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Interdepartementale Arbeitsgruppe zur Korruptionsbekämpfung
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Activity Report of the Interdepartmental Working Group on Combating Corruption (2014–17)

Table of contents

1. Introduction.....	3
2. Priorities in combating corruption in the 2014–17 reporting period	4
2.1 Perceptions and analysis of corruption in Switzerland	4
2.2 Cases of corruption	5
2.3 Concluded and ongoing legislative work.....	6
2.4 Reporting offices	8
2.5 Educational and awareness-raising measures	8
2.6 Receiving foreign delegations	9
2.7 Multilateral instruments and processes.....	9
2.7.1 GRECO (Group of States against Corruption of the Council of Europe).....	10
2.7.2 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.....	11
2.7.3 United Nations Convention against Corruption (UNCAC).....	12
2.7.4 Switzerland’s other activities at the international level.....	13
3. Status of implementation of the IDWG core group’s recommendations from its 2011–13 activity report	14
3.1 Development cooperation	14
3.2 Reporting obligation in decentralised administrative units	15
3.3 Implementation of a cooling-off period.....	15
3.4 List of reporting offices abroad	16
3.5 Advanced training of at-risk groups	16
3.6 E-learning module	17
3.7 Raising awareness among SMEs.....	17
3.8 Cooperation with cantons and cities	18
3.9 Secretariat of the IDWG on Combating Corruption	19
4. Assessment of performance and outlook for the future of the IDWG.....	19
4.1 Evaluation by the Swiss Federal Audit Office	19
4.2 Interim assessment of the core group	20
4.3 New mandate of the IDWG on Combating Corruption	21
4.4 Summary of recommendations of the IDWG core group	22

1. Introduction

The reporting period was characterised by a number of major international corruption scandals, some of which affected Switzerland, including the Petrobras, FIFA and 1MDB scandals and the revelations of the 'Panama Papers' and 'Paradise Papers'. At the same time – not least in the face of growing public outrage – governments have become more resolute in acting against corruption. The 2016 London Anti-Corruption Summit provided clear evidence of this, where the issue of corruption at the level of head of state and government throughout the world was addressed for the first time. In addition, in the last two years, the G20 has given prominence to combating corruption and featured the issue in its summit communiqués. Switzerland actively supports these efforts at the policy level and participates in the investigation and prosecution of the above-mentioned corruption cases.

In spite of its highly developed culture of integrity and its stable institutions, Switzerland is not immune to corruption. At federal level, convictions have been handed down in cases of corruption in recent years in the Federal Office for the Environment (FOEN), the State Secretariat for Economic Affairs (SECO) and the Federal Tax Administration (FTA). In addition, there are media reports of a considerable number of pending corruption cases in federal offices and operations. Cantonal, city and communal administrations are not spared either. These cases underscore the need to further develop the structures in place to prevent and defend Switzerland against corruption. The revision of criminal anti-corruption legislation is complete, and a new act on the illicit assets of politically exposed persons has come into force.¹ Further legislation is being drafted concerning public procurement and the protection of employees in the private sector who report irregularities (whistleblowing).

To increase the efficacy of cooperation between the various federal government offices and agencies at different levels, the Federal Council tasked the Federal Department of Foreign Affairs (FDFA) in 2008 with creating an interdepartmental working group on combating corruption (IDWG on Combating Corruption) in response to a recommendation of the Group of States against Corruption (GRECO). A core group headed by the Sectoral Foreign Policies Division (SFPD) of the FDFA Directorate of Political Affairs is responsible for planning the work of the IDWG and for determining its working methods and strategic approach. Other members of the core group come from the Federal Office of Justice (FOJ), the Office of the Attorney General of Switzerland, the Federal Office of Personnel (FOPER), SECO and armasuisse. The FDFA provides the secretariat.

Within the framework of its mandate and limited resources, the IDWG on Combating Corruption aims to strengthen the exchange and flow of information between the different federal offices, cantons, cities, industry, civil society and academia. The IDWG also considers it has a responsibility to signal abuses and risks and, where necessary, suggest changes to Switzerland's anti-corruption framework and instruments.

The IDWG is also mandated to inform the Federal Council and the interested public on a regular basis. The first activity report was presented in March 2011 and the second in October 2014. The current activity report (2014–17)² describes progress in the implementation of the recommendations that the core group of the IDWG made in the previous report and the working group's activities in the reporting period, as well as other national and international developments in the area of combating corruption. Lastly, the core group has made new recommendations in the activity report on strengthening Switzerland's anti-corruption framework.

¹ Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons of 18 December 2015 (FIAA; SR 196.1).

² All activity reports of the IDWG on Combating Corruption are available online at <https://www.eda.admin.ch/eda/en/home/foreign-policy/financial-centre-economy/corruption/working-group-combating-corruption.html>.

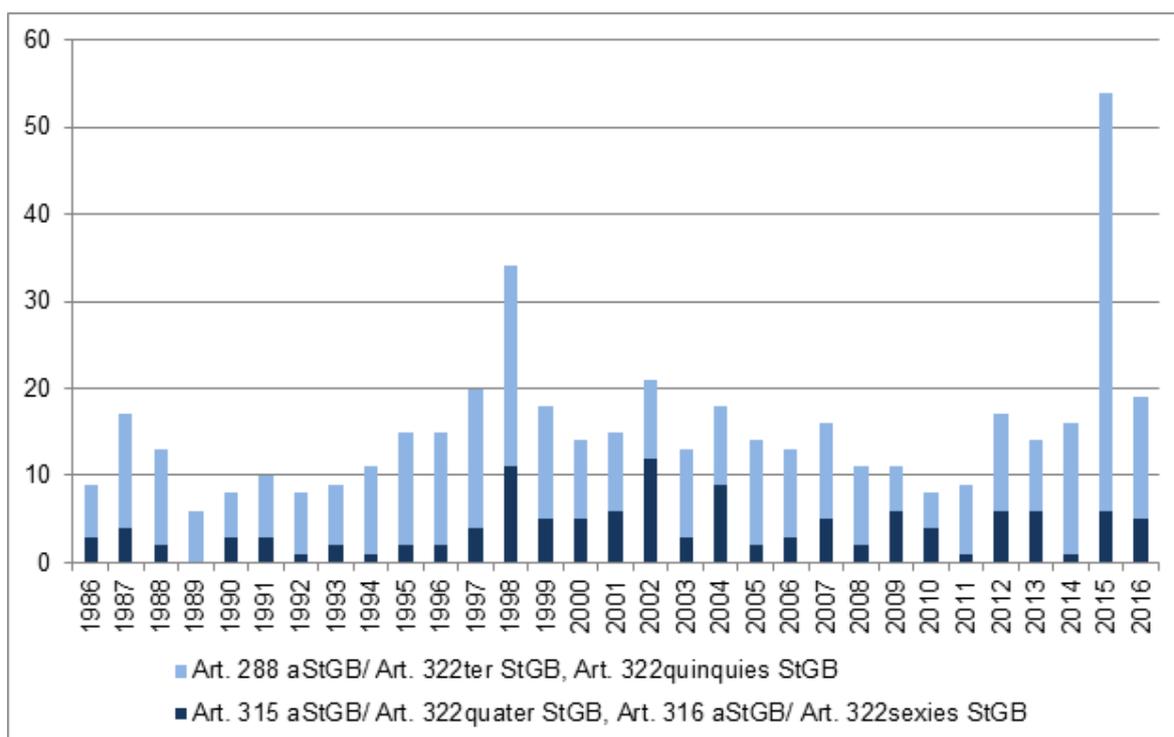
2. Priorities in combating corruption in the 2014–17 reporting period

2.1 Perceptions and analysis of corruption in Switzerland

Both on a European and on a worldwide comparison Switzerland remains among those countries where corruption is less prevalent. This is confirmed with Switzerland's consistently good rating in Transparency International's Corruptions Perceptions Index: Since the beginning of the rankings Switzerland has never been rated below twelfth place and in the last few years it has climbed to fifth. For only 10% of those surveyed in Switzerland was corruption among the three most serious problems that the government should actively deal with, while state efforts to combat corruption are judged to be poor by only 28% of those asked (in other European states except in Scandinavia this percentage is significantly higher).³ The surveys carried out by Transparency International also show that state authorities in Switzerland in general enjoy a high degree of trust; the judiciary and police rate significantly higher than Parliament, the government and their officials. Trust in business leaders is significantly less pronounced.

