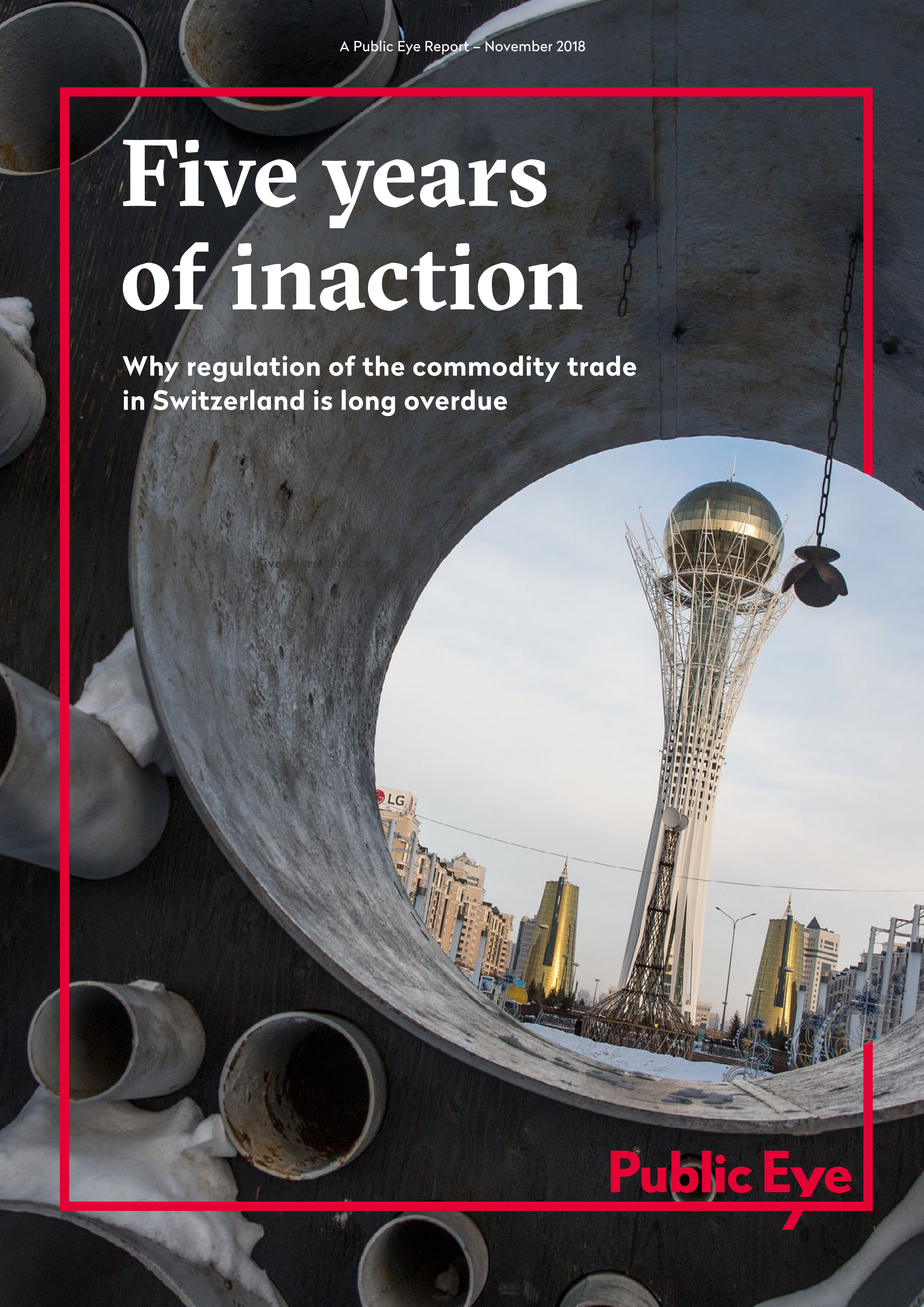
A Public Eye Report – November 2018

Five years of inaction

Why regulation of the commodity trade in Switzerland is long overdue



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1 Introduction

The Federal Council is soon due to publish a fresh assessment of the state of the Swiss commodities sector, five years on from its "Background Report: Commodities"[1] published on 27 March 2013. In the interim period the authorities published three reports in 2014,[2] 2015[3] and 2016[4] on the progress made to implement the 17 recommendations of the interdepartmental platform on commodities which falls under the auspices of the Federal Department of Foreign Affairs (FDFA), the Federal Department of Finance (FDF) and the Federal Department of Economic Affairs, Education and Research (EAER).

