information concerning determined business relationships “*to the extent necessary for the overall management of legal and reputational risks*” (Art. 6 para. 4 OBA-FINMA). A narrow interpretation of this measure may restrict sharing of information.

Exchange of information between financial institutions: The professional secrecy of financial intermediaries is not an obstacle to the transmission of information between financial institutions (see R. 13, 16, 17, 18, 24 and 25).

Weighting and Conclusion:

All criteria have been met.

Switzerland is compliant with Recommendation 9.

Recommendation 10 – Customer Due Diligence

Switzerland was rated partially compliant during the third evaluation (para. 318ff.), notably due to insufficiencies relating to the obligation to identify customers on determinant aspects like bearer savings books, persons acting in the name of the legal person or the legal arrangement, systematic

identification of beneficial owners, or the possible issuance of bearer shares by public limited companies without transparency measures. Switzerland has since taken corrective measures, especially with the law of 12 December 2014. The new FATF Recommendation imposes more detailed requirements, particularly concerning the identification of legal persons and legal arrangements.

In compliance with the requirement of R. 10, LBA imposes the obligation of due diligence by financial intermediaries (Art. 3ff.). Certain of the conditions for implementation are specified by the *Agreement on Due Diligence of Banks* (CDB 16), which also applies to securities traders (Art. 1 para. 1), and to which the regulatory measures taken by FINMA refer to for application of LBA (Art. 35 OBA-FINMA). The corresponding provisions of CDB 16 are thus an integral part of the regulatory framework that applies to banks and securities traders.

Criterion 10.1 – The prohibition to keep accounts anonymous ensues from the obligation of the financial intermediaries to verify the identity of the customer when the business relationship is established (Art. 3 para. 1 LBA). Opening of new bearer savings books is prohibited, and the existing books must be cancelled the first time they are first physically presented with identification of the person who makes the withdrawals (Art. 5 CDB 16). For numbered accounts, CDB 16 specifies that all provisions relating to the due diligence obligations of banks applies to all accounts, books, deposits and safe deposit compartments designated by a number or a code (Art. 1 para. 3).

Criterion 10.2 – (a) LBA imposes the principle of executing due diligence obligations when there are business relationships (Art. 3, 4 and 6). (b) The rules provide for performing due diligence for occasional transactions that reach a minimum threshold. This threshold is set at CHF 25 000 (Art. 40 para. 1, 41 para. 1 subpara. c, 51 para. 1 subpara. b and 61 para. 1 OBA-FINMA, 4 para. 2 subpara. f and g CDB 16, 3 para. 1 R OAR-ASA, §14 para. 2 subpara. a R Polyreg, point 1 b. of Annex R ASG, art. 22 R VQF), i.e. USD 25 324 / EUR 22 835, which is greater than the minimum threshold set by R. 10. (c) Due diligence is required when financial intermediaries perform occasional transactions of transmission of funds or values as electronic wire transfers (banks do not typically perform this type of transaction, which are thus offered by providers of funds transfer services). The customer's identity must be verified in all cases for the IFDS (Art. 52 para. 1 OBA-FINMA), but only for affiliates of OARs in the case of foreign wire transfers (§14 para. 3 R Polyreg, art. 23 para. 2 R VQF, Art. 10 para. 4 R OAR G). (d) Due diligence measures are also required when there is a suspicion of ML/TF (Art. 3 para. 4 and 6 para. 2 LBA); and (e) when there is a doubt of the veracity of the identification data submitted to the financial intermediary, which entails a second check of the identification of the customers in question (Art. 5 para. 1 LBA).

Criterion 10.3 – LBA imposes the principle of customer identification and verification of identity (Art. 3 para. 1). It applies with the limits identified in c. 10.2. Verification of the customer's identity is generally performed for natural persons by showing official identification with a photograph (Art. 45 para. 3 OBA-FINMA, 9 CDB 16 and 4 para. 1 R OAR-ASA, §9 para. 1 R Polyreg, Art. 8 para. 1 and 3 R ASG, § 2.1.3 R SVIG, Cm 17 para. 1 subpara. 1 R ASSL, art. 15 R VQF). Legal persons must show an extract from the commercial register or another official document (Art. 47 OBA-FINMA, 12, 13 and 15 CDB 16, 5 R OAR-ASA, §11 R Polyreg, Art. 10 R ASG, § 2.1.5.1 R SVIG, Cm 17 para. 1 subpara. 2 R ASSL, art. 16 R VQF). Copies of documents must be certified (Art. 49 OBA-FINMA, 10 and 11 CDB 16,

4 para. 2 and 3 R OAR-ASA, §15 R Polyreg, Art. 12 para. 1 R ASG, § 2.1.1.2 R SVIG, Cm 18 R ASSL), including recourse to entities of the financial group to which the financial intermediary belongs (see R. 17). When the customer does not have identification, the financial intermediary may verify identity on an exceptional basis using other “*documentary evidence*”, for ex. confirmations from official/public authorities or a business report signed by an auditor (Art. 50 para. 2 OBA-FINMA, 8 CDB 16 and 6 R OAR-ASA, §9 para. 2 R Polyreg, Art. 14 para. 2 R ASG, § 2.1.1.8 R SVIG, Cm 21 R ASSL, art. 21 R VQF).

Criterion 10.4 – When the customer is a legal person, the financial intermediary must be aware of his commitment authority and verify the identity of persons establishing the business relationship in his name (Art. 3 para. 1 LBA). This requirement also applies to partnerships (Art. 44 para. 3 OBA-FINMA, 7 para. 2 and 15 CDB 16, 5 para. 3 R OAR-ASA, §12 para. 1 R Polyreg, Cm 15 para. 4 R ASSL, 8 para. 2 R OAR G). In addition, trustees must confirm in writing that they are authorised to establish the business relationship in the name of the trust (Art. 64 para. 3 OBA-FINMA, Art. 16 para. 3 CDB 16, §24 para. 3 R Polyreg, Art. 9 para. 3 R ASG, 16 para. 1 R OAR G). With the exception of R SVIG (§ 2.1.2.3), no measure in the regulations concerning AML/CFT explicitly adopts the obligation of private law according to which the financial intermediary must verify whether a natural person acts in the name and on behalf of another natural person on the basis of a power of attorney or a mandate. Various provisions of OBA-FINMA nevertheless make indirect reference to it (Art. 13 para. 5 subpara. d and 39 subpara. c).

Criterion 10.5 – The financial intermediary must identify the beneficial owner¹⁷⁹ of his customer “*with the due diligence required by the circumstances*” (Art. 4 para. 1 LBA). The message of the Federal Council accompanying the draft law specifies that it concerns introducing the general principle of identification of the beneficial owner and requesting the financial intermediary to “*determine the persons who, in a manner that is recognisable for him, control the legal person.*”

When the financial intermediary has no reason to doubt the customer (natural person) is the beneficial owner, he must document it in an appropriate manner (Art. 59 OBA-FINMA, 29 CDB 16 and 18 para. 3 R ASG, § 2.3.1.1 R SVIG, art. 33. para. 3 R VQF). If there is a doubt, if the customer is a domiciliary company (defined in Art. 2a OBA-FINMA) or a legal person with an operational activity or if it involves a cash transaction exceeding CHF 25 000, the financial intermediary will require a written declaration from the customer (“form A”) concerning its beneficial owners (Art. 4 para. 2 LBA).

There is no general obligation for financial intermediaries to implement reasonable measures –i.e., “*appropriate measures that are proportional to the ML/TF risks,*” according to the definition of FATF– to verify the written declaration concerning the beneficial owners. According to Swiss authorities, this declaration itself constitutes a reasonable measure and a means of reliable verification since it has a penal character and providing a forged document is punishable by a penalty of at least five years' imprisonment (Art. 251 CP). Swiss authorities also indicate that the financial intermediary is required to define the profile of the customer (Art. 6 LBA and 13 OBA-FINMA) and must on this

¹⁷⁹ The expression “*ayant droit économique*” (beneficial owner) used in Swiss terminology is the equivalent of the concept of “*bénéficiaire effectif*” (beneficial owner) used by FATF.

occasion perform a substantive verification concerning information about the beneficial owner. The authorities add that Art. 305^{ter} CP provides that the financial intermediary is required to verify the identity of the beneficial owner. For the assessors, if the existence of this sanction may involve an obligation to verify the identity of the person designated as beneficial owner, it does not extend systematically to verification of the status of beneficial owner of the designated person, which is required by the criterion. Verification measures may nevertheless be envisaged, but not in a systematic manner: facing a situation of increased risk in which the financial intermediaries must carry out additional clarifications, the extent of which depends on the risk that the customer represents and may include research on the content of the declaration (Art. 6 para. 2 subpara. c LBA and 16 OBA-FINMA).

Criterion 10.6 – The financial intermediary must identify the subject and purpose of the business relationship since the extent of information to collect depends on the risk that the customer represents (Art. 6 para. 1 LBA).

Criterion 10.7 – (a) A system of monitoring depending on risks must be implemented by the financial intermediaries (Art. 6 para. 1 LBA, Art. 20 para. 1 OBA-FINMA, Art. 22 R OAR-ASA, §34 para. 1 R Polyreg, Art. 33 para. 1 R ASG, 54 para. 1 R VQF, § 2.6.4.1 R SVIG, 29 para. 5 R OAR G)(). The origin of the assets may be sought as an additional measure of due diligence in case increased risk is detected in the activities of the customer (Art. 15 para. 2 subpara. e OBA-FINMA, 14 para. 1 subpara. b R OAR-ASA, §35 para. 2 subpara. a R Polyreg, Art. 34 para. 2 subpara. a R ASG, 55 para. 3 subpara. b R VQF, § 2.6.5.2 subpara. b R SVIG, Cm 47 para. 2 subpara. b R ASSL, 19 para. 1 R OAR G). (b) Except for Polyreg affiliates (§34 para. 2), there is no general and explicit obligation for the financial intermediary to ensure that data obtained as part of due diligence remains current and relevant during the business relationship. Only in the event of doubt about the data concerning identification of the customer or the beneficial owner is it necessary to perform the procedure again (Art. 5 LBA, Art. 12 R OAR-ASA, Art. 28 R ASG, 45 R VQF, § 2.4 R SVIG, Cm 28 R ASSL, art. 24 R OAR G).

Criterion 10.8 – The financial intermediary must, as part of his obligation for due diligence, identify the purpose and subject of the business relationship that is sought (Art. 6 para. 1 LBA), which implies that he be aware of the customer's business activity. When customers are legal persons or legal arrangements, the intermediary must also obtain a written declaration concerning the beneficial owners (Art. 4 para. 2 subpara. b LBA). Nevertheless, there is no systematic obligation to conduct a verification of the beneficial owner status of the person designated in this declaration (see c. 10.5), which limits the cases in which the financial intermediary endeavours to understand the ownership structure and his customer's control.

Criterion 10.9 – During the establishment of business relationships with legal persons and legal arrangements, the financial intermediary must identify and verify the customer's identity using the data referred to in the criterion: (a) Art. 44 para. 1 subpara. b and 47 OBA-FINMA, Art. 12 and 13 CDB 16, Art. 5 R OAR-ASA, §8 para. 1 subpara. b R Polyreg, Art. 10 R ASG, Cm 15 para. 1 subpara. b and 17 para. 2 R ASSL, § 2.1.2.1 and 2.1.5 R SVIG, Art. 16 para. 1 and 2 R VQF; (b) Art. 3 para. 1 LBA, 44 para. 3 OBA-FINMA, 7 para. 2, 15 and 16 para. 3 CDB 16 and form T, 5 para. 3 R OAR-ASA, §12 para. 1 R Polyreg, Art. 11 R ASG, Cm 15 para. 3 R ASSL, § 2.1.2.4 R SVIG, Art. 17 para. 3 R VQF (c. 10.4); and (c) Art. 44 para. 1 subpara. b OBA-FINMA, 7 para. 2 CDB 16, §12 para. 1 subpara. b R

Polyreg, Cm 15 para. 1 subpara. b R ASSL, § 2.1.2.1 R SVIG, Art.16 para. 1 subpara. b VQF - the address is not always explicitly required in the documents equivalent to the extract from the commercial register, even if this information is mentioned in a general manner.

Criterion 10.10 – The beneficial owners written declaration required of legal persons actively involved in operations must contain indications concerning natural persons such as listed by this criterion while following the series of steps to identify who the beneficial owner is (Art. 56 OBA-FINMA, 20 CDB 16 and form K, form S for foundations and 9 para. 1 and 2 subpara. c R OAR-ASA, §18 para. 2 R Polyreg, Art. 19 R ASG). As indicated in c. 10.5, there is no systematic obligation to verify the beneficial owner status of the person designated in the declaration submitted by the customer.

Swiss law considers legal persons without business operations as “domiciliary companies” (Art. 2 para. a OBA-FINMA) and as such must follow specific rules (see c. 10.11).

Criterion 10.11 – For legal arrangements, and more generally for “non-capitalistic” institutions for which the concept of “owner of controlling interest” (Art. 2 para. f OBA-FINMA) is not applicable, Swiss law requires that the beneficial owners of assets be identified.

(a) The various parties to the trusts must be identified in compliance with the approach of the criterion (Art. 64 OBA-FINMA, Art. 41 CDB 16 and form T, §24 R Polyreg, Art. 24 R ASG, § 2.3.5.1 R SVIG, Art. 25 para. 1 R VQF, Cm 32 para. 1 R ASSL, Art. 16 para. 1 R OAR G).

(b) Identical provisions are applicable to other types of legal arrangements, including foreign ones, which may conduct business in Switzerland (Art. 64 para. 2 OBA-FINMA, § 24 para. 2 R Polyreg, Art. 24 para. 2 R ASG, § 2.3.5.2 R SVIG, Cm 32 para. 2 R ASSL, 16 para. 2 R OAR G) since the formulation of requirements concerning trusts is sufficiently large to apply to the diversity of legal arrangements that may be targeted.

When a domiciliary company is the customer of a financial intermediary, it is most often through a trustee (who is subject to AML/CFT obligations). A written declaration about the beneficial owners is always required when the customer is a domiciliary company (Art. 4 para. 2 subpara. b LBA and 63 OBA-FINMA, 9 para. 1 subpara. b R OAR-ASA, §19 para. 1 subpara. b R Polyreg, Art. 23 para. 1 R ASG, 38 R VQF, Cm 29 para. 2 R ASSL, § 2.3.4.1 R SVIG, Art. 15 para. 1 R OAR G). A standard form used by banks requires information about the identity of the beneficial owner (Art. 39 para. 1 CDB 16 and form A, S or T depending on the nature of the domiciliary company), without specifying how or through which connection the identified person would be able to exercise control over the assets or have them assigned to him. The information about beneficial owners of domiciliary companies, particularly those collected by the banks, are insufficient for FATF's purposes. No reasonable measure is required by financial intermediaries to verify the beneficial owner status of persons designated in the form submitted to banks. The forms do not require grasping how control is exercised by the persons who exercise ultimate control or benefit from the assets, as in the case of complex ownership chains.

Non-profit foundations are considered as domiciliary companies (Art. 2 para. a subpara. 1 OBA-FINMA). They follow specific rules concerning information about their beneficial owners at banks, as do groups of persons and patrimonial entities for which there is no determined beneficial owner (Art. 40 CDB 16 and form S).

As indicated in c. 10.5, there is no systematic obligation to verify the status of the person designated as beneficial owner in the declaration submitted by the customer who is a legal arrangement.

Criterion 10.12 – The insurance company must identify the name of the beneficiary of the life insurance contract no later than the time when benefits are paid (Art. 11 para. 1 R OAR-ASA), whatever the legal status of the customer. The identity must be verified only if the beneficiary is a politically exposed person (PEP).

Criterion 10.13 – The OAR-ASA Regulation contains an indicative list of criteria for detecting business relationships with increased risk, of which a single criterion targets the beneficiary, in special circumstances (payment exceeding CHF 25 000 to a beneficiary not related to the buyer, Art. 13^{ter} para. 2 subpara. g). Even if each financial intermediary is responsible for determining his own criteria for increased risks (Art. 13^{ter} para. 1), the beneficiary should be included in the relevant risk factors to consider. When the beneficiary is a legal person and the situation presents increased risk, the financial intermediary must apply more stringent measures to identify the beneficial owners of the beneficiary (Art. 11 para. 2 subpara. 2 R OAR-ASA).

Criterion 10.14 – In principle, the financial intermediaries must obtain the documents and information required to verify the identity of the customer and the beneficial owner before executing the transactions or establishing the relationship (Art. 55 para. 1 and 68 para. 1 OBA-FINMA, Cm 25 R ASSL, Art. 12 R OAR G, 4 para. 2, 20 para. 5, 27 para. 3 CDB 16, §7 para. 2 R Polyreg, Art. 6 R ASG). If however some data or information is insufficient, with the exception of the first and last names of the customer and the beneficial owner, banks, securities traders and wealth managers –affiliated with OAR ASG– are authorised to open the account. They must then require that the missing documents be provided as soon as possible (Art. 45 CDB 16, Art. 6 para. 2 R ASG), and no later than 90 days at the end of which measures are taken if the matter has not been regularised. This period is an exceptional measure but it does not reflect the requirement to provide the missing documents quickly. In addition, the number and nature of the documents that constitute insufficiency are not specified, and it is not indicated whether it may concern documents that are essential for the normal course of business. Lastly, adequate measures for management of ML/TF risks are not imposed in the case of CDB 16: the 90-day freeze affects only outgoing funds, which does not rule out the possibility that incoming funds during this period are of illicit origin, and that they will be returned at the end of the 90 days if the missing documents are not produced (with, however, in the case of significant values, the financial intermediary being responsible for tracking them, Art. 30 para. 2 OBA-FINMA). For cash transactions and the other FINMA financial intermediaries, there are no measures that allow for postponing completion of due diligence requirements (Art. 56 para. 5 FINMA, Art. 3 para. 3 R OAR-ASA).

Criterion 10.15 – The customer of a bank may benefit from the business relationship even when data or documents are still lacking (and thus cannot be verified). Freezing accounts for withdrawal of funds and values after 90 days when the missing documents have not been provided is the only specific measure provided for managing risk, and it is insufficient (see c. 10.14). No specific provision is made for ASG affiliates (Art. 6 para. 3 R ASG). For ASSL affiliates, withdrawals of funds are not legal as long as the documents are not all available. If the situation is not regularised after 30 days, the business relationship must be terminated (Cm 25 para. 2 R ASSL).

Criterion 10.16 – For financial intermediaries directly supervised by FINMA (IFDS, see R. 14 and 26) and certain affiliates of OARs, the rules on identification of beneficial owners introduced by the law of 12 December 2014 apply to new customers with whom relationships are established after 1 January 2016 (Art. 78 para. 3 OBA-FINMA, §64 para. 2 R Polyreg, Art. 54 R ASG, 98 para. 5 R VQF, 50 R OAR G). For the banks, this measure also applies to the new rules for verifying the identity of the customer (Art. 70 para. 3 CDB 16). However, existing customers may be subject to the new requirements if the procedure to verify the identity of the customer or the beneficial owner must be repeated, i.e., in case of doubt about existing information or increased risk in the business relationship (Art. 5 LBA and 69 OBA-FINMA, §64 para. 2 R Polyreg, Art. 54 R ASG, 98 para. 5 R VQF, 50 R OAR G). It is not possible to use this approach to prioritise the application of the new measures to the categories of customers with the profiles with highest risk, as proposed in the criterion. However, the scope of this arrangement is limited to the extent that identification of the beneficial owner was not a systematic procedure in the previous measures.

Criterion 10.17 – The financial intermediaries must clarify the background and purpose of a business relationship when it is associated with increased risk (Art. 6 para. 2 subpara. c LBA). In these circumstances, they must perform additional clarifications in a measure that is proportional to the circumstances (Art. 15 OBA-FINMA, Art. 14 R OAR-ASA, §35 and 36 R Polyreg, Art. 30 R ASG, see c. 1.10 and 1.11, Cm 42 and 43 R ASSL, § 2.6 R SVIG, Art. 55 and 56 R VQF, 29 R OAR G).

Criterion 10.18 – FINMA may take account of specific information related to the activities of financial intermediaries by reducing requirements in applicable AML/CFT measures, depending in particular on the level of risk involved (Art. 3 para. 2 OBA-FINMA). The financial intermediaries are not authorised to reduce their level of due diligence in case of low risk that they may have identified outside the provisions expressly made by OBA-FINMA.

Issuers of means of payment who have signed a delegation agreement with a bank authorised in Switzerland are subject to simplified due diligence measures in circumstances defined in Art. 12 OBA-FINMA when this involves transactions of a limited amount. The restrictive conditions in which the simplified measures are applicable appear adequate to limit the low ML/TF risk identified for when there are copies missing in the identity verification file of the financial intermediary (Art. 12 para. 1 OBA-FINMA, point 5 para. 1 Annex R ASG). The arrangements do not however specify whether the simplified measures are suspended in case of suspicion of ML/TF. The current conditions for the simplified measures for authenticating copies of identification documents (Art. 12 para. 2 OBA-FINMA and §16 para. 2 R Polyreg, point 5 para. 2 R ASG) appear insufficient, see c. 1.8.

Criterion 10.19 – (a) When the obligations to verify the identity of the customer or to identify the beneficial owner cannot be carried out, the IFDS and certain affiliates of OARs must refuse to establish the business relationship or must terminate it (Art. 55 para. 2 and 68 para. 2 OBA-FINMA, §17 and 25 R Polyreg, Art. 17 and 27 R ASG). On the other hand, there is no obligation for banks, but only an option of terminating the business relationship when they have not obtained the missing documents within a period of 90 days (Art. 45 CDB 16, see c. 10.14). The IFDS and the banks must however terminate as soon as possible the business relationship if doubts persist concerning the beneficial owners following a second procedure to confirm their identity or if it has been confirmed that they were knowingly supplied with erroneous information (Art. 70 OBA-FINMA, Art. 46 para. 2

CDB 16). (b) A declaration to MROS is obligatory when the negotiations for establishing a business relationship are severed due to suspicions based on ML/TF (Art. 9 para. 1 b LBA). The customer's failure to cooperate in providing identification is moreover an indication of ML/TF (Annex 2.2. of Annex OBA-FINMA) which requires that the financial intermediary anticipate making a declaration in these circumstances.

Criterion 10.20 – In case of suspicion of ML/TF, the financial intermediary may use its right to communicate (Art. 305^{ter} para. 2 CP). If there is already a suspicion based on ML/TF, the financial intermediary must communicate it (Art. 9 LBA). In both cases, communication does not entail automatic blocking of assets (on condition of a suspicious transaction report on the basis of Art. 9 para. 1 subpara. c LBA) thus avoiding notifying the customer. Beginning with this communication and during the analysis carried out by MROS, the financial intermediary must execute customer orders, which also greatly diminishes the risks that they will be informed that a report of suspicious activity has been submitted about them. Nevertheless, these provisions do not give a verdict on the obligation on whether to maintain the requirement of performing due diligence in addition to the transactions.

Weighting and Conclusion:

The limits to the scope of due diligence obligations related to the high amount of the applicable threshold have repercussions on the other criteria imposed for this Recommendation. In addition, the lack of a general and explicit obligation for the financial intermediary to ensure that the data obtained as part of due diligences remains current and relevant is a significant deficiency, particularly for the detection and monitoring of risks. Lastly, the extent of the observed insufficiencies with regard to the verification of the beneficial owners also weighs substantially on the rating, particularly for domiciliary companies, which have been identified as having a high risk of ML/TF in Switzerland. The insufficiencies also had an impact on the other significant requirements imposed by the Recommendation (c. 10.8, 10 and 11).