Surveys of large companies carried out by Ernst & Young indicate that unethical behaviour in the Swiss private sector is becoming more widely perceived in the general public. To the question 'Are bribery and corrupt methods in business life widespread in this country?' 18% replied 'yes' in the most recent report, while four years earlier it was 10%.⁴ It is also worrying to note that Swiss employees are relatively reluctant to report suspected cases of corruption. It seems that fear of personal and professional consequences count more than loyalty towards one's employer.

Table 1: Statistics on criminal convictions in Switzerland, 1986–2016: Number of convictions. Source: FSO



The statistics on criminal convictions complete the picture. In the first three years of the reporting period (2014–16) the Federal Statistical Office recorded only 5 convictions for acceptance of bribes (Art. 322^{quater} Swiss Criminal Code), 7 convictions for acceptance of an

³ Transparency International (2016): People and Corruption: Europe and Central Asia. Global Corruption Barometer. <https://www.transparency.org/whatwedo/publication/7493>.

⁴ Ernst & Young (April 2017): EMEIA Fraud Survey – results for Switzerland.

[http://www.ey.com/Publication/vwLUAssets/EY_-_EMEIA_Fraud_Survey_%E2%80%93_Ergebnisse_Schweiz_April_2017/\\$FILE/ey-emeia-fraud-survey-ergebnisse-schweiz-april-2017.pdf](http://www.ey.com/Publication/vwLUAssets/EY_-_EMEIA_Fraud_Survey_%E2%80%93_Ergebnisse_Schweiz_April_2017/$FILE/ey-emeia-fraud-survey-ergebnisse-schweiz-april-2017.pdf) (de).

advantage (Art. 322^{sexies} SCC) and 12 convictions for misconduct in public office (Art. 314 SCC).

A similar picture results when the period under review is expanded. Table 1 shows, on the basis of convictions, the long-term trend in corruption-related offences involving Swiss officials, specifically active corruption, in particular bribery (SCC Art. 322^{ter}) and the granting of an advantage (Art. 322^{quinqüies}), and passive corruption, in particular acceptance of bribes (Art. 322^{quater}) and acceptance of an advantage (Art. 322^{sexies}). The longer time series includes those criminal offences corresponding to bribery that were abolished with the 1999 reform. As shown, in spite of the stricter measures introduced into the anti-corruption legislation that entered into force on 1 May 2000, the number of convictions has not essentially increased. An above-average number of convictions for acts of active bribery (Art. 322^{ter} SCC) is only to be observed in 2015, which can be attributed to an accumulation of corruption-related convictions limited to this period in the canton of Zurich.⁵

2.2 Cases of corruption

In the reporting period several cases of corruption in public administration came to light and were processed. These took place at federal, cantonal and communal levels. Some offences were committed before the reporting period, while their processing in some cases is still ongoing.

Persons from both within and outside the Federal Administration were sentenced for up to three years' imprisonment in December 2016 for bribing public officials in the period from 2007 to 2010 in connection with a major IT project in the FOEN.⁶ On the basis of a criminal charge filed by SECO, the Office of the Attorney General of Switzerland opened a criminal investigation in 2014 against the head of the SECO systems and technology unit and unknown persons on suspicion of misconduct in public office (Art. 314 SCC) and acceptance of bribes (Art. 322^{quater} SCC) in connection with the awarding of SECO IT contracts.⁷ To the best of our knowledge the investigations by the Office of the Attorney General have not been concluded. The corruption case within the context of the FTA's 'INSIEME' IT project resulted in convictions for multiple acts of misconduct in public office, multiple acts of acceptance of an advantage, and multiple acts of granting of an advantage.⁸

Irregularities have also been reported at the cantonal and local levels. An alleged case of corruption involving the Ticino cantonal office of migration became especially prominent in public discussion. Allegations of theft, passive corruption and violations of the Federal Act on Foreign Nationals arose in the context of the issuance of work permits.⁹ At the local level, for example, the investigation authorities took an active part in the case against the director of

⁵ According to information provided by the Staatsanwaltschaft I (Office I of the Canton of Zurich public prosecutor), this higher number of convictions is related to a higher number of penalty orders for attempted bribery of Swiss officials in the form of the unsuitable attempt arising from a single case of fraud which is still pending. A Turkish couple living in the canton of Zurich made offers to numerous compatriots to obtain driving licences and test certificates against payment supposedly with the aid of an employee of the Motor Vehicle Control Office who was allegedly open to corruption. Later, it transpired that the couple had fabricated the story about the corrupt employee of the Motor Vehicle Control Office.

⁶ See Office of the Attorney General of Switzerland: 2016 Annual Report, p. 17, <https://www.bundesanwalt.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>.

⁷ See Office of the Attorney General of Switzerland: 2014 Annual Report, p. 13, <https://www.bundesanwalt.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>.

⁸ See Federal Criminal Court (FCC): Criminal Chamber 2015.12, p. 127, https://bstger.weblaw.ch/pdf/20150915_SK_2015_12.pdf (de). 'INSIEME' was also dealt with in a report by the Control Committee: 14.057: The 'INSIEME' IT project of the FTA, report of the federal parliamentary Finance Committees and Control Committees, 21 November 2014, <https://www.parlament.ch/centers/documents/de/bericht-insieme-fk-gpk-2014-11-21-d.pdf>.

⁹ Federal Act of 16 December 2005 on Foreign Nationals (Foreign Nationals Act, FNA; SR 142.20); See office of migration of the Canton of Ticino: Arrest of an employee of the Migration Office. Press release, Bellinzona, 8 February 2017, <http://www3.ti.ch/CAN/comunicati/08-02-2017-comunicato-stampa-7923130284.pdf> (it).

Zurich waste management and recycling, who has since been suspended. The suspicion is of misconduct in public office; the presumption of innocence applies.¹⁰

Major international corruption cases also frequently reveal connections to Switzerland, Swiss companies or Swiss nationals. Such cases often involve violations of due diligence obligations in the context of money laundering. FINMA dealt with 22 such cases in 2016 (2015: 9) often in connection with cases of corruption at the international level.¹¹ During the reporting period, the Office of the Attorney General of Switzerland also dealt with international corruption cases with connections to Switzerland. At the end of 2016, the Office of the Attorney General had 82 pending international criminal investigations into suspected cases of corruption.¹² This is almost two-and-a-half times more than in 2013 (33 investigations).¹³

In the context of the 'Lava Jato' corruption case involving the Brazilian companies Petrobras and Odebrecht, the Office of the Attorney General has been conducting 60 criminal investigations since 2014. In particular it is investigating serious cases of money laundering and bribery. Among other things, certain Brazilian officials are suspected of depositing the proceeds of bribery in Swiss banks.¹⁴ In the financial scandal involving the Malaysian state development fund 1MDB, funds resulting from offences are thought to have passed through Swiss bank accounts. The Office of the Attorney General of Switzerland has initiated investigations into the actions of officials from Malaysia and the United Arab Emirates on suspicion of fraud, bribery and money laundering.¹⁵

International media attention has focused especially on the International Federation of Association Football (FIFA), which is based in Zurich, initially on the internal investigations of the independent Ethics Committee, and since 2015 on criminal proceedings in the US and Switzerland. The Office of the Attorney General is conducting around 25 criminal proceedings in this context and analysing approximately 19 terabytes of seized documents. The Money Laundering Reporting Office Switzerland has received 178 reports in this context. The first case was concluded in June 2017 with the conviction of a former bank employee.