In its Background Report, the Federal Council recognises that "As the industry increases in size it brings with it additional challenges that must be taken seriously", stating that these challenges are linked to respect for human rights and the environment in producer countries, the fight against corruption and the "resource curse" seen in developing countries. The report stated that these challenges presented "reputational risks" for Switzerland.[5]

In response to these challenges, the federal government nonetheless restricted itself to demanding that "all companies operating in or out of Switzerland [...] conduct themselves responsibly, and with integrity", thereby omitting the fact that the lack of regulation of the sector is part of the problem.[6] Of the 17 recommendations made by the Background Report, few properly address the problems of the commodities trading sector. Some simply seek to maintain Switzerland's "attractiveness as a business location"[7] (two recommendations), an aim that often serves to justify the lack of action in the fields of combating corruption and enforcing the respect for human rights.

Furthermore, in its "Background Report: Commodities", the Federal Council also admitted that "Fragile and conflict-affected states often lack the capacities needed for dealing with these problems. For this reason, Switzerland is actively involved in the development and implementation of international initiatives and standards".[8] The Swiss federal authorities also consider international competition a means of pushing the country "to maintain and consolidate its competitive edge as a business location".[9] Indeed, any rules should apply to all business locations to prevent companies from choosing their domicile through regulatory arbitrage. That said, this aim should not serve as an excuse to prevent improvement at the national level, especially given that Switzerland is by far the biggest commodity trading hub.

THE PROGRESS MADE FALLS SHORT OF THE SCOPE OF THE PROBLEMS

After five years of existence, the interdepartmental platform on commodities has achieved very little. Since the Federal Council's first report was published, the scandals have come thick and fast (see the summary of the main cases in the annex of this report). The reality of Swiss commodity traders' business activities is completely different from the image presented by the industry's representatives to political decision-makers and the media, which focuses on their efforts on compliance and corporate social responsibility. The federal authorities in turn reflect this image.

The scandals have involved corrupt payments when obtaining oil contracts in extremely sensitive jurisdictions, such as Gunvor in Congo Brazzaville, partnerships with "politically exposed persons" (PEPs), such as Vitol in Kazakhstan or Trafigura in Angola – cases that reveal the high-risk appetite and dubious practices of the main Swiss traders' business models.

Other cases shed light on the human rights violations and environmental damage that Swiss commodities companies are implicated in. In 2016, Public Eye revealed how Swiss commodity traders play a crucial role in the production, sale and supply of fuel with an extremely high sulphur content in West Africa – demonstrating how traders take advantage of weak legislation, in countries such as Nigeria or Ghana, to maximise their profits at the expense of the health of hundreds of millions of people.

These scandals testify to the multiple manifestations of the resource curse that Swiss companies contribute to. The Federal Council should acknowledge the scale of these problems and propose "tailored, binding regulations"[10] in line with the recommendation made to Switzerland by the OECD in March 2018. Will the Federal Council's new report finally put forward an action plan and credible measures? We have significant cause for doubt.

The current report by Public Eye outlines the developments in relation to the Swiss commodities trading sector, detailing the corruption risks linked to this activity. It then reviews the positions of the federal authorities and the actions undertaken. Finally, it outlines the measures we consider necessary to contain the risks, describing how they apply – or would apply – in a national or international context.

2
Corruption: a central issue

Approximately 69 % of the world's population living in extreme poverty lives in resource-rich countries[11]. Extracting and trading commodities provide a unique opportunity for these countries to achieve economic development. Nevertheless, despite their natural resource wealth, these states remain prisoners of poverty due to poor governance and authoritarian or at times even dictatorial regimes. Of the multiple causes of the resource curse, persistent corruption within government institutions has been identified as a key factor.

As the world's biggest commodities trading hub, Switzerland has a significant responsibility. It is home to companies that account for approximately one third of the international trade of crude oil and petroleum products. By way of example, Swiss commodity traders alone bought US$ 55 billion worth of crude oil from the national oil companies of the ten biggest producer countries in sub-Saharan Africa in 2011 and 2013, which equates to 12 % of these countries' combined state revenues.[12]

Commodity trading presents heightened corruption risks which were clearly identified in 2015 by Switzerland's interdepartmental coordinating group on combating money laundering and the financing of terrorism (CGMF), which stated that: "It is well known that the extraction industries figure prominently amongst the activities exposed to foreign bribery.[13]

There are several reasons for this:

a) Commodities and in particular crude oil are a matter of national sovereignty. By awarding private companies the right to explore, extract and market its natural resources, the state imposes its desires on the entire value chain – this makes oil trading an intrinsically risky business. This risk increases greatly where the rule of law is weak, which is often the case in producer countries.
b) There is a huge amount of money at stake in each trade. Depending on the price of a barrel of crude oil, a single cargo can be worth up to US$ 100 million. These revenues are essential for producer countries.