Switzerland is partially compliant with Recommendation 10.

Recommendation 11 – Record-keeping

Switzerland was rated compliant during the third evaluation (para. 554ff.). The requirements imposed by FATF were not modified in any substantial way.

Criterion 11.1 – LBA requires that financial intermediaries keep documents relating to transactions as well as necessary clarifications for 10 years after the transaction has been performed or the business relationship terminated (Art. 7).

Criterion 11.2 – The documents that the financial intermediaries are required to keep for 10 years must give “*experts an objective idea about the transactions and business relationships as well as compliance with the provisions of LBA*”, which covers the implemented due diligence measures (Art. 7 para. 1 LBA). In addition, data concerning communications of suspect transactions must be kept separately and for 5 years after having been communicated (Art. 34 LBA). Documents relating to communications that took place in the framework of a business relationship must be kept as long as

this business relationship has not ended and at maximum for 10 years after the end of the business relationship. There is also a general obligation to keep accounts and accounting records, which may include business correspondence, for 10 years.

Criterion 11.3 – LBA requires that the documents be kept to respond to any requests for information or seizure by law enforcement authorities (Art. 7 para. 2).

Criterion 11.4 – The documents must be produced within a reasonable period for law enforcement authorities and other authorised authorities (Art. 7 para. 2 LBA and 22 para. 2 OBA-FINMA, §37 para. 4 R Polyreg, Art. 40 and 41 para. 1 R ASG).

Weighting and Conclusion:

All the criteria of the Recommendation have been met.

Switzerland is compliant with Recommendation 11.

Recommendation 12 – Politically exposed persons (PEP)

Switzerland was rated largely compliant during the third evaluation (para. 450ff. and 515ff.). In 2012 FATF introduced new requirements for national PEPs and PEPs from international organisations. Switzerland has taken adaptation measures by adopting the law of 12 December 2014.

Criterion 12.1 – (a) Application of obligations to identify relationships with increased risk (Art.13 OBA-FINMA) and to monitor for detecting these risks (Art. 20 para. 1 OBA-FINMA, Art. 13^{bis} R OAR-ASA, §41 para. 1 R Polyreg, Art. 30 R ASG, 27 para. 3 R OAR G) –quality of all customers and beneficial owners who are foreign PEPs (Art. 6 para. 3 LBA)– for determining whether the customer or beneficial owner is a foreign PEP. There is however a difficulty for detecting the beneficial owners of existing customers who are foreign PEPs, in application of the provisional measures set by the law of 12 December 2014, see c. 10.16. (b) Permission for a business relationships requires a decision by management at its highest level or one of its members (Art. 19 para. 1 OBA-FINMA, Art. 15 para. 1 R OAR-ASA, §34 para. 4 R Polyreg, Art. 31 para. 8 R ASG, Cm 49 para. 1 R ASSL, Art. 60 R VQF, § 2.6.9.1 R SVIG, Art. 27 para. 5 R OAR G). (c) If there is increased risk, the financial intermediary must clarify the background of the transactions (Art. 6 para. 2 LBA). Depending on the circumstances, this may include the source of the submitted assets and/or the source of the wealth of the co-contractor (Art. 15 para. 2 subpara. b and e OBA-FINMA, Art. 13 para. c R OAR-ASA, §35 para. 2 R Polyreg, Art. 34 para. 2 R ASG, Cm 47 para. 2 R ASSL, Art. 55 para. 3 R VQF, § 2.6.5.2 R SVIG, Art. 29 para. 1 subpara. b R OAR G). (d) There is an explicit obligation to implement regular monitoring for transactions with foreign PEPs (Art. 19 OBA-FINMA, 15 para. 1 subpara. b R OAR-ASA, 60 para. 2 R VQF, Cm 49 para. 3 R ASSL, § 2.6.9.1 para. b R SVIG). In addition, continued heightened monitoring is in place through the involvement of the management body which each year must have the information required to decide whether to pursue the business relationships (Art. 25 para. 1 subpara. e OBA-FINMA, §34 para. 4 subpara. a R Polyreg, Art. 31 para. 8 R ASG), and the implementation, assessment and monitoring of the controls of increased risks.

Criterion 12.2 - (a) The financial intermediary must determine systematically whether a customer or a beneficial owner is a national or international organisation PEP in order to envisage whether there is another element of risk which makes this an increased risk relationship (Art. 6 para. 4 LBA, Art. 13 para. 4 subpara. a and b OBA-FINMA). (b) Relationships with domestic or international organisation PEPs are considered as increased risks when they present one of the risk factors described in the regulatory texts (ex. Art. 13 para. 2 OBA-FINMA, 13^{bis} para. 2 R OAR-ASA, Art. 31 para. 4 R ASG, 57 para. 2 R VQF, § 2.6.2.5 R SVIG, Cm 45 para. 2 R ASSL). The measures described in c. 12.1 apply if the business relationship presents increased risk.

Criterion 12.3 – The obligations of increased due diligence that apply to foreign, domestic, or international organisation PEPs when they present increased risks also apply to their close relationships [*proches*], who include family members and persons closely associated to PEPs (Art. 6 para. 3 and 4 LBA).

Criterion 12.4 – For life insurance contracts, financial intermediaries must determine whether the beneficiary is a PEP no later than the time when benefits are paid and carry out additional clarifications if it concerns an increased risk according to the conditions provided in the criterion (Art. 11 para. 1 and 2, 14 para. 1 subpara. a and para. 2 R OAR-ASA). It is only when there is a higher risk that the beneficial owner of the beneficiaries which are legal persons must be identified (Art. 11 para. 2 R OAR-ASA). In addition, the presence of increased risk is defined restrictively: payment of more than CHF 25 000 to a beneficiary who is not manifestly related to the buyer of the insurance based on family, personal or business ties (Art. 13^{ter} para. g).

Weighting and Conclusion:

Deficiencies are noted regarding the detection of foreign PEPs among existing customers and the verification of the PEP status of the beneficial owners of beneficiaries of insurance contracts.

Switzerland is largely compliant with Recommendation 12.

Recommendation 13 – Correspondent banking

Switzerland was rated non-compliant during the third evaluation (para. 471 and 526ff.) because there was no specific arrangement on correspondent banking in the national AML/CFT framework. The OBA-FINMA modifications adopted in 2008 introduced the measures aimed at considering correspondent banking relationships as having increased risks in all cases. The new FATF Recommendation adds requirements concerning the prohibition of relationships with shell banks.

Criterion 13.1 – In all cases, correspondent banking relationships are considered as having increased risks (Art. 13 para. 3 subpara. f OBA-FINMA). The financial intermediary must thus undertake additional clarifications in application of the general LBA framework (Art. 15 para. 1 OBA-FINMA). These clarifications comply with the requirements of the criterion (Art. 6 para. 1 and 15 para. 1 subpara. f, 16 para. 1 subpara. c, Art. 19 para. 1 subpara. a and 13 para. 3 subpara. c, Art. 29 para. 1 and 37 para. 3 OBA-FINMA).

Criterion 13.2 – Swiss authorities indicate that payable-through accounts giving direct access of the customer of the foreign respondent to the account offered by the correspondent bank do not constitute a practice that exists in Switzerland due to their character that is “*incompatible with the basic principles of risk management*”. This practice is not explicitly prohibited by the legislation in effect. Swiss authorities consider that in application of point 4.4 of Annex OBA-FINMA, recourse to payable-through accounts constitutes an indication of money laundering consequently considered as a relationship with increased risk (Art. 20 and 38 OBA-FINMA). Point 4.4 of the OBA-FINMA Annex does not cover the general practice of payable-through accounts and it thus cannot be taken into account.

Criterion 13.3 – Financial intermediaries are prohibited from having a business relationship with shell banks (Art. 8 subpara. b OBA-FINMA). The prohibition also applies to correspondent banking relationships (Art. 37 para. 1 OBA-FINMA). Financial intermediaries must ensure that their respondents do not authorise shell banks to access their accounts (Art. 37 para. 2 OBA-FINMA).

Weighting and Conclusion:

There are insufficiencies in the management of correspondent banking relationships with regard to important and risky aspects of payable-through accounts.

Switzerland is largely compliant with Recommendation 13.

Recommendation 14 – Money or value transfer services

Switzerland was rated compliant during the third evaluation (para. 841ff.). FATF introduced new requirements concerning the identification of providers of money or value transfer services who are not authorised or registered, and the definition of sanctions for failure to comply with these obligations.

Criterion 14.1 – Persons who in a professional capacity transfer assets belonging to a third party are considered as financial intermediaries, subject to the LBA (Art. 2 para. 3 LBA) and must be affiliated with an OAR that is recognised or authorised by FINMA (Art. 14 para. 1 LBA)¹⁸⁰. FINMA keeps a register of affiliates of OARs¹⁸¹, as well as a register of financial intermediaries it directly supervises¹⁸² (IFDS) (Art. 18 para. 1 subpara. f LBA). The definition of the activity of transferring funds or values (Art. 4 para. 2 OBA) corresponds to that of FATF and is always considered as exercised in a professional capacity (except when performed for close relationships and in small volumes, Art. 9 OBA; or by auxiliaries acting on behalf of a financial intermediary, Art. 2 para. 2 subpara. b OBA).

¹⁸⁰ The Swiss authorities indicate that the OARs Polyreg, VQF, CFF, and ARIF include funds and value service providers among their affiliates.

¹⁸¹ <https://www.finma.ch/fr/autorisation/organisme-d-autoregulation-oar/recherche-de-membres-oar/>

¹⁸² <https://www.finma.ch/fr/surveillance/direkt-unterstellte-finanzintermediaere--dufi/>

Criterion 14.2 – FINMA keeps a registry of persons to whom it has refused to grant authorisation to exercise the activity of financial intermediary (Art. 18 para. 1 subpara. f LBA). The fact that providing money or value transfer services is always considered to be exercised in a professional capacity (see c. 14.1)--thus under condition of authorisation from FINMA or affiliation with an OAR--and without application of thresholds, facilitates identification of illegal activities. FINMA has a general power to investigate when it receives information concerning institutions submitted to the LBA in particular (Art. 29 para. 2 LFINMA) and to compliance with the law when such an institution breaks the law (Art. 31 LFINMA). A division of FINMA is responsible for proactively identifying persons performing transfer activities without authorisation. Art. 44 LFINMA provides for sanctions of imprisonment (three years) or fines against those who have intentionally exercised activities without authorisation, as well as day-fines in case of a repeated offence within five years. These sanctions appear proportional and dissuasive.

Criterion 14.3 – As financial intermediaries, providers of money or value transfer services are subject to the monitoring of an OAR or FINMA (Art. 12 subpara. c LBA).

Criterion 14.4 – Auxiliaries of transfer services providers described in Art. 2 para. 2 subpara. b OBA match the “agent” as defined in the FATF glossary. Art. 73 para. 4 of OBA-FINMA requires that IFDS maintain an updated list of the auxiliaries working with them, as in §40 para. 3 R Polyreg, Art. 83 R VQF, Art. 4 Directive 10 ARIF and B8 R OAR CFF.

Criterion 14.5 – OBA provides that auxiliaries authorised to operate in Switzerland must follow the instructions and controls of the financial intermediary and integrated in his organisation measures (Art. 2 para. 2 subpara. b). Transfer service providers in Switzerland may use the services of auxiliaries abroad, provided that they are required to be authorised and monitored by the competent foreign authority. Sanctions may be applied to auxiliaries who pursue their activities despite non-compliance with the conditions of Art. 2 para. 3 subpara. b 1 to 6 of OBA as detected by the supervisory authority of the provider, as well as to the financial intermediary.

Weighting and Conclusion:

The requirements of Recommendation 14 are met.

Switzerland is compliant with Recommendation 14.

Recommendation 15 – New technologies

Switzerland was rated largely compliant during the third evaluation (para. 473ff.). The new R. 15 focuses on assessing risks related to the use of new technologies in general, and no longer specifically targets distance contracts.

Criterion 15.1 – The financial intermediaries are required to identify and assess the risks related to the development of new products and business practices or the use of technologies that are new or developed for new or existing products (Art. 23 OBA-FINMA, §3 para. 2 subpara. f R Polyreg, Art. 42 para. 2 subpara. d R ASG, Art. 76 R VQF, Cm 52 R ASSL, § 2.9.1.1 R SVIG). There is no equivalent

obligation for the country but the national risk assessment and other work, for example on virtual currencies, demonstrate that this issue is considered.

Criterion 15.2 – (a) A certain number of financial intermediaries must assess the risks “*in advance*” (Art. 23 OBA-FINMA, Art. 42 para. 2 subpara. d R ASG, Art. 76 R VQF, Cm 52 R ASSL, § 2.9.1.1 R SVIG). No equivalent arrangement exists for other financial intermediaries. (b) Financial intermediaries must limit and adequately verify the identified risks (Art. 23 OBA-FINMA, Art. 33 and 42 para. 2 subpara. d R ASG, Art. 76 R VQF, §3 para. 2 subpara. f R Polyreg, Cm 52 R ASSL, § 2.9.1.1 R SVIG).

Weighting and Conclusion:

The issues related to new technologies appear to be an integral part of work on risk assessment carried out by Switzerland even in the absence of an explicit measure in this regard in the mandate of the GCBF, for example. The deficiency noted concerning the regulations of certain OARs must be kept in context since in general these bodies do not include members who use new technologies.

Switzerland is largely compliant with Recommendation 15.

Recommendation 16 – Wire transfers

Switzerland was rated partially compliant during the third evaluation (para. 566ff.), due particularly to an exception concerning identification of originators and the absence of sufficient measures covering domestic wire transfers. Corrective measures were taken. The new R. 16 substantially strengthens the requirements, particularly concerning identification of parties to transfers and the obligations incumbent on the financial institutions involved, including intermediary financial institutions.

Criterion 16.1 – (a) and (b) Cross-border transfer orders must include the indications required by the criterion (Art. 10 para. 1 OBA-FINMA, §14 para. 4 R Polyreg, point 3 para. 1 Annex R ASG, Art. 13 para. 1 R VQF, § 2.1.7.1 R SVIG, Art. 8 para. 4 R OAR G, Art. 23 para.3 R FSA/FSN, D2 R OAR CFF, 3.5 para. 1 R Trustee – exception for Art. 28 para. 1 R OAD FCT which does not provide for the name of the beneficiary). For the FINMA financial intermediaries, there is no explicit obligation to verify the information concerning the originator. For Swiss authorities, the obligation is implicit and results from the obligation to “indicate” included in Art. 10 OBA-FINMA. This is an obligation to achieve a result and to ensure that, through technical measures and/or manual control, the requested information is correctly entered into the system. On the other hand, there is a requirement for affiliates of OARs (Art. 17 para. 2 R OAD FCT, 10 para. 4 OAR G, D2 R OAR CFF, 22 para. 3 R FSA/FSN). It should be noted that the “*transaction reference number*” will ensure that the transaction can be tracked.

Criterion 16.2 – The provisions of Art. 10 para. 1 OBA-FINMA and the corresponding provisions of the OAR Regulations (see c. 16.1) apply to all transfer orders, separately or by batch. A reservation identical to the one identified for c. 16.1 concerning the exact nature of information about the originator and the number related to the transaction is thus issued.

Criteria 16.3 and 16.4 – Switzerland does not apply a minimum threshold.

Criterion 16.5 – There is a customs and monetary union between Switzerland and Liechtenstein, and wire transfers between the two countries are considered domestic. Domestic transfers must contain information about the originator under the conditions set by the criterion (Art. 10 para. 2 OBA-FINMA, §14 para. 4 R Polyreg, point 3 para. 1 Annex R ASG, § 2.1.7.2 R SVIG, Art. 8 para. 4 R OAR G, Art. 23 para. 2 R FSA/FSN, Art. 287 para. 2 R OAD FCT, Art. 13 para. 2 R VQF).

Criterion 16.6 – Information accompanying the domestic wire transfers can be made available to the parties concerned by means other than by information about the originator, under the conditions set by the criterion, including concerning the period of three working days (see provisions mentioned in c. 16.5 with a reservation concerning the three working days for Art. 23 para. 2 of R FSA/FSN). Law enforcement authorities may constrain the immediate production of information, even though the parties may have a certain time to act (Art. 265 CPP).

Criterion 16.7 – LBA imposes a general obligation to conserve information and documents relating to the transactions for 10 years, under conditions compliant with R. 11 (see also R. 11).

Criterion 16.8 – Art. 10 para. 1 OBA-FINMA imposes the conditions in which a transfer may legitimately be executed without any exception. As soon as one of these conditions has not been met, the transfer may not be executed.

Criterion 16.9 – The intermediary financial institution must ensure transmission of all information received pursuant to Art. 10 para. 1 OBA-FINMA (Art. 37 para. 4 OBA-FINMA). This provision applies in the framework of a correspondent banking framework, since it is not possible to perform an electronic wire transfer outside of this framework in Switzerland. The sense and scope of the obligation introduced by OBA-FINMA, which corresponds to the requirements of the criterion, are included in the explanatory report on the revision of OBA-FINMA.

Criterion 16.10 – The requirement imposed by LBA concerning conservation of documents relating to transactions for a period of 10 years applies, even though technical limitations prevent the information from being transmitted with the wire transfer (Art. 7, see also R. 11).

Criterion 16.11 – The intermediary financial institution must define the procedure to follow in the case where it receives repeated incomplete transfer orders (Art. 37 para. 4 OBA-FINMA). It must also take reasonable measures to identify the transfer orders which do contain all the required information. This reading of OBA-FINMA is based on the hearing report on the revision of OBA-FINMA, which clarifies the extent of the obligation that is imposed. Nevertheless, there is no requirement for reasonable measures to identify the isolated incomplete electronic transfers, lacking the data of the originator and the beneficiary.

Criterion 16.12 – The intermediary financial institutions are required to define a procedure to follow, based on the risk, for the case where they receive a series of incomplete transfer orders for the IFDS (Art. 37 para. 4 OBA-FINMA). According to the hearing report on the revision of OBA-FINMA, this procedure must ensure that financial intermediaries can determine the situations where they must execute, refuse or suspend the incomplete transfer orders according to a risk-based approach.

Criterion 16.13 – The financial institution of the beneficiary must define the “*procedure to follow*” for incomplete transfer orders on the basis of the risks involved (Art. 10 para. 5 OBA-FINMA, point 3

para. 5 Annex R ASG, § 13 para. 5 R VQF, Art. 28 para. 4 R OAD FCT). The financial intermediary must thus take reasonable measures to identify the transfer orders which do not include all required information (hearing report on the revision of OBA-FINMA). Such an obligation is not found in the Regulations of a certain number of OARs (Polyreg, SVIG, ASG, FSA/FSN, OAR G).

Criterion 16.14 – When the beneficiary of the transfer is already a customer of the financial intermediary, his identity was verified at the beginning of the business relationship (Art. 3 para. 1 LBA). When it concerns an occasional customer, the beneficiary of the payment must be identified only if the amount exceeds CHF 1 000 and it involves a wire transfer from abroad (Art. 52 para. 2 OBA-FINMA, this provision does not apply to banks because they do not perform these transactions, §14 para. 3 Polyreg, Art. 22 and 23 R VQF, 30 Directive 2 ARIF). The other OAR Regulations do not include a similar provision. In both cases, the documents are kept in compliance with R. 11 (Art. 7 LBA).

Criterion 16.15 – The financial institution of the beneficiary must define a procedure to follow, depending on the level of risk involved, for the case where it receives incomplete transfer orders (Art. 10 para. 5 OBA-FINMA, point 3 para. 5 Annex R ASG, Art. 13 para. 3 VQF). Such an obligation is not included in the Regulations of a certain number of OARs (Polyreg, SVIG, FSA/FSN, OAR G).

Criterion 16.16 – The provisions governing electronic transfers of OBA-FINMA, and of the Regulations of Polyreg, SVIG, OAD FCT, FSA/FSN, OAR G, VQF or ASG are applicable to the financial intermediaries that they monitor, whatever their status, and whatever the country where they exercise their activities.

Criterion 16.17 – The Swiss authorities indicate that in the absence of a provider under their authority and performing certain of the transactions described in c. 16.17, this criterion does not apply and Switzerland has not adapted its national legislation.

Criterion 16.18 – Financial intermediaries implement freeze measures and comply with prohibitions on conducting transactions with designated persons and entities, as per obligations set out in the relevant United Nations Security Council Resolutions concerning the prevention and suppression of terrorism and financing of terrorism, such as Resolutions 1267 (Art. 3 para. 2 Ordinance of 2 October 2000) and 1373 (Art. 6 para. 2 subpara. d, Art. 9 para. 1 subpara. c and Art. 10 para. 1^{bis} LBA) and their successor resolutions. The deficiencies identified pursuant to R. 6 will have repercussions when the freeze occurs during electronic transfer transactions.

Weighting and Conclusion:

Given the presence of subsidiaries of large foreign banking groups in Switzerland and the significant share of customers who do not live in the country, cross-border wire transfers represent a substantial number of transactions. The absence of a specific obligation for financial intermediaries to implement measures to control the quality of information contained in transfer orders constitutes a significant weakness in Switzerland's technical compliance for electronic transfers.

Switzerland is partially compliant with Recommendation 16.

Recommendation 17 – Reliance on third parties

Switzerland was rated largely compliant in the third evaluation (para. 532ff). The FATF's new requirements emphasise the country risk of the third party required to perform due diligence on the customer.

Criterion 17.1 – A financial intermediary relying on a third party to perform customer due diligence remains ultimately responsible for that due diligence (Art. 29 para. 1 OBA-FINMA, Art. 18 para. 5 R OAR-ASA, Art. 39 para. 1 R ASG, §39 para. 1 R Polyreg, Art. 31 para. 1 R OAR G, Cm 37 R ASSL - requirement not included in R SVIG) under the conditions required by the criterion (Art. 28 and 29 para. 2 OBA-FINMA, 18 para. 1, 3 and 6 R OAR-ASA, Art. 37 and 39 R ASG, §38 and 39 R Polyreg, Art. 30 and 31 R OAR G, Art. 80 para. 4 R VQF, Cm 34 and 35 R ASSL). However, the exemptions for issuers of payment methods mean that they do not necessarily obtain the initial information “immediately” from the bank delegated to perform the customer due diligence (Art. 12 para. 1 subpara. a and b OBA-FINMA, point 5 para. 1 subpara. a and b of Annex R ASG), even though any changes must be sent immediately (Art. 12 para. 1 subpara. c OBA-FINMA, point 5 para. 1 subpara. c of Annex R ASG).

Criterion 17.2 – Swiss financial intermediaries may rely on third parties on certain conditions, one of which is that the financial intermediary is subject to equivalent AML/CFT regulation and supervision (Art. 28 para. 2 OBA-FINMA, §38 para. 1 R Polyreg, Art. 37 para. 1 R ASG, Art. 30 para. 1 R OAR G, Art. 80 para. 2 subpara. b R VQF, Cm 35 para. 1 subpara. b R ASSL). According to the Swiss authorities, this requirement, together with Art. 5 para. 1 and 29 OBA-FINMA, enables account to be taken of available information about the risk level of the country where the third party is established. This approach restricts the risk-based approach to the country solely to the applicable AML/CFT supervision and controls. Issuers of payment methods can only rely on banks authorised in Switzerland (Art. 12 para. 1 OBA-FINMA, point 5 para. 1 Annex R ASG).