The most recent revelations by journalists who gained access to a wide range of files of the offices of the legal firms Mossack Fonseca (Panama Papers, April 2016) and Appleby (Paradise Papers, November 2017) created a major sensation and cast the limelight on money laundering, tax evasion and tax optimisation via offshore financial centres such as Panama, Bermuda and Mauritius. Switzerland was marginally affected mainly as a location for global commodity trading companies. In this context several ongoing cases involving suspected corruption have come to public attention.

2.3 Concluded and ongoing legislative work

Criminal law on corruption

The revised criminal provisions on corruption entered into force on 1 July 2016.¹⁶ Corruption in the private sphere is now prosecutable ex officio and sanctioned even in cases that do not

¹⁰ Civil Engineering and Waste Management Department: Director of Zurich waste management and recycling (ERZ Entsorgung + Recycling Zürich) suspended, 22 May 2017, <https://www.stadt-zuerich.ch/ted/de/index/departement/medien/medienmitteilungen/2017/170522a.html> (de).

¹¹ See FINMA Annual Media Conference 2017, 4 April 2017, <https://www.finma.ch/en/news/2017/04/20170404-mm-jmk/>.

¹² See Office of the Attorney General of Switzerland: 2016 Annual Report, p. 34, <https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>.

¹³ See Office of the Attorney General of Switzerland: 2013 Annual Report, p. 32, <https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>.

¹⁴ See Office of the Attorney General of Switzerland: 2016 Annual Report, p. 19, <https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>.

¹⁵ See Office of the Attorney General of Switzerland: 2016 Annual Report, p. 19 ff., <https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>.

¹⁶ Official Compilation of Federal Legislation (AS) 2016 1287.

cause competitive distortions. In less serious cases, however, offences are only prosecuted upon complaint. This modification, however, extends the scope of the criminal provisions on the granting and acceptance of advantages in the public sphere. Cases where the advantages are knowingly granted not to a public official but to a third party with the aim of influencing a public official are also punishable. These modifications are an integral part of the extension to the recommendations made by GRECO to Switzerland at the end of 2011.

Whistleblowing

The dispatch on the revision of the code of obligations (protection for employees who report irregularities) adopted by the Federal Council on 20 November 2013 was debated in the parliamentary chambers. After the Council of States adopted the draft with some minor modifications, the National Council debated the draft version but decided to return it to the Federal Council with the request to simplify and clarify the draft. The Council of States agreed with this decision to return the draft on 10 September 2015. Work on this mandate is currently in progress and will terminate with the adoption of a new dispatch by the Federal Council.

In addition, the work on protection against dismissal is continuing. A preliminary draft adopted by the Federal Council in October 2010 provided for the maximum compensation in cases of wrongful or unjustified dismissal to be increased from 6 to 12 months' salary. This increase was motivated especially by the need to protect whistleblowers. The Federal Council had decided to suspend the draft with effect on 21 November 2012 and to further examine a number of questions. Two studies were then requested to provide a basis for discussions between the social partners, who were expected find solutions acceptable to all. These studies have now been concluded and the discussions have started.

Law on procurement

The draft version of the revised Federal Act on Public Procurement¹⁷ (draft PPA) was submitted to Parliament in February 2017. It was first debated in the National Council and then in the Council of States and is expected to enter into force in 2019. The purpose of the revision is to harmonise procurement procedures at the federal and cantonal levels. At the same time the WTO Agreement on Government Procurement, which was revised in 2012 (GPA 2012), is to be integrated into national legislation. GPA 2012 improves transparency and accords considerable weight to combating corruption in the awarding of public contracts. With the revised PPA, even more attention will be given in the future to systematic efforts to combat corruption than is currently the case. A fundamentally new element of the draft PPA is the explicit mention of corruption prevention in the object article and in the procedural principles (Art. 2 let. d and Art. 11 let. b draft PPA). In addition, the draft law contains concrete measures on combating corruption. For example, bidders and sub-contractors who violate the provisions on combating corruption can be excluded from a current procedure (Art. 44 para. 1 let. e draft PPA). This regulation takes into account a recommendation made by the OECD Working Group on Bribery. In serious cases, exclusion from future public contracts for up to five years is possible (Art. 45 para. 1 draft PPA) and applies to all contracting authorities in the Federal Administration. In less serious cases offenders can be given a warning. The responsible authority compiles a non-public list of the bidders and sub-contractors who have been sanctioned.

Foreign Illicit Assets Act

Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (FIAA), which was adopted by Parliament in December 2015 and entered into force on 1 July 2016, applies in situations where foreign rulers have, in all likelihood, unduly enriched themselves by appropriating public assets through acts of corruption or other crimes, and have diverted them abroad. The FIAA regulates the freezing, confiscation and restitution of stolen assets. It aims to provide solutions even in cases that cannot be resolved

¹⁷ Federal Act of 16 December 1994 on Public Procurement (SR 172.056.1) (de, fr, it).

through mutual legal assistance in criminal matters. It also provides for measures to help the states of origin of the illicitly acquired assets to recover the assets. In the event of failure of the mutual legal assistance procedure, it allows the Federal Council to initiate a procedure of administrative confiscation before the Federal Administrative Court. This judicial procedure is governed by public law and not criminal law. A particular consequence of this is that it is not necessary to establish the criminal guilt of the holder of the assets and that criminal prosecution cannot be invoked by it. The presumption of the illicit origin of the assets to be confiscated is provided, but it can be overturned if the holder can plausibly demonstrate that their assets are licit. The rights of third parties may enable them to oppose confiscation to a very limited extent. Instigating administrative confiscation proceedings opens the way for returning the assets to the state of origin. The principles of transparency and accountability should be respected regardless of the national context. The FIAA provides that the restitution of assets is intended to improve the living conditions of the local people and to strengthen the rule of law, thereby helping to combat impunity in the state of origin. As a rule, an agreement between the Swiss government and the government of the state of origin regulates the practical arrangements for returning assets. Non-governmental organisations may also be involved.

2.4 Reporting offices

Since Art. 22a of the Federal Personnel Act¹⁸ came into force on 1 January 2011, federal employees have been under the obligation to report crimes and misdemeanours and have the right to report other irregularities. Now federal employees are obliged or authorised to report abuses in the course of their official duties to “the prosecution authorities, their line managers or the Swiss Federal Audit Office (SFAO)”.

Up to now the SFAO has accepted reports by email, letter or phone; since 1 June 2017 it has also operated a ‘whistleblowing reporting office’ to which both private individuals and federal employees can safely and anonymously report suspected cases of irregularities, corruption or other illegal activities within federal offices. According to information provided by the SFAO, the number of reports it has received since 2011 has remained comparatively stable within a range of 61 to 78 reports per year. In 2016, 36% of all the reports originated from federal employees and 60% from outside the Federal Administration; the origin of 4% of the reports is unknown.

Since 15 September 2015, the Federal Criminal Police (FCP) has operated an online ‘Integrity Platform’ where anyone can submit information, anonymously if they wish, about possible acts of corruption in public administration, the judiciary, politics, companies operating nationally or internationally and non-profit associations or organisations. Reports submitted to the FCP are checked for their relevance with regard to criminal law and forwarded to the responsible unit within the FCP or, where necessary, to an external authority (e.g. cantonal police) for processing. By the end of June 2016, i.e. within one year, 72 reports were submitted, of which 18 cases led to further investigations. Of these 18 cases, 9 involved suspected corruption and 9 irregularities within the Federal Administration.

A number of other federal offices have also set up internal reporting offices.

