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State of implementation of the United Nations
Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

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* CAC/COSP/IRG/2024/1.
II. Executive summary

Switzerland

1. Introduction: overview of the legal and institutional framework of Switzerland in the context of implementation of the United Nations Convention against Corruption


The implementation by Switzerland of chapters III and IV of the Convention was reviewed in the second year of the first review cycle, and the executive summary of that review was issued on 5 July 2012 (CAC/COSP/IRG/I/2/1/Add.2).

Switzerland has a civil law system and follows the principle of direct implementation of international treaties (art. 190 of the Federal Constitution). The national legal framework for preventing and countering corruption includes provisions from a number of laws, notably the Criminal Code and the Criminal Procedure Code, the Federal Act on Public Procurement, the Federal Act on the Personnel of the Swiss Confederation, the Anti-Money-Laundering Act, the Federal Act on International Mutual Assistance in Criminal Matters and the Foreign Illicit Assets Act.

Switzerland has several bodies and agencies at the federal level that are concerned with preventing and combating corruption, including the Office of the Attorney General, the Interdepartmental Working Group on Combating Corruption, the Swiss Federal Audit Office, the Federal Office of Justice, the Federal Office of Police (Fedpol), the Directorate of International Law, the Money Laundering Reporting Office Switzerland (MROS) and, in connection with the supervision of the financial market, the Financial Market Supervisory Authority (FINMA).

Switzerland is a federal State with 26 cantons. Each canton has its own constitution and legislation, as well as judicial authorities. The present review is focused on measures taken at the federal level.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

The Federal Council of Switzerland has adopted an anti-corruption strategy for the period 2021–2024, structured around the three pillars of “prevention”, “detection and law enforcement” and “international cooperation”. The strategy consists of 11 goals, covering awareness-raising, a risk-based approach, transparency, detection and investigation, the private sector and international cooperation, with 42 measures primarily directed at the Federal Administration. The Federal Department of Foreign Affairs will commission an independent body to evaluate the strategy’s implementation in 2024.

The Interdepartmental Working Group on Combating Corruption is a designated planning and coordinating body for the prevention of corruption and was established on the basis of article 56 of the Government and Administration Organization Act. It includes the relevant federal offices and representatives of the cantons and of civil society. It is funded through the budget of the Federal Department of Foreign Affairs and its management and secretariat are part of the Department. It developed the aforementioned anti-corruption strategy and now coordinates its implementation.

The Swiss Federal Audit Office is the supreme audit institution of the Confederation. It functions independently and receives public reports, including anonymous ones, of any incidents that may constitute an offence. The cantons have their own audit bodies.
Although there is no formal mechanism for periodically evaluating the adequacy of relevant legal instruments and administrative measures to prevent and fight corruption, the Federal Constitution provides for the possibility for the Federal Assembly, the Federal Council, and members of the Parliament, the cantons and the Swiss population to question the effectiveness of laws (arts. 138, 139, 160, 170, 182 and 187) through, for example, cantonal and parliamentarian initiatives, motions and popular initiatives requesting total or partial revisions of the Federal Constitution. The Swiss Federal Audit Office also conducts risk-based audits and evaluations of legislation and policies to determine whether they are efficient and effective, including from the anti-corruption perspective. In addition, Switzerland participates in peer reviews such as the evaluations of the Group of States against Corruption (GRECO) of the Council of Europe and the Working Group on Bribery in International Business Transactions of the Organisation for Economic Co-operation and Development (OECD) (which oversees the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions by the parties thereto), through which its legal instruments are regularly assessed.

The Federal Administration offers a compulsory e-learning module entitled “Preventing corruption and code of conduct” for all managers from salary grade 12 and above and all staff from salary grade 24 and above. The Interdepartmental Working Group on Combating Corruption organizes workshops and training for both the public sector and the private sector in order to raise awareness of corruption; in particular, it offers a three-hour in-person module on fighting corruption to all new diplomats on an annual basis.

Switzerland actively participates in international and regional anti-corruption initiatives and maintains active cooperation with foreign States in the prevention of corruption. It is a member of GRECO, the OECD Working Group on Bribery in International Business Transactions, the Financial Action Task Force (FATF), the Extractive Industries Transparency Initiative and the Water Integrity Network. Switzerland also participates in the Group of 20 Anti-Corruption Working Group as an invited country on a regular basis.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The Ordinance on the Personnel of the Swiss Confederation governs the recruitment and management of public officials in the Federal Administration, and the Federal Council directive of 28 November 2014 has special provisions on senior officials (such as State secretaries, office directors and federal vice chancellors). Cantons follow their own ordinances/codes of conduct concerning their own personnel. Recruitment is decentralized, with no single dedicated human resources agency and all competent units enjoying a significant degree of autonomy.