Criterion 17.3 – A financial intermediary relying on a third party that is part of the same financial group must check that the customer due diligence rules that apply are equivalent (Art. 28 para. 2 subpara. a OBA-FINMA, 18 para. 6 R OAR-ASA, Art. 80 para. 2 R VQF, Cm 35 para. 1 subpara. a. R ASSL). The other information mentioned in the criterion is not required when an intermediary is relying on a third party in the same financial group. In that case the conditions laid down for other cases (see c. 17.1) also apply in situations where the customer due diligence requirements are delegated within a group.

Weighting and Conclusion:

Insufficient account is taken in the Swiss system of the requirement to consider the risk level of the country where a third party is established.

Switzerland is largely compliant with Recommendation 17.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In the third evaluation Switzerland was rated largely compliant on internal controls and partially compliant on measures related to foreign branches and subsidiaries (para. 661ff). The corrective measures taken partially close the identified deficiencies, but there are still weaknesses as regards insurance companies and non-banking intermediaries. R. 18 introduces some new requirements on implementing an independent audit function for internal supervision and AML/CFT programmes for financial groups.

Criterion 18.1 – (a) Financial intermediaries must take the necessary steps to prevent money laundering and terrorist financing (Art. 8 LBA), including having a specialist department responsible to put in place a compliance management system (Art. 24 OBA-FINMA, Art. 21 R OAR-ASA, §41 R Polyreg, Art. 44 R ASG), the person in charge of which is a member of the management (Cm 102 FINMA Circular 2008/24). (b) Financial intermediaries' employees must meet integrity criteria and be selected with care (Art. 27 OBA-FINMA, 42 para. 1 R ASG, Art. 2 para. 1 R OARG G) but some OARs do not have an equivalent provision (e.g. Polyreg). (c) The specialist AML/CFT department supervises the internal training of employees (Art. 24 para. 2 OBA-FINMA and 21 para. 1 R OAR-ASA), who must receive sufficient (Art. 8 LBA) regular training on all relevant aspects of AML/CFT (Art. 27 para. 2 OBA-FINMA and 21 para. 3 subpara. f R OAR-ASA, §60 R Polyreg, Art. 42 para. 2 R ASG, Art. 17 R ARIF). (d) The independent audit to test AML/CFT systems is the responsibility of the internal audit function that financial intermediaries directly supervised by FINMA must have (Art. 12 para. 4 OB, 20 para. 2 OBVM, 27 LSA). There is no independent audit function to test the AML/CFT systems of IFDSs or of affiliates of OARs other than the ASG, CFF and ARIF (Art. 45 R ASG, 39 R ARIF, B2 f. R OAR CFF).

Criterion 18.2 – Financial intermediaries are under a general obligation to define group-wide AML/CFT programmes where the lead company is also a financial intermediary established in Switzerland with establishments abroad (Art. 6 OBA-FINMA, Art. 1 para. 3 subpara. b R ASG, §3 para. 2 subpara. f R Polyreg, 2.2.3 R Fiduciaire - The few cases where affiliates of other OARs belong to an (international) group explain the lack of similar measures). The measures organising the group's AML/CFT programme do not include the requirements of c. 18.1 (Art. 6 OBA-FINMA, Art. 1 para. 3 subpara. b R ASG, §3 para. 2 subpara. f R Polyreg). However, groups must ensure they implement minimum measures (Art. 5 para. 1 OBA-FINMA, Art. 1 para. 3 subpara. a R ASG). The OBA-FINMA measures focus on international groups but overall risk management requirements also apply to national banking groups (Art. 3f para. 2 LB). (a) and (b) Financial intermediaries must check that their compliance department and external auditors have access to information about the business relationships of the whole group, which is necessary for overall risk management (Art. 6 para. 2 OBA-FINMA), but there is no obligation to introduce a general policy for sharing information related to customer due diligence requirements through a central database of customer information or access to local databases of entities within the group (Art. 6 para. 2 subpara. a). (c) The LBA makes general reference to the Law on data protection (Art. 33 OBA-FINMA). This Law contains a general provision (Art. 6) introducing safeguards on the confidentiality and use of information exchanged within a group, but only in a cross-border context.

Criterion 18.3 – There is an obligation on financial intermediaries to ensure that their foreign branches meet minimum AML/CFT standards (Art. 5 para. 1 OBA-FINMA, Art. 1 para. 3 subpara. a R ASG, Art. 2.2.2 R Fiduciaire). Where the host country does not permit proper implementation of AML/CFT measures consistent with Switzerland's requirements, financial intermediaries must refrain from entering into business relationships in that country and inform FINMA or the OAR (Art. 5 para. 3 OBA-FINMA, Art. 1 para. 3 subpara. a R ASG, 2.2.3 para. 3 R Fiduciaire). Similar measures should exist for Polyreg, which requires that groups have AML/CFT programmes (see c. 18.2).

Weighting and Conclusion:

Weaknesses were noted concerning the requirement for an independent audit function for some financial intermediaries. Measures related to group-wide AML/CFT programmes are particularly important for Switzerland because so many financial groups exist there. There are only minor deficiencies in the requirements in place, particularly concerning the fact that national groups are not covered and the regulations of some OARs lack measures concerning groups.

Switzerland is largely compliant with Recommendation 18.

Recommendation 19 – Higher-risk countries

Switzerland was rated largely compliant in the third evaluation (para. 605ff). R. 19 strengthens the requirements to be met by countries and financial institutions in respect of higher-risk countries.

Criterion 19.1 – Financial intermediaries are required to apply enhanced measures where there are higher risks (Art. 6 para. 2 subpara. c LBA). The countries listed by the FATF are mentioned in the context of ML indicators solely in relation to transfers, which must be treated as higher-risk transactions (Annex 2.3 OBA-FINMA and Art. 38 OBA-FINMA). Criteria on increased risk also make reference to the customer's country/place of business or establishment. For some financial intermediaries, the criteria for identifying increased risk also refer to the customer's links with countries whose AML/CFT measures do not comply with the core principles in the LBA (insurance - Art. 13^{bis} para. 2 subpara. k R OAR-ASA and Cm 44 para. 2 R ASSL), or with “countries or territories that are non cooperative or subject to international sanctions recognised by Switzerland” (Art. 31 para. 7 subpara. c R ASG, Annex A R ASSL), which goes some way to meeting the criterion's requirements. FINMA also uses its publications and communications with the financial intermediaries it supervises to make sure they used enhanced customer due diligence measures where called for by the FATF¹⁸³. This channel seems inappropriate bearing in mind that the document governing FINMA's supervisory communication states that it is to be used to regulate behaviour and has no legal effect.

Criterion 19.2 – (a) and (b) According to information from the Swiss authorities, Art. 7 LFINMA enables FINMA to issue the necessary orders or circulars for the application of countermeasures

¹⁸³ <https://www.finma.ch/fr/documentation/communications-finma-sur-la-surveillance/#Order=4>

either when called upon to do so by the FATF or independently of any call by the FATF to do so. Reference is also made to certain provisions of OBA-FINMA (Art. 5, 6, 28, 29, 37) which place obligations on financial intermediaries. Federal orders could also be issued.

Criterion 19.3 – FINMA circulates FATF warnings to financial intermediaries through its ongoing information service and its website¹⁸⁴, and invites them to take account of these in their business relationships and transactions. ASG, ARIF and Polyreg¹⁸⁵ publish these warnings; some other OARs inform their affiliates through their websites (ex. VQF). Information made available to financial intermediaries through these channels does not mention all the high-risk jurisdictions identified by the FATF, the list of which is updated after each of its Plenary meetings.

Weighting and Conclusion:

The provisions applicable for taking account of higher-risk countries are inadequate, particularly as regards the systematic application of enhanced measures to transactions with links to these countries. Furthermore, information of financial intermediaries is insufficient regarding jurisdictions with important AML/CFT weaknesses.

Switzerland is partially compliant with Recommendation 19.

Recommendation 20 – Reporting of suspicious transactions

Switzerland was rated partially compliant in the third evaluation (para. 613ff). The main weaknesses identified concerned in particular the absence of a specific requirement to make a suspicious transaction report (STR) in case of a TF suspicion, partial coverage of attempted suspicious transactions, and some problems with effectiveness, e.g. combining the freezing of funds and reporting, and the coexistence of an *obligation* and a *right* of communication.

Criterion 20.1 – All financial intermediaries are obliged to inform the financial intelligence unit (MROS) immediately if they know or assume, based on a “grounded suspicion”, that the assets involved in a business relationship meet at least one of the criteria listed, i.e. that they are the proceeds of a predicate offence, that the power of disposal of the assets lies with a criminal (including terrorist) organisation, or that they are being used for TF as defined in Art. 260^{quinquies} (Art. 9 para. 1. subpara. a LBA). According to the Federal Council's interpretation at the time of the reporting obligation's introduction, a suspicion is deemed *grounded* “where there are concrete signs or several indicia that suggest the origin of the assets is unlawful”¹⁸⁶. However, according to a more extensive conception of this notion that has been promoted by MROS and courts, a grounded

¹⁸⁴ <https://www.finma.ch/fr/documentation/sanctions-internationales-et-lutte-contre-le-terrorisme/declarations-du-gafi/#Order=4>

¹⁸⁵ www.vsv-asg.ch/fr/listes_de_sanctions; ARIF link www.arif.ch/liens not up to date as at 15 January 2016; www.polyreg.ch/f/sanktionslisten/fatf.html

¹⁸⁶ FF 1996 III 1057, p. 1086.

suspicion exists as soon as there is a mere doubt as to the legal origin of asset. This conception of a grounded suspicion meets the requirements of R. 20.

Besides the reporting obligation mentioned above, Swiss law also provides for a *right* to report the “indicia that found the suspicion” (Art. 305^{ter} para. 2 CP). The coexistence of a right to report and a reporting obligation may cause legal uncertainty for financial intermediaries as to the mandatory nature of their report.

Criterion 20.2 – The reporting requirement applies if a financial intermediary breaks off negotiations aimed at establishing a business relationship because of grounded suspicions as defined in Criterion 20.1 (Art. 9. para. 1 subpara. b LBA) regardless of the amount of the transaction. Attempted transactions made in the course of a business relationship must also be reported under Art. 9 para. 1 subpara. a LBA, including where no assets have been deposited in an account. The reservation noted under Criterion 20.1 concerning the legal uncertainty stemming from the coexistence of a right to report and a reporting obligation equally applies here.

Weighting and Conclusion:

Even if the coexistence of a right to report and a reporting obligation may cause legal uncertainty, the main requirements of R.20 are met.

Switzerland is largely compliant with Recommendation 20.

Recommendation 21 – Tipping-off and confidentiality

Switzerland was rated partially compliant in the third evaluation (para. 625ff). Some major weaknesses identified in the MER (para. 655-658) have since been corrected.

Criterion 21.1 – The LBA states that the author of a suspicious transaction report (STR) may not be prosecuted for a professional or commercial breach of confidentiality or be held liable for breach of contract if the STR is made in good faith (Art. 11 para. 1). This exclusion applies to financial intermediaries, their directors, officers and employees. It also applies to STRs made on the basis of the right of communication or filed by OARs (Art. 11 para. 2), as well as to information disclosed by a financial intermediary at the request of MROS (Art. 11a para. 5).

Criterion 21.2 – The LBA sets out the principle that financial intermediaries must not inform either the persons concerned or any third party that they have made an STR (Art. 10a para. 1) or disclosed information to MROS (Art. 11a para. 4). However, there are a few exceptions to this principle that R. 21 does not provide for. Firstly, the LBA states that financial intermediaries are not prohibited from disclosing that a report has been made where they are protecting their own interests in civil, criminal or administrative proceedings (Art. 10a para. 6). This exception seems justified since it stems from the right to defend oneself and only occurs once assets have been frozen. In addition, a financial intermediary who has made an STR may inform the following entities of this fact: (1) the OAR of which it is an affiliate (Art. 10a para. 1 to enable it to perform its supervisory role) (2) another financial intermediary who is able to freeze the assets if the reporting entity is unable to do this (Art. 10a para. 2), and (3), a financial intermediary if this is necessary for compliance with the

obligations stemming from this law and if the intermediary and the reporting entity are providing joint services to a customer related to the management of that customer's assets on the basis of a contractually agreed collaboration, or are part of the same group of companies (Art. 10a para. 3). These exceptions are minor deficiencies in that they only have a limited impact on the confidentiality of STRs. Directors, officers and employees are not covered by the prohibition on disclosing the report defined by the LBA, but are subject to professional confidentiality (Art. 47 LB, Art. 43 LBVM, Art. 321a CO, Art. 321 CP).

Weighting and Conclusion:

The main requirements of R.21 are met and the remaining deficiencies concerning the confidentiality of STRs seem to be minor and do not impede the Recommendation's objective.

Switzerland is largely compliant with Recommendation 21.

Recommendation 22 – DNFBPs: Customer due diligence

Switzerland was rated partially compliant in the third evaluation (para. 851ff) mainly because a number of non-financial activities and professions targeted by the FATF are not subject to the LBA, and also because of weaknesses in the general framework for customer due diligence requirements, which have repercussions for the requirements applicable to DNFBPs.

Criterion 22.1 ¹⁸⁷

(a) Casinos [*maisons de jeu* in Switzerland] must apply AML/CFT measures either to all cash transactions (purchases or sales of gaming tokens, slot machine payments, issue or cashing of cheques, counter transactions such as currency exchange) in excess of CHF 4 000 [*USD 4 052/EUR 3 654*] (Art. 2 para. 1 OBA-CFMJ), which is slightly higher than the FATF's threshold (USD/EUR 3 000); or to all customers at the entry to a casino (Art. 2 para. 2). Casinos are required to make further clarifications in higher-risk cases (Art. 8 to 12 OBA-CFMJ). They must also refuse to establish or continue a business relationship where they cannot fulfil the customer due diligence requirements or are suspicious about the information they are given, and must consider making a report to MROS if they have grounded suspicions of ML/TF (Art. 23). There is an obligation to monitor customer transactions (Art. 13 para. 1 OBA-CFMJ). Some weaknesses have been identified: except in the case of ongoing business relationships (Art. 3 OBA-CFMJ), the casino must only record transactions under the customer's name if they are above the thresholds set (Art. 2 para. 3 OBA-CFMJ), which makes it impossible to establish a link between potentially fragmented transactions. In particular, gaming token purchases and slot machine payments must be recorded, but from a value of CHF 15 000 [*USD 15 194/EUR 13 701*], which is a much higher threshold than the one set by the FATF. Identification of beneficial owners is required for all cash transactions for more than CHF 4 000 and in all “unusual” [*insolites*] situations identified by the casino (Art. 6 and 7 OBA-CFMJ), but a natural person does not have to be identified (Art. 7 para. 1), despite this being a requirement of the definition of beneficial owner (Art. 2a para. 3 LBA). The LBA takes precedence over the OBA-CFMJ, which will be amended in a forthcoming revision. Also, there is no general, systematic

¹⁸⁷ Deficiencies in the scope of preventive measures are reflected in the final rating, but also impact each of the individual criteria.

obligation to take reasonable measures to check the written declaration of the beneficial owners submitted by the customer.

(b) The LBA does not consider real estate agents to be financial intermediaries in respect of their real estate dealings except when they are transferring or paying the selling price funds to the vendor on the buyer's behalf. This is a weakness with regard to the FATF requirements. Real estate agents are the target of new measures governing the receipt of cash sums of more than CHF 100 000 and are covered by a special regime under these circumstances (Art. 8a, 9 para. 1^{bis} and 15 LBA).

(c) Similarly, dealers in precious stones only have to comply with the LBA when they receive cash payments of more than CHF 100 000 [USD 101 296/ EUR 91 340]. This is a much higher threshold than the one set by the criterion (USD/EUR 15 000). Dealers to whom this measure applies must check the identity of their customer, or their customer's representative, and identify the beneficial owner (Art. 8a para. 1 subpara. a and b LBA, Art. 17 and 18 OBA). They are required to draw up documents on compliance with the customer due diligence requirements using either the standard form in the Annex to the OBA or a similar document. Reasonable measures to verify the information about the beneficial owner are not required. Where the transaction appears unusual or if the dealer has suspicions about ML/TF, the dealer must make further clarifications (Art. 8a para. 2 LBA). There are no specific measures if the dealer is unable to fulfil the customer due diligence requirements.

(d) and (e) *Lawyers*, notaries other legal professionals and accountants, and also trust and company service providers are not subject to the LBA when their work is limited to preparing or executing non-financial aspects of the transactions concerned, even though these situations are expressly included in the criterion. This means in particular that acts related to the creation of companies, legal persons and legal arrangements, in which they may be involved without being parties to transactions such as transfers, are outside the scope of the LBA (see c. 24.5). It should also be pointed out that lawyers and notaries cannot be required to send suspicious transaction reports in the context of activities where they are bound by professional confidentiality (Art. 9 para. 2. LBA). Consequently, the “traditional” activities of lawyers and notaries are not subject to the LBA.

Concerning compliance with R. 10, where DNFBPs are working as “financial intermediaries” within the meaning of the LBA, they are subject either to FINMA's LBA regulations as a directly supervised financial intermediary (IFDS), in which case please refer to the comments concerning R. 10; or to the regulations of an OAR. The OARs' LBA regulations use a threshold of CHF 25 000 for the application of customer due diligence measures, limiting the scope of the requirements (see c. 10.2). They generally set requirements for the identification/verification of customers (e.g. Art. 3.1 to 6 R Fiduciaire, C1 R OAR CFF), for information about the nature and purpose of the business relationship (e.g. Art. 5.1 R Fiduciaire, §30 R Polyreg), for the monitoring of transactions (e.g. Art. 43 R FSA/FSN, Art. 54 R VQF), for the updating of customer profiles (e.g. Art. 52 R FSA/FSN, §34 para. 2 R Polyreg) and for the identification of increased risks and enhanced measures (e.g. Art. 41, 42 and 44 R FSA/FSN, C4 R OAR CFF, 5.2 R Fiduciaire, §31 to 33 R Polyreg). A number of regulations list situations in which controller/beneficial owners must be identified by means of a written declaration (e.g. Art. 21 R OAD FCT, 30 and 36 para. 1 R FSA/FSN). It is not specified whether identification should take place in other cases too and/or what form it should take. The OAD FCT Regulation makes reference to Form A (Art. 21), and others make reference to a declaration with specified content (Art. 32 R FSA/FSN, 4.4 R Fiduciaire). In addition, there is no systematic obligation to take reasonable measures to check whether the designated persons are the beneficial owners.

Intermediaries may not start to execute transactions before all the required customer due diligence checks have been carried out (e.g. Art. 35 R OAD FCT, 3.7 R Fiduciaire). If they fail to obtain the required information, they must end the relationship (Art. 39 para. 1 R FSA/FSN, 3.7 R Fiduciaire).

Criterion 22.2 – All financial intermediaries listed in Art. 2 LBA, including dealers/merchants (Art. 8a LBA and Art. 21 OBA), affiliates of OARs and casinos, are subject to the LBA's record-keeping requirements (see R. 11).

Criterion 22.3 – The weaknesses of the system introduced by the LBA are reflected in the measures applicable to the non-financial sector (see R. 12).

Criterion 22.4 – The LMJ bans the operation of online casinos (Art. 5 LMJ). Measures have been introduced by some OARs to ensure that the ML/TF risks associated with new technologies are taken into account (§3 para. 2 subpara. f R Polyreg, Art. 76 R VQF, 53 para. 2 R FSA/FSN, Art. 16 para. 2 R OAD FCT, 5.3.2 R Fiduciaire), in some cases before these technologies are in use (Art. 76 R VQF, 16 para. 2 R OAD FCT, D1 R OAR CFF), and to ensure that appropriate measures are in place to manage these risks (§3 para. 2 subpara. f R Polyreg, Art. 76 R VQF, Art. 16 para. 2 R OAD FCT, D1 R OAR CFF, 5.3.2 R Fiduciaire).

Criterion 22.5 – When a casino relies on a third party to undertake customer due diligence measures, it remains ultimately responsible for that due diligence (Art. 14 para. 3 OBA-CFMJ) in accordance with the conditions set by the criterion (Art. 14 para. 1 and 2 OBA-CFMJ), but there are no regulatory measures corresponding to c. 17.2. The OARs' regulations also include measures on delegation to third parties, in accordance with the conditions set by c. 17.1 (e.g. §38 and 39 R Polyreg, Art. 46 to 48 R FSA/FSN, 46 and 46 R OAD FCT, 80 R VQF, 6.2 R Fiduciaire, Directive 10 ARIF, B6 R OAR CFF). However, the requirements are inadequate, particularly as regards the lack of consideration of the level of risk associated with the country where the third party is established. In the case of dealers/merchants, the principle of relying on third parties and the dealer/merchant's responsibility is set out (Art. 16 OBA).

Weighting and Conclusion:

The conclusion concerning the level of compliance with R. 22 takes account of the fact that a number of activities covered by the Recommendations are not subject to the LBA, and also takes into consideration the deficiencies identified in the case of R. 10, 12, 15 and 17. The requirements concerning customer due diligence are vital (R. 10) and the deficiencies in respect of this have a big impact on the rating.

Switzerland is partially compliant with Recommendation 22.

Recommendation 23 – DNFBPs: Other measures

Switzerland was rated partially compliant in the third evaluation (para. 950ff) mainly because a number of non-financial activities and professions targeted by the FATF are not subject to the LBA, and also because of weaknesses in the general framework for AML/CFT obligations, which have repercussions for the requirements applicable to DNFBPs.

Criterion 23.1 – ¹⁸⁸ The obligation to report suspicious transactions is laid down by the LBA (Art. 9) and is therefore a requirement for all financial intermediaries, casinos, and dealers/merchants (Art. 9 para. 1^{bis}), with the limit identified in R. 20. The OARs are also under an obligation to report suspicious transactions by their affiliates if their affiliates have not met their own obligations (Art. 27 para. 4 LBA), as are FINMA and the CFMJ (Art. 16 para. 1 LBA) and the dealers/merchants' auditors (Art. 15 para. 5 LBA). (a) When engaging in financial transactions, lawyers and notaries are subject to the requirement to report suspicions. (b) Dealers in precious metals are subject to the general LBA regime as “financial intermediaries” (Art. 2 para. 3 subpara. c LBA) and therefore to the reporting obligation as regards all their transactions. Dealers in precious stones are subject to a special LBA regime in respect of payments received in cash for sums above CHF 100 000, which is higher than the FATF threshold (see c. 22.1 (c) and this is the sole basis on which they are required to report suspicious transactions (Art. 9 para. 1^{bis} subpara. a to c LBA). However, this obligation does not extend to cases where they suspect a link to terrorist financing. (c) Trust and company service providers are subject to the general LBA regime as “financial intermediaries” (Art. 2 para. 3 LBA) and therefore to the reporting obligation as regards all their transactions subject to the LBA.

Criterion 23.2 – The LBA requires that employees are trained in AML/CFT and that there is monitoring to ensure these controls are carried out (Art. 8). These measures are applicable to all the financial intermediaries listed in Art. 2. For intermediaries subject to FINMA's LBA regulations as IFDSs, please refer to the comments on c. 18.1.