2.5 Educational and awareness-raising measures

During the reporting period the IDWG on Combating Corruption organised six plenary meetings and three workshops, each of which addressed a current priority issue with specialist speakers and interactive panel discussions. These events served to raise awareness both among members of the IDWG and, depending on the topic under discussion, a wider audi-

¹⁸ Federal Personnel Act of 24 March 2000 (FPA; SR 172.220.1) (de, fr, it, rm).

ence from within and outside the Federal Administration on preventing and combating corruption. They also served to prepare Switzerland's contributions to discussions and positions at the international level. The following topics were addressed:

- *Transparency in the funding of political parties and election campaigns* (plenary of 25 February 2014)
- *State and non-state actors in the fight against corruption: What they can do and whether/how they can work together* (plenary of 1 September 2014)
- *Asset recovery: Restitution of the proceeds of corruption to countries of origin* (workshop of 18 March 2015)
- *Initial results on Art. 22a Federal Personnel Act/Whistleblowing* (workshop of 10 September 2015)
- *Preventing corruption among members of parliaments, courts and prosecution authorities* (plenary of 25 November 2015)
- *Corruption and international sports associations in Switzerland* (plenary of 24 May 2016)
- *Risks of corruption abroad: How do the public and private sectors deal actively and passively with 'special incentives'?* (workshop of 7 September 2016)
- *Whistleblowing in the private sector* (plenary of 23 November 2016)
- *Preventing corruption in the armaments industry* (plenary of 31 May 2017)

The consistently high number of participants in both the plenary meetings and the thematic workshops is clear proof of the relevance of the selected topics and the ongoing need for discussion and exchanges between the different federal offices active in combating corruption.

In addition, individual members of the IDWG or the secretariat contributed to educational and training events for specific target groups, such as human resources specialists in the Federal Administration, the heads of Swiss Business Hubs and prospective diplomats (within the framework of an economic module provided by SECO).

Preventing corruption is also part of the Federal Administration's efforts to strengthen corporate social responsibility (CSR). In 2015, SECO developed a CSR awareness-raising concept for specific audiences and, in 2017, published a new edition of the brochure 'Preventing corruption – Information for Swiss businesses operating abroad' (see section 3.7).

2.6 Receiving foreign delegations

In the reporting period – as also in previous years – a number of other countries expressed an interest in exchanging information with Switzerland on issues concerning combating corruption. The secretariat of the IDWG acts as contact point for other national authorities in accordance with Art. 6 UNCAC. It received (together with individual members of the core group) delegations from Kazakhstan, Kenya, Serbia, South Korea, Thailand and the UK. Since the beginning of 2016, Switzerland has conducted bilateral anti-corruption dialogues with Argentina, Brazil and China, through which Switzerland has gained privileged access to important actors in the multilateral forums, such as the G20. Priority with regard to the content of these dialogues is given, in addition to current problems with multilateral anti-corruption activities, to exchanges on issues of corruption prevention – which is frequently neglected and given second priority to aspects of repression – and the return of stolen assets through mutual legal assistance.

2.7 Multilateral instruments and processes

Switzerland has ratified three fundamental international anti-corruption conventions – those of the UN, the OECD and the Council of Europe – and takes an active part in their implementation. This includes country evaluations and the development of guidelines and recommen-

dations. The IDWG on Combating Corruption carries out regular information exchanges on developments at the international level with the aim of coordinating Switzerland's positions in the various processes and forums at this level.

2.7.1 GRECO (Group of States against Corruption of the Council of Europe)

GRECO aims to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards. To this end it applies a process of mutual evaluation and peer pressure.¹⁹

Within the framework of the fourth evaluation round, which is currently under way, Switzerland was evaluated on the measures it has in place to support the integrity of and prevent corruption in Parliament, the federal courts and the Office of the Attorney General of Switzerland. In its report, which was adopted on 2 December 2016, GRECO made 12 recommendations to Switzerland²⁰, which is required to produce a report on progress with their implementation by mid-2018.

In its report, GRECO first pays homage to Switzerland's institutions, which are characterised by their high degree of independence, their consensual decision-making processes, non-professional politics and concordance systems, and their culture of trust and discretion. It states that there are effectively no notable cases of corruption. According to GRECO, the weak points of the system are rather to be found in the subtle pressures that could be applied on politicians and judges. It consequently recommends to Parliament, the courts and the Office of the Attorney General to adopt codes of conduct with commentaries and concrete examples, and to raise awareness of such codes among their members and employees.

With regard to Parliament, GRECO notes that the federal legislative procedure is characterised by a high degree of transparency. This quality does not, however, extend to the deliberations of the parliamentary committees. GRECO therefore recommends to Parliament to examine whether the confidentiality of these deliberations could be relaxed in any way. It also points out the need to extend the obligations incumbent on members of Parliament to disclose their financial interests and to report, on a case-by-case basis, specific conflicts of interest at the deliberations, even though information on them is available in the official register of interests. It also recommends closer monitoring of compliance with their reporting and disclosure obligations.

With regard to the courts, GRECO is of the opinion that it is necessary to strengthen the quality and objectivity of the process of selecting members of the federal courts and to abolish the common practice of members paying part of their salary to their political party. It also recommends ensuring that the non-reappointment of judges not be done for political reasons, and examining whether the members of the federal courts should not be elected for an unlimited duration. Lastly, GRECO recommends introducing a disciplinary system that provides for sanctions, other than revocation or non-re-election, for judges in the event of violations of their professional obligations.

Concerning the Office of the Attorney General of Switzerland, GRECO recommends that it improve the compiling of information on disciplinary procedures and, if necessary, to inform the public while remaining in compliance with the anonymity of interested parties. If the law on the organisation of criminal authorities is to be revised²¹, it would be necessary, moreover,

¹⁹ GRECO (Group of States against Corruption) is a Council of Europe institution. It has 49 member states, comprising all member states of the Council of Europe together with the United States and Belarus. Switzerland has been a state party since 1 July 2006, which was an automatic consequence of its ratification of the Criminal Law Convention on Corruption.

²⁰ <https://www.bj.admin.ch/bj/fr/home/aktuell/news/2017/2017-03-15.html> (de, fr, it).

²¹ See parliamentary initiative 15.473, <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20150473> (de, fr, it).

to ensure that the rules and procedures that apply to the surveillance authority of the Office of the Attorney General take account of possible conflicts of interest of those of its members who conduct procedures before Swiss criminal courts.

Concerning the third GRECO evaluation round, Switzerland continues to find itself in a situation of non-conformity given that no measures have been undertaken to date to implement the recommendations that GRECO made to it on improving transparency in the funding of political parties. Specifically, in its 2011 report, GRECO had recommended²² establishing:

- (i) standardised accounting and the independent auditing of the accounts of political parties and electoral campaigns;
- (ii) publication of accounts (including of donations above a set amount);
- (iii) prohibition on the acceptance of anonymous donations;
- (iv) independent supervision of this transparency regime;
- (v) possibilities of appropriate sanctions in cases of violations of these rules.

The federal popular initiative 'For more transparency in political funding (Transparency Initiative)' was duly submitted on 10 October 2017. It reflects to a large extent the recommendations made by GRECO. A popular vote on the initiative is expected to be held in 2020.

2.7.2 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Switzerland ratified on 31 May 2000 the OECD Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention).²³ A system of country monitoring is in place to examine whether the OECD Anti-Bribery Convention is being effectively implemented and applied in the signatory states.