Vacancies are, in principle, advertised publicly (art. 22 of the Ordinance on the Personnel of the Swiss Confederation), and selection is merit-based. Besides the regular recruitment procedure, each federal office can conduct qualification tests at its own discretion. Personality assessments may also be conducted with the consent of candidates. Salaries are calculated on the basis of the training required, the scope of tasks, and the requirements, responsibilities and risks inherent in the role (art. 52(3) of the Ordinance). The maximum amount in each salary grade is published. The gross median monthly wage in the public sector is higher than that in the private sector.

No public positions have so far been identified as especially vulnerable to corruption. However, efforts in this regard are set out in the Federal Council’s anti-corruption strategy for the period 2021–2024.

The seven members of the Federal Council, the supreme executive authority of the Swiss Confederation, are elected by the Federal Assembly through an absolute majority. The Federal Constitution (art. 144), the Government and Administration Organization Act (arts. 60 and 61) and the Parliament Act (arts. 11 and 14) set out the
potential grounds for incompatibility that must be eliminated before an individual’s election to the Federal Council or the Federal Assembly. Although members of the Federal Council are not permitted to undertake any gainful economic activity (art. 60(1) of the Government and Administration Organization Act), such a restriction is not placed on members of the Federal Assembly.

The amended Federal Act on Political Rights establishes transparency rules (title 5b) on the funding of campaigns for federal elections and popular votes (art. 76c) and on the funding of political parties represented in the Federal Assembly (art. 76b). The origin of donations of more than 15,000 Swiss francs per donor and year must be publicly declared, while anonymous donations or donations from abroad are prohibited. Declarations are audited on a random basis.

The Ordinance on the Personnel of the Swiss Confederation and the Federal Administration’s Code of Conduct summarize the key ethics rules for public officials of the Federal Administration. Gifts exceeding a market value of 200 Swiss francs are prohibited (art. 93 of the Ordinance). Paid secondary activities must be disclosed to the supervisor for authorization (art. 91 of the Ordinance). A centralized staff data management system contains the details of authorized secondary activities performed by employees of the Federal Administration. Actual or potential conflicts of interest must be disclosed to the superior, who will take necessary mitigating measures. Similar provisions can be found in the Parliament Act (art. 11) for members of the Federal Assembly. Failure to observe ethics rules may result in sanctions or disciplinary measures within the scope of the labour law (e.g. art. 25 of the Federal Act on the Personnel of the Swiss Confederation; art. 99 of the Ordinance) and even criminal sanctions. Federal departments such as the Federal Department of Foreign Affairs and cantons enact their own codes of conduct.

According to the Federal Act on the Personnel of the Swiss Confederation (art. 22a), federal employees are obliged to report offences that are prosecuted ex officio and that have been brought to their attention while carrying out duties. They may also report irregularities. The Swiss Federal Audit Office runs a dedicated online reporting platform (www.whistleblowing.admin.ch) that allows anonymous reporting. The Federal Act also protects reporting federal employees (“whistleblowers”) from any retaliation.

Judicial independence is enshrined in the Federal Constitution (art. 191c) and implemented by acts governing the Federal Supreme Court, the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court. Switzerland has adopted rules on best practice for judges of the Federal Supreme Court and the Code of Judicial Conduct for judges of the Federal Administrative Court, which reflect the Bangalore Principles of Judicial Conduct.

The Federal Assembly makes final decisions on the selection and removal of federal judges. Selection is primarily based on merit and party affiliation. Professional, personal and linguistic competences are also considered. A serious breach of duty may result in early removal or prosecution if immunity is duly waived. The Control Committees of the Federal Assembly investigate allegations of corruption involving judges. The Federal Supreme Court exercises administrative oversight over the running of the Federal Criminal Court, the Federal Administrative Court and the Federal Patent Court. Under the Criminal Code, judges are considered public officials and subject to the same provisions on corruption.

The autonomy of the Office of the Attorney General is guaranteed by law (art. 4(1) of the Criminal Procedure Code). The Office is subject to the oversight of the Federal Assembly and the Supervisory Authority for the Office. Its staff are bound by the Federal Administration’s Code of Conduct, as well as the Code of Conduct of the Office.
Public procurement and management of public finances (art. 9)

Public procurement at the federal level in Switzerland is mainly governed by the Federal Act on Public Procurement, the Ordinance on Public Procurement and the Ordinance on the Organization of Federal Public Procurement. Cantons are bound by cantonal laws, and most cantons have joined the Inter-cantonal Agreement on Public Procurement, which reflects the provisions of the World Trade Organization Agreement on Government Procurement of 2012.

The Federal Procurement Conference is the strategic body for the procurement of goods and services at the federal level. The Competence Centre for Federal Public Procurement provides legal support to the central procurement units and requesting units in procuring goods and services.