For casinos, compliance management systems must be introduced (Art. 17 OBA-CFMJ) and all OARs require a specialist AML/CFT department to be set up. To take account of the size of their smaller affiliates, some allow the affiliate to implement a special structure for this department and its responsibilities. Their regulations specify what should be included in their AML/CFT programmes as a minimum (§41 para. 4 and 5 R Polyreg). Internal control measures are required for casinos (Art. 19 OBA-CFMJ) and by some OARs for their affiliates above a certain size, with minimum requirements (e.g. §41 para. 5 R Polyreg, Art. 59 R FSA/FSN, 39 R ARIF). For personnel there are specific integrity requirements (e.g. Art. 5 para. 2 subpara. a OLMJ at the request of the CFMJ, Art. 41 R ARIF), and requirements are laid down concerning ongoing training in AML/CFT (e.g. Art. 18 OBA-CFMJ, §60 R Polyreg, Art. 55 to 57 R FSA/FSN). However, weaknesses have been identified concerning personnel selection procedures and the independent audit function (see c. 18.1), though similar requirements to those expected of financial institutions cannot be applied to smaller DNFBPs.

Criterion 23.3 – For intermediaries subject to FINMA's LBA regulations as IFDSs, please refer to the comments on R. 19. Casinos and the affiliates of OARs are required to apply enhanced measures where there are increased risks (Art. 6 para. 2 subpara. c LBA). The OAD FCT's Regulations make reference to relationships involving links with the countries listed by the FATF as higher-risk countries (Art. 41 para. 1 subpara. e) and the OAR CFF and Fiduciaire Regulations list them as indicators of money laundering (point 2.3 Annex). In addition, and more generally, the registered office or domicile of the customer and its beneficial owners, their nationality, and the place of

¹⁸⁸ Deficiencies in the scope of preventive measures are reflected in the final rating, but also impact each of the individual criteria.

business or the source or destination country of the transfers to which the customer is a party are criteria used to judge whether transactions are higher risk and require enhanced customer due diligence measures even though no reference is made to the countries listed by the FATF (e.g. Art. 9 OBA-CFMJ, §32 R Polyreg, Art. 41 para. 2 R FSA/FSN). The OARs Polyreg, OAD FCT and ARIF distribute the FATF warnings to their affiliates¹⁸⁹. The OAR FSA/FSN refers its affiliates to FINMA's publications¹⁹⁰.

Criterion 23.4 – The principles of protecting people who report suspicious transactions from possible prosecution and of prohibiting disclosure that a report has been made are set out by the LBA (Art. 10a and 11). They therefore apply to all the financial intermediaries listed in Art. 2, with the limits identified in R. 21. There is also a special provision prohibiting the tipping off of dealers/merchants (Art. 10a para. 5 LBA).

Weighting and Conclusion:

The conclusion concerning compliance with R. 23 takes account of the fact that a number of activities covered by the Recommendations are not subject to the LBA, and also takes into consideration the deficiencies identified in the case of Recommendations 18, 19, 20 and 21. Account should also be taken of the size of some of the structures involved when assessing how well adapted the regulatory requirements are, and the volume of their business should be considered to put into perspective the importance of some of the deficiencies identified.

Switzerland is partially compliant with Recommendation 23.

Recommendation 24 – Transparency and beneficial ownership of legal persons

Switzerland was rated non-compliant in the third evaluation, in particular because of the lack of transparency of public limited companies [*sociétés anonymes*], especially those that have issued bearer shares, and some foundations (para. 1012ff). The Law of 12 December 2014 introduces measures to address these aspects. The new FATF Recommendation and the Interpretive Note accompanying it contain more detailed requirements, particularly concerning the information to be collected about beneficial owners.

Criterion 24.1 – Mechanisms that identify and describe the basic and beneficial ownership information [*informations sur les ayants droit économiques*¹⁹¹] for legal persons do exist and are publicly available (e.g. [Portail PME](#), [Foundations](#) or [www.zefix.ch](#)).

Criterion 24.2 – The national risk assessment published by Switzerland in June 2015 looks at the involvement of legal persons as a risk factor of ML/TF. However, the risk associated with the different types of legal persons created in Switzerland is not systematically assessed, and does not

¹⁸⁹ www.polyreg.ch/f/sanktionslisten/fatf.html; <http://www.arif.ch/Legislation.htm>, though the link is not up to date

¹⁹⁰ www.sro-sav-snv.ch/fr/finma-fr

¹⁹¹ Equivalent term to *bénéficiaire effectif*, see c. 10.5

precisely identify specific risk factors, in particular for those categories of legal persons most exposed to ML/TF risks.

Criterion 24.3 – Swiss law requires that company founders register their companies in the commercial register [*registre de commerce*]. This formality enables the company to acquire legal status (Art. 52 CC and specific provisions for the different types of company: Art. 643 (public limited company [*société anonyme, SA*]), Art. 764 (company with liability limited by shares [*société en commandite par actions*]), Art. 779 (limited liability company [*société à responsabilité limitée, SARL*]) and Art. 838 (co-operative company [*société coopérative, SC*]) CO, Art. 37 LPCC (collective investment scheme [*société d'investissement à capital variable, SICAV*])¹⁹². The information required by this Criterion is part of the information that must appear in the register (Art. 41, 45, 68, 73, 87, 99, 101, 104 ORC) and this information is publicly accessible (Art. 930 CO). Foundations are also obligated to register in the commercial register (Art. 52 para. 2 and 80 to 89 CC). Existing family foundations and religious foundations have however until 2021 to comply with this registration obligation (Final Title Art. 6b para. 2^{bis} CC).

Criterion 24.4 – There is a requirement to maintain the information in the commercial register (Art. 166 ORC). Companies in Switzerland must keep a record of their shareholders (SAs) or members (SARLs and SCs) containing the information required by the criterion (Art. 686, 697I, 747, 790, 837 CO), including the number and categories of shares held. Bearer shares of SAs must be recorded as such (see c. 24.11) and the register and list must be accessible at all time in Switzerland (Art. 697I para. 5 CO). Foundations do not have members who could be listed in a register.

Criterion 24.5 – Only the creation of SAs and SARLs, the amendment of their statutes and their dissolution require an authentic act, and therefore the involvement of a notary to check the identity of the persons involved and the formal conditions of the act (Art. 629, 631, 647, 736, 777, 780, 821 CO). The creation and modification of foundations also require an authentic act (Art. 81 CC). Notaries who, intentionally or through negligence, make false statements in an authentic act, are committing a criminal offence (Art. 317 CP). Failure to fulfil their obligations makes them liable to face disciplinary sanctions and incurs their civil liability. The official responsible for the commercial register checks the veracity of the registered facts (Art. 26 ORC) and the formal and material conditions of the act (Art. 15 para. 2, 28 ORC and 940 CO), in particular by checking the identity of the natural persons listed and of the legal persons (Art. 24 and 24a ORC). Any change in the facts appearing in the commercial register must be recorded (Art. 937 CO), but there is no condition as regards timescale. The recording of certain facts in the commercial register (e.g. creation, amendment of the statutes) has certain legal effects (e.g. third-party enforceability) for the legal persons and for third parties (Art. 933, 942 CO and 9 CC). According to the Swiss authorities, this means in practice that legal persons ensure their information is accurate and up to date. The authorities also have the power to take action if an entry in the register does not or ceases to reflect reality (Art. 152 ORC), which can

¹⁹² SAs and SARLs account for more than 90% of the legal persons listed in Switzerland's commercial register. The third most common form of company is the co-operative company (SC). By comparison, on 1 January 2015, only nine companies with liability limited by shares [*sociétés en commandite par actions*] and ten SICAVs were listed. The analysis that follows therefore focuses mainly on SAs and SARLs, and to a certain extent SCs, because they are the most widespread forms of legal person.

lead to the legal person's liquidation (Art. 731b, 941a CO, 83d CC). Shareholders and partners must identify themselves when they are entered in a register or list and must report any changes in the facts recorded in relation to them (Art. 686 and 697i CO).

Criterion 24.6 – Beneficial ownership information for companies can be obtained from a number of sources: SAs and SARLs must keep a list of their beneficial owners, which must be accessible at all times in Switzerland (Art. 697l and 790a para. 3 CO). For bearer shares, the list may be held by a financial intermediary (Art. 697k CO). When shares are issued as intermediated securities, the information about the beneficial owners is available from the depositories. If there are several depositories, the flow of information is governed mainly by Art. 23a LTI. For listed companies, information about shareholdings is publicly available at all times (Art. 120 to 124 LIMF in relation to Art. 24 to 26 OIMF-FINMA). Beneficial ownership information obtained by financial intermediaries as part of their customer due diligence obligations may also be used, in particular for foundations (Art. 4 LBA), see c. 10.10 and 10.11.

Criterion 24.7 – When beneficial ownership information is held by a company, the information must be kept up to date, since all shareholders, of both registered and bearer shares, or of units where the holding reaches or exceeds the threshold of 25% of the capital or of the votes, must inform the company, within one month of acquisition, of the name of the natural person who is the beneficial owner of the shares or units and must notify the company of any changes (Art. 697j and 790a CO). In addition, the company must be notified of any changes to the information identifying the beneficial owner (first name, surname, address) (Art. 697j para. 2 and 790a para. 2 CO). For information held by financial intermediaries, see c. 10.5 and the deficiencies related to the lack of systematic verification of declarations of beneficial ownership, and c. 10.7 and the deficiencies concerning the lack of any obligation to keep the information about customers up to date.

Criterion 24.8 – SAs, SARLs and SCs must be represented by individuals – directors [*administrateurs, directeurs*] or managers [*gérants*] – domiciled in Switzerland (Art. 718 para. 4, 814 para. 3, 898 para. 2 CO). Bearer shares issued as intermediated securities must be deposited or registered with a depository in Switzerland (Art. 697i para. 4 CO). These people must send the information to the competent authorities under the general rules of administrative and criminal law (e.g. Art. 241 or 251 CPP), as part of the applicable procedures. Foundations must cooperate with the Supervisory Authority for Foundations (ASF), which involves communicating information on beneficial owners (Art. 84 and 88 CC) (see R. 8).

Criterion 24.9 – The books of dissolved SAs have to be kept for 10 years (Art. 747 CO), which includes beneficial owners lists. This measure is applicable by analogy to SARLs (Art. 790a para. 3 and 697l CO). Information about foundations is kept by ASF for an indefinite period. When foundations are dissolved, their books are kept between 3 and 5 years in line with the rule of the federal archives services, then archived. Financial intermediaries are obliged to keep documents relating to business relationships for 10 years, which should include a list of beneficial owners (see R. 11).

Criterion 24.10 – The information in the commercial register is public (Art. 10 ORC, www.zefix.com) and the supporting documents can be made available to the judicial authorities and to the supervisors of the banks and financial markets (Art. 167 ORC). The law enforcement

authorities (federal and cantonal public ministries, police), the Federal Department of Finance (SG-DFF)¹⁹³, the financial intelligence unit (MROS), the supervisors of those subject to the LBA (FINMA, OARs and CFMJ) have the powers they need to access basic and beneficial ownership information (particularly Art. 29 LFINMA, 11a LBA, 244, 246 and 263ff CPP, 37 and 45ff DPA). The Swiss authorities state that this information can be obtained at any time and within a reasonable period [*délai raisonnable*]. However, there are reservations about how accurate and up-to-date the available information is (c. 24.5).

Criterion 24.11 – There are mechanisms for identifying the holders of bearer shares in SAs (the only legal persons able to issue this type of security in Switzerland), along with obligations on purchasers of such shares to declare their identity to the company either themselves (Art. 697i CO) or through a financial intermediary (Art. 697k CO), and on the company to keep a list of the holders of these shares (Art. 697l CO). The conversion of these shares into registered shares is also facilitated (Art. 704a CO). The advertising rules applicable to listed SAs also apply to bearer shares (see c. 24.6). The institution of the “bearer share warrant” is unknown in Swiss Law.

Criterion 24.12 – Switzerland does not have the institution of “nominee”. Besides, shareholders have to be registered in the company’s register of nominative shares or on the list of holders of bearer shares. Representatives cannot be listed in the register, and only people registered with the company can exercise the rights associated to the shares (Art. 686 para. 4 and 697m CO). Furthermore, a shareholder can only be represented to exercise his rights on the basis of a written proxy signed by himself and including the name of the representative and the shares represented (Art. 689 CO), information which are kept in the minutes of the meeting (Art. 702 CO). This measure ensures the transparency of the use of the shares and of their economic ownership. In addition, rules on information about beneficial owners of shares to the company apply (Art. 697j CO) (see c. 24.6) and on the identification of the customer and of the beneficial owner by financial intermediaries (see c. 10.4, 10.5 and 10.10).

Criterion 24.13 – Shareholders or partners who fail to declare their purchases of bearer shares and the beneficial owners are deprived by law of the membership and proprietary rights associated with their shares (Art. 697m CO). If they exercise these rights nevertheless (participation in shareholders’ meetings, collection of dividends), the persons concerned (companies, directors, shareholders/partners) lay themselves open to significant civil consequences (cancellation of decisions by shareholders’ meetings, action to reclaim dividends unduly paid, directors’ liability, etc.). On the other hand, there are no penal or administrative sanctions for the holder of the shares/parts has not declared his purchase or acquisition, or his beneficial owner status, or if he has failed to do so by the required deadline. Directors and managers, auditors or liquidators are answerable to the company if they fail in their duties intentionally or through negligence (Art. 754, 755, 827 and 916 CO). They are also liable to criminal sanctions if they unduly pay dividends to shareholders or partners who have failed to fulfil their duties of disclosure (misconduct, Art. 158 CP). Failure to register with the commercial register is a criminal offence subject to prosecution *ex officio*, which carries a custodial sentence of three years maximum or a fine (Art. 153 CP, 326^{ter} CP,

¹⁹³ In its role as a law enforcement authority under the FINMA Law.

23 Law on Unfair Competition). Administratively, failure to register in the commercial register triggers automatic procedures, which can lead to liquidation of the company (Art. 941 and 941a CO and 152 et seq. ORC). Finally, administrative fines of between CHF 10 and CHF 500 are also applicable (Art. 943 CO). Custodial sentences (of three years maximum) can also be handed down for false declarations or omissions (Art. 153 CP). The communication of false information by persons bound by a duty of transparency (shareholders towards a company, or a company towards the commercial register or financial intermediaries) is also a criminal offence, particularly as regards document forgery (Art. 251 CP) and obtaining a false certificate by fraud (Art. 253 CP), both of which are offences prosecuted ex officio and carry a custodial sentence of five years maximum or a fine. Financial intermediaries who start or maintain a business relationship with a company or shareholder must comply with the customer due diligence requirements arising from Art. 3ff LBA. If they breach their obligations, they are liable to face the consequences laid down by the supervisory law, with the limits noted in R. 35. The scale of sanctions applicable includes a number of harsh penalties for the most serious breaches of duty, which are imposed on the legal person itself (e.g. the obligation to reimburse dividends paid out unduly) or its directors/managers (e.g. liability claims against directors, managers and shareholders, custodial or financial sentences). These breaches of duty usually involve deliberate misconduct. In situations where misconduct is not punishable by a criminal judgment, and where no civil action is initiated, the sanctions that apply can consist of relatively small administrative fines, which seem rather too low. Consequently, the administrative sanctions applicable do not appear proportionate.

Criterion 24.14 – (a) The commercial register contains basic information that is freely accessible (www.zefix.com in three languages). (b) and (c) MROS can send its foreign counterparts all the information at its disposal, including on shareholders and beneficial owners (Art. 30 LBA). The law enforcement authorities (federal and cantonal public ministries, police) and the Federal Department of Finance (SG-DFF) may exchange information in the context of criminal proceedings launched abroad or may send information spontaneously (Art. 67a EIMP). FINMA and the CFMJ may send information that is not public in compliance with confidentiality and speciality rules (see c. 40.7). However, if this information concerns the customers of financial intermediaries, the “customer” procedure [*procédure client*] applicable – used in a limited number of cases following the introduction of Art. 42a para. 4 LFINMA – may prolong response times, affecting the rapidity of the expected cooperation (see c. 40.1). For foundations, ASF is not a “competent authority” but it can be requested to transfer supervisory information to Swiss competent authorities, which they can be pass on to foreign authorities.

Criterion 24.15 – The Swiss authorities monitor the quality of the assistance they receive from other countries concerning basic or beneficial ownership information. FINMA evaluates all the responses received to requests for international administrative assistance. Switzerland also takes part every year in an assessment led by the General Secretariat of IOSCO on the standard of international administrative assistance given and received by member countries. The OFJ also keeps a guide to the international legal assistance obtained by Switzerland, which enables the standard of legal assistance provided to be assessed.

Weighting and Conclusion:

The requirements related to the transparency of legal persons and their beneficial owners play a vital role in the Swiss AML/CFT system, mainly due to the frequent involvement of complex corporate structures in detected cases of ML/TF. There is a weakness identified concerning the lack of assessment of the risk of legal persons created in Switzerland being abused for ML/TF purposes.

Switzerland is largely compliant with Recommendation 24.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In the third evaluation, R. 34 was judged not applicable, since Swiss substantive law applicable does not include the concept of the trust (para. 1030ff). In 2007, Switzerland ratified the Hague Trust Convention, which allows foreign trusts to be recognised in Switzerland, at civil law level. The revised Recommendation (R. 25) is applicable to countries like Switzerland that do not have trusts.

Trustees managing trusts in Switzerland are considered to be financial intermediaries in their capacity as “*governing bodies of domiciliary companies*” (Art. 6 para. 1. subpara. d OBA) where they provide wealth management services, make investments as advisers, or hold or manage securities on behalf of the trust, on a professional basis (Art. 2 para. 3 LBA). Trust protectors may also be considered financial intermediaries depending on the powers conferred on them. Other types of legal arrangements do not exist in Switzerland. A fiduciary contract is a bilateral relation governed by the rules applicable to a mandate or agency contract and is characterised by the absence of a separation of assets.¹⁹⁴

Criterion 25.1 – (a) and (b) not applicable because there are no trusts regulated by Swiss law. (c) Trustees, who manage the trust from Switzerland where the assets are not located, are financial intermediaries. As such, they must obtain information about the identity of their customers, the trusts, when the business relationship is formed (Art. 64 OBA-FINMA which particularly concerns information about the founder, trustee, protector, named beneficiaries or categories of beneficiary, persons who give instructions to the trust or the trustee and are authorised to revoke the trust where necessary). All trusts are considered to maintain banking relationships and the trustee must therefore give the bank the information to which this criterion relates, on a special form (“form T”) (Art. 41 CDB 16). Information is communicated by trustees “*to the best of their knowledge*” and they agree to inform the bank of any changes to this information. The LBA requires financial intermediaries to keep the documents related to the business relationship for 10 years after the relationship has ended (Art. 7).

Criterion 25.2 – Trustees must carry out checks on the identification documents received (Art. 3 para. 1 LBA). The information requested on form T must be updated “*immediately*” by the trustee when a change occurs. The customer faces criminal sanctions if a breach of this requirement constitutes a false declaration (Art. 251 CP). The circumstances in which financial intermediaries must repeat the identity checks on customers and beneficial owners are limited (Art. 69 OBA-FINMA,

¹⁹⁴ See Chapter 7, IO.5

Art. 46 CDB 16, §26 R Polyreg, Art. 28 R ASG, see c. 10.2 and 10.5) and it should be pointed out that there is no general obligation to check regularly that this information is up-to-date (c. 10.7).

Criterion 25.3 – Trustees are required to identify themselves as such to the other contracting party, if that party is also a financial intermediary (Art. 64 para. 3 OBA-FINMA, Art. 16 para. 3 CDB 16, §24 para. 3 R Polyreg, Art. 9 para. 3 R ASG, 25 para. 4 R VQF). In their relationships with banks, trustees must confirm in writing that they may establish a business relationship on the trust's behalf (Art. 16 para. 3 CDB 16).

Criterion 25.4 – Trustees are always financial intermediaries in the eyes of Swiss law. They may not use professional confidentiality as grounds for refusal to disclose information to their supervisor (see R. 27), to MROS in the context of a suspicious transaction report (R. 21), or to the law enforcement authorities as part of proceedings (R. 9 and 31).

Criterion 25.5 – Competent authorities, and in particular law enforcement authorities, have the powers necessary to obtain access to information about the trust held by trustees and the other parties (see R. 9 and 31). The Swiss authorities state that this information can be obtained at any time and within a reasonable period [*délai raisonnable*].

Criterion 25.6 – International co-operation in relation to information on trusts and other legal arrangements is organised by the measures presented in the context of R. 40. FINMA is required, as a general rule, to give administrative assistance “diligently” [*avec diligence*] (Art. 42 para. 4 LFINMA). The potential prolongation of the procedure when the information to be forwarded concerns the customers of a financial intermediary, due to the “customer” procedure applicable in a limited number of cases as a result of the introduction of Art. 42a para. 4 LFINMA (see c. 40.1), means that FINMA may not be able to provide international co-operation in this area rapidly.

Criterion 25.7 – Because all trustees are financial intermediaries, the regime applicable to financial intermediaries in terms of liability for compliance with customer due diligence requirements and sanctions for failing to comply is fully applicable. Deliberate provision of incorrect information on form T is punishable under Art. 251 CP (maximum five years imprisonment or a fine). The sanctions described in relation to R. 35 are applicable, with the provisos mentioned in this context.

Criterion 25.8 – To the extent that they are subject to the LBA, trustees must provide FINMA with the information and documents necessary for it to perform its tasks, and must supply without any delay any important evidence likely to be of interest to FINMA (Art. 29 LFINMA). Deliberately supplying false information carries a custodial sentence of three years maximum or a fine (max. CHF 1.08 million); perpetrators doing so through negligence are punishable with a fine of CHF 250,000 maximum (Art. 45 LFINMA).

Weighting and Conclusion:

There are deficiencies in the regime applicable to trusts and other legal arrangements in Switzerland, particularly concerning verification of the available information.

Switzerland is largely compliant with Recommendation 25.

Recommendation 26 – Regulation and supervision of financial institutions

Switzerland was rated largely compliant in the third evaluation (para. 697ff). The new R. 26 strengthens the principle of supervision and controls using a risk-based approach.

Criterion 26.1 – Financial intermediaries performing activities of financial institutions as understood by the FATF are regulated and supervised as regards their AML/CFT obligations either by FINMA or by the OAR (*‘Organisme d’autorégulation’*, self-regulatory organisation) (Art. 12, 17 and 25 para. 1 and 2 LBA). The OAR must fulfil the FATF’s definition of “supervisor” as non-public bodies (private law associations): general power to supervise their affiliates (Art. 24 para. 1 subpara. b and 25 para. 3 subpara. b LBA); sanctions on their members (Art. 25 para. 3 subpara. c LBA); inspections by a competent authority, FINMA (Art. 18 para. 1 subpara. b LBA). They must also be recognised by FINMA (Art. 24 LBA).

Financial intermediaries can choose either to join a recognised OAR or to be directly supervised by FINMA (Art. 12c LBA,) except in the case of banks, distributors and representatives of investment funds, investment companies, insurance institutions and securities traders for which FINMA has sole supervisory responsibility (Art. 12 subpara. a LBA). In the case of insurance, FINMA has given OAR-ASA responsibility for supervision as regards AML/CFT, and controls are carried out by audit firms on the basis of Art. 24 LFINMA.

FINMA and the OARs may delegate the performance of controls to audit firms (Art. 24 LFINMA and 24 subpara. d LBA). In the case of IFDSs, the law requires the use of an audit firm (Art. 19a LBA), with FINMA and the OARs remaining ultimately responsible for the AML/CFT obligations of financial intermediaries under the LBA.

Every OAR must draw up regulations specifying, in particular, the customer due diligence obligations required of its affiliates (Art. 25 LBA).