Country monitoring of Switzerland: Follow-up report to Phase 3 and start of Phase 4

Switzerland submitted its report on implementation of the recommendations to the OECD Working Group on Bribery in March 2014, i.e. two years after its Phase 3 country monitoring. The working group concluded that of the 20 recommendations made, Switzerland had met 10 fully, 7 partially, and 3 not yet. Legislative processes are currently under way at the federal level concerning implementation of the three unmet recommendations, i.e. on the partial revision of the Code of Obligations regarding whistleblowing and protection against dismissal, and the revision of the Federal Act on Public Procurement; see section 2.3). In compliance with the practice of the working group, however, the revised versions of these laws will only be considered once they have been adopted by Parliament. The recommendations require additional, more detailed statistics from Switzerland in the area of legal assistance and also provide that the cantons be encouraged to introduce an obligation on their employees to report suspected cases of bribery. In addition, Switzerland should continue its efforts to raise awareness among companies of the risks of corruption in foreign business transactions, focusing in particular on internationally active SMEs. SECO and FDFA/SFPD have carried out further relevant measures (see section 3.7).

Phase 4 of the OECD country monitoring started at the beginning of 2017. The issues of detection and international cooperation in cases of bribery of foreign officials and the responsibility of legal entities (corporate liability) will be examined at depth in this phase of the country monitoring. Switzerland responded to a comprehensive list of questions in this context. The

²² https://www.bj.admin.ch/bj/fr/home/aktuell/news/2011/ref_2011-12-02.html (de, fr, it).

²³ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, of 17 December 1997 (SR 0.311.21). The OECD Anti-Bribery Convention has so far been signed by 35 OECD member states and 6 other countries (Argentina, Brazil, Bulgaria, Colombia, Russia and South Africa). It entered into force in Switzerland on 30 July 2000.

visit to Switzerland by the OECD secretariat and the lead examiners (Austria and Belgium) took place from 19–22 September 2017. The final evaluation was carried out at the plenary meeting of the OECD Working Group on Bribery in March 2018.

OECD Anti-Bribery Ministerial Meeting

Switzerland took part in the ministerial meeting on the OECD Anti-Bribery Convention on 16 March 2016. The event marked the official launch of Phase 4 country monitoring of the OECD Anti-Bribery Convention. The participants strengthened their commitment to the next country monitoring phase in a ministerial declaration. In the declaration the participants also mentioned the importance of cooperation with other major economic powers, such as China, India and Indonesia, which have not signed the OECD Anti-Bribery Convention. In addition, the declaration underscored the importance of working with other international organisations, companies and civil society. Switzerland is committed to ensuring that international anti-corruption standards are met and efforts to ensure criminal prosecution of corruption are strengthened in countries where there is a need to catch up.

2.7.3 United Nations Convention against Corruption (UNCAC)

Switzerland ratified the United Nations Convention against Corruption (UNCAC) on 24 September 2009.²⁴ After Germany acceded in 2014 and Japan in 2017, all major states are now among the 183 contracting parties. The UNCAC has broad thematic scope, containing preventive measures (chapter II), criminalisation and law enforcement (chapter III), international cooperation (chapter IV) and asset recovery (chapter V).

The sixth Conference of the States Parties (COSP) to the United Nations Convention against Corruption took place on 2–6 November 2015 in Saint Petersburg. Switzerland introduced a resolution on the Implementation Review Mechanism. The background was the transition from the first to the second review cycle and the numerous open questions in this context. Following tough negotiations, the resolution was adopted and with it both the smooth termination and finishing work of the first review cycle and the launch of the second cycle. The second review cycle became operational in the second half of 2016 and focused on chapters II (preventive measures) and V (asset recovery) of the convention. Switzerland was balloted for the fifth review year and will undergo its review in the period 2020–21. As a reviewer, together with South Africa, Switzerland is responsible for evaluating Malta.

The under-funding of the review mechanism is cause for concern. The so-called mixed funding model provides for voluntary contributions by member states in addition to those from the UN regular budget. Since voluntary donations have fallen significantly in the last few years owing to the general trend in cost cutting, the shortfall in funds required to continue the review mechanism as planned has run into millions. This could severely affect the country reviews, especially those of the least developed states – and thus impede efforts to create a global level playing field. Switzerland, together with other donor states, is searching for solutions to bridge the funding shortfall.

At the seventh UNCAC COSP, which took place from 6 to 10 November 2017 in Vienna, one important theme for Switzerland was the issue of the recovery and return of stolen assets, on which finally one until recently controversial resolution was adopted. One priority in relation to the country reviews was the question of improving synergies within the review mechanisms of the different multilateral organisations. One resolution was drafted and adopted on this point.

Even if progress is only very slow, the UNCAC remains the only universal anti-corruption instrument. It is in Switzerland's interest – not least in view of emerging trading partners in Asia, Africa and Latin America – that UNCAC standards be applied as widely and extensively as possible.

²⁴ United Nations Convention against Corruption of 31 October 2003 (SR 0.311.56).

2.7.4 Switzerland's other activities at the international level

G20 Anti-Corruption Working Group

Switzerland was invited by the Chinese chair of the G20 in 2016 and by the German chair in 2017 to take part in the G20 Anti-Corruption Working Group (ACWG). In 2016, the priorities were *Asset Recovery and Fugitive Repatriation*, and *Beneficial Ownership Transparency*; in 2017, *Corruption in Sport* and others. Switzerland took these opportunities to represent its proposed solutions within a body that plays a major role in global agenda setting. It presented the new Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (see section 2.3) and also spoke about its relations with the international sports associations based in Switzerland. Argentina held the G20 chair in 2018 and also invited Switzerland to attend ACWG meetings.

London Anti-Corruption Summit

The London Anti-Corruption Summit was held in May 2016 on the personal initiative of the then British prime minister, David Cameron. This was the first time that the issue of combating corruption had been addressed at top political level. The main theme of the summit was – in the wake of the publication of the Panama Papers – to increase transparency, specifically in relation to the economic beneficiaries of legal entities and other legal constructs, including trusts, and also in the commodities trading sector, public procurement and sport. The participating states committed themselves politically in a joint communiqué and in individual country statements to take measures in these areas. Switzerland was represented at the summit by its foreign minister, Didier Burkhalter, who highlighted Switzerland's comprehensive and innovative efforts to recover the foreign proceeds of corruption deposited in Switzerland (asset recovery).

Asset recovery forums

At the request of the G7, Switzerland hosted the third Arab Forum on Asset Recovery (AFAR III) in Geneva in November 2014. The aim of the forum was to support Arab transition countries in their efforts to recover illicitly acquired assets. Since then, Switzerland is regularly represented in the discussions of the Steering Committee of the G7 countries with the World Bank on the preparations of such meetings. It had previously taken part in the Ukraine Forum on Asset Recovery (UFAR) in April 2014 in London and most recently in 2015 at AFAR IV in Hammamet, Tunisia. The Global Forum on Asset Recovery (GFAR) took place for the first time in December 2017 in Washington DC as the merger of various asset-recovery forums, and offered four states, namely Sri Lanka, Tunisia, Nigeria and Ukraine, a platform for contacts with the financial centres.

Lausanne seminars

Experience shows that for the successful restitution of stolen assets, close cooperation with the affected states, especially with the judicial authorities, is crucially important. The international seminars of experts that have been organised by Switzerland in Lausanne since 2001 (Lausanne Seminars) serve to strengthen cooperation and coordination between requesting and requested states at the international level. For this reason Switzerland hosted the Lausanne Seminars again in 2014, 2016 and 2017. On the basis of several UN mandates, in 2014 the participating representatives from more than 30 jurisdictions and international organisations developed a set of 'Guidelines for the Efficient Recovery of Stolen Assets'. The guidelines were supplemented in 2016 and 2017 with a step-by-step handbook on implementing them, the 'Asset Recovery Handbook'.²⁵ The handbook was presented at the UN-CAC COSP in November 2017 in Vienna. The International Centre for Asset Recovery (IC-AR) of the Basel Institute on Governance and the Stolen Asset Recovery (StAR) Initiative of

²⁵ See <https://guidelines.assetrecovery.org>.

the United Nations Office on Drugs and Crime (UNODC) and the World Bank were closely involved in the development of the guidelines and the handbook.