The principle of transparency is established in article 2(b) of the Federal Act on Public Procurement. Depending on the value of the contract and the thresholds, the contracting authority may choose to award public contracts by open procedure, selective procedure, invitation procedure or direct award procedure (art. 17 of the Federal Act). The contracting authorities are required to publish award criteria and decisions to award contracts or to interrupt procurement processes on an online platform (www.simap.ch) operated by the Association for the Provision of an Information System on Public Procurement in Switzerland (art. 48(1) of the Federal Act). However, the digital contract management system maintained by the Federal Administration is not public.

The conditions of participation in tendering are defined in article 26 of the Federal Act on Public Procurement, including a requirement not to conclude unlawful agreements that affect competition. Contracting authorities are required to ensure that tenderers and their subcontractors fulfil the conditions and to evaluate a tender based on performance-related criteria (art. 29 of the Federal Act).

Audits of federal contracts are conducted by the internal audit unit of contracting authorities and the Swiss Federal Audit Office. A contracting authority or another appropriate authority may exclude a tenderer from an award process, exclude it from a list or withdraw an award if the tenderer, one of the tenderer’s bodies or a third party hired by the tenderer has contravened the anti-corruption provisions (art. 44(1)(e) of the Federal Act on Public Procurement). If such violations are serious, the tenderer may be excluded for up to five years from future contracts (art. 45(1) of the Federal Act).

Decisions of contracting authorities may be appealed before the Federal Administrative Court (art. 52 of the Federal Act on Public Procurement). Appeals related to contracts awarded by the Federal Administrative Court fall within the jurisdiction of the Federal Supreme Court. Appeals related to contracts awarded by the Federal Supreme Court are dealt with by an internal appeals committee established by that Court.

Federal Administration employees who play a role in procurement processes must sign a declaration of impartiality. The Federal Procurement Conference approves and the Competence Centre for Federal Public Procurement conducts training programmes on public procurement (art. 24(1)(b) and art. 27(2)(c) of the Ordinance on the Organization of Federal Public Procurement). The courses may be offered to cantonal and communal procurement staff (art. 27(2)(c) of the Ordinance).

The Parliament Act, the Financial Budget Act and the Financial Budget Ordinance govern the management of public finances. The Federal Department of Finance prepares the budget on behalf of the Federal Council and monitors credit applications and revenue estimates (art. 58 of the Financial Budget Act), with the assistance of the Federal Finance Administration (art. 59 of the Act). The Federal Council adopts the draft budget, determines State financial statements and submits both to the Federal Assembly for final approval.
Cantons are bound by their own constitutions and financial budget acts. The majority of cantons have adopted the financial referendum instrument, whereby an expenditure decision must or may be subject to a popular vote.

Chapter 5 of the Financial Budget Act and chapter 4 of the Financial Budget Ordinance set out the accounting standards. The Confederation’s financial statements are prepared in accordance with the International Public Sector Accounting Standards. The Swiss Federal Audit Office assesses financial management during all phases of budget implementation, reviews the preparation of State financial statements (art. 6(a) and (b) of the Federal Audit Office Act), and audits administrative units’ management and accounting processes (art. 6(c), (e) and (f) of the Act).

An internal control system has been introduced in every administrative unit to monitor risks with financial implications. The Federal Finance Administration coordinates risk management by, inter alia, defining methodological standards and minimum requirements, publishing guidelines and explanatory manuals, running a digital application for risk reporting and offering courses to the Federal Administration.

Bookkeeping is the responsibility of individual agencies. Bookkeeping requirements are set out in the Ordinance on the Maintenance and Retention of Accounts. Supporting documents must be kept for 10 years. The falsification or destruction of accounting documents may constitute a criminal offence under the Criminal Code (arts. 166, 251, 252, 254, 325 and 327a).

Public reporting; participation of society (arts. 10 and 13)

Freedom of information is protected by the Federal Act on Freedom of Information in the Administration, the Ordinance on Freedom of Information in the Administration and the cantonal laws on transparency and public access to information.

Requests under the Federal Act on Freedom of Information in the Administration may be submitted to the relevant authority in oral, electronic or written form. The Federal Act provides for exceptions, whereby access to an official document may be limited, deferred or refused (arts. 7–9). The authority invoking the exception has the burden of proof and must respect the principle of transparency. No fees are charged in the procedure for accessing official documents. By way of exception, fees may be charged if an application for access requires particularly extensive processing (art. 17 of the Federal Act). This is the case if the processing by the authority of an application for access requires more than eight hours of work (art. 14 of the Ordinance on Freedom of Information in the Administration).