Criterion 26.2 – Financial intermediaries subject to the Core Principles must be licensed by FINMA to carry on their activity (Art. 3 LB, Art. 13 LPCC, Art. 10 LBVM and Art. 3 LSA)¹⁹⁵. Other financial intermediaries, including providers of money or value transfer services (see R. 14) and or currency exchange services must be members of an OAR or be licensed by FINMA (Art. 14 para. 1 LBA), which keeps registers of these people (Art. 18a LBA). There is no explicit ban on shell banks, but the licensing conditions for banks would exclude them anyway (Art. 3 LB and Art. 10 OB).

Criterion 26.3 – Requirements are laid down for the professional integrity of directors and managers of banks, distributors and representatives of investment funds, investment companies, insurance institutions, securities traders and IFDSs (Art. 3 para. 2 LB, Art. 10 para. 2 d. LBVM, Art. 14 LPCC, Art. 14 LSA, Art. 14 para. 2 subpara. c LBA). Sector-specific provisions also require that holders of at least 10% of the equity or voting rights or a qualified shareholding guarantee that their influence will not be wielded to the detriment of sound and prudent management (Art. 4 para. 2

¹⁹⁵ It should be noted that the French versions of the laws mentioned make reference to “authorisation” [*autorisation*] (LB, LBVM and LPCC) and “licensing” [*agrément*] (LSA). On the other hand, the Italian and German versions each use a single term in all four texts, “*autorizzazione*” and “*Bewilligung*” respectively. The differences in the French version seem to be due to translation rather than a difference in concept.

subpara. f and 46 para. 1 subpara. b LSA, 14 para. 2 subpara. c LBA, Art. 29 para. 1 LFINMA). The banks have a specific obligation to inform FINMA of any changes concerning directors, managers and holders of qualified shareholdings (Art. 3 para. 2 subpara. c, 3 para. 5 and 6 LB). Other financial intermediaries, except for insurance companies, are subject to a general requirement to seek approval for any change to the conditions on which they were originally licensed (Art. 10 para. 3 LBVM and Art. 16 LPCC).

The OARs set out their membership conditions either in their Statutes or in their LBA Regulations. These conditions generally require that affiliates, their directors, managers and employees and anyone who holds a significant share of their capital have a good reputation and be fit and proper (e.g. Cm 11 para. b R ASSL, Art. 4 ASG Statutes, §4 para. 1 R Polyreg, Art. 5 R ARIF, Art. 2 para. 1 R OAR G and Art. 4 para. 2 subpara. a. R VQF for affiliates and employees only).

Criterion 26.4 – (a) As indicated by the conclusions of the Financial Sector Assessment Program (FSAP) conducted by the IMF in 2014, overall the regulation and supervision of financial institutions follow the Core Principles, with a very high level of compliance with the Principles on banking supervision (BCBS) and insurance supervision (IAIS), and more modest compliance with the Principles in relation to securities commissions (IOSCO). The IMF also mentions progress made with applying the risk-based approach to the (prudential) supervision of the insurance and securities sectors.

As far as the consolidated supervision of financial groups, including AML/CFT, is concerned, the sector-specific regulations allow it but do not demand it (Art. 3b LB, 14 LBVM 2 para. 1 subpara. d LSA, 18 para. 2 LPCC).

(b) For financial intermediaries not subject to the Core Principles, there are measures requiring regulations and supervision regarding AML/CFT (Art. 12 subpara. c, 24.1 subpara. b and 25 para. 2 LBA), and a number of OARs make reference to a risk-based approach for supervision (e.g. ASG, ASA, Polyreg – see c. 26.5). Providers of money or value transfer services are subject to supervision by an OAR or by FINMA (Art. 12 subpara. c LBA) (see R. 14).

Criterion 26.5 – Audits by FINMA must take account of the risks that the supervised entity could pose to the financial markets (Art. 24 para. 2 LFINMA). For each supervision area, FINMA defines the areas audited, the audit frequency and the scope of the audit (Art. 3 para. 1 OA-FINMA). It sets out a minimum standard strategy for the basic audit (Cm 29 FINMA Circular 2013/3). For AML/CFT, the standard audit strategy includes an annual critical review and a more in-depth audit every three years. Another annual review takes place to identify contracting parties and beneficial owners, and higher-risk relationships and PEPs (“Audit Strategy” Annex, FINMA Circular 2013/3, footnote on page 3). In addition, the frequency and scope of the basic audit may be increased on the basis of an analysis of the inherent risks of the activity in which the entity subject to AML/CFT requirements is engaged (Cm 13ss and 30 FINMA Circular 2013/3). FINMA may also order an extra audit (Art. 4 OA-FINMA), call in a third-party expert for a one-off audit (Art. 24 para. 1 subpara. b, para. 2 and 24a LFINMA) or may itself conduct an on-site audit (Art. 24 para. 1 and 2 LFINMA) on the grounds that an entity subject to AML/CFT requirements is higher risk. A number of OARs require that AML/CFT audits to a certain extent take account of risk in their frequency, scope and/or selection of the sample of customer files to be examined (e.g. Art. 31, 32, 36b. ASSL Regulations on the audit

procedure, Annex B I 3 and III ASG Disciplinary Regulation, Art. 3 subpara. b 11, 14, 15 and 22 OAR-ASA Supervision, Audit and Sanctions Regulations, §51 para. 3 R Polyreg).

Criterion 26.6 – FINMA reviews at least once a year the assessment of financial intermediaries' ML/TF risk profile (Cm 9 FINMA Circular 2013/3 and FINMA's supervisory concepts as regards the LBA). The OARs' regulations stipulate that, except where a significant event triggers an update, this review shall take place once the audit results have been examined; the audit cycles themselves vary depending on the OAR. For some OARs (e.g. Polyreg, OAR-ASG, OAR-ASA, OAD FCT), whether an audit takes place is dependent on whether the last two audits have identified any irregularities. Regular review of risk profiles assumes, however, that reviews occur at a stable frequency decided in advance for a given risk level, regardless of circumstances. Yet the application of a criterion based on the results of previous audits means that the review depends on the profile of elements over which the authority has no control and which are based on subjective data.

Weighting and Conclusion:

The weaknesses identified for this recommendation essentially affect the organisation and the supervision procedures of the OARs, particularly the risk-based approach.

Switzerland is largely compliant with Recommendation 26.

Recommendation 27 – Powers of supervisors

Switzerland was rated partially compliant in the third evaluation (para. 729ff), due to weaknesses identified in the insurance control system, the independence of the governing bodies of the self-regulatory bodies, and the administrative authorities not having the power to impose financial sanctions. Switzerland has since taken corrective measures.

Criterion 27.1 – The LBA gives FINMA general powers to supervise compliance with AML/CFT requirements by the financial intermediaries for which it has sole responsibility (Art. 12 a), by those that choose to be directly supervised by it (Art. 12 subpara. c 2), and by the OARs (Art. 18 para. 1). These controls are part of the overall prudential supervision of financial intermediaries. FINMA may perform these controls itself where necessary (Art. 23 LB) or have them carried out by an audit firm or audit officer [*chargé d'audit*] (Art. 24 LFINMA), including on foreign premises of entities subject to the AML/CFT requirements for which FINMA must carry out consolidated supervision (Art. 43 para. 1 LFINMA). The LBA gives the OARs responsibility for supervising the AML/CFT compliance of their members, which it may delegate to an audit firm (Art. 24).

Criterion 27.2 – The “audit” concept in the LFINMA is synonymous with an on-site inspection (Federal Council Message on the federal law on the concentration of supervision by audit firms, Art. 24 para. 1 LFINMA). Some of the OAR' regulations explicitly mention the power to make on-site inspections (e.g. §51 para. 1 R Polyreg).

Criterion 27.3 – The entities subject to AML/CFT requirements, their audit firms and internal audit bodies and persons and companies that have a qualified or majority shareholding in the entities subject to AML/CFT requirements must give FINMA the information necessary for it to accomplish

its tasks (Art. 29 para. 1 LFINMA). Moreover, when FINMA asks an independent specialist to perform an inspection on the premises of an entity subject to AML/CFT requirements, in order to clarify a fact related to the supervision or to implement the supervisory measures FINMA has ordered, the entity must give the specialist all the information and documents necessary for FINMA to accomplish its tasks (Art. 36 LFINMA). Finally, entities subject to AML/CFT requirements are under an obligation to give their audit firms the necessary documents and information (Art. 25 LFINMA). The Swiss authorities also state that the existence of criminal or financial sanctions (Art. 45 LFINMA) incentivises those entities to co-operate with the supervisors. The provisions related to supervision in the Regulations of the ASSL, ASA and Polyreg require the entity subject to AML/CFT requirements to allow access to all the necessary information and documents (e.g. Art. 51 ASSL Supervision Procedure Regulations, Art. 44 OAR-ASA Supervision, Audit and Sanctions Regulations, §51 para. 6 R Polyreg).

Criterion 27.4 – FINMA may impose administrative sanctions if there is a serious breach of the supervision law (Art. 33 to 37 LFINMA), which include breaches of the LBA. These sanctions include withdrawal of an entity's authorisation, recognition, licensing or registration (Art. 37 LFINMA). FINMA does not have the power to impose monetary sanctions such as fines, but can confiscate any earnings acquired through a serious infringement of supervisory law (art. 35 LFINMA).

The OARs must define appropriate sanctions in their LBA Regulations (Art. 25 para. 3 subpara. c. LBA). The sanctions provided for include fines, warnings and exclusion (see R. 35).

Weighting and Conclusion:

Deficiencies were identified regarding the absence of FINMA's powers to impose monetary sanctions such as fines.

Switzerland is largely compliant with Recommendation 27.

Recommendation 28 – Regulation and supervision of DNFBPs

Switzerland was rated largely compliant in the third evaluation (para. 979ff). The FATF's new requirements strengthen the risk-based approach to regulation and supervision.

Criterion 28.1 – (a) Casinos must obtain a concession [*concession*] from the Confederation in order to engage in activity (Art. 106 Constitution and 10 to 13 LMJ). Internet gambling is prohibited (Art. 5 LMJ) (see c. 22.4). (b) For a concession to be granted, it must be established that the applicant, its main commercial partners (meaning the persons bound by a contract or a significant financial interest, or likely to influence the running of the gambling, Art. 3 OLMJ), its beneficial owners, and the holders of shares and their beneficial owners have a “good reputation” and are fit and proper, verified through the production of extensive criminal, tax, financial or wealth-related information (Art. 12 para. 1 subpara. a LMJ and 5 OLMJ) about the persons involved (including directors), regardless of whether they are Swiss or foreign. The lawful origin of the funds must also be checked (Art. 12 para. 1 subpara. b LMJ). The CFMJ must be notified of any change in these original conditions and any change of share ownership that would result in a concentration of more than 5% of the capital or votes (Art. 18 LMJ and 5b and 5c OLMJ). (c) The Federal Casinos Commission (CFMJ) is the

supervisor responsible for casinos, including as regards their AML/CFT obligations (Art. 12 subpara. b LBA).

Criterion 28.2 – DNFBPs other than casinos that are financial intermediaries within the meaning of the LBA are either subject to direct monitoring by FINMA, or are members of an OAR responsible for supervising them (Art. 12 subpara. c LBA), on the conditions described in c. 26.1. Furthermore, as described in c. 22.1, “dealers/merchants” [*négociants*] are not counted as “financial intermediaries” subject to the LBA in its entirety and in particular are not subject to a supervision obligation on the same conditions: they must appoint an audit body to check their compliance with their obligations (Art. 15 LBA).

Every OAR must draw up regulations specifying, in particular, the customer due diligence obligations required of its affiliates (Art. 25 LBA).

Criterion 28.3 – IFDSs’ AML/CFT supervision follows the rules and process defined by FINMA (Art. 18 LBA). Other DNFBPs are AML/CFT supervision frameworks defined by the OAR to which they are affiliated.

Criterion 28.4 – (a) As indicated in c. 27.1, FINMA and the OARs have general powers to carry out AML/CFT audits of IFDSs and of affiliates (Art. 12 and 24 LBA), which they may perform themselves or through an audit firm (Art. 24 LFINMA and 24 LBA). (b) For the IFDSs, see c. 26.3. Generally the membership conditions laid down by the OARs require that affiliates and their employees have a good reputation in the context of their activity (e.g. Art. 4 VQF Statutes and membership criteria, §4 subpara. b R Polyreg, Art. 5 R ARIF, 6 para. 2 R OAD FCT, Art. 8 LLCA). The OARs must be informed of changes in the data or information given to them at the time of joining (e.g. Art. 7 para. 2 R VQF, Art. 6 R OAD FCT), and in some cases must approve these changes (e.g. §52 para. 3 R Polyreg, Art. 23 and 24 R ARIF). There are rules governing controlling interests for members of OARs (e.g. §4 subpara. d R Polyreg, Art. 6 para. 2 R OAD FCT, 10 para. 2 LPav Genève). (c) FINMA has the power to impose sanctions, mainly administrative, which it may apply to IFDSs for breach of their AML/CFT obligations, see c. 27.4 and R. 35. For the OARs, the LBA states that the LBA Regulation must define appropriate sanctions (Art. 25 para. 3 subpara. c LBA). The weaknesses mentioned in c. 27.4 and R. 35 concerning these sanctions also apply to the DNFBP sector.

Criterion 28.5 – (a) and (b): For the IFDSs, see c. 26.4. The OARs require that AML/CFT supervision take account of the risks, to a certain extent, in their frequency (e.g. §51 para. 3 R Polyreg, Art. 5ff Directive 12B ARIF, 17 para. 2 R FSA/FSN). The regulations of some OARs stipulate that if no irregularities are identified in the last two audits, the next audit can be postponed for a period of up to four years. In the interim, affiliates of some OARs can perform self-certification or less in-depth audits. Some OARs (e.g. ARIF) make a limited reference to the risks when determining the scope of the audits.

Weighting and Conclusion:

The weaknesses identified concerning the supervision of DNFBPs affect the risk-based approach and sanctions.

Switzerland is largely compliant with Recommendation 28.

Recommendation 29 – Financial intelligence units (FIU)

Switzerland was rated largely compliant in the third evaluation (para. 197ff). The main weakness identified was linked to the fact that the financial intelligence unit was not authorised to obtain from the reporting entities the additional intelligence needed to perform its functions properly.

Criterion 29.1 – Art. 23 of the LBA establishes the Money Laundering Reporting Office Switzerland (MROS) as the financial intelligence unit for Switzerland within the meaning of R. 29.

Criterion 29.2 – MROS is responsible for receiving suspicious transaction reports (STRs) filed by financial intermediaries in accordance with their reporting obligation in Art. 9 of the LBA and their right to report in Art. 305^{ter} CP. MROS is also responsible for receiving STRs filed by other entities in accordance with the LBA, i.e. dealers/merchants (Art. 9 para. 1^{bis}), dealers/merchants' audit bodies (Art. 15 para. 1), FINMA and the CFMJ (Art. 16 para. 1) and the OARs (Art. 27 para. 4). Swiss legislation does not provide for other types of disclosures to MROS.

Criterion 29.3 –

(a) Where required for the analysis of an STR, MROS is authorised to ask for additional information from the financial intermediary that made the disclosure (Art. 11a para. 1) and from any other financial intermediary that, according to the analysis, is or was involved in the transaction or business relationship in question (Art. 11a para. 2).

(b) FINMA, CFMJ and MROS may exchange all the intelligence and documents necessary for the law's application (Art. 29 para. 1 LBA). More generally, MROS is authorised to request and obtain from the federal, cantonal and municipal authorities, any information it needs to perform analyses related to combating ML, the predicate offences, organised crime or TF (Art. 29 para. 2 LBA). Moreover, MROS has access to a wide range of judicial, police and administrative databases, e.g.: data of the Swiss commercial register; the automated register of vehicles and vehicle owners; the automated register of driving licences; the police computerised research system; the federal police's computerised files and persons management and indexing system; the PJF's computerised system; the computerised criminal records database; the OFJ's persons, files and cases management system (international legal assistance in criminal matters); the general information and analysis system (secure central system for the input, processing and analysis of intelligence data); the national police index including the police information systems of the cantons; the central information system on migration; and the police's computerised internal case and file management system.

Criterion 29.4 – In terms of operational analysis, the Ordinance on the Money Laundering Reporting Office Switzerland [*Ordonnance sur le Bureau de communication en matière de blanchiment d'argent (OBCBA)*] stipulates that MROS is responsible among other things for assisting the law enforcement authorities in suppressing ML, the predicate offences, organised crime and the financing of terrorism (Art. 1 para. 1 subpara. a), and specifies that, for the accomplishment of its tasks, MROS receives and analyses reports of suspicious activity and undertakes research related to the disclosed facts. The OBCBA also states that MROS shall undertake strategic analysis (Art. 1 para. 2 subpara. f).

Criterion 29.5 – MROS is responsible for informing the law enforcement authority in the cases defined in Art. 23 para. 4 of the LBA, and may exchange all the necessary information and documents for application of the LBA (Art. 29 para. 1). Additionally, MROS may, on a case-by-case basis, give intelligence to the federal, cantonal and municipal authorities, provided that it is used solely for

combating ML, the predicate offences, organised crime or TF (Art. 29 para. 2^{bis}). The LBA contains a non-exhaustive list of the information that MROS may disclose (Art. 30 para. 2). In accordance with the Egmont Group principles, Art. 29 para. 2^{ter} of the LBA also specifies that information from a foreign counterpart may not be disclosed by MROS to the national authorities without express permission from the foreign counterpart in question. Disclosures between MROS and other authorities are made via secure channels.

Criterion 29.6 – To protect the information that it processes and archives, MROS has set up a secure database (GEWA). Access to GEWA is limited to persons working at MROS and, for the modification and upgrading of the system, to the system administrators (Art. 20 OBCBA). All GEWA data sent to third parties is accompanied by information about restrictions on the use of the data (Art. 25 para. 1 OBCBA). MROS has also adopted internal guidelines concerning data confidentiality and organises training on the subject for its employees. Access to MROS' offices and its archives is limited by an electronic access system to a small number of people. Apart from MROS' employees, only four federal police employees subject to checks by DDPS may have access.

Criterion 29.7 – MROS' operational independence and autonomy are the result of the following:

(a) Although MROS is a federal police headquarters division, the hierarchical link only concerns organisational and not operational aspects. Decisions concerning communications, the exchange of information, training for the financial sector, etc. are taken by the head of MROS or his/her deputy. The head of MROS is recruited in accordance with federal police procedures and appointed by the director of the federal police at the proposal of the deputy director.

(b) MROS has the authority to decide the terms of its collaboration with its foreign counterparts (Art. 30 para. 6 LBA), particularly by means of agreements where the counterpart authorities require an agreement in order to comply with their national law. To date, MROS has signed cooperation agreements with 10 other financial intelligence units. The texts mentioned above under Criterion 29.5, and particularly Art. 29 LBA, show that MROS may decide in complete independence to cooperate with other national competent authorities.

(c) MROS' core functions are defined in Art. 23 of the LBA and are distinct from the federal police's functions.

(d) MROS' resources may be adjusted depending on workload, either internally if there is an excessive workload, or by request to the Swiss Federal Council if extra posts are necessary. Its resources are assessed whenever any legislation is reformed that concerns MROS, as shown by the Swiss Federal Council's message on the Law of 12 December 2014.

Criterion 29.8 – MROS has been a member of the Egmont Group since it (MROS) was set up in 1998.

Weighting and Conclusion:

All applicable criteria are met.

Switzerland is compliant with Recommendation 29.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

Switzerland was rated compliant in the third evaluation (para. 249ff).

Criterion 30.1 – The law enforcement authorities dealing with ML, associated predicate offences and TF are the police (Art. 15 Criminal Procedure Code, CPP) and the prosecution authorities (Art. 16 CPP). In accordance with Art. 14 of the CPP, the Confederation and the cantons designate their respective law enforcement authorities. The law enforcement authorities with competence at the level of the Confederation are the Federal Office of Police (fedpol) and the Office of the Attorney General of Switzerland [*Ministère public de la Confédération* (MPC)]. Article 22 of the CPP sets out the principle upon which the cantonal law enforcement authorities have competence to prosecute and bring to trial offenders as defined under federal law, unless the law explicitly attributes competence to the Confederation. Article 23 thus contains a list of offences, including some predicate offences, which come within the competence of the federal authorities. As regards AML/CFT and organised crime, there is an exception whereby the federal authorities (rather than the cantonal authorities) have competence in the case of offences committed for the most part abroad or in more than one canton and where there is no clearly predominant connection with any one of them (Art. 24 CPP).

Criterion 30.2 – The investigators at the cantonal and federal levels are authorised to conduct parallel financial investigations within the framework of criminal proceedings related to ML predicate offences. If necessary, a number of different investigators may be involved in a single criminal proceeding.

Criterion 30.3 – As part of their investigations, the prosecution authority and the police have a duty to identify and trace assets subject to or liable to be subject to confiscation.

Once assets subject to or potentially subject to confiscation have been identified, the prosecution authority can order them to be seized in accordance with articles 263ff of the CPP. In urgent cases, an order to seize assets can be given orally, provided that it is confirmed in writing thereafter (Art. 263 para. 2 CPP). *See also R. 4 and 38.* The Federal Customs Administration [*Administration fédérale des douanes* (AFD)] also has the power to seize goods and assets which are likely to be confiscated (Art. 104 LD).

Criterion 30.4 – The AFD and the Federal Tax Administration [*Administration fédérale des contributions* (AFC)] have competences under administrative criminal law. Regarding combating money laundering, the AFD has competence in the area of controlling cross-border transportation of cash and prosecuting certain customs offences which are considered predicate offences to ML. The AFD has the power to take the measures required to conserve evidence (including provisional seizure) and immediately transfer it to the competent authority responsible for such goods, assets and evidence. The AFC has competence to prosecute certain predicate offences, primarily associated with indirect tax (mainly withholding tax, stamp duty and domestic VAT). AFC and AFD employees are under a general obligation to report to the law enforcement authorities, to their superiors or to the Swiss Federal Audit Office any crimes or offences subject to *ex officio* prosecution which come to their knowledge or are been reported to them in the exercise of their duties [Art. 22a, para. 1 of the Federal Law on Employees of the Confederation (LPers)]. Where required, financial investigations are entrusted to the law enforcement authorities.

Criterion 30.5 – There is no specific anti-corruption enforcement authority in Switzerland.

Weighting and Conclusion:

All applicable criteria have been met.

Switzerland is compliant with Recommendation 30.

Recommendation 31 – Powers of criminal prosecution and investigative authorities

Switzerland was rated compliant in the third evaluation (para. 262ff). This Recommendation was expanded when the FATF standards were revised in 2012 and now requires countries to have, among other provisions, mechanisms for determining in a timely manner whether natural or legal persons hold or manage accounts.

Criterion 31.1 – The authorities have adequate powers to access documents and information required for criminal prosecution. In particular, the authorities have the power to apply the following coercive measures:

- (a) searches for documents and recordings (Art. 246-248 CPP);
- (b) searches of premises (Art. 244-245 CPP), and of persons and objects (Art. 249-250 CPP);
- (c) an order to appear requiring a person to appear before the competent authority, notably for a hearing (Art. 207 CPP);
- (d) various methods of seizing and obtaining evidence, notably by means of probative seizure (Art. 263 ff. CPP), DNA analysis (Art. 255 ff. CPP) and the seizure of identification data (Art. 260 ff. CPP).

Criterion 31.2 – The law enforcement authorities can use investigative techniques appropriate for investigating ML offences, associated predicate offences and TF offences, as defined for the criterion (Art. 246 ff., 269 ff., 280, 285a and 298a of the CPP). Swiss legislation also provides for surveillance of relations between a bank or similar establishment and a defendant, with a view to elucidating crimes or offences (Art. 248-285 CPP).