Addis Ababa Process

In February 2017, an 'international expert meeting on the management and disposal of recovered and returned stolen assets, including in support of sustainable development' took place in Addis Ababa. The meeting was funded by Switzerland and carried out by the UN. The aim of the meeting was to provide a first overview of cases of asset recovery to date and their success factors, and through this to close the gap between the different perspectives of lawyers and development specialists from the North and South. Switzerland and Ethiopia took up a recommendation of the Addis Ababa Action Agenda (part of the 2030 Agenda), which is to be developed on the basis of 'Best Practices on Asset Return' by the international community.

Partnering Against Corruption Initiative

Since November 2016, the World Economic Forum has invited Switzerland (FDFA/SFPD) to take part in the meetings of the Partnering Against Corruption Initiative (PACI). PACI is one of the Forum's oldest and most important initiatives and aims to bring together high-level representatives mainly from the private sector, but also from governments and civil society, with a view to developing collaborative solutions to the questions of corruption and transparency, in particular in the most economically dynamic emerging markets. These meetings have provided opportunities for Switzerland to share experiences in the field of fighting corruption and to start working with the Forum on this issue.

3. Status of implementation of the IDWG core group's recommendations from its 2011–13 activity report

In its 2011–13 activity report, the IDWG core group presented ten recommendations to strengthen Switzerland's anti-corruption framework. The progress made to date in implementing these recommendations is outlined below and – where relevant – new recommendations have been drawn up (text boxes).

3.1 Development cooperation

The IDWG core group recommended that the SDC and SECO prepare a list of Swiss development cooperation projects, programmes and other measures to combat corruption and provide this information to the IDWG (Recommendation 1).

On 12 August 2016 various lists of the projects undertaken since 1 January 2014 by the FDFA's Swiss Agency for Development and Cooperation (SDC) and SECO were published on the webpage of the IDWG on Combating Corruption.²⁶

These lists comprise 62 projects and programmes in 32 countries which directly or indirectly contribute to combating corruption. The overall objective is to improve governance at central, regional and local levels and to strengthen public institutions (including the judiciary and prosecution authorities) and civil society.

Furthermore, details were published on the same webpage about the main institutional measures taken since 1 January 2014 by the two federal agencies and by the FDFA's Compliance Office to prevent corruption in development cooperation.

These lists are an important source of information for internal users at the Federal Administration as well as external stakeholders. They document the fact that Switzerland fulfils its

²⁶ <https://www.eda.admin.ch/eda/en/home/foreign-policy/financial-centre-economy/corruption/working-group-combating-corruption.html>.

obligation to provide technical assistance (under the UNCAC) by way of numerous development projects. However, as they represent the status at a given time, they should be updated on an ongoing basis.

➤ ***Recommendation 1: The IDWG core group recommends that the SDC and SECO periodically update the existing lists of their projects and programmes to combat corruption and make these lists available to the public.***

3.2 Reporting obligation in decentralised administrative units

The IDWG core group recommended adoption of a reporting obligation in cases of suspicion of corruption (analogous to Article 22a FPA) for all decentralised administrative units (Recommendation 2).

On 29 September 2016 the chair of the IDWG on Combating Corruption sent a letter to the heads of 29 decentralised administrative units of the federal government with their own legal personality (as per Annex 1 of the Government and Administration Organisation Ordinance²⁷) and of organisations which had been hived-off from the federal government (hereinafter collectively referred to as 'decentralised units'). In this letter he enquired about the situation in the decentralised units regarding the legal basis for reporting obligations and rights in cases of corruption and about any concrete implementation of such legal bases (code of conduct, regulations, directives, etc.).

While the replies varied greatly in terms of quality and level of detail, the survey gave the IDWG an overview of the situation. Of the 29 decentralised units, 13 are subject to Art. 22a of the Federal Personnel Act (FPA), four have a similar legal basis outside of the FPA, eight have no legal basis (although a contractual basis in some cases), and four did not provide sufficient information (although it can be assumed that they also have no legal basis or, at most, are subject to contractual regulations). In most of the decentralised units not subject to Art. 22a FPA, whistleblowers are entitled to or obliged to report abuses, suspected instances of corruption or irregularities to an internal body (e.g. line manager, senior management or legal service). Only three decentralised units mention the existence of an external reporting office.

As 13 of the 29 decentralised units are subject to the FPA, these already have in Art. 22a FPA a legal basis for whistleblowing. Four administrative units have established whistleblowing rules in their relevant laws outside of the FPA. The decentralised administrative units subject to the Code of Obligations currently have no provisions in this respect. The IDWG core group expects that the Federal Council will in due course present Parliament with a (revised) bill introducing a whistleblowing law for the private sector (cf. also section 2.3) which, upon enactment, would also apply for the decentralised units subject to the Code of Obligations. The IDWG core group is therefore not under any immediate pressure to take further implementation steps in this respect (even if no provision is made for a reporting *obligation* analogous to Art. 22a FPA).

3.3 Implementation of a cooling-off period

The IDWG core group noted that the revolving door clause was not contained in various senior federal employees' employment contracts. The IDWG core group recommended that this clause be adopted, where objectively appropriate, in the employment contracts of senior managers of the Federal Administration (Recommendation 3).

²⁷ Government and Administration Organisation Ordinance of 25 November 1998 (GAOO / SR 172.010.1).

With the ordinance of 25 November 2015 on the cooling-off period for employees of the central and decentralised Federal Administration²⁸, which came into effect on 1 January 2016, the Federal Council established a legal basis to agree with central and decentralised federal employees on a minimum mandatory period before which they can move into the private sector. It is up to the individual departments and offices to incorporate any such 'revolving door' clauses into the contracts of the employees in question.

The IDWG core group will continue to monitor closely the implementation of this recommendation in practice. To this end it intends to conduct a survey within the Federal Administration on the implementation of the revolving door clause in employment contracts from salary grade 35 up.

3.4 List of reporting offices abroad

The IDWG core group recommended that the FDFA compile a list of offices in different countries where corruption can be reported, especially for use by the private sector (Recommendation 4).

A list of anti-corruption bodies worldwide, together with their contact details, was published at the end of 2015 on the webpage of the IDWG on Combating Corruption²⁹ (under 'Reporting offices') and on SECO's anti-corruption webpage³⁰ (under 'Further information'). This is available to the public and in particular all Swiss companies and private individuals wishing to report suspected instances of corruption abroad to the relevant local authorities. The list is regularly checked and updated by the IDWG secretariat in collaboration with the Swiss representations to ensure it can fulfil its purpose.

3.5 Advanced training of at-risk groups

The IDWG core group recommended identifying specific risk groups in the Federal Administration and working towards appropriate advanced training in the area of corruption (Recommendation 5).

In association with armasuisse, the IDWG secretariat has identified seven general groups or activities within the Federal Administration at particular risk of corruption:

- a) Procurement;
- b) Liquidation processes;
- c) Second jobs;
- d) Subsidies;
- e) Authorisation/supervision;
- f) Property management;
- g) Risks abroad.

A subsequent consultation with the secretaries general of the seven federal government departments found that, in principle, there is general consensus on the groups and activities identified as being at risk. However, some reservations were raised with respect to the additional bureaucracy and resources required at the department level; the opinion was that responsibility should remain with the individual federal offices or directorates.

²⁸ Official Compilation of Federal Legislation (AS) 2015 5019.

²⁹ <https://www.eda.admin.ch/eda/en/home/foreign-policy/financial-centre-economy/corruption/working-group-combating-corruption.html>.

³⁰

https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbildungen/Korruptionsbekämpfung/Informationen_fuer_Unternehmen.html.

The IDWG core group believes that the at-risk groups and activities within the Federal Administration are adequately determined and that all offices involved in education and training should make a priority of raising awareness among these particular groups and activities. The IDWG on Combating Corruption itself will increasingly direct its communication efforts to the target groups dealing with at-risk activities.