> "It is well known that the extraction industries figure prominently amongst the activities exposed to foreign bribery." **Swiss Federal Council report on the national evaluation of the risks of money laundering (2015)**

c) There tends to be opacity around both the transactions and the stakeholders, whether they are private or state-owned companies.
d) The business is not subject to any regulations specifically targeting the risks associated with it.

The commodities trade all too often contributes to the resource curse by decreasing state revenues, weakening institutions and promoting illegitimate or even illegal accumulation of wealth on the part of the elites that govern producer countries.

DANGEROUS STRATEGIES

There are two ways for a commodity trading company operating in jurisdictions where the rule of law is weak to obtain market share. Both are risky and in both cases the beneficial activity relies on the absence of regulation.

The traditional strategy involves outsourcing the risk by paying intermediaries. As soon as the anti-corruption agreements in the contracts with the trading company have been signed, the intermediary is free to pay all or part of their commission to public officials tasked with awarding the desired contract. This was the option chosen by Gunvor in Congo-Brazzaville – and that caused the Office of the Attorney General of Switzerland to initiate proceedings into the company for organisational shortcomings. Other examples, such as that of Brazil or Venezuela (see the summary of the main cases in the annex of this report), show that paying intermediaries who have notoriously questionable profiles is not an uncommon practice.

Just as adventurous, the second strategy involves forming partnerships with "politically exposed persons" (PEPs) able to obtain contracts, either directly with representatives of the authorities or with individuals close to them. Trafigura opted for this approach in Angola, as Vitol did in Kazakhstan – two states in which corruption is endemic.

THE RISKS ARE RECOGNISED AT THE INTERNATIONAL LEVEL

The risks of corruption linked to the commodities trade have now been recognised by the international community. Numerous fora have focused on the sector whose efforts may not yet have translated into tangible progress but recognition of the problems posed by the trade has grown considerably. Topics of discussion include the fight against corruption on the one hand and improving governance in producer countries on the other.

For example, without targeting Switzerland in particular, the OECD has documented numerous acts of corruption in the commodities sector. In 2014, an initial study identified the extractives sector as presenting the highest risks of corruption – greater than the arms trade and public procurement.[14]

Analysing 131 cases of corruption in relation to commodities, another OECD publication[15] showed that, in one in five cases, corruption had taken place when the resources were traded, i.e. during the core phase of Swiss commodity trading companies' business models. The study also made a series of recommendations to producer countries, companies and the home countries where these companies are registered.[16] The

Swiss banks are key actors in the global commodity trade finance. | © Mark Henley table below summarises the measures proposed by the OECD countries where commodities trading companies are registered.

The OECD has initiated a dialogue on development policies targeting the natural resources sector. Bringing together states, companies and NGOs – including Public Eye – the discussions have focused on preventing the risks of corruption and improving transparency. Two of the main trading centres, Switzerland and the United Kingdom, also participate in this dialogue. Although Switzerland had always championed the launch of an international initiative such as this, the federal authorities were not particularly forthcoming in terms of voluntary action – to the extent that in January 2018, the Swiss representatives were pointedly asked, following one of their interventions, whether they wished to adjourn the process in order to clarify their own position.[17]

THE OECD HIGHLIGHTS SWITZERLAND'S SHORTCOMINGS

In its evaluation of the implementation by Switzerland of the Anti-Bribery Convention, the OECD confirmed in 2018 that "The risk of corruption is particularly high in this sector because of the players involved (state-owned enterprises, foreign public officials), very high potential gains, secrecy surrounding the actual sales, and the absence of specific regulations or international rules governing such transactions."[18] On the basis of this observation, the OECD Working Group invited the Swiss authorities to "take action that includes more sustained enforcement and measures to prevent foreign bribery in those sectors that are identified as being at greatest risk", meaning that the commodities trade in particular should be subject to "tailored, binding regulations".[19]

"The Swiss authorities should take action that includes more sustained enforcement and measures to prevent foreign bribery in those sectors that are identified as being at greatest risk." **OECD – Implementing report: Switzerland**

In this assessment Switzerland also came up for criticism because its criminal sanctions are so rare and ineffective in cases of cross-border corruption. Despite the key role that Switzerland has played in numerous high-profile cross-border corruption cases (e.g. Petrobras, 1MDB, etc.), the Working Group noted that from 2012 to 2017 only six individuals and five companies were convicted. It regretted "that the sanctions imposed are not effective, proportionate or dissuasive as provided for in the Convention, particularly in relation to legal persons, and that this is likely to alter the dissuasive effect of these convictions".[20]