Criterion 31.3 – The prosecution authority can issue a request for information from one or more financial intermediary(ies) by means of an order to produce and hand over information (Art. 265 CPP), to determine whether or not a given natural or legal person holds or manages an account with said financial intermediary(ies). However, this order can only be issued if there is a suspicion or, at least, some concrete indicator that the person in question holds or manages an account with the establishment. In the absence of any concrete evidence, Switzerland does not have any mechanisms to determine the existence of current accounts in a timely manner. The mechanism that can be used to identify goods or assets is the same as that used to identify accounts, i.e. an order to produce and hand over items (Art. 265 CPP). Nonetheless, the limitation of the requirement to produce concrete evidence is offset by the possibility of searching databases (land registry, trade and business registry, motor vehicle registry, etc.).

Criterion 31.4 – MROS can, in individual cases, provide information to the federal, cantonal and communal authorities, provided that, in accordance with the principle of speciality, such information is exclusively used to combat ML, predicate offences, organised crime or TF (Art. 29, para. 2^{bis} of the LBA). The competent authorities can submit requests for information to MROS based on Articles 43 ff of the CPP within the framework of domestic mutual assistance.

Weighting and Conclusion:

The key requirements of R. 31 are met, but some minor weaknesses can be observed, notably in relation to the new requirements set out in the Recommendation.

Switzerland is largely compliant with Recommendation 31.

Recommendation 32 – Cash couriers

Switzerland was rated non-compliant in the third evaluation (para. 284 ff.), as it was considered that implementation of the requirements relative to cash couriers was based on inadequate and incomplete mechanisms. Since then, Switzerland has taken measures to ensure compliance with the Recommendation, notably with the adoption of the Ordinance of 11 February 2009 on the control of cross-border cash movements (hereinafter the Ordinance of 11 February 2009).

Background notes: (1) The territory Principality of Liechtenstein is associated with the Swiss customs territory, of which it is an integral part. Swiss customs laws and ordinances (such as the Ordinance of 11 February 2009) apply in the Principality of Liechtenstein and controls at the Austrian-Liechtenstein border are carried out by the Swiss Federal Customs Administration (AFD) (which does not carry out controls at the border between Switzerland and Liechtenstein). This lack of controls is based on the customs union treaty between both countries. Nonetheless, in the event of any suspected case of ML/TF, the competence to prosecute lies with the Liechtenstein authorities. (2) Although Switzerland is in the Schengen Area, the main border posts are still manned at all times.

Criterion 32.1 – The Ordinance of 11 February 2009 introduced a disclosure system for cross-border transportation of cash by persons who are required to make a customs declaration as per Art. 26 of the LD. Cash means currency (Swiss and foreign banknotes and coins in circulation as means of payment), and bearer securities, shares, bonds, cheques and other similar transferable securities (Art. 2). Cross-border transportation by mail or freight is not considered to be tourist movement and is therefore subject to customs procedure relative to commercial movement. Regarding commercial cross-border movement, all merchandise, including cash, is subject to a declaration system. There is no declaration or disclosure system at the border between Switzerland and Liechtenstein.

Criterion 32.2 – Regarding transportation by mail, goods (letters and parcels) are subject to the customs procedure relative to commercial movement. The post office and courier services (Fedex, TNT, UPS, DHL, etc.) are authorised consignees [see Art. 100 ff. of the Customs Ordinance (*Ordonnance sur les douanes*, OD)]. They must declare the contents of parcels in accordance with general customs stipulations. Nonetheless, they can send goods and receive them directly to their registered address or authorised premises without having to take them to a customs office of departure. They must check the goods present at their premises without delay, draw up an inventory

for the purposes of the import declaration, and immediately report any irregularity (see Art. 111 OD). All goods are subject to checks as per Article 36 para. 1 of the LD, either in their entirety or by sampling, depending on the risks involved. Transport companies must collaborate with such checks (see Art. 44 para. 2 LD). An additional customs check may be carried out by the FCA at the border or also at the authorised consignee's premises upon arrival of the goods (see Art. 110 and 112 OD).

Criterion 32.3 – Regarding the cross-border transportation of cash, the person subject to the disclosure requirement must, upon request of the customs office, provide information on the import, export and transit of cash exceeding CHF 10 000 [USD 10 130/EUR 9 134] or equivalent value in another currency (Art. 3 of the Ordinance of 11 February 2009).

Criterion 32.4 – In accordance with Article 3 para. 1 of the Ordinance of 11 February 2009, the customs authorities are authorised to request and obtain information regarding the origin and intended use of the cash transported if the person questioned replies that they are carrying more than CHF 10 000 or equivalent value in another currency, or if ML/TF is suspected. According to AFD practice (transposed in an official document submitted to the evaluation team), suspicion may, in particular, arise in the event of false information being disclosed or a refusal to disclose information. The customs office is therefore authorised to request and obtain information regarding the origin and intended use of the cash transported in such a situation.

Criterion 32.5 – Under Article 5 of the Ordinance of 11 February 2009, the fact that a person, first, refuses to provide information about themselves or about cash which they are importing, exporting or transporting to the value of at least CHF 10 000 or equivalent value in another currency, or second, provides false information, is considered an offence. The AFD can directly apply a maximum fine of CHF 5 000 (Art. 127 para. 1 LD), regardless of the undeclared sum. Such a sanction is neither dissuasive nor proportionate. According to the Swiss authorities, a refusal could also, depending on the circumstances, be sanctioned on the basis of Art. 286 CP ("Prevention of an official act"), but the authorities have not clarified to what extent this sanction would supersede the fine mentioned above.

Criterion 32.6 – Under Article 95 para. 1^{bis} of the LD, the AFD is required, in the exercise of its duties, to support the fight against ML and TF. The Ordinance of 11 February 2009 stipulates that "in certain cases" the Directorate General of Customs shall transmit data from the information system ("RUMACA") to MROS and to the competent police authorities (Art. 8). However, neither the law nor the ordinance list the cases in which such data must be communicated, and there is therefore no guarantee that MROS is informed of all suspect cases. It is then the duty of the police to inform MROS that it must present a request for administrative assistance to the AFD. To overcome the disadvantages of this procedure, it is planned that MROS employees will be given direct access to the AFD's information system (new Art. 110e para. 3 subpara. a(2) of the LD, not yet in force at the time of the on-site visit¹⁹⁶). Based on the law in force at the time of the on-site visit, information-sharing between the AFD and MROS does not fully meet the requirements of the criterion. In addition, given that the Swiss authorities are not competent for prosecuting offences committed on the territory of

¹⁹⁶ The relevant provision took effect on 1 August 2016, i.e. after the on-site visit. It can therefore not be taken into account for the rating (see para. 28 of the Methodology).

Liechtenstein other than customs offences, they are required to inform the Liechtenstein police if they detect any suspicious incident during their controls on cross-border transportation of cash at the border between the Principality of Liechtenstein and Austria.

Criterion 32.7 – At the national level, Switzerland has set up mechanisms to enable coordination between the AFD, the State Secretariat for Migration (SEM) and any other authority involved. This coordination is primarily based on general provisions under administrative criminal law (DPA), mainly regarding reporting offences (Art. 19 para. 2 DPA). In application of these provisions, the AFD reports to the SEM any person found to have irregular status, together with people making application for asylum who are found to be in possession of large sums of money but cannot give a satisfactory explanation of its source. Such money is confiscated and entrusted to the SEM in accordance with Art. 87 of the Asylum Law (LAsi). Coordination with immigration departments is also ensured by mutual access to all relevant databases and by AFD liaison officers on assignment at the SEM. Information-sharing between the AFD and MROS is currently limited but should be improved by the revision of the LD.

Collaboration between the Federal Criminal Police (PJF), on the one hand, and border surveillance and customs authorities on the other hand, is based on Art. 4 para. 1 subpara. c of the Ordinance of 30 November 2001 relative to the tasks performed by the criminal police within the Federal Office of Police (fedpol). The FCA also assigns liaison officers to work at fedpol.

Criterion 32.8 – According to the Customs Law (LD), the AFD can take any measures necessary to conserve evidence liable to be used in criminal proceedings, notably by seizing such evidence (Art. 104 LD). Such measures can be applied in the case of suspected ML/TF or associated predicate offences, as well as in the case of providing false information given that this can be a reason for suspicion of ML/TF (see c. 32.4).

Criterion 32.9 – The AFD can communicate data to foreign authorities provided that this is foreseen under an international treaty. The key applicable texts are: the Agreement of 26 October 2004 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities affecting their financial interests; the Council of Europe Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; and the Ordinance of 8 March 2013 on the national section of the Schengen Information System (N-SIS) and the SIRENE office (Ordinance N-SIS). The Ordinance of the 11 February 2009 provides for the Directorate General of Customs to conserve data, notably regarding the identity and address of any person required to declare or disclose and the amount of cash (Art. 6 and 7). These data must imperatively be entered in the information system in the cases listed in this criterion.

Criterion 32.10 – Access to information obtained via the communication system is limited to the authorities involved in AML/CFT with a view to ensuring its proper use and confidentiality (Art. 4, Annex A 8 of the Ordinance of 4 April 2007 on data processing at the AFD). Also, where there is no suspicion of ML/TF, the aforementioned provisions do not set any limits either on payments relative to the trading of goods or services between countries, or on the free movement of capital. The restrictions stipulated in the event of suspicious activities (in particular regarding provisional seizure) appear to be proportionate to the desired end, in other words, to counter ML and TF. Last,

the AFD is required to implement the principle of proportionality in carrying out its duties (see Art. 5 and 36 of the Federal Constitution).

Criterion 32.11 – If cash being transported has any link with an ML or TF offence, or with a predicate offence, the person transporting the cash may be prosecuted on the basis of ML or TF offences as analysed in R 3 and 5. In addition, the cash will then be confiscated to the extent it represents the proceeds of an offence (see R. 4).

Weighting and Conclusion:

There is a significant risk related to cash couriers in Switzerland given the fact that cash is widely used in the Swiss economy and high-denomination banknotes are in circulation (EUR 500 and CHF 1 000). It should be acknowledged that in 2009 a communication system was set up to control the cross-border transportation of cash. However, the system fails to be fully compliant due to the lack of fully dissuasive sanctions in the event of failure to comply with the disclosure requirement, as well as by the limited level of cooperation between the AFD and MROS.

Switzerland is largely compliant with Recommendation 32.

Recommendation 33 – Statistics

Switzerland was rated largely compliant in the third evaluation. The weaknesses observed were mainly related to statistics on confiscation and mutual legal assistance.

Criterion 33.1 – (a) Switzerland keeps detailed statistics on the STRs received and disseminated by the MROS, as well as on their follow-up by the law enforcement authorities (see MROS annual reports). (b) Data regarding investigations, prosecution and sentencing related to ML/TF are available at the level of the Confederation and for practically all the cantons (e.g. the Report on the national evaluation of the risks of money laundering and terrorist financing in Switzerland). In 2013, an initiative to harmonise the statistics kept by federal and cantonal law enforcement authorities was launched in order to correlate existing data. Given that this is still in progress, the results could not be taken into account in this report. (c) Data was provided on property confiscated under Swiss law or at the request of other countries. These data indicate a certain level of confiscation and a significant number of cases where assets have been returned to other countries, but they do not seem to have been kept systematically. For example, the total worth of property confiscated under Swiss law was only provided for 2014. Nonetheless, the new system for collecting statistics is aimed at ensuring that statistics on confiscation are more consistent and complete. (d) Statistics were provided on mutual legal assistance as well as on other international cooperation requests issued and received by MROS and FINMA. However, with the exception of requests to return assets and requests addressed to MROS, the statistics do not provide information on action taken in response to such requests (in particular, whether the cooperation requested was granted).

Weighting and Conclusion:

Switzerland does have certain statistics available relative to the effectiveness of its AML/CFT measures, primarily including detailed statistics on STRs received and disseminated. Nonetheless,

the data available on prosecutions, confiscation and international cooperation is incomplete. More generally, the statistics presented are not processed in a system that would enable the efficiency and the effectiveness of AML/CFT measures to be assessed. The new system for collecting statistics is designed to address these deficiencies in the future.

Switzerland is partially compliant with Recommendation 33.

Recommendation 34 – Guidance and feedback

Switzerland was rated compliant with these requirements during the third evaluation (para. 629ff).

Criterion 34.1 – MROS has a legal mandate to raise awareness among financial intermediaries of the problems of money laundering, predicate offences, organised crime and the financing of terrorism (Art. 1 para. 1 subpara. c OBCBA). MROS also has a mandate to inform reporting entities of the action taken in response to STRs received (Art. 9 para. 1 OBCBA). The legislative framework does not specify the extent to which this awareness-raising and feedback should help financial intermediaries better implement national AML/CFT measures.

FINMA can adopt circulars to specify procedures for application of the LBA (Art. 7 para. 1 subpara. b LFINMA). The most recent of these relating to the LBA was adopted in 2015 and related to the FATF Report on the financing of Islamic State¹⁹⁷. FINMA also publishes an annual report on its *enforcement* decisions, including descriptions of decisions in AML/CFT cases. It also publishes a bulletin containing details of key decisions and court rulings¹⁹⁸. For example, in its Bulletin 5/2015, it published a key order relating to the duty to report within the meaning of the LBA¹⁹⁹. In accordance with its "Guidelines" regarding communication, FINMA may also publish communications to supervised institutions giving its interpretation of financial markets legislation or its observations on certain potential risks. For example, in 2010 it published such communications on relations with Iran²⁰⁰ and in 2011 on insurance wrappers²⁰¹. FINMA also organises training and presentations and takes part in seminars held for supervised organisations to assist them in applying the AML/CFT measures and complying with their STR requirements. It also holds an annual conference attended by supervised organisations, OARs and audit firms, with a view to raising awareness and providing information to stakeholders, and including a workshop on risks.

Some OARs are looking into the possibility of publishing directives on concrete implementation of certain requirements provided for in the Regulations (§40 para. 2 subpara. b R Polyreg). The OARs also organise training and presentations held for supervised organisations to assist them in applying

¹⁹⁷. <https://www.finma.ch/fr/news/2015/05/aufruf-im-zusammenhang-mit-der-bekaempfung-der-terroristischen-organisation-islamischer-staat/>

¹⁹⁸ <https://www.finma.ch/fr/documentation/selection-de-decisions/>

¹⁹⁹ <https://www.finma.ch/fr/documentation/selection-de-decisions/>, p. 24

²⁰⁰ <https://www.finma.ch/fr/news/2010/10/aktuell-geschaeftsbeziehungen-iran-20101018>

²⁰¹ <https://www.finma.ch/fr/news/2011/01/aktuell-finma-mitteilung-18-2010-20110104>

the AML/CFT measures and complying with their STR requirements. The CFMJ publishes circulars specifying the AML/CFT requirements²⁰².

With regard to countering PF, SECO has drawn up guidelines to help financial intermediaries comply with their obligations regarding targeted financial sanctions.

Weighting and Conclusion:

Guidelines are available to supervised organisations to help them in implementing AML/CFT legislation, but feedback for supervised organisations, on a collective basis, which would help them improve compliance with the reporting requirements, is insufficient, especially for those operating in the non-financial sector.

Switzerland is largely compliant with Recommendation 34.

Recommendation 35 – Sanctions

Switzerland was rated partially compliant with these requirements during the third evaluation (para. 697 ff.) notably due to the fact that the supervisory authorities lacked the power to impose monetary sanctions, the fact that sanctions related to breaches of AML provisions lack proportionality, and potential inequalities in the treatment of organisations supervised by the authority for the financial sector compared to OARs, and also between one OAR and another.

Criterion 35.1 – Sanctions applicable in the event of failing to comply with the obligations referred to in Recommendations 8-23

The sanctions that can be applied in the event of any failure to comply with the obligations imposed on NPOs are limited, see c. 8.5.

The LBA sets out the fines applicable in the case of failing to comply with the requirement to declare (max. CHF 500 000, and min. CHF 10 000 for a repeated offence, Art. 37) and for failing to designate an audit body in the case of dealers/merchants (Art. 38). OARs are also required to define appropriate sanctions in their regulations (Art. 25 para. 3 subpara. c) and submit a list of sanctions rulings regarding their affiliates to FINMA (Art. 27 para. 3 LBA).

The CDB 16 sets out sanctions for any breach of its provisions in the form of a fine up to a maximum of ten million CHF (Art. 64). It can be used to hold natural persons accountable for any breach found. It also provides for not imposing sanctions in minor cases, where the objective of the measure has been achieved in spite of a formal breach (Art. 63). CDB 16 forms an integral part of the AML/CFT regulatory system applicable to all banks and securities traders (see Art. 35, 40 and 41 OBA-FINMA). The Swiss authorities also state that the sanctions set out in the CDB 16 refer to private law and are imposed for breach of contract. Such sanctions can only be imposed, therefore, in cases involving financial institutions that have signed the CDB 16.

²⁰² e.g. www.esbk.admin.ch/dam/data/esbk/spielbanken/mitteilungen/mitteilung_6_2007-12-06-f.pdf; www.esbk.admin.ch/dam/data/esbk/spielbanken/mitteilungen/mitteilung_1_2000-04-07-f.pdf

FINMA has powers to impose administrative sanctions on all financial intermediaries subject to its direct supervision if they seriously infringe supervisory law (Art. 33 to 37 LFINMA), which includes AML/CFT provisions (Art. 1 LFINMA). FINMA decides on a case-by-case basis what violations are considered serious and what sanctions are proportionate. FINMA can also challenge the fitness and properness on the part of members of the boards of directors and executive boards of financial institutions. In cases other than these serious circumstances, FINMA can enforce injunctions to comply with the law or issue a simple infringement finding (Art. 31 and 32) without imposing sanctions on the financial intermediary in question. It can also impose restrictions on the activities exercised by the financial intermediary. Criminal sanctions (custodial sentences of up to three years or monetary penalties) are also provided for under the LFINMA, primarily for exercising an activity without being authorised, recognised, licensed or registered, or for providing false information, including to OARs (Art. 44 and 45). Based on a proposal by FINMA, the Federal Department of Finance [*Département fédéral des finances* (DFF)] can impose fines (max. CHF 100 000) on any person who, intentionally, fails to comply with a ruling entered into force and of which they have been informed by FINMA under threat of the penalty provided for under this Article or an appeal court ruling (Art. 48 and 50 LFINMA).

Criminal sanctions can also be applied for failing to ascertain the identity of the beneficial owner of the assets with the care that is required in the circumstances (Art. 305^{ter} para. 1 CP) - a custodial sentence of up to one year, or a monetary penalty. It has also been established by previous court decisions that failure to identify the customer and, by omission, to undertake clarifications, can also be liable to criminal sanctions²⁰³.

The LMJ stipulates a maximum custodial sentence of one year or a fine of 1 million CHF [*USD 1.01 million/EUR 0.91 million*] if there is intentional failure to exercise due diligence in the matter of AML/CFT (Art. 55 para. 1c). The CFMJ can also suspend, restrict or withdraw the concession, or place it under additional conditions and requirements if it fails to fulfil the essential conditions (Art. 19 LMJ).

In the case of OARs, the sanctions applicable in the event of any breach of the LBA Regulations include fines in all cases (e.g. Art. 6, ASG Disciplinary Regulations, 88 R VQF) and also warnings or exclusion (e.g. Art. 37 Regulations relative to Control, Audit and Sanctions OAR-ASA, §54 R Polyreg, 47 R OAR G). The maximum fine varies between CHF 100 000 – CFF, 250 000 – VQF, 500 000 – ASG, and 1 million – OAR-ASA and PolyReg. The amount is usually set in light of the seriousness of the violation, as well as the extent of guilt and the financial capacity of the financial intermediary (e.g. Art. 6 R ASG, F1 R OAR CFF), or of the existence of a fine imposed by the courts (e.g. §53 R Polyreg). In the cases of minor offences or negligence, it is possible that a fine will not be imposed, but a warning or reprimand given instead (e.g. Art. 6 R ASG, §55 R Polyreg).

²⁰³ Ruling of the Federal Supreme Court of Switzerland of 8 December 2011, 6B_729/2010, consid. 3.4; Federal Supreme Court, ATF 136 IV 188, p. 191 ff, precedent confirmed by the Ruling of the Federal Supreme Court of Switzerland of 8 December 2011, 6B_729/2010, consid. 4.3

Sanctions applicable in the event of failing to comply with the requirements referred to in R. 6

Regarding any failure to comply with the requirement to implement targeted financial sanctions relating to the prevention and suppression of terrorism and terrorist financing, in accordance with R. 6, sanctions are provided for by the relevant ordinances of the Federal Council.

UNSCR 1267/1989 and 1988: In the case of targeted financial sanctions implemented by Switzerland based on UNSCRs 1267/1989 and 1988, Art. 6 of the Ordinance of 2 October 2000 stipulates, depending on the nature of the breach, that sanctions as defined in Articles 9 and 10 of the LEmb will be applied. Thus, an intentional breach of the requirement to freeze funds or other assets is punishable, for a basic offence, by a prison sentence of one year or a fine of CHF 500 000 and, in the event of aggravating circumstances (e.g. a repeat offence), by a five-year prison sentence possibly combined with a fine of CHF 1 million [USD 1.01 million/EUR 0.91 million]. If the person who committed the offence acted with negligence, they are liable to a three-month prison sentence or a fine of CHF 100 000. Failure to comply with the requirement to declare freezing measures is an offence [*contravention*] which carries a penalty of detention or a fine of CHF 100 000. These penalties can be applied to any natural or legal person.

UNSCR 1373: The regime varies depending on the source of the designation on which targeted financial sanctions are based. (a) Foreign designations: If the designation was proposed by another country, the sanctions are governed under the LBA. According to the Swiss authorities, any breach of the "blocking" requirement would be sanctioned as a "serious infringement of supervisory law" by FINMA (see above). Foreign designations only create requirements for financial intermediaries, and so no sanctions are applicable to other natural or legal persons in the event of failing to comply with the requirements of R. 6. (b) National designations: In the absence of any practical case, it is not possible to determine what sanctions are applicable in the event of a failure to comply with a requirement which might be imposed as a result of a designation made by Switzerland pursuant to UNSCR 1373.

Criterion 35.2 – Criminal sanctions imposed pursuant to the LBA and the LEmb are applicable to any natural or legal person, including members of the board of directors and senior management of financial institutions and DNFBPs. The Swiss authorities emphasised that, as a general rule, criminal sanctions are applied to natural persons. In the case of administrative sanctions, persons in management positions and/or members of the board of directors of financial intermediaries may be forced to resign if they can no longer demonstrate fitness and properness, and proceedings may be initiated with regard to the role played in any failure to comply with the financial intermediary's AML/CFT obligations. FINMA can thus issue a ruling against a natural person prohibiting them from holding a management position in a financial sector institution for a maximum period of five years (Art. 33 LFINMA). In addition, any person who commits a crime (*crime ou délit*) in the exercise of a professional activity and who has been sentenced to a term of imprisonment of more than six months or a financial penalty of over 180 day-fines, may be prohibited, by a criminal judge, from totally or partially exercising the activity or comparable activities for a period of six months to five years (Art. 67 para. 1 CP). FINMA can also confiscate any earnings acquired by a person in a senior management position through a serious infringement of supervisory law (Art. 35 LFINMA).