A dissatisfied requestor may seek mediation before the independent Federal Data Protection and Information Commissioner. If the requestor disagrees with the Commissioner’s recommendation, he or she can request a decision from the relevant authority. The authority may also issue a decision ex officio. This decision is subject to appeal to the Federal Administrative Court and then the Federal Supreme Court.

Authorities are required to proactively publish important official documents on the Internet provided that such publication does not cause disproportionate costs or violate legal provisions (art. 19 of the Ordinance on Freedom of Information in the Administration).

The Federal Act on the Consultation Procedure and the Ordinance on the Consultation Procedure require the publication of draft constitutions, laws and ordinances on a designated website (www.fedlex.admin.ch/de/consultation-procedures/ongoing), with the opportunity for the public to comment. Completed consultations are published on another website (www.fedlex.admin.ch/de/consultation-procedures/ended/2022). Political, economic and social organizations can further exercise their influence on the administration through extra-parliamentary committees.

There are no specific awareness-raising campaigns or training programmes on corruption in schools and universities. However, training modules on basic values and norms are available to all primary school pupils in most cantons.
The Interdepartmental Working Group on Combating Corruption comprises all Federal Administration offices involved in anti-corruption activities and the Office of the Attorney General. Representatives from the private sector, civil society and academia are also involved in its events. Its activity reports to the Federal Council include information on corruption risks in Switzerland. Law enforcement authorities, such as the police and the Office of the Attorney General, publish media releases and activity reports on cases of corruption. The media and non-governmental organizations play an active role in reporting cases of maladministration and corruption.

The Interdepartmental Working Group maintains a website with information on reporting offices where the public may report corruption.1

**Private sector (art. 12)**

The Interdepartmental Working Group on Combating Corruption is tasked with strengthening exchanges between the public sector and the private sector. The counter-crime strategy for the period 2020–2023 of the Federal Department of Justice and Police highlights public-private partnership as a guiding principle and requires targeted prevention and awareness-raising programmes for the private sector. The State Secretariat for Economic Affairs promotes, on its own or together with regulatory bodies such as the Swiss Association for Standardization, the development of standards and procedures with a view to safeguarding the integrity of private sector entities. The State Secretariat also engages in regular awareness-raising activities targeting the private sector, with a special focus on small and medium-sized enterprises.

Registration in the commercial register is either mandatory or voluntary according to the type of legal entity (art. 927 of the Swiss Code of Obligations).2 Failure to register, the making of false statements or the omission of information constitute criminal offences (arts. 153 and 326ter of the Criminal Code). The Commercial Register Ordinance lays down transparency requirements for the establishment and management of corporate entities, such as the obligation to verify documents (art. 16 of the Commercial Register Ordinance; art. 929(1) and (2) of the Swiss Code of Obligations) and identify natural persons (art. 24a of the Ordinance). Information in the commercial register is public (art. 936 of the Code; art. 10 of the Ordinance).

Legal persons are subject to obligations regarding transparency. Companies must maintain a register of their shareholders, partners and beneficial owners, including companies with bearer shares (art. 686 and 697 of the Swiss Code of Obligations).

The Federal Act on Financial Assistance and Subsidies and the Federal Act on Public Procurement govern subsidies and licences granted by public authorities for commercial activities. Transparency, objectivity and impartiality are general principles. To prevent the misuse of such subsidies, applicants are required to provide the competent authority with access to their records and premises (art. 11 of the Federal Act on Financial Assistance and Subsidies).

Article 94b of the Ordinance on the Personnel of the Swiss Confederation establishes a waiting period of a minimum of 6 and a maximum of 12 months for a former public

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2 Sole proprietorships (art. 931 of the Swiss Code of Obligations); general partnerships (arts. 552 and 553 of the Code); limited partnerships (arts. 594 and 595 of the Code); companies limited by shares (art. 643 of the Code); partnerships limited by shares (art. 764 (2) of the Code); limited liability companies (art. 779 of the Code); cooperatives (arts. 830 and 835 of the Code); associations (art. 61 of the Civil Code); foundations (art. 81 of the Civil Code); limited partnerships for capital investment schemes (art. 100 of the Collective Investment Schemes Act); investment companies with fixed capital (art. 112 of the Collective Investment Schemes Act); investment companies with variable capital (art. 37 of the Collective Investment Schemes Act); public institutions (art. 932 of the Swiss Code of Obligations) and branch offices (art. 931 of the Swiss Code of Obligations).
official to take up a position that could lead to a conflict of interest with the activity that he or she previously carried out.

The Swiss Code of Obligations contains accounting standards and prohibitions for the private sector (arts. 957 ff.). Accounting records, together with audit reports, must be retained for 10 years (art. 958f). Like in the public sector, the falsification or destruction of accounting documents may constitute a criminal offence under the Criminal Code (arts. 166, 251, 252, 254, 325 and 327a).