RISK FACTOR	RECOMMENDED MEASURES (FOR HOME GOVERNMENTS)
Opaque transactions	Introduce adequate oversight of transactions
Opacity concerning ownership and governance structures of key actors involved in commodity trading	Require companies active in commodity trading to publicly disclose beneficial ownership information of businesses involved in transactions, including the direct or indirect involvement of any politically exposed persons.
Lack of transparency of commodity-trading-related data	Require companies active in commodity trading to disclose all payments to state-owned enterprises.
Lack of or insufficient compliance procedures within companies	Require companies active in commodity trading to carry out rigorous due diligence on their business partners, to prevent illicit transactions with politically exposed persons or other intermediaries. Require companies active in commodity trading to carry out rigorous due diligence on their supply chain to verify the origin of the commodities, the conditions under which they are acquired, in particular when sourcing from high-risk areas.

Five years after the Federal administration started its work on commodites, reliable data on the sector is still missing. | © Mark Henley

3

Problems ignored and data lacking in Switzerland

The Federal authorities have long recognised that Switzerland has a "particular responsibility" as the world's largest trading hub.[21] Nevertheless, there are no signs that the Federal Council is planning on acting on this recognition by introducing specific, binding measures that seek to mitigate the negative impact of the activities undertaken by Swiss companies in producer countries. However in November 2017, following the revelations of the Paradis Papers, Federal Councillor Simonetta Sommaruga did manage to make a coherent statement: "The natural resources sector has asked us to leave it to regulate itself. Its engagement to date has left us unconvinced. [...] If the market cannot abide by the rules it sets itself, then the state must regulate."[22]

Yet we doubt that a majority in the Federal Council share her view. In fact, no less than 23 parliamentary interventions directly or indirectly addressing the natural resource sector were submitted from 2015 to 2018. Of the eight postulates and motions proposed to the Federal Council – which require the Council to take a position – the Council accepted only one: a postulate submitted by Luc Recordon (canton of Vaud) on the trading of gold in cases where human rights have been violated in its production.[23]

THE MYTH THAT BANKS PROVIDE INDIRECT OVERSIGHT OF THE TRADE

Published in 2015, the Federal Council's Report on Combating Money Laundering and the Financing of Terrorism stressed that the commodities trade presented a clear risk of Switzerland being used as a platform to launder assets derived from bribery committed abroad in resource-producing countries for the purpose of obtaining contracts.[24]

The same report also concluded that "the due diligence obligations [in relation to financial intermediaries] can be viewed as having an indirect risk-reducing effect in the areas not subject to the AMLA [Anti-Money Laundering Act]".[25] In other words, although the risks are clearly recognised, the Council argues that it is ineffective to regulate the commodities trade because the banks that fund its transactions indirectly supervise the sector. The federal authorities use this line of argument to avoid acting, mirroring the position of the banks and commodity traders themselves.

This argument clearly does not stand up to an analysis of the facts.

> "The commodity sector has asked us to leave it to regulate itself. Its undertaking to date has left us unconvinced." **Simonetta Sommaruga**

The same report provides the first counter argument: a commodities trader "can dispense with a financial intermediary in Switzerland, in particular for financing, which means the trading occurs outside the AMLA mechanism".[26]

Moreover, two thirds of the data analysed by the Money Laundering Reporting Office Switzerland (MROS) linked to the commodities trading sector comes from foreign authorities.[27] This fact confirms that problematic situations will not be detected via Swiss financial intermediaries even though the Swiss financial services industry provides a significant portion of the capital required for the business – over CHF 1,500 billion in 2011.[28] It should also be noted that some transactions are undertaken without the involvement of banks; for instance *swaps*, a form of bartering used by companies to exchange one commodity for another for example in the case of Trafigura and Nigeria where crude oil was traded for refined products. Trafigura used this system in Nigeria for years, until the government put a stop to it due to its opacity.

Finally, even if indirect supervision might be considered sufficient, banks are increasingly unable to exercise proper indirect supervision. The large trading houses are increasingly raising funds through syndicated loans or by issuing bonds. The sums often reach billions of dollars and the use of these sources of funding means that creditor banks waive their checks on individual transactions.

"We have access to billions of credit facilities which enable us to fund our own transactions and, under certain strict conditions, those of third parties." **Marco Dunand, Mercuria CEO**

In addition, their huge funds enable traders to replace banks. On the one hand, they do so by funding companies that do not have access to capital markets without being subjected to the same regulations as banks. Marco Dunand, CEO of Mercuria, confirmed this trend in the press: "We have access to billions of credit facilities which enable us to fund our own transaction and, under certain strict conditions, those of third parties."[29] No details of these self-imposed strict conditions are provided, in contrast to banks, traders are not subject to an oversight authority or specific regulations. On the other hand, traders become lenders to the governments of countries that produce natural resources, in particular through loans linked to future oil consignments. In a study on the debt of Low-Income Developing Countries, the IMF recently evoked the growing role that traders play: "External borrowing from commercial creditors has grown quickly. […] Commodity traders are among the [category of] 'other' commercial creditors who have extended sizeable loans in some countries (Chad, Republic of Congo)."[30] Chad was granted US$ 1.45 billion in loans by Glencore,[31] while in the Congo, Glencore and Trafigura provided loans totalling US$ 2 billion.[32]

The banks themselves recognised the problems they face in fulfilling their due diligence duties. In 2017, the Wolfsberg Group, which brings together 13 of the biggest international banks to prevent money laundering, cautioned that "it is extremely rare for any one bank to have the opportunity to review an overall trade financing process in complete detail given the premise of the trade business that banks deal only in documents".[33] Moreover, the documents are provided by the traders themselves.

In Switzerland there was an interesting development in the Council of States recently when Anne Seydoux-Christe (PDC/JU) submitted a postulate asking the Federal Council to assess whether the supervision provided by banks is sufficient to contain the risks of money laundering in the commodities trading sector.[34] Once again, the Federal Council had proposed to reject it but after the upper chamber accepted it in March 2018, the Council is constitutionally required to respond. Under the aegis of the State Secretariat for International Financial Matters (SIF), the administration is obliged to publish a report by March 2020.

This result is a direct consequence of the lessons learned from the case of Gunvor in the Republic of the Congo (see annex). None of the banks involved in that case had fulfilled their due diligence requirements relating to money laundering in a satisfactory manner, despite the numerous warning signs.

FIVE YEARS LATER THERE ARE STILL NO RELIABLE DATA

One of the main weaknesses of the background report published by the Federal Council in 2013 was the lack of detailed data on the commodities trading sector. After a year of work on the topic, the authorities were content to conclude that "There are, at present, no figures available on tax revenues deriving from the commodities industry."[35] The federal authorities also acknowledged that the statistics obtained from the survey carried out by the Swiss Federal Statistics Office (OFS) "do not make it possible to determine how many of those companies and employees belong specifically to the commodities industry".[36]

A motion submitted following the Federal Council's report called for the OFS to create a specific section in its General Classification of Economic Activities (NOGA) in order to ensure that commodity trading firms were specifically listed.[37] Once again, the Federal Council proposed to reject the parliamentary motion. Moreover, the relevant authorities have not subsequently provided reliable data. This lack of information on the sector has led to a mixture of problematic categories in the context of a multistakeholder process initiated by the Background Report; we provide details below.

One of the main weaknesses of the background report published by the Federal Council in 2013 was the lack of detailed data on the commodities trading sector.

HUMAN RIGHTS: "DATA" PROVIDED BY A RETICENT INDUSTRY

As part of its insistence on relying on voluntary measures taken by companies, the Federal Council advocated the establishment of a multistakeholder working group comprised of the administration, representatives of the sector and of civil society, to formulate standards relating to corporate responsibility (recommendation 11). Public Eye participated in this process.

Specifically, the goal of the Working Group was to develop "guidance" to implement the UN's Guiding Principles on Business and Human Rights.[38] The lack of reliable data from the authorities had a negative impact on the negotiations between the trading companies, their lobby – the Swiss Trading and Shipping Association (STSA) –, the NGOs and the administration. In an initial phase, a decision was taken to map the Swiss commodities sector. The administration tasked the Swiss Trading and Shipping Association with a significant part of the data gathering process. It relied entirely on information provided by the companies that accepted to participate, meaning there was a methodological bias from the outset. The Commodity Trading Monitoring Report[39] produced by this exercise and published with the stamp of the University of Geneva was presented by the STSA as an independent study and the "first scientific study" on the sector, when in reality is had been drafted by the "CSR officer" of the trading lobby. The University of Geneva's role was limited to carrying out a statistical analysis of the data to which their collaborators had exclusive access. The report was published on the website of the Swiss Research Institute on Commodities (SRIC), whose founding board includes the Secretary General of the STSA and the Chair of the Swiss Coffee Trade Association as members.

This process shows the passive stance of the Federal Council, which refuses to tackle the challenges posed by the trading sector.

Even before the report was officially published, the STSA used the results for lobbying purposes, particularly in the context of debates on the third reform of the Swiss corporate tax law.[40] One figure that appeared in the study in particular was picked up by several media outlets: the claim that the commodity trading sector employs 36,154 people in Switzerland. This estimate is based on a confidential list of companies, many of which are not actually active in the commodities trading sector. Public Eye analysed the misleading report[41] and compiled its own list. Unlike the lobby group, Public Eye published all the names of the companies identified.[42] On the basis of the 544 companies on Public Eye's list, the OFS calculated that the sector provides 7,594 direct jobs, which is 4.5 times lower than the inflated figures, or "alternative facts", put forward by the STSA.

This multistakeholder process, undertaken with companies more interested in protecting their reputation than in properly addressing the problems associated with their business activities, finally led to the publication of the "guidance document" – significantly later than planned. The Federal Council continues to rely solely on the good will of companies, leaving them free to decide if and how they plan to apply it. The Council did not take account of the recommendations of Public Eye and other NGO, who advocated that implementation of the guiding document by trading companies be regularly assessed by the authorities and that the results of these assessments be published. Under these circumstances, there is a high risk that this "guidance" will primarily serve to provide companies with a veneer of legitimacy. This process shows the passive stance of the Federal Council, which refuses to tackle the challenges posed by the trading sector.

Working conditions in gold artisanal mines of Burkina Faso questions the reality of the due diligence conducted by Swiss refiners on their supply chain. | © Pep Bonet – Noor/Keystone

4
Regulation to mitigate specific risks

In light of the specific risks posed by the sector and companies' lack of will to address them, it is vital to subject trading activities to binding regulations. Currently no such regulations exist and there is no political will in Switzerland to remedy the situation.

In its 2013 Background Report, the Federal Council states that Switzerland has a "regular practice of not pursuing sectoral economic policies".[43] This line of argument is unacceptable, not only because it dismisses all action that could be taken at the political level, but also because numerous industries are indeed regulated in Switzerland.

We shall refrain from citing the entire list to avoid this report becoming excessively lengthy and will limit our discussion to that of the financial sector, which is the closest to that of commodities. Banks and insurance companies are overseen by the Swiss Financial Market Supervisory Authority (FINMA) and must, for example, obtain a licence to operate. Is this an intolerable infringement to economic freedom or – on the contrary – regulation that is needed to protect consumers and, for the largest institutions, to prevent a systemic risk to the country in the event of them failing? The answer seems clear.

A IN FAVOUR OF A SUPERVISORY AUTHORITY

Despite their differences, the risks associated with the Swiss commodities trading sector are in some respects similar to those associated with Switzerland's financial services industry. The country's reputation needs to be protected; as a business location it needs to live up to the values that it promotes within the context of its diplomacy – therefore its traders' contribution to perpetuating the resource curse must be limited.

Federal Councillor Simonetta Sommaruga recognised the challenge: "It would be very damaging for our country if it once again found itself in the spotlight due to certain business practices. It would also be harmful if we were only to act in response to foreign pressure. I very much hope that we will take the requisite measures ourselves. Our reputation is at risk."[44]

In 2014, Public Eye outlined what such regulation could look like in Switzerland by describing the duties and powers of a Swiss Commodity Market Supervisory Authority (ROHMA).[45] The measures it advocated to regulate the commodities trading sector are targeted and enforceable. In addition to issuing authorisation to operate, ROHMA would be tasked with supervising compliance with five main measures. The table on page 14 summarises these measures and links them to the cases published by the press or NGOs since the Background Report was published.

> "It would also be harmful if we were only to act in response to foreign pressure. I very much hope that we will take the requisite measures ourselves. Our reputation is at risk."
> **Simonetta Sommaruga**

B DUE DILIGENCE REQUIREMENTS ON BUSINESS PARTNERS

Despite the risks associated with their business activities, commodity trading companies are not subject to any specific regulations in relation to their business partners. In contrast to the banking sector, for example, they are under no obligation to document details of the identity of their business partners or how these individuals obtain contracts or acquire the funds needed to carry out their business activities. Moreover, traders often do business with politically exposed persons (PEPs), either with government officials or individuals close to them. As is the case in the banking sector, such relationships can be legitimate, but they present a heightened risk of corruption that should be subject to enhanced due diligence checks. Currently, these fundamental compliance tasks are left in the hands of the companies themselves.

RISK	CASE	SOLUTION/MEASURES Due diligence requirements on business partners	Transparency of payments	Transparency of contracts	Transparency of beneficial ownership of companies	Due diligence requirements regarding supply chains
Corruption	Vitol/Kazakhstan (2018)	✖	✖	✖	✖	
	Lava Jato/Brazil (2018)	✖	✖	✖		
	PDVSA/Venezuela (2018)	✖	✖	✖	✖	
	Gunvor/Congo-Brazzaville (2017)	✖	✖	✖	✖	
	Trafigura/Angola (2013/2017)	✖	✖	✖	✖	
	Glencore/DRC (2017)	✖	✖	✖	✖	
	Louis Dreyfus Commodities/Brazil (2017)	✖				
	Philia/Congo-Brazzaville (2015)	✖	✖	✖	✖	
	Steinmetz/Guinea (2013)	✖	✖	✖	✖	
Human rights and the environment	Dirty Diesel/West Africa (2016)					✖
	Gold/Togo and Burkina Faso (2015)					✖

Source: Compilation Public Eye

In 2014, the British Financial Conduct Authority (FCA) observed very divergent “know your customer” practices within the sector (the regulator also cited the instance of business deals concluded with PEPs).[46] This is not surprising given that no standards exist defining the process to be followed or providing for sanctions in the event of non-compliance. In reality, this means that a trading company can plead ignorance if criminal, administrative or political authorities demand explanations. In fact, this line of defence was used by Gunvor when legal proceedings were opened in Switzerland in relation to its business in the Republic of the Congo. The company refused to accept responsibility for its actions, instead laying the blame on the shoulders of an ex-employee by accusing him of having made a mistake in paying intermediaries tasked with obtaining oil contracts. The managers pocketed rich profits thanks to this corruption-tainted business.

> “According to UK's Financial Conduct Authority, the lack of regulation sanctions ‘good students’.”

On the basis of these observations, the FCA concluded that the lack of regulation penalised “good students” and that the resulting distortion to competition increased companies’ risk appetite and encouraged regulatory dumping.

C TRANSPARENCY OF PAYMENTS TO GOVERNMENTS

In many producer countries, commodities generate a key part of state revenue through transactions exposed to corruption and embezzlement risks. Over the past ten years, international recognition has emerged that disclosing payments made by companies to governments is one means of mitigating these risks. This is underpinned by the notion that transparency promotes good governance.

INTERNATIONAL DEVELOPMENTS

Currently, 51 producers have applied this principle by joining the Extractives Industry Transparency Initiative (EITI). However, the transparency obligations focus solely on extraction (taxation, the award of production permits, etc.). In 2013, the EITI introduced a standard that also recommends that member states publish their revenues from trading commodities as well as the identity of the buyer.[47]

Since 2016, an EITI working group has assessed options for implementing the disclosure of payments linked to the sale of commodities by state-owned companies. Numerous countries such as Ghana, Nigeria or Iraq are actively contributing to this endeavour by developing guidelines.

This very promising process does however overshadow the fact that numerous problematic countries, such as Venezuela, Angola or Azerbaijan, have not joined the EITI. The standards cannot therefore replace binding rules in the home countries of the companies involved. That is why Canada, Norway and the European Union have complemented these provisions by adopting rules that apply to their companies' activities around the world. Two European directives have been transposed into numerous member states' national legislation, leading initial reports on payments to be published from 2015 onwards.

TRADING – A LOOPHOLE TO BE CLOSED

Yet once again, the applicable provisions only apply to extraction, excluding trading from the regulations applicable in the European Union. The example of Vitol in Kazakhstan demonstrates the absurdity of this situation (see annex): in line with the European Union directive, Vitol's Dutch holding company disclosed that it had transferred US$ 2.7 million to the Kazakh government in 2016 as part of its extractive activities. Yet it was not obliged to disclose the huge volumes of oil it traded in the same year through its joint venture Ingma, or the pre-financing of US$ 4 billion awarded to the Kazakh government from 2015 to 2016.

THE UNITED KINGDOM AS A PIONEER?

In Brussels, the European Commission is currently in the process of reviewing its accounting and transparency directives and it is due to issue recommendations before the summer of 2019. A large coalition of NGOs is championing the need to include the trading of commodities so that companies are obliged to disclose what they purchase from state-owned companies.

For its part, the United Kingdom could expand its legislation to cover trading, as it announced it would do in December 2017: "Going forward, in order to incorporate commodity trading transactions on payments to governments [numerous government departments] are working to explore whether we could further amend mandatory reporting rules to include companies engaged in physical oil, gas and minerals trading as an economic activity as well as a further category of payment within the legislation to capture such transactions."[48]

The International Monetary Fund (IMF) has also encouraged the UK government to pursue this approach, primarily due to the presence of numerous trading companies in the country, but also to set an example to other countries that could expand their provisions on transparency.[49] As previously noted, the OECD has also recommended that home countries where companies are registered should adopt such provisions.[50]

IN SWITZERLAND, A LAW PRESERVES OPACITY

In the framework of a review of Switzerland's corporate law, the Federal Council proposed a bill on the transparency of payments to governments. Its initial 2015 draft did not include trading, but the government gave itself the option of integrating trading at some time in the future if the international context were to change, through a delegation of authority that does not require parliamentary approval. The Federal Council however performed a U-turn the following year by withdrawing the delegation of authority so as not to damage the attractiveness of Switzerland as a business location. As a result, trading is excluded from the provision on transparency.

An exact copy of the European provisions, the Federal Council's proposal was limited to obliging companies active in the extraction of commodities to disclose their payments to governments of producer countries under certain conditions. The bill was approved by the National Council in June 2018 but the Council of States has yet to issue a ruling. In session, senators proposed to reintroduce the delegation of authority and a minority are calling for trading to be included now in the law.

If the Federal Council's bill is adopted in its current form, only four of the approximately 544 companies registered in Switzerland will certainty be subject to the new article to be included in the Swiss Code of Obligations.[51] The lack of will on the part of the authorities in relation to this issue is all the more surprising given that the commodities lobby reacted favourably to the concept of a delegation of authority. Moreover, even a company such as Trafigura[52] already chooses to publish part of its purchases from governments of producer countries, and has not seen the move impact its competitiveness. Ultimately, transparency of payment to governments, the only regulatory measure implemented since the Background Report was published in 2013, is a political farce.

D TRANSPARENCY OF CONTRACTS

The notion of "Transparency of contracts" seeks to guarantee that contracts are concluded in conformity with applicable legislation, in particular public procurement rules. In a study based on cases, the Natural Resource Governance Institute, an NGO, identified three types of corruption risk in relation to trading commodities. Two are linked to the conclusion of contracts: selecting the buyer (the trading company) and the terms of the contract itself.[53]

INTERNATIONAL DEVELOPMENTS

Under the aegis of the EITI, numerous producer states have committed to increase transparency. EITI Standard 2.4 recommends the disclosure of contracts signed and concessions awarded in relation to the exploitation of natural resources. Some 29 of the 51 EITI member states respect this provision in part or in full. Companies such as Rio Tinto or Total as well as international organisations such as the UN, the IMF or the International Finance Corporation (which is part of the World Bank Group) advocate such transparency.[54]

The next step would be to recognise that contracts relating to the sales of commodities by state-owned companies should also be disclosed.

The US Department of Justice is reviewing how Glencore obtained significant copper mining rights in the Democratic Republic of the Congo. | © Bloomberg – Getty Images

DEVELOPMENTS IN SWITZERLAND

The example of Philia SA in the Republic of the Congo (see annex) shows how the company, registered in Geneva, was able to win an exclusive contract to purchase fuel oil sold by the state-owned refinery, Coraf, without a tender process. At the time, Philia lacked the financial, commercial and logistical capacity to justify winning the contract, so it resold its cargos to other traders – notably Swiss trading companies, such as Mercuria or AOT Trading – in exchange for an unjustifiable margin. Public Eye would not have been able to shine light on this problematic case if it had not gained access to confidential information. The contract concluded by Gunvor in the same country also violated public procurement legislation (see annex). And yet, in Switzerland, the transparency of contracts is still not on the government's agenda.

E TRANSPARENCY OF BENEFICIAL OWNERSHIP OF COMPANIES

Money laundering or hiding funds acquired through corruption or tax evasion requires legal structures that make it possible to conceal the real beneficial owners of the illegal assets. The use of such structures (shell companies, trusts) is one of the recurring features of financial crime and illicit business practices. Switzerland has not been spared – recent cases show that politically exposed persons (PEPs) or criminal networks hide behind Swiss companies and that Swiss actors (lawyers, trustees, banks, etc.) are the architects of the companies set up in other jurisdictions and used for illegitimate or illicit purposes.

> "Countries should consider measures to facilitate access to beneficial ownership and control information."
> **FATF**

INTERNATIONAL DEVELOPMENTS

The revised recommendations (24 and 25) of the Financial Action Task Force (FATF) seek to address such abuses by outlining transparency requirements in relation to the beneficial ownership of legal persons and legal entities, and requiring authorities to ensure they can obtain information regarding who actually controls them. In addition, FATF stipulates that "countries should consider measures to facilitate access to beneficial ownership and control information".[55]

The European Union's 5th directive on money laundering entered into force on 9 July 2018. Member states have until 10 January 2020 to disclose their national commercial registers, which will make it possible to obtain information on beneficial ownership of companies in all EU member states. Anyone who can demonstrate a legitimate interest – including investigative journalists and NGOs – will be able to access information pertaining to the ownership structure of trusts. The United Kingdom has opted for full transparency by setting up a commercial register that provides free access to information relating to all companies registered in the United Kingdom. In the area of commodities, EITI member