Weighting and Conclusion:

There are some significant shortcomings in the sanctions regime: the range of sanctions available to the FINMA seems limited, insofar as it has no instruments available to penalise moderately serious behaviour which do not merit such strong measures as imposing restrictions on the activities of the financial intermediary or withdrawal of a licence, but would require a more severe sanction than a mere decision to restore the legal order. This range of sanctions is too narrow and does not allow for the possibility of graduated sanctions against institutions which infringe the law. Further, the sanctions that can be applied are not necessarily proportionate, mainly due to the amounts of fines which can be imposed for failure to comply with requirements to ascertain identity (max. CHF 10 million, CDB 16), and disclosure requirements (administrative sanction of max. CHF 500 000). In the case of SRBs, weaknesses are observed in relation to the sanctions that can be applied by the different OARs, which impacts on the proportionate nature of the sanctions.

Switzerland is partially compliant with Recommendation 35.

Recommendation 36 – International instruments

In the third evaluation, Switzerland was rated largely compliant and partially compliant with the recommendations relative to international instruments relative to AML (para. 1073 ff.) and CFT (para. 1078 ff.) respectively. The weaknesses noted related to the fact that Switzerland had not ratified the Palermo Convention, nor fully implemented UNSCR 1373. Switzerland has since ratified the Palermo Convention without reservations.

Criterion 36.1 – Following the ratification of the Palermo Convention, Switzerland is now party to all the conventions mentioned in R. 36. Switzerland is also party to the Council of Europe Convention on Cybercrime (2001), which countries are also encouraged to ratify and implement under R. 36.

Criterion 36.2 – Switzerland's legislative and regulatory framework largely complies with the articles in question in the conventions, and has been supplemented by additional legislative measures since the last evaluation, such as the law on the restitution of illicit assets of 1 October 2010 and the law on extra-procedural measures for the protection of witnesses of 23 December 2011. Nonetheless, as noted in the context of Recommendations 3 and 5 (where minor shortcomings were observed), Switzerland has not fully implemented certain articles of the conventions in question, specifically those articles relative to establishing money laundering as a criminal offence (Art. 3(1)(c)(i) of the Vienna Convention, Art. 6(1)(b)(i) of the Palermo Convention and Art. 23(1)(b) of the Merida Convention) and establishing the financing of terrorism as a criminal offence (Art. 2 para. 1 subpara. a and para. 4 of the TF Convention). In addition, regarding the Merida Convention, weaknesses were found in relation to R. 10 and 13 (Art. 52 of the Merida Convention), R. 16 (Art. 14.3) and R. 35 (Art. 30).

Weighting and Conclusion:

Switzerland is party to all the conventions listed under R. 36, but there are still some minor shortcomings regarding implementation of certain key articles.

Switzerland is largely compliant with Recommendation 36.

Recommendation 37 – Mutual legal assistance

In the third evaluation, Switzerland was rated compliant and largely compliant with the Recommendations on mutual legal assistance related to ML and TF respectively (para. 1082 ff). The weaknesses observed were the result of the dual criminality condition, which could be an obstacle to mutual legal assistance or extradition in certain cases.

Criterion 37.1 – Domestic law, i.e. the federal law on international mutual legal assistance in criminal matters (EIMP) in association with its implementation ordinance (OEIMP), provides in and of itself a basis for providing MLA. The EIMP defines an obligation to execute requests promptly (Art. 17a), which applies to all the authorities responsible for executing requests for mutual assistance (cantonal prosecution authorities and MPC) as well as to the federal administrative authorities. In line with this obligation of promptness, the executing authority is able to immediately take provisional measures (Art. 18 EIMP), rulings that may be appealed during the mutual assistance proceedings are limited (Art. 80e of the EIMP) and the federal criminal court (*Tribunal pénal fédéral*) has been recognised as the sole national competent court for appeals against MLA rulings. The EIMP includes a broad and non-exhaustive definition of the mutual assistance measures that can be taken, specifying that mutual assistance "*shall comprise the transmission of information, as well as procedural acts and other official acts permitted under Swiss law*" (Art. 63 EIMP). The EIMP also expressly allows for the spontaneous sharing of information and evidence (Art. 67a). Minor weaknesses observed in relation to Recommendations 3 (regarding possession of the proceeds of crime) and 5 may nonetheless restrict the range of mutual assistance in cases where dual criminality is required.

In addition to the EIMP, Switzerland has concluded many international agreements pertaining to MLA with States that require such agreements in order to cooperate. International cooperation – at federal and cantonal level – is governed by the "principle of favourable treatment" (*principe de faveur*), established by previous rulings of the Federal Supreme Court, according to which the executing authority must always decide to apply the legal basis that is most favourable to granting mutual assistance (i.e. conventional law or domestic law).²⁰⁴ Where the EIMP and MLA agreements are silent, the procedure applicable to the execution of requests is usually that governing the measure in question at the national level.

Criterion 37.2 – The Federal Office of Justice [*Office fédéral de justice* (OFJ)] is responsible for analysing whether requests are admissible and transmitting them to the competent authority for execution. The OFJ can also order provisional measures to be taken as soon as it is notified of an upcoming request. Priority cases are identified on the basis of defined criteria (e.g. person in custody, emergency measures, coordination, case covered in the media) and are subject to quarterly inspection. Cases are managed using a partially computerised system.

²⁰⁴ Federal Supreme Court, ATF 123 II 134 consid. 1a.

Criterion 37.3 – Mutual legal assistance is not generally subject to any unreasonable or unduly restrictive conditions. Mutual assistance is subject to the principle of *ne bis in idem* (Art. 66 EIMP), the principle of speciality (Art. 67 EIMP) and, as a general rule, to a guarantee of reciprocity (Art. 8 EIMP). Mutual assistance shall not be granted in the case of certain offences, mainly including acts which, in the Swiss view, are of a predominantly political nature (Art. 3 EIMP), and can be rejected if the importance of the offence does not justify conducting proceedings (Art. 4 EIMP). (See Criterion 37.4 below for tax-related offences.) In addition, coercive measures are subject to a condition of dual criminality (see c. 37.6 below). It should be noted that, as mentioned above, Switzerland does not require a bilateral agreement in order to grant MLA. In addition, in the case of suspected ML, case law specifies that the requesting authority does not necessarily have to provide evidence that ML acts or predicate offences have been committed.²⁰⁵ In such cases, concrete indicia of suspicion are sufficient, for example transactions with no apparent justification, the use of several companies located in different countries or the fact that suspicious transactions involve large sums of money will suffice under the dual criminality condition. As mentioned below in relation to c. 37.5, strict conditions apply relative to the confidentiality of the request with regard to the beneficial owner. In the event that these conditions are not met, MLA will only be granted if the requesting country agrees to the participation of the beneficial owner. Depending on the nature of the request, such conditions may seem unduly restrictive.

Criterion 37.4 – Under Article 3 para. 3 of the EIMP, a request is inadmissible if it relates to "an offence which appears to be aimed at reducing fiscal duties or taxes or which violates regulations on currency, trade or economic measures". However, the Article goes on to specify that a request for cooperation other than extradition may be granted if it relates to tax fraud. Tax fraud consists in malicious conduct on the part of the perpetrator to keep to himself all or part of a tax contribution, of any kind, that is due to the State, as well as malicious conduct on the part of the perpetrator to cause harm to the State's fiscal assets²⁰⁶. Mutual assistance can therefore be granted for all tax offences which are predicate offences in Swiss law, notably aggravated tax offences pursuant to Art. 305^{bis} of the CP, given that such offences imply, by definition, the use of forged documents. In addition, the EIMP specifies that the protection of privacy shall be governed by the provisions on the right of witnesses to refuse to testify (Art. 9 EIMP). In application of the relevant provisions in the CPP, a request for mutual assistance can therefore not be refused on the grounds of secrecy or confidentiality obligations of financial institutions or DNFBPs as per the meaning of the FATF Recommendations, unless the information in question has been obtained by lawyers or notaries in the exercise of activities that bear no relation to financial intermediation. See R. 9, C. 23.1 and C. 25.4 above.

Criterion 37.5 – Employees of the authorities responsible for transmitting and/or executing requests for MLA are bound by official secrecy provisions. It should be noted that beneficial owners and any person deemed to have sufficient interest in the request are legally entitled to take part in proceedings. This right and the right to access the file may be restricted in a certain number of cases,

²⁰⁵ Federal Supreme Court, ATF 129 II 97; Federal Criminal Court, 23 March 2015, RR.2014.257-260.

²⁰⁶ Federal Supreme Court, ATF 125 II 250, consid. 3a.

notably in the interests of the foreign proceedings (Art. 80b of the EIMP), for example if the person's awareness of the request would pose a threat to someone's life. Yet, based on Articles 80(d) and 80(k) of the EIMP, it would seem that, in all cases, beneficial owners would be informed of the final ruling issued by the executing authority when it has determined that the request is completely or partially executed. They would also be informed of the fact that they can choose to be represented by a Swiss lawyer who can act in the mutual assistance proceedings. Such a notification would lift the confidentiality insofar as the person in question is informed both of the request for mutual assistance and the evidence gathered to execute the request. Even though the Swiss authorities try to find partial solutions to preserve the confidentiality of requests after evidence has been transmitted, the mechanisms in question have not been validated by the Federal Supreme Court to date and remain exceptional.

Criterion 37.6 – Article 64 of the EIMP specifies that dual criminality is required in the case of coercive measures. However, and according to previous rulings of the Federal Supreme Court²⁰⁷, this condition is not applied to MLA requests that do not involve coercive measures.

Criterion 37.7 – Article 64 of the EIMP states that the dual criminality condition is met if "the description of the circumstances of the case indicates that the offence being prosecuted abroad contains the objective elements of an offence under Swiss law". This means that it is not necessary for Switzerland and the requesting country to classify the offence in the same category of offences, nor for them to use the same term for it.

Criterion 37.8 – Given that MLA includes all procedural actions and other official actions admitted under Swiss law, the weaknesses observed in relation to R. 31 relative to national investigations are also applicable here.

Weighting and Conclusion:

Swiss law provides for a relatively broad array of MLA, founded on the principles of prompt action and favourable treatment. However, mutual assistance is limited by restrictions regarding the need to protect the confidentiality of requests and, in the case of coercive measures conditional upon dual criminality, by minor weaknesses with regard to Recommendations 3 and 5.

Switzerland is largely compliant with Recommendation 37.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

Switzerland was rated compliant in the third evaluation (para. 1103ff).

Criterion 38.1 – The general provisions of the EIMP analysed above for R. 37, and, in particular, the obligation of promptness, also apply to measures that can be taken to identify, freeze, seize or confiscate property. Given that the applicable provisions set out in the CPP are the same outside the context of MLA, the minor weakness observed above with regard to R. 4 relative to the confiscation of instrumentalities also apply in this area. Furthermore, the dual criminality condition, in relation to

²⁰⁷ Federal Supreme Court, ATF 139 IV 137.

the minor weakness observed with regard to R. 3 and R. 5, may limit the scope of mutual assistance in the case of a request to freeze or confiscate relating to certain ML/TF offences.

Criterion 38.2 – Under Swiss law, confiscation is not conditional upon prior criminal conviction. Confiscation applies to "assets that have been acquired through the commission of an offence or that were intended to entice or reward an offender" (Art. 70 CP). In light of previous rulings, it is confirmed that property can be confiscated even if the perpetrator of the offence cannot be identified, is deceased or not responsible for their actions, or if they cannot be prosecuted in Switzerland on other grounds²⁰⁸.

Criterion 38.3 – Seizure and confiscation actions can be coordinated with other countries on the basis of domestic law and do not require an international agreement. Switzerland has an agreement with EUROJUST and has participated in joint investigation teams to facilitate synchronised seizure operations. Switzerland also has mechanisms for managing property that has been frozen, seized or confiscated and, if necessary, for disposing of such property (see c. 4.4 above). In addition, Article 74a of the EIMP provides for the handing over of objects or assets seized to a foreign competent authority with a view to confiscation or return.

Criterion 38.4 – The Federal law of 19 March 2004 on sharing confiscated assets (LVPC) provides measures for sharing certain confiscated assets either between the Confederation and the cantons (domestic sharing, with no international aspect), or between the Swiss Confederation and one or more foreign States (international sharing).

Weighting and Conclusion:

Notwithstanding the minor deficiency observed with regard to R. 4, Switzerland has a comprehensive set of measures regarding freezing and confiscation of assets within the framework of mutual legal assistance. Some minor weaknesses relating to ML/TF offences may impact on the scope of application of these measures.

Switzerland is largely compliant with Recommendation 38.

Recommendation 39 – Extradition

Switzerland was rated largely compliant in the third evaluation (para. 1127 ff).

Criterion 39.1 – In Switzerland, extradition is governed by the EIMP (Part Two). It can be granted in the case of offences which are punishable by a sentence of imprisonment for a maximum term of at least one year, or a more severe sentence, under both Swiss law and the law of the requesting State (Art. 35 para. 1 EIMP). Subject to the minor weaknesses observed with regard to R. 3 and R. 5, ML and TF offences are therefore offences for which extradition is possible. With regard to timeliness, the general obligation to take prompt action also applies to responding to requests for extradition. In addition to the aforementioned conditions applicable to all forms of cooperation in criminal cases (see c. 37.3 above, with the exception of the conditions relative to the beneficial owner's right to

²⁰⁸ Federal Supreme Court, ATF 128 IV 145 consid. 2d; Federal Supreme Court, ATF 132 II 178, consid. 4.

participate in proceedings), execution of extradition requests can be refused in a certain number of cases (Art. 37 EIMP) and is subject to conditions concerning subsequent proceedings in the requesting State (Art. 38 EIMP). Extradition can also be refused if the person sought is able to provide an alibi clearly proving that they were not involved in the crime of which they are accused by the requesting State (Art. 53 EIMP). According to a previous Federal Supreme Court ruling, neither a version of the facts which differs from that described in the request, nor simple arguments in the accused person's defence, will be taken into consideration in this context²⁰⁹. Nonetheless, it seems that the possibility of presenting an alibi in Switzerland will not be ruled out if the request contains evidence relating to the probable or proven localisation of the accused (e.g. an eyewitness). Article 53 EIMP may thus constitute an exception to the general principle whereby merits should be determined in the requesting country. In general, and taking into account additional information provided by the Swiss authorities regarding these various exceptions, it appears that the execution of requests for extradition is not subject to unreasonable or unduly restrictive conditions.

Criterion 39.2 – A Swiss citizen cannot be extradited without his or her consent (Art. 7 EIMP). As appropriate, at the request of the State in which the offence was committed, the case will be submitted to the competent authorities in application of Switzerland's jurisdiction based on the active personality principle (Art. 7 para. 1 CP).

Criterion 39.3 – Extradition is possible if the offence is punishable by a sentence of imprisonment for a maximum term of at least one year, or a more severe sentence, under both Swiss law and the law of the requesting State (Art. 35 EIMP). This means that it is not necessary for Switzerland and the requesting country to classify the offence in the same category of offences nor for them to use the same term for it.

Criterion 39.4 – Article 54 EIMP sets out the provisions relating to simplified extradition. In addition, Switzerland has an agreement with France on simplified extradition and has signed the Third Additional Protocol to the European Convention on Extradition, which covers the simplified extradition procedure. Ratification of this instrument is in progress.

Weighting and Conclusion:

Switzerland has a comprehensive set of measures regarding extradition. However, some minor weaknesses relating to ML/TF offences may impact on the scope of application of these measures. Furthermore, the fact that it is possible to present an alibi in response to a request for extradition is an exception to the general principle whereby the merits should be decided on by the requesting State.

Switzerland is largely compliant with Recommendation 39.

²⁰⁹ Federal Supreme Court, ATF 122 II 373 consid. 1.

Recommendation 40 – Other forms of international cooperation

Switzerland was rated largely compliant in the third evaluation (para. 1138 ff). The weakness observed related to the restrictive conditions governing the transmission of information or documents by the Swiss supervisory authorities (Federal Banking Commission, Federal Office of Private Insurance, Anti-Money Laundering Control Authority) to their international counterparts.

Criterion 40.1 – As a rule, the competent authorities are able to provide rapidly a broad range of international cooperation - both spontaneously and upon request - in the areas of ML, associated predicate offences and TF. However, in the absence of an STR, MROS only has limited legal powers to request and obtain information from a financial intermediary on behalf of a foreign counterpart (see c. 40.8). In addition, the procedures governing FINMA's ability to request and obtain information can delay response times where cooperation involves the transmission of information on customers of financial intermediaries. In certain cases where the proceedings are particularly sensitive case, the customer has the right to be informed of the transmission of personal information before such information is transmitted ("customer" procedure). He has the right to appeal against this decision before the Federal administrative court (Art 29 para. 2 Federal Constitution and Art. 44 LPA). Even if this procedure is implemented in a limited number of cases since the introduction of Art. 42a para. 4 of the LFINMA, according to which FINMA can refrain from informing customers prior to transmitting the information requested if such information would compromise the purpose of administrative assistance and the effective fulfilment of the requesting authority's tasks, it may impact on FINMA's ability to provide international cooperation without undue delay, as required to meet this criterion.

Criterion 40.2 –

(a) A legal basis for cooperation is available to the competent authorities (*Police*: Art. 13 para. 2 LOC, Art. 75a EIMP regarding certain acts of mutual assistance²¹⁰, multilateral and bilateral agreements (see c. 40.3); *MROS*: Art. 30 ff. LBA and agreement protocols; *AFD*: Art. 115 LD; *FINMA*: Art. 42 to 43 LFINMA; *CFMJ*: Art. 102 OLMJ).

(b) There is nothing to prevent the competent authorities from employing the most efficient means for cooperating.

(c) The competent authorities use clear and secure channels, networks and mechanisms to facilitate and enable the transmission and execution of requests (*Police*: I-24/7, SIENA or Sirenemail; *MROS*: computer security standards defined by the Egmont Group and verifications of individual cases for FIUs which are not members of the Egmont Group; *FINMA*: by registered post or international courier service with tracking; secure digital channels). There is no information available on the CFMJ, which has no experience of mutual assistance to date.

(d) There are clear procedures available to the competent authorities to establish priorities (except in the case of the CFMJ) and to execute requests without undue delay. Response times for the police

²¹⁰ For details of the divisions of competence between mutual legal assistance in criminal matters and mutual assistance in police matters, see www.rhf.admin.ch/etc/medialib/data/rhf.Par.0059.File.tmp/abgrenzung-f.pdf.

are defined in internal directives (e.g. in the Interpol directive). As a general rule, this means within 24 hours for urgent communications and within one month for non-urgent communications. The police have an internal management system for dealing with pending cases. In the case of MROS, the maximum time limits for responding to an FIU request are thirty working days, or seven working days for urgent requests. As for FINMA, the definition of priorities is provided for in its internal guide to international mutual administrative assistance. FINMA is bound to provide administrative assistance "*with due diligence*" (Art. 42a para. 4 LFINMA), but when this involves transmitting information relative to the customers of financial intermediaries, the procedure to be applied, implemented in only a limited number of cases since the introduction of Art. 42 para. 4 LFINMA, can cause undue delays in responding (see c. 40.1). There are no specific provisions applicable in the case of the CFMJ.

(e) There are clear procedures available to the competent authorities for protecting any information received (Police and MROS: the federal law on data protection [*Loi fédérale sur la protection des données* (LPD)] and its implementation ordinance, the ordinance on computing within the federal administration, and related regulations at cantonal level, together with organisational and technical measures specified by the fedpol regulation on data processing; FINMA: the LPD and its implementation ordinance, the FINMA data processing ordinance, which specifically deals with data files on persons who fail to present every guarantee of irreproachable business conduct, the FINMA regulation on data protection of 18 October 2010; CFMJ: LPD).

Criterion 40.3 – Switzerland has concluded many cooperation agreements relative to police and customs matters, which are subject to a ratification procedure.²¹¹ MROS does not require agreements in order to cooperate with foreign counterparts which fulfil a certain number of conditions (Art. 30 LBA). MROS can also sign MoUs, notably if the law of a third country so requires in order to enable cooperation (Art. 30 para. 6 LBA). FINMA and the CFMJ can cooperate directly with their foreign counterparts without requiring bilateral agreements (see c. 40.2 and 40.12). FINMA does however sign such agreements to ensure information sharing.

Criterion 40.4 – The police and the AFD do not have a standard procedure for giving feedback to a foreign authority which has provided information, but it can give feedback depending on the situation, notably if the information provided is incomplete. MROS, within the framework of information transmitted within the meaning of Art. 30 LBA, provides feedback if asked by a foreign FIU, or spontaneously depending on the importance of the case and the information received, as well as on the resources available. FINMA provides feedback to its counterparts, either when requested or spontaneously, although it is not required to do so either by the legislation or by the regulations. The CFMJ is also not required to do this, and has not developed a standard procedure in the matter, since it has never received a request from a counterpart.

Criterion 40.5 – MROS, the police, the AFD and FINMA do not appear to subject information sharing or mutual assistance in the areas of ML and TF to any unreasonable or unduly restrictive conditions (Art. 30 LBA, Art. 75a para. 2 EIMP, art. 42 and 43 LFINMA). The CFMJ places strict conditions on collaboration with foreign counterparts (see c. 40.6) and, moreover, prohibits any communication to third parties regarding information transmitted (Art. 102 para. 2 OLMJ).

²¹¹ <https://www.admin.ch/opc/fr/classified-compilation/0.36.html#0.360>

Criterion 40.6 – MROS, the police and the AFD have established monitoring and protective measures to ensure that any information transmitted is only used for the purposes and by the authorities for which the information was sought or provided by MROS, the police or the AFD, except in the case of prior authorisation by the competent authority. Outgoing communications are preceded by a predefined text to this end. All information received by fedpol's central directorate for International Police Cooperation [*Coopération policière internationale* (CPI)] is transferred to the competent department via an internal system and is subject to restricted access rights. FINMA can transmit non-public information to its foreign counterparts providing, primarily, that such information is exclusively used to implement laws on the financial market or is forwarded for this purpose to other authorities, courts or bodies (Art. 42 para. 2 LFINMA). Information transmitted by foreign counterparts to FINMA is communicated to the departments that requested mutual assistance, in accordance with the speciality principle. If forwarding information to other authorities proves necessary, FINMA systematically notifies the authority in question and officially requests its authorisation. The CFMJ has a similar approach to FINMA, in addition requiring that information will be used only for the purposes of an administrative procedure relating to the gambling legislation and that only information relating to implementation of the gambling legislation will be transmitted (Art. 102 para. 2 OLMJ).

Criterion 40.7 – MROS, the police and the AFD apply the same measures to protect confidentiality of any information shared as they do to internally-sourced information. This ensures an appropriate level of confidentiality (Note: Art. 320 and 352 CP; Art. 22 LPers; Art. 24 ff. OBCBA). If necessary, the police also apply the relevant international requirements. MROS must refuse to transmit information to a foreign counterpart if the latter fails to undertake to be bound by official secrecy or professional secrecy (Art. 30 para. 1 LBA). In addition to official secrecy, the police are bound by the data protection law and by the relevant provisions of legislative texts governing police cooperation. FINMA and the CFMJ cannot transmit non-public information to their foreign counterparts unless the latter are bound by official or professional secrecy provisions and they use the information exclusively for the direct supervision of foreign institutions (Art. 42 para. 2 LFINMA and Art. 102 para. 2 OLMJ). FINMA employees are also bound by official secrecy provisions insofar as regards information received from foreign authorities (Art. 14 LFINMA).