The Federal Audit Oversight Authority oversees the implementation of auditing standards, which are updated by professional associations such as EXPERTsuisse. Article 727 of the Swiss Code of Obligations lays down the types of companies that must have their annual financial statements audited by licensed auditors. Article 59(2) of the Federal Act on Direct Federal Taxation provides that bribes, as defined in the Criminal Code, paid to Swiss or foreign public officials are not tax deductible.

**Measures to prevent money-laundering (art. 14)**

The Swiss anti-money-laundering legal regime is defined at the federal level and consists principally of the Anti-Money-Laundering Act, the Ordinance on Combating Money-Laundering and Terrorist Financing, the FINMA Ordinance on the Prevention of Money-Laundering and the Financing of Terrorism (the FINMA Ordinance) and the Agreement on Due Diligence (CDB 20), in addition to relevant circulars issued by FINMA and regulations issued by the self-regulatory organizations.

To comply with the anti-money-laundering requirements, all financial institutions and designated non-financial businesses and professions (where such businesses and professions are working as “financial intermediaries” within the meaning of article 2, paragraph 3, of the Anti-Money-Laundering Act) must carry out customer due diligence (see the section on article 52 below).

While most designated non-financial businesses and professions are covered by the anti-money-laundering requirements, some of their activities susceptible to money-laundering are not.

The Anti-Money-Laundering Act designates the authorities with anti-money-laundering supervisory functions for each reporting entity (arts. 12, 17 and 25(1)). They include FINMA (for banks, securities traders, insurance companies and institutions subject to the law on collective investment schemes (fund administrators and managers)) and the self-regulatory organizations for designated non-financial businesses and professions. Designated non-financial businesses and professions can choose either to join one of the recognized self-regulatory organizations or to be directly supervised by FINMA (art. 12c of the Anti-Money-Laundering Act).

Although the supervisory authorities may impose a range of rectification measures and sanctions for non-compliance with measures to prevent money-laundering, FINMA does not have the power to impose monetary sanctions such as fines.

Article 23 of the Anti-Money-Laundering Act establishes MROS as the Swiss financial intelligence unit.

Anti-money-laundering supervisory and law enforcement authorities cooperate and exchange information at both the domestic and international levels (arts. 29–32 of the Anti-Money-Laundering Act; arts. 38 and 39 of the Financial Market Supervision Act).

The Ordinance of 11 February 2009 on the control of cross-border cash movements introduced a disclosure system for the cross-border transportation of cash (including bearer negotiable instruments). Persons subject to the disclosure requirement must, at the request of the customs office, provide information on the import, export and transit of cash exceeding 10,000 Swiss francs (art. 3). The Ordinance provides for the provisional seizure of cash and includes a criminal law provision.
Electronic transfer of funds’ requirements are in line with the Convention (arts. 10(1) and 37(4) of the FINMA Ordinance).

Switzerland actively contributes to the development and strengthening of regional and international cooperation on the fight against money-laundering, particularly through its participation in FATF and the Egmont Group of Financial Intelligence Units.

2.2. Successes and good practices

- A comprehensive system of codes of conduct, including a general code of conduct for the Federal Administration and specialized codes of conduct for the judiciary and administrative agencies (art. 8, para. 2, and art. 11).
- A staff data management system that contains the details of authorized secondary activities performed by Federal Administration employees (art. 8, para. 5).

2.3. Challenges in implementation

It is recommended that Switzerland:

- Consider enhancing the independence of the Interdepartmental Working Group on Combating Corruption (art. 6, para. 2).
- Endeavour to identify positions considered especially vulnerable to corruption and establish adequate procedures for the selection and training of individuals for such positions (art. 7, para. 1 (b)).
- Consider enhancing transparency in the funding of political parties by ensuring that donations and expenditures are regularly audited and that audit findings are made available to the public, in accordance with Swiss legislation (art. 7, para. 3).
- Consider strengthening systems that promote transparency and prevent conflicts of interest in the funding of candidatures for elected public office (art. 7, paras. 3 and 4).
- Make the digital contract management system maintained by the Federal Administration publicly available to increase transparency in public procurement (art. 9, para. 1 (a)).
- Develop public education programmes that contribute to non-tolerance of corruption (art. 13, para. 1 (c)).
- Extend the anti-money-laundering regime to all the activities of designated non-financial businesses and professions that are susceptible to money-laundering and review the lack of powers by FINMA to impose monetary sanctions such as fines (art. 14, para. 1 (a)).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Switzerland has established a legal framework for international cooperation and asset recovery and provides, to a large extent, effective legal assistance for the seizure, confiscation and return of assets. Asset recovery through international cooperation is governed by the general provisions on mutual legal assistance in the Federal Act on International Mutual Assistance in Criminal Matters of 20 March 1981 and its implementing ordinance, in addition to relevant bilateral and multilateral treaties to which Switzerland is a party, including the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its Second Additional Protocol and the Council of Europe Criminal Law Convention on Corruption of 27 January 1999.
Within the Federal Office of Justice, the International Legal Assistance Division is the central authority for mutual legal assistance, including asset recovery.

Switzerland can cooperate in the area of asset recovery on the basis of reciprocity and regardless of the existence of a treaty (art. 8 of the Federal Act on International Mutual Assistance in Criminal Matters). The same set of measures and procedures that are available in domestic criminal proceedings, including those relating to the tracing, freezing, seizure and confiscation of property, are available in the context of such cooperation. Switzerland implements the provisions of the Convention against Corruption directly in cases where no relevant agreement applies.

Notification of a customer targeted by a mutual legal assistance request is expressly authorized by the Federal Act on International Mutual Assistance in Criminal Matters (art. 80n). Accordingly, the bank account holder, and any other person with an interest considered sufficient, is notified before transmission of the requested information. This might compromise the foreign investigation, in particular in asset recovery cases.

In 2011, Switzerland established the Asset Recovery Section within the Directorate of International Law at the Federal Department of Foreign Affairs. The Section is tasked primarily with implementing the Foreign Illicit Assets Act, an administrative law that provides for subsidiary measures complementing mutual legal assistance in cases in which foreign politically exposed persons are involved. The Section is also tasked with negotiating restitution agreements with affected countries of origin. It works closely with the Federal Department’s Swiss Agency for Development and Cooperation, which has an asset return unit.

Switzerland has adopted a strategy on freezing, confiscating and returning illicitly acquired assets of politically exposed persons.

Switzerland has requested the seizure of funds abroad in connection with at least two cases of corruption and money-laundering and has returned funds to countries in several cases.

The Federal Act on International Mutual Assistance in Criminal Matters expressly allows for the spontaneous sharing of information and evidence (art. 67a). MROS, FINMA, Fedpol and other competent authorities can exchange information internationally without prior request and are doing so in practice. MROS has signed 11 memorandums of understanding with its foreign counterparts that also provide for the spontaneous exchange of information.

Switzerland has concluded numerous bilateral and multilateral international cooperation agreements relevant to penal matters and the tracing of criminals and proceeds of crime.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Financial institutions and designated non-financial businesses and professions (where such businesses and professions are working as “financial intermediaries” within the meaning of article 2, paragraph 3, of the Anti-Money-Laundering Act) are subject to the anti-money-laundering requirements, in accordance with the Anti-Money-Laundering Act, the Ordinance on Combating Money-Laundering and Terrorist Financing, the FINMA Ordinance and the Agreement on Due Diligence, in addition to relevant circulars issued by FINMA and regulations issued by the self-regulatory organizations.

These requirements cover customer due diligence measures (art. 3 ff. of the Anti-Money-Laundering Act; art. 1 ff. of the FINMA Ordinance; the Agreement on Due Diligence), including customer identification and verification (art. 3(1) of the Anti-Money-Laundering Act; art. 52(1) of the FINMA Ordinance), beneficial owner identification and verification (art. 4(1) of the Anti-Money-Laundering Act; art. 4 of the Agreement on Due Diligence), the ongoing monitoring of transactions (art. 6(2) of the Anti-Money-Laundering Act; art. 20(1) of the FINMA Ordinance),
record-keeping (for at least 10 years, art. 7(3) of the Anti-Money-Laundering Act) and the reporting of suspicious transactions to MROS (art. 9 of the Anti-Money-Laundering Act; art. 305ter of the Criminal Code). The requirements also include assessing the risks of money-laundering and taking appropriate measures to manage those risks (arts. 13 and 25(2) of the FINMA Ordinance), and applying enhanced due diligence to high-risk customers, accounts and transactions, including accounts of foreign politically exposed persons and high-risk domestic politically exposed persons (art. 6(3) of the Anti-Money-Laundering Act; art. 20(1) of the FINMA Ordinance). The obligations of increased due diligence that apply to foreign politically exposed persons, and to domestic politically exposed persons and politically exposed persons of international organizations when they present increased risks, also apply to their family members and close associates (art. 6(3) and (4) of the Anti-Money-Laundering Act).

The Swiss normative framework identifies the relationships and transactions that are considered in all cases to be high risk (art. 6(3) of the Anti-Money-Laundering Act; art. 13(3)(c) and art. 14(3) of the FINMA Ordinance). FINMA may also take into account specific information related to the activities of the financial intermediaries and order more stringent measures depending on the level of risk involved (art. 3(2) of the FINMA Ordinance).

The procedures for the establishment of banks (art. 3 of the Banking Act; art. 10 the Banking Ordinance) prohibit the establishment of shell banks. The FINMA Ordinance prohibits banks from having correspondent relationships with shell banks or with banks that provide correspondent services to shell banks (arts. 8 and 37).

Although Switzerland has not established financial disclosure systems for public officials, in 2022 it prepared a study entitled “Possible design of a reporting obligation for significant assets, capital investments and liabilities for holders of functions with increased corruption risks”, which was required by measure 8 of the Federal Council’s anti-corruption strategy for the period 2021–2024.

Switzerland has not adopted measures requiring appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records in relation thereto. Although all taxpayers in Switzerland are required under tax rules to disclose income and assets of any kind, irrespective of origin or whether the assets are located in Switzerland or abroad (arts. 6 and 124(2) of the Federal Act on Direct Federal Taxation), these measures are not designed to take into account the objectives of article 52, paragraphs 5 and 6, of the Convention.

The Swiss financial intelligence unit (MROS) was established in 1998 as a division of Fedpol and has been a member of the Egmont Group since that time. MROS has its own secure database, known as GEWA, and uses the UNODC goAML software, which is linked with 1200 members, including financial intermediaries. On 1 July 2021, the amended Anti-Money-Laundering Act came into force, allowing MROS, under article 11a, paragraph 2bis, to request all related information to the extent that it is available from a Swiss financial intermediary if, on the basis of the analysis of information from a foreign reporting office, it becomes apparent that financial intermediaries subject to the Anti-Money-Laundering Act are or have been involved in a transaction or business relationship in connection with this information. Before 1 July 2021, MROS did not have the power to formulate requests in the name of a foreign reporting office in the absence of a suspicious transaction report sent to MROS by a Swiss financial intermediary. This legal development therefore further enhances the ability of MROS to cooperate internationally.

Considering the size of the Swiss financial sector, MROS seems to have adequate financial and technical resources but not enough human resources. At the time of the country visit, MROS had 61 staff positions (49 full-time equivalents), including 35 analysts.
Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Swiss law establishes the right of any person, whether legal or natural, to initiate an action (art. 67 of the Civil Procedure Code) to establish ownership of property (art. 641 of the Civil Code) or claim compensation for damages (art. 28a of the Civil Code; art. 41 of the Swiss Code of Obligations) in the domestic courts. This could be done either by instituting civil proceedings or by participating in criminal proceedings (art. 122 of the Criminal Procedure Code). These provisions equally apply to foreign States, and many actions have been initiated by foreign States in Swiss courts on the basis of them. Furthermore, the Federal Supreme Court has recognized the right of foreign States to compensation as aggrieved parties.³

Article 70 of the Criminal Code provides that the court must order the forfeiture of assets that have been acquired through the commission of an offence or that are intended to be used in the commission of an offence or as a payment therefor, unless the assets are passed on to the person harmed for the purpose of restoring the prior lawful position. Official notice must be given of forfeiture. The rights of persons harmed or third parties expire five years after the date on which official notice is given.

The Federal Act on International Mutual Assistance in Criminal Matters provides for the enforcement of foreign final and enforceable criminal judgments, including confiscation orders, and the return of funds, either directly (without exequatur) on the basis of article 74a (return on the basis of a foreign confiscation order) or through exequatur procedures on the basis of article 94. The Swiss authorities can also issue a domestic confiscation order upon a foreign request on the basis of the general provisions of the Criminal Code, the Criminal Procedure Code and the Federal Act on International Mutual Assistance in Criminal Matters that regulate confiscation and mutual legal assistance.

Swiss courts can order the confiscation of property of foreign origin by adjudication of an offence of money-laundering, provided that the main offence was also liable to prosecution at the place of commission (art. 305bis, para. 3, read in conjunction with art. 70, of the Criminal Code).

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 of the Criminal Code).

Swiss authorities can take provisional measures to preserve property at the request, formal or informal, of another State (art. 18 of the Federal Act on International Mutual Assistance in Criminal Matters). While article 18 of the Act is an optional provision, Swiss courts have ruled that, if all conditions for the application of the Act are fulfilled, the Swiss authorities have the obligation to ensure a follow-up to a request for assistance. Requests for provisional measures addressed pursuant to article 18 of the Act can equally be based on an order for provisional measures issued in the requesting State.

Swiss authorities can use protective seizure to prevent any transaction or any transfer or disposition of property subject to confiscation (art. 263 ff. of the Criminal Procedure Code). In previous situations involving a change of Government in various countries, Switzerland has carried out preventive asset freezing in the absence of criminal proceedings and without prior request. Since 2016, the Foreign Illicit Assets Act (adopted on 18 December 2015) has given the process an explicit legislative framework and provides for this type of asset freezing when certain conditions are met.

³ In a ruling of 3 November 2010, for example, the Federal Supreme Court did so for Brazil and recognized that Brazil was harmed by the acts of corruption.
The Federal Act on International Mutual Assistance in Criminal Matters (arts. 28 and 76) specifies the information to be included in requests for mutual legal assistance sent to Switzerland. More detailed requirements are established in case law and through the direct implementation of article 55, paragraph 3, of the Convention.

The Federal Act on International Mutual Assistance in Criminal Matters provides for the possibility of refusing a request if the importance of the offence does not justify conducting proceedings (art. 4). As a matter of practice, and before refusing a request or lifting provisional measure, the requesting State may be invited to provide additional documents or information (art. 78 (3)). The Swiss competent authorities also conduct periodic reviews of frozen accounts and assets and contact the foreign States concerned on a regular basis (twice a year) for follow-up.

In addition to establishing grounds for third persons to participate as civil plaintiffs in criminal proceedings, the Criminal Code (art. 70), the Federal Act on International Mutual Assistance in Criminal Matters (art. 74a(4)(c)) and the Foreign Illicit Assets Act (art. 16) include provisions on preserving the rights of bona fide third parties in cases of confiscation, including pursuant to a foreign request.

Return and disposal of assets (art. 57)

The general principle under Swiss legislation is that forfeited assets are allocated to the public treasury. Nevertheless, if the State or any other person that has suffered harm has joined Swiss criminal proceedings and established their entitlement to the assets, those assets may be returned to that State or person without the need for forfeiture (art. 73 of the Criminal Code). Although these provisions, in addition to direct implementation of the Convention, allow the Swiss authorities to return assets in line with the scenarios covered in article 57, paragraph 3, of the Convention, Swiss legislation does not explicitly mandate such return. In fact, the Federal Act on the Division of Forfeited Assets does not give foreign States the right to claim a share of any confiscated assets. The asset-sharing agreement must set out the terms of apportionment and the apportionment formula. In general, assets are shared equally between Switzerland and the foreign State. However, it is possible to deviate from this formula, including returning all the confiscated assets to the foreign State (“fictitious sharing”), for justified reasons.

Swiss legislation provides for the possibility of charging the requesting State for some of the expenses incurred in investigations, prosecutions or judicial proceedings (art. 80q of the Federal Act on International Mutual Assistance in Criminal Matters; art. 19 of the Foreign Illicit Assets Act). In practice, Switzerland does not charge any expenses when rendering international cooperation, except in the case of extraordinary costs.

The Foreign Illicit Assets Act (art. 18(2)) and the Federal Act on the Division of Forfeited Assets (art. 11(1)) allow the Federal Council to conclude agreements governing the restitution of assets, and Switzerland has developed a practice of concluding agreements on the return and final disposal of confiscated property.

Switzerland reported that over the past 30 years, it has negotiated modalities for the return of over $2 billion to affected States.

3.2. Successes and good practices

- Switzerland provides, to a large extent, effective legal assistance for the seizure, confiscation and return of assets (art. 51).
- Switzerland has adopted a dedicated strategy for freezing, confiscating and returning illicitly acquired assets of politically exposed persons (art. 51).
- The Federal Act on International Mutual Assistance in Criminal Matters (art. 74a) provides for a simplified procedure for returning funds based on a foreign confiscation order, without the need for an exequatur decision (art. 54, para. 1 (a)).
Switzerland has adopted a legislative framework providing for preventive asset freezing in the absence of criminal proceedings or foreign requests (art. 54, para. 2 (c)).

The Swiss competent authorities conduct periodic reviews of frozen accounts and assets and contact the foreign States on a regular basis (twice a year) for follow-up (art. 55, para. 8).

3.3. Challenges in implementation

It is recommended that Switzerland:

- Take the necessary measures to better ensure the confidentiality of incoming international cooperation requests (art. 51).
- Consider establishing effective financial disclosure systems for appropriate public officials that provide for appropriate sanctions for non-compliance, and consider permitting its competent authorities to share that information with foreign competent authorities when necessary to investigate, claim and recover proceeds of offences established in accordance with the Convention (art. 52, para. 5).
- Consider taking the necessary measures to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records in relation thereto (art. 52, para. 6).
- Consider updating article 18 of the Federal Act on International Mutual Assistance in Criminal Matters, in the light of the Convention and rulings by the Swiss courts (art. 55, para. 2).
- For greater legal certainty, expressly provide for a mechanism for the return and disposal of assets in accordance with the provisions of article 57, paragraph 3, of the Convention (art. 57, paras. 1 and 3).
- Increase the human resources of MROS in view of the size of the Swiss financial sector (art. 58).