➤ ***Recommendation 2: The IDWG core group recommends taking measures to increase awareness within specific at-risk groups and activities at the Federal Administration.***

3.6 E-learning module

The IDWG core group recommended that specific groups at risk within the Federal Administration work through the existing e-learning module 'Combating Corruption'. The module contains references to the legislation, the Federal Administration's Code of Conduct, information on federal employees' obligation to report and practical case studies. The extension of the recommendation to all employees of the Federal Administration was to be reviewed within the framework of the preparation of the 2014–17 Activity Report on Combating Corruption (Recommendation 6).

On 25 June 2015 the IDWG on Combating Corruption was successful in its request to have the Conference of Secretaries General declare the e-learning module mandatory for all Federal Administration employees with internet access. On 14 December 2015 the Conference of Secretaries General ruled as follows: *"The e-learning module 'Corruption prevention and code of conduct' is hereby declared compulsory as of 1 January 2017 for all employees of salary grades 12-23 with managerial functions and with e-gate access, and for all employees of salary grades 24-38, also with e-gate access."* Based on the decision of the Conference of Secretaries General, the Federal Office of Personnel (FOPER) expanded the existing e-learning module and made it available on its new intranet platform from 1 March 2017 (as the web-based training course 'Corruption prevention and code of conduct' (*Korruptionsprävention und Verhaltenskodex*)). This was also announced internally in the Federal Administration.

The IDWG core group considers it important that web-based training is being used to raise awareness of corruption prevention and to draw attention to the code of conduct among the target groups designated by the Conference of Secretaries General. It will closely monitor implementation of this ruling passed by the Conference of Secretaries General on 14 December 2015.

3.7 Raising awareness among SMEs

The IDWG core group recommended continuing the measures to raise awareness among companies of corruption risks in international business transactions with a focus on SMEs with international operations. The topic of combating corruption was to continue to be included in business-related events (Recommendation 7).

During the reporting period, the IDWG on Combating Corruption organised for the second time since 2012 a workshop on corruption risks abroad, at which the preventive measures of federal agencies as well as of international organisations and SMEs were presented. Furthermore, representatives of the IDWG on Combating Corruption, specifically from SECO³¹ and the FDFA/SFPD, actively participated in efforts at various events to raise awareness among Swiss companies of the risk of corruption in international business transactions, together with business associations, Transparency International Switzerland, universities, etc.

³¹ Between 2014 and 2017, SECO alone participated in a total of 11 events and activities to raise awareness among companies of the risks of corruption in international business activities.

Raising awareness among SMEs remains a particular challenge. Given their limited human resources, especially in regard to compliance, SMEs rarely attend corruption prevention events, even when invited by their business associations. In contrast, the larger multinationals generally have compliance departments and specialised legal advisers well acquainted with anti-corruption policies and practices. The third, revised version of SECO's brochure 'Preventing corruption – Information for Swiss businesses operating abroad' (2017)³² is specifically written for SMEs. The IDWG core group welcomes the publication of this brochure and will continue to support SECO in raising awareness among SMEs. It also appears worth exploring the idea of a consulting service for SMEs so as to put interested firms in contact with compliance experts from the private sector (e.g. providers of risk analysis for new projects).

➤ ***Recommendation 3: The IDWG core group recommends that SECO continue its measures to build awareness among SMEs of the risks of corruption when doing business abroad.***

3.8 Cooperation with cantons and cities

The IDWG core group recommended that cooperation with the Conference of the Cantonal Governments (CCG) and with the individual cantons and cities should be strengthened (Recommendation 8). The IDWG core group also recommended that cantons and cities appoint specific individuals or offices with the mission of combating corruption and notify the public and especially the IDWG of these individuals/offices in order to simplify cooperation (Recommendation 9).

Already in January 2014 a delegation of the IDWG participated in a training seminar in Zurich run by the Association of Audit Offices of German-Speaking Switzerland and the Principality of Liechtenstein, which was mainly attended by representatives of the cantonal administrations. The delegation presented the IDWG's activities, the legal provisions for combating corruption in Switzerland and at the international level and the implementation of the OECD's recommendations for Switzerland regarding the cantons' anti-corruption efforts. The presentations were subsequently also published in the Newsletter of the Institute of Internal Auditing Switzerland (IIAS).

A comparison of whistleblower protection provisions and reporting offices in the cantons, conducted by two members of the core group, noted that substantial progress had been made by 2016 since the initial survey in 2010. These findings were reported in an OECD publication.³³ However, the core group has not yet systematically identified the persons in charge of anti-corruption at the cantonal authorities and encouraged them to participate in the IDWG's events. The core group thus also believes there is substantial potential for improvement regarding communication with the cantons.

After a survey by the IDWG secretariat in 2010 had already revealed little interest among the cantons and cities in increasing their anti-corruption collaboration at a federal level, a consultation with the Conference of the Cantonal Governments of Switzerland (CCG) in 2015 again found that the CCG gave low priority to corruption and how to combat it. The CCG did however express an interest in working together with the IDWG and its secretariat on an ad hoc basis and in participating in the plenary meetings and possibly also organising an information session for the cantons together with the IDWG.

The core group is convinced that the cantons face similar challenges as the federal government in combating and preventing corruption; therefore, interested cantons should be included in the exchange of information and best practices organised by the IDWG.

³²

https://www.seco.admin.ch/seco/en/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Aussenwirtschafts/broschuere/korruption_vermeiden.html.

³³ Committing to Effective Whistleblower Protection, OECD Publishing, Paris, 2016, page 29, Box 1.1.

3.9 Secretariat of the IDWG on Combating Corruption

The IDWG core group recommended that additional human and financial resources be allocated to the IDWG secretariat (Recommendation 10).

The Federal Council has decision-making authority on this matter. At the time the 2011–13 Activity Report of the IDWG on Combating Corruption was published in October 2014, the Federal Council did not respond to this recommendation. The Swiss Federal Audit Office (SFAO) concluded in its evaluation in 2017 (see section 4.1) that additional human and financial resources would be needed to fully implement the mandate given by the Federal Council. While the core group recognises that an increase in resources is not currently conceivable for financial reasons, it agrees that it is important to ensure personnel continuity within the secretariat, another deficiency noted by the SFAO. The rotation principle at the FDFA and the current practice of limiting the IDWG Secretary's term of office to a maximum of three years are not conducive to developing networks, skills and experience.

➤ **Recommendation 4: The IDWG core group recommends that the FDFA ensure personnel continuity at the secretariat of the IDWG on Combating Corruption.**

4. Assessment of performance and outlook for the future of the IDWG

The Federal Council issued a mandate to the IDWG on 10 December 2008; this mandate is limited to a ten-year period and is renewable. In this context, the question arises as to whether the IDWG has proven itself as part of the Swiss anti-corruption framework and in what form the future anti-corruption efforts should be organised.

Further, upon taking note of the 2011–13 Activity Report of the IDWG on Combating Corruption on 8 October 2014, the Federal Council instructed the FDFA together with the Federal Department of Finance to review the question of where the IDWG secretariat should be housed. The General Secretariats of both departments subsequently agreed to defer the issue of where to house the secretariat until after publication of the findings of an evaluation by the Swiss Federal Audit Office (SFAO).

4.1 Evaluation by the Swiss Federal Audit Office

The SFAO conducted an evaluation of the IDWG on Combating Corruption between April and July 2017 with a view to assessing its effectiveness and efficiency. In anticipation of this audit, the SFAO had previously withdrawn from the IDWG in 2015.

On 9 January 2018 the SFAO submitted its report³⁴ to the Federal Council for an opinion. The main results were as follows:

- (i) While the mandate given to the IDWG on Combating Corruption enables it to counter the risks of corruption in Switzerland, especially at a federal level, it could be more precisely defined in certain respects;
- (ii) The framework conditions are not conducive to fulfilment of the mandate. Reforms are needed in regard to the IDWG's autonomy, financial and human resources, scope of competency and authority, institutional memory and visibility;
- (iii) The Federal Council should express its political support for corruption prevention.

The SFAO has drawn up two recommendations for the Federal Council:

³⁴ Contrôle fédéral des finances (2017): Lutte contre la corruption – Evaluation de la mise en œuvre de l'arrêté du Conseil fédéral du 19 octobre 2008.

- (i) A new mandate should be given to a body independent of the administration (i.e. an office of a federal delegate for combating corruption), which should be given the necessary resources, skills, powers and visibility;
- (ii) Regarding the concentration of anti-corruption tasks in the hands of specialists, the resources currently available in the Federal Administration should be recorded and the composition of delegations at international conferences should be questioned.

The SFAO is therefore in favour of an institutional reorganisation which, while maintaining a core working group (augmented by the representatives of cantons, cities and NGOs as well as independent experts) for the purpose of information exchange, would at the same time introduce the office of a federal delegate for combating corruption to which a range of functions would be transferred, in particular the formulation of a national anti-corruption strategy, participation in legislative processes, representing Switzerland at an international level, coordination at a national level, information gathering and evaluation, increasing awareness among authorities at all levels and in civil society. The office of the federal delegate for combating corruption would be housed with the Federal Council staff office in the Federal Chancellery. According to the SFAO, this model could be achieved without any additional resources (apart from a budget for conducting studies, surveys and analyses) by reallocating existing resources in the Federal Administration.

4.2 Interim assessment of the core group

The core group of the IDWG (as its steering committee) took note of the SFAO's recommendations. Based on the SFAO report, it drew up a range of practical suggestions which, if implemented, could eliminate certain weaknesses of the IDWG on Combating Corruption.

While the IDWG appears to be well accepted within the Federal Administration, the core group itself notes self-critically that, with its existing resources, it has had limited effect in a wider circle outside the Federal Administration. It has therefore decided to systematically include the representatives of the cantons, civil society and the private sector in the planning of plenary meetings and workshops so as to place a stronger emphasis on their specific interests and to address individual target groups more directly. As previously mentioned (section 3.5), raising awareness among at-risk groups takes priority over increasing public relations efforts, for which additional resources would be necessary.

The core group also reassessed the decision to house the secretariat within the FDFA and concluded that there were no advantages to be gained by housing it in another department. It agrees with the SFAO that personnel continuity in the secretariat should be improved and has formulated a recommendation to this effect for the FDFA (see section 3.9 above). However, the core group is sceptical about the idea of centralising anti-corruption tasks in the Federal Administration. It believes that anti-corruption efforts should remain a cross-cutting task in which all federal departments participate through the coordination of their respective existing competencies. It also seriously doubts that the model proposed by the SFAO could be implemented without any additional resources, given that a 'federal delegate for combating corruption' would undoubtedly need a separate secretariat and would still be reliant on the expertise and support of the administration, e.g. to conduct the various country reports ('peer reviews') and implement the recommendations of the international committees. Moreover, when it comes to negotiating new standards that are binding upon the federal government, Switzerland cannot be represented by a delegate who demands independence of that government's directives.

The core group has repeatedly deliberated on whether the IDWG is sufficiently independent to address politically controversial issues. In its current configuration, the IDWG – unlike, for example, the federal government's extra-parliamentary advisory commissions – cannot very well play the role of political catalyst. Moreover, the Federal Council has to date not given it a

broad remit in this respect.³⁵ The IDWG has therefore limited its intervention to ad-hoc recommendations of a more technical and directive nature for the administration in the context of its periodic activity reports. The recommendations formulated as part of international country reports and addressed to Switzerland go into more depth, and the core group has also dealt with these recommendations and monitored their implementation. Such recommendations – together with the findings from IDWG workshops – could by all means form a basis for an anti-corruption strategy at federal government level.

The core group acknowledges that there has been to date no overall view of Switzerland's anti-corruption framework and no strategy for its further development. It agrees with the SFAO that these gaps should be closed if possible. A two-year period would seem appropriate for drawing up strategic and operational objectives; this would also allow Switzerland to meet the requirement for 'effective, coordinated anti-corruption policies' (Art. 5 UNCAC) in its UNCAC country review (from mid-2020). As a cross-departmental project organisation, the core group (i.e. the IDWG) would be in a position to coordinate the development of a broad-based strategy.

Based on the evaluation and its own assessment, the core group formulated the following additional recommendation:

➤ ***Recommendation 5: The core group recommends that the Federal Council give a mandate to the IDWG on Combating Corruption to formulate strategic and operational objectives to prevent and combat corruption at the federal level.***

4.3 New mandate of the IDWG on Combating Corruption

The IDWG on Combating Corruption has a mandate up to the end of 2018. Together with this activity report, the core group submits an application to the Federal Council for a new 10-year mandate. As before, this conceives the IDWG as an internal body which reports to the Federal Council, with the management and secretariat provided by the FDFA. In principle, the IDWG consists of all federal offices with an interest in combating corruption as well as the SFAO and the Office of the Attorney General of Switzerland. It establishes a core group to which it can delegate operational tasks (such as planning and control). The members of this core group are, as before, the FDFA's Directorate of Political Affairs (Sectoral Foreign Policies Division), SECO, the FOJ, the FOPER, armasuisse, the SFAO, the Office of the Attorney General of Switzerland and, as a new member, fedpol. The composition of the core group could change over the course of the mandate with the addition of other federal offices.

The remit of the IDWG should be more clearly defined. Its primary task lies in internal coordination: without impinging upon the individual federal offices' powers, the IDWG should help them achieve smooth and seamless collaboration. Through its coordination, it also ensures coherency in Switzerland's presence within the various international bodies. Moreover, the IDWG contributes to examining and, where possible, implementing the recommendations from the country reviews by GRECO, the OECD and UNCAC.

The IDWG organises workshops to which it may also invite interested stakeholders outside the Federal Administration, such as the cantons, communes, private businesses, civil society and experts. It addresses subject-specific target groups, however, rather than the general public. It promotes dialogue with the cantons through its information network.

The IDWG works to identify successful anti-corruption measures and disseminates this information within the administration. In addition, the IDWG should be tasked with formulating strategic and operational objectives for preventing and combating corruption at a federal level, to be presented to the Federal Council by 31 March 2020 for approval. The IDWG work-

³⁵ The Federal Council Decision of 19.8.2008 merely states that the IDWG "may be called upon to formulate joint policies at a national level upon the request of the Federal Council".

shops should be used and evaluated to this end, thereby giving them an operational purpose.

To conclude, the IDWG will continue to report to the Federal Council on its activities and on relevant developments in relation to anti-corruption policies and practices.

4.4 Summary of recommendations of the IDWG core group

The IDWG core group has formulated the following five recommendations to improve Switzerland's anti-corruption framework:

Recommendation 1: The IDWG core group recommends that the SDC and SECO periodically update the existing lists of their projects and programmes to combat corruption and make these lists available to the public.

Recommendation 2: The IDWG core group recommends taking measures to increase awareness within specific at-risk groups and activities at the Federal Administration.

Recommendation 3: The IDWG core group recommends that SECO continue its measures to build awareness among SMEs of the risks of corruption when doing business abroad.

Recommendation 4: The IDWG core group recommends that the FDFA ensure personnel continuity at the secretariat of the IDWG on Combating Corruption.

Recommendation 5: The IDWG core group recommends that the Federal Council give a mandate to the IDWG on Combating Corruption to formulate strategic and operational objectives to prevent and combat corruption at the federal level.

The IDWG core group also calls upon the Federal Council to issue a new mandate to the IDWG on Combating Corruption.