Criterion 40.8 – MROS cooperates on the basis of the principle of availability (Art. 30 para. 1 LBA), but does not have the power to request information from a financial intermediary on behalf of a foreign counterpart in the absence of a link to an STR filed with MROS by a Swiss financial intermediary. The police and the AFD have the same investigative powers as in national proceedings, and can share evidence thus obtained with foreign authorities in accordance with Art. 75a EIMP and, if an international treaty exists, through police cooperation (see Art. 13 para. 2 LOC and cooperation treaties) and customs cooperation. The police can only return or hand over evidence (Art. 63 and 74 EIMP) if this does not involve the use of coercive measures (see table on the division of competence between mutual legal assistance in criminal matters and mutual assistance in police matters referred to in the footnote to c. 40.2). FINMA can request information from third parties which are in possession of information requested by a foreign counterpart (Art. 42a LFINMA). FINMA must comply with the principles of confidentiality and of speciality (see c. 40.7) when transmitting non-

public information to its foreign counterparts. These conditions also apply to information sharing by the CFMJ.

Criterion 40.9 – MROS has an adequate legal basis for cooperating with foreign FIUs independently and effectively (Art. 30 LBA).

Criterion 40.10 – See c. 40.4.

Criterion 40.11 – MROS generally cooperates in accordance with the principle of availability. However, in order to obtain information requested by a foreign counterpart, MROS can only send requests to financial intermediaries who have either filed an STR with MROS in the same matter, or who present a link with an STR from another Swiss financial intermediary. The Swiss authorities state that, in the absence of a prior STR, MROS may contact FINMA or a prosecution authority with a properly-supported request for the latter to request the financial intermediary either to communicate information to MROS (FINMA), or to submit all documentation (prosecution authority). However, there is no guarantee that this procedure will give MROS access to the information requested by a foreign counterpart, whereas MROS has such an access to information required to analyse an STR sent to MROS.

Criterion 40.12 – The LFINMA sets out the principles governing international collaboration (Art. 42) and administrative assistance (Art. 42a) that FINMA can provide to foreign counterparts. These principles apply without distinction to all areas of supervision, including AML/CFT.

Criterion 40.13 – FINMA can transmit information to which it has access, held by the financial intermediaries under its supervision or which it requests from third parties which have it in their possession (Art. 42a para. 1 LFINMA). If such information is about the customers of financial intermediaries, the procedure which can be applied may cause undue delays in response times (see c. 40.1).

Criterion 40.14 – Information sharing between authorities who have joint responsibility over financial intermediaries operating within a single group is organised in accordance with Art. 42 ff. LFINMA. (a) and (b) Much of the regulatory information available to the supervisory authorities is not available to the public (e.g. internal memos on risks in a specific financial sector which may be the sector to which the group belongs). The same applies to prudential information. Sharing such information is thus subject to confidentiality and speciality conditions (see c. 40.7). (c) Communicating "institutional" information relating to AML/CFT (i.e. procedures, domestic policy, etc.) is also subject to the principles of confidentiality and speciality. FINMA can also transmit, subject to these same principles of confidentiality and speciality, information relative to customer files. In such cases, the procedure regarding customers applies (see c. 40.1).

Criterion 40.15 – FINMA can seek information on behalf of its foreign counterparts. FINMA can also authorise foreign authorities to directly carry out audits on establishments located in Switzerland, subject to the conditions set out in Art. 43 para. 2 and 3 LFINMA. Should they require access to information directly or indirectly related to asset management transactions, the negotiation of transferable or investment securities on behalf of customers, or concerning investors in collective capital investments, FINMA can collect such information and transmits them to the foreign authority (Art. 43 para. 3^{bis} LFINMA). For the supervision of foreign groups with establishments in

Switzerland, FINMA may authorise the foreign authority in charge of consolidated supervision to consult a sample of individual customer files, selected at random according to predefined criteria (Art. 43 para. 3^{ter} LFINMA). The Federal Council Message presenting the LFINMA state that the criteria for selecting files are defined by the foreign authority and the files selected at random from the anonymised list of customer files matching the selection criteria, by the financial institution or its audit firm. This approach limits the measures that can be implemented by FINMA to facilitate access to files by foreign authorities within the framework of cooperation.

Criterion 40.16 – FINMA only transmits information received from a foreign counterpart if it is expressly authorised to do so by that counterpart, and requires that its counterparts do not transmit information which it has communicated to them without its authorisation. All the MoUs signed by FINMA with its foreign counterparts contain clauses to this effect.

Criterion 40.17 – The police are able to exchange objects, documents and assets seized as evidence, together with case files and rulings, with their foreign counterparts, in application of Article 74 of the EIMP in cases of mutual assistance in criminal matters dealt with by the police (see c. 40.8), and in application of international agreements in the case of other forms of cooperation.

Criterion 40.18 – See c. 40.8 above regarding police powers to respond to requests for cooperation. Restrictions on use of these powers are governed by the relevant agreements (e.g. INTERPOL Regulation on data processing, Agreement between the Swiss Confederation and the European Police Office (Europol), Agreement between the Swiss Confederation and Eurojust).

Criterion 40.19 – As demonstrated in the agreements signed, the law enforcement authorities can form joint investigation teams to carry out investigations within the framework of cooperation.

Criterion 40.20 – MROS can authorise the transmission of information to authorities other than its counterparts subject to certain conditions regarding confidentiality and use of the information transmitted (Art. 30 para. 4). MROS can also provide information to foreign law enforcement authorities pursuant to Art. 32 para. 1 LBA, which refers to Art. 13 para. 2 LOC, notably if the information is required in order to prevent or elucidate an offence in an area within MROS' competence. MROS can make requests to foreign authorities through fedpol's international police cooperation directorate. FINMA can transmit information to its foreign counterparts in order to forward them to other Swiss authorities, subject to the conditions mentioned for c. 40.6. FINMA can also authorise the transmission of information to authorities other than its counterparts provided that the information is required in order to enforce financial market legislation, that it is exclusively used to enforce that legislation and that the non-counterpart authority is bound by official or professional secrecy provisions (Art. 42 LFINMA). In addition, if the AFD has any information relating to suspected ML/TF activities, notably in relation to cross-border transportation of currency, which it is unable to transmit directly to a foreign authority due to a lack of competence in the matter, it will inform the competent Swiss police authority, which will then decide, within the framework of its own competences, whether or not to transmit the information in question to a foreign authority.

Weighting and Conclusion:

The competent authorities are able to provide a broad range of international cooperation - both spontaneously and upon request - in the areas of ML, associated predicate offences and TF. Restrictive conditions do apply in some situations, in particular for MROS and FINMA, both of which play a key role in sharing information relative to financial intermediaries.

Switzerland is partially compliant with R. 40.

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	- The TF risk assessment is limited by the lack of available data. - There is no indication on the impact of the risk level on the resources allocated to counter these risks. - Exemptions and simplified measures apply to activities where the risks are not considered as low/lower. - The factors that casinos must take into account to prepare their risk assessments is not provided.
2. National cooperation and coordination	LC	Switzerland does not currently have a national AML/CFT policy that would take into account all risks identified in the national risk assessment.
3. Money laundering offence	LC	In certain cases, possessing the proceeds of a crime does not constitute an act of money laundering.
4. Confiscation and provisional measures	LC	The confiscation of instrumentalities used or intended to be used to commit an offence is possible only if the instruments are of a nature to compromise the security of persons, moral standards or public order.
5. Terrorist financing offence	LC	For TF offences that do not relate to the groups “Al-Qaida” and “Islamic State” and related organisations, minor deficiencies can be found in the requirement of a link (at least indirect) between the financing act on one hand and a criminal or terrorist act/activity on the other hand.
6. Targeted financial sanctions related to terrorism & TF	LC	- In order for a freezing measure taken in response to a designation made by another country on the basis of UNSCR 1373 to be maintained longer than five days, the prosecution authority must impose a seizure in accordance with the provisions of the Criminal Code. - Swiss legislation does not contain a provision protecting the rights of bona fide third parties in the context of designations concerning TF. - No text defines precisely the conditions for applying sanctions, particularly with regard to degrees of control. - There is no prohibition against making funds and other goods, economic resources or financial services and other related services available to persons designated in response to a designation request made by another country on the basis of UNSCR 1373. - Since the blocking obligation applies only to financial intermediaries, its scope is limited to assets that are entrusted to such a financial intermediary. - In the case of a freezing measure in response to a designation by another country on the basis of UNSCR 1373, only the third country can remove the name from the list.
7. Targeted financial sanctions related to proliferation	C	Switzerland is compliant with R. 7.
8. Non-profit organisations	PC	- While the adequacy of laws and regulations relating to entities that can be used for TF purposes was examined, the conclusions of recent studies are contradictory and thus uncertain. - The Swiss authorities have not conducted any outreach to the NPO sector concerning TF risks. - The rules that apply to foundations and large associations do not cover all the obligations listed under c. 8.4 (including publication of annual

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		financial statements and the rule to know beneficiaries and associated non-profit organisations) and do not include dissuasive sanctions in the event of breach of the obligations.
9. Financial institution secrecy laws	C	Switzerland is compliant with R. 9.
10. Customer due diligence	PC	- The threshold for occasional transactions is too high (CHF 25 000/USD 25 324/EUR 22 835). - The identity of the customer should be verified only for transfers abroad by affiliates of OARs. - There is no general and systematic obligation to take reasonable measures to verify the identity of the beneficial owners of customers. - There is no general and explicit obligation to ensure that the customer data remains up to date and relevant. - The identity of the beneficiary of an insurance contract is verified only if he is a politically exposed person. - The beneficiary of the life insurance contract is not systematically considered as a risk factor. - The conditions in which the identification documents that were not available when the business relationship was established have to be provided do not comply with the requirements for swiftness. Adequate risk management measures are not imposed on banks in these circumstances, neither on affiliates of certain OARs. - The application of measures introduced by the LBA of 2014 on existing customers does not prioritise the riskiest customers. - The application of simplified measures does not always correspond to situations where the risks are lower (copy of authentication documents in cases of new relationship established by mail). - The banks are not obliged not to establish the relationship or to terminate it when they cannot comply with their obligations for due diligence.
11. Record keeping	C	Switzerland is compliant with R. 11.
12. Politically exposed persons	LC	- The detection of beneficial ownership of foreign PEPs among existing customers presents a problem in the application of the transition measures of the LBA of 2014. - The verification of the PEP status of the beneficial owner of the beneficiary of insurance contract customers is not taken into account.
13. Correspondent banking	LC	There are no measures covering payable-through accounts.
14. Money or value transfer services	C	Switzerland is compliant with R. 14.
15. New technologies	LC	- There is no obligation for the country to identify and assess risks related to new technologies. - There are no obligations for all the non-banking intermediaries to assess the risks before using new technologies.
16. Wire transfers	PC	- For the FINMA intermediaries, there is no explicit obligation to verify the information concerning the originator. - Taking reasonable measures is not imposed to identify the isolated incomplete wire transfers lacking originator or beneficiary's information. - It is not specified how intermediate financial institutions should respond to a series of isolated incomplete wire transfers.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		- Certain regulations of OARs do not provide for: - when the OAR affiliate has the position of intermediary financial institution, reasonable measures for detecting wire transfers that do not contain all the required information, - when the OAR affiliate has the position of financial institution of the beneficiary, the identification of occasional beneficiaries when the wire transfer is less than CHF 1 000 and the procedure to follow when an incomplete isolated wire transfer is received .
17. Reliance on third parties	LC	- The derogation scheme granted to issuers of means of payment does not ensure that they immediately receive the initial information from the delegating bank. - The level of risk related to the country where the third parties may be established is restricted to aspects related to supervising and controlling the applicable AML/CFT requirements.
18. Internal controls and foreign branches and subsidiaries	LC	- Certain regulations of OARs have no provision that the staff of affiliates must comply with the integrity criteria. - There is no independent audit function to test the AML/CFT systems of directly supervised financial intermediaries (IFDSs) or affiliates of OARs; - The measures for the AML/CFT programme of the group do not include all the requirements of c. 18.1.
19. Higher-risk countries	PC	- There are no mandatory provisions that require that all financial institutions apply enhanced measures to business relationships exhibiting links with countries considered at risk by FATF. - The measures ensuring that all financial institutions are informed of the countries considered at risk for ML/TF have not been implemented.
20. Reporting of suspicious transaction	LC	The coexistence of a right and an obligation to report suspicious transaction may constitute a factor of legal uncertainty for financial intermediaries as to the mandatory nature of their report.
21. Tipping-off and confidentiality	LC	There are some limited exceptions to the confidentiality of suspicious transaction reports.
22. DNFBPs: Customer due diligence	PC	- The scope of the LBA does not cover all the activities targeted by R. 22 with regard to real estate agents, dealers in precious metals and precious stones, and lawyers, notaries, accountants, fiduciaries and trust and company service providers. - The deficiencies noted in regard to R. 10, 12, 15 and 17 are also applicable to DNFBPs.
23. DNFBPs: Other measures	PC	- Deficiency on the scope of R.23 similar to the one noted for R. 22. - The deficiencies noted in regard to R. 18, 19, 20 and 21 are also applicable to DNFBPs.
24. Transparency and beneficial ownership of legal persons	LC	- No assessment has been made of BC/FT risks of legal persons created in the country. - The mechanisms for listing in the commercial register, as well as modifications of these listings do not ensure that all the information is accurate and up to date. - There are no administrative or criminal sanctions for failure to meet the obligation to announce. - Application of the “customer procedure” may impact the speed of the international cooperation for information about beneficial owners.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
25. Transparency and beneficial ownership of legal arrangements	LC	- Requirements relating to the obligation to maintain current data about trusts are insufficient. - Application of the “customer procedure” may impact the speed of the international cooperation anticipated in this field. - The deficiency concerning verification of beneficial ownership (R. 10) is applicable. - The deficiencies noted with regard to R. 31 and 35 are also applicable.
26. Regulation and supervision of financial institutions	LC	- Insurance companies and affiliates of OARs are not required to seek approval of changes in the conditions by which they were originally licensed, including changes in managing officials, administrators and holders of qualified shareholding. - Sector-specific regulations allow consolidated supervision of financial groups, including for AML/CFT, but do not require it. - For certain OARs, the criteria determining the revision of the risk profile of the affiliates are not satisfactory.
27. Powers of supervisors	LC	FINMA does not have the power to impose monetary sanctions.
28. Regulation and supervision of DNFBPs	LC	- Certain OARs have a limited reference to risks for determining the extent of AML/CFT controls. - The deficiencies noted with regard to FINMA not having the power to impose monetary sanctions (R. 27) and to R. 35 are also applicable.
29. Financial intelligence units	C	Switzerland is compliant with R. 29.
30. Responsibilities of law enforcement and investigative authorities	C	Switzerland is compliant with R. 30.
31. Powers of law enforcement and investigative authorities	LC	Without concrete evidence that a person has or controls an account with a financial institution, Switzerland does not have mechanisms to determine the existence of current accounts in a timely manner.
32. Cash couriers	LC	- The applicable fine in case of a false declaration or refusal to make a declaration does not appear to be either dissuasive or proportionate. - According to the law in effect at the time of the visit, information sharing between AFD and MROS did not fully meet the requirements of the criterion.
33. Statistics	PC	- The data available on prosecutions, confiscation and international cooperation is incomplete. - More generally, the statistics presented are not organised in a way that would allow for an assessment of the efficiency and effectiveness of AML/CFT measures.
34. Guidance and feedback	LC	The feedback available to those covered by the LBA legislation is insufficient, particularly in the non-financial sector.
35. Sanctions	PC	- With the range of sanctions available, it is not possible to impose measured sanctions on those covered who have not met their obligations. - The applicable sanctions are not proportionate.
36. International instruments	LC	Minor deficiencies remain concerning the implementation of certain key articles of the relevant instruments.
37. Mutual legal assistance	LC	Minor deficiencies observed in relation to R. 3 (regarding possession of the proceeds of crime) and 5 may restrict the range of mutual assistance in cases where dual criminality is required.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		Depending on the nature of the request, the conditions for maintaining confidentiality may seem unduly restrictive.
38. Mutual legal assistance: freezing and confiscation	LC	- Compliance with R.38 is limited by the minor deficiency observed as part of R. 4. - The dual criminality condition, in conjunction with the minor deficiencies observed with regard to R. 3 and R. 5, may limit the scope of mutual assistance in the case of a freezing or confiscation request relating to certain ML/FT offences.
39. Extradition	LC	- Certain minor deficiencies relating to ML/FT offences may impact the scope of extradition measures. - The option of providing an alibi in response to an extradition request is an exception to the general principle whereby the merits should be decided on by the requesting State.
40. Other forms of international cooperation	PC	- Application of the “customer procedure” may delay the international cooperation granted by FINMA. - MROS does not have the authority to request information from a financial intermediary on behalf of a foreign counterpart if there is no link with an STR sent to MROS by a Swiss financial intermediary. - The conditions for supervising foreign groups with entities in Switzerland are insufficient to ensure effective supervision of these groups.

Glossary of Acronyms

Act of 12 December 2014	Federal Act of 12 December 2014 for Implementing Revised FATF Recommendations of 2012
AFC	Federal Tax Administration
AFD	Federal Customs Administration
AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
ATF	Decision of the Federal Supreme Court
BE	Canton of Bern
BNS	Swiss National Bank
BS	Canton of Basel-Stadt
c.	FATF Methodology Criterion
CC	Civil Code
CDB 16	Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (2016)
CFMJ	Federal Gaming Board
CO	Code of Obligations
CP	Penal Code
CPP	Code of Criminal Procedure
DDIP	Directorate of International Law (part of DFAE)
DDPS	Federal Department of Defence, Civil Protection and Sport
DEFR	Federal Department of Economic Affairs, Education and Research
DETEC	Federal Department of the Environment, Transport, Energy and Communications
DFAE	Federal Department of Foreign Affairs
DFF	Federal Department of Finance
DFJP	Federal Department of Justice and Police
DNFBPs	Designated non-financial businesses and professions
DPA	Federal Act on Administrative Criminal Law
EIMP	Federal Act on International Mutual Assistance in Criminal Matters
Federal Constitution	Federal Constitution of the Swiss Confederation of 18 April 1999
fedpol	Federal Office of Police (part of DFJP)

FINMA	Swiss Financial Market Supervisory Authority
FIU	Financial Intelligence Unit
GCBF	Interdepartmental Co-ordinating Group on Combating Money Laundering and the Financing of Terrorism
GE	Canton of Geneva
IFDS	Financial intermediary directly supervised by FINMA
IN	Interpretive Note
Law banning the groups “Al-Qaida” and “Islamic State” and related organisations	Federal law of 12 December 2014 banning the groups “Al-Qaida” and “Islamic State” and related organisations
LB	Banking Act
LBA	Federal Act on Combating Money Laundering Act and Terrorist Financing
LBVM	Securities Act
LD	Customs Act
LDA	Copyright Act
LEmb	Embargo Act
LFINMA	Financial Market Supervision Act
LHID	Federal Act on Harmonisation of Direct Cantonal and Municipal Taxes
LIFD	Federal Direct Tax Act
LIMF	Financial Market Infrastructure Act
LLCA	Attorneys-at-Law Act
LMJ	Casinos Act
LOC	Federal Act of 7 October 1994 on Central Offices of the Federal Criminal Police
LPA	Administrative Procedure Act
LPAv	Act on the Legal Profession Geneva
LPCC	Federal Act on Collective Investment Schemes
LPD	Federal Act on Data Protection
LPers	Federal Law on Personnel of the Confederation
LSA	Insurance Supervision Law
LTI	Federal Intermediated Securities Act

MER	FATF Mutual Evaluation Report
ML	Money laundering
MLA	Mutual Legal Assistance
MoU	Memorandum of Understanding
MPC	Office of the Attorney General of Switzerland
MROS	Money Laundering Reporting Office-Switzerland
NPO	Non-Profit Organisation
OA-FINMA	Ordinance on Financial Market Audits
OAR	Self-Regulatory Body
OB	Banking Ordinance
OBA	Anti-Money Laundering Ordinance
OBA-CFMJ	Ordinance of the Swiss Federal Gaming Board on Due Diligence Obligations of Casinos in Combating Money Laundering
OBA-FINMA	FINMA Anti-Money Laundering Ordinance
OBCBA	Ordinance on the Money Laundering Reporting Office Switzerland
OBVM	Stock Exchange Ordinance
OFJ	Federal Office of Justice (part of DFJP)
OIMF-FINMA	Financial Market Infrastructure Ordinance
O-Iran	Ordinance of 11 November 2015 on Measures against the Islamic Republic of Iran
OLMJ	Gaming Ordinance
ORC	Commercial Register Ordinance
Ordinance of 11 February 2009	Ordinance of 11 February 2009 on the control of cross-border traffic of cash
Ordinance of 2 October 2000	The Ordinance of 2 October 2000 on Sanctions against Persons and Organisations with Connections to Osama Bin Laden, Al-Qaida or the Taliban
O-DPRK	Ordinance of 25 October 2006 on Measures against the Democratic People's Republic of Korea
Palermo Convention	United Nations Convention against Transnational Organized Crime (2000)
PF	Financing the proliferation of weapons of mass destruction
PJF	Federal Criminal Police

R ARIF	LBA regulations of the OAR Association Romande des Intermédiaires Financiers
R ASG	LBA regulations of the OAR Swiss Association of Asset Managers
R ASSL	LBA regulations of the OAR Association Suisse des Sociétés de Leasing
R Fiduciaire	LBA regulations of the OAR Fiduciaire Switzerland
R FSA/FSN	LBA regulations of the OAR of the Swiss Bar Association and Swiss Notaries Association
R OAD FCT	LBA regulations of the OAR FCT (<i>Organismo di Autodisciplina dei Fiduciari del Cantone Ticino</i>)
R OAR-ASA	LBA regulations of the OAR of the Swiss Insurance Association for combating money laundering and terrorist financing
R OAR CFF	LBA regulations of the OAR Swiss Federal Railways
R OAR G	LBA regulations of the OAR Gérants de Patrimoine
R Polyreg	LBA regulations of the PolyReg General OAR
R SVIG	LBA regulations of the OAR of the Schweizer Verbandes der Investmentgesellschaften
R VQF	LBA regulations of the VQF OAR (<i>Verein zur Qualitätssicherung von Finanzdienstleistungen</i>)
R.	FATF Recommendation(s)
SA	<i>Société Anonyme</i> (public company)
SARL	<i>Société A Responsabilité Limitée</i> (private limited liability company)
SECO	State Secretariat for Economic Affairs (part of DEFR)
SFI	State Secretariat for International Financial Matters (part of DFF)
SRC	Federal Intelligence Service (part of DDPS)
TF	Terrorist financing
TF Convention	International Convention for the Suppression of the Financing of Terrorism (1999)
TI	Canton of Ticino
UNSCR	United Nations Security Council Resolution
UNSCR 1267	United Nations Security Council Resolution 1267 (1999)
UNSCR 1373	United Nations Security Council Resolution 1373 (2001)
UNSCR 1988	United Nations Security Council Resolution 1988 (2011)
UNSCR 1989	United Nations Security Council Resolution 1989 (2011)

VD	Canton of Vaud
Vienna Convention	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
ZAG	<i>Zentrale Aufbereitung Geldwäschereiverdachtsmeldung</i> (Unit of the MPC responsible for handling STRs transmitted by MROS)
ZH	Canton of Zurich



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Anti-money laundering and counter-terrorist financing measures - Switzerland *Fourth Round Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Switzerland as at the time of the on-site visit on 25 February - 11 March 2016. The report analyses the level of effectiveness of the Switzerland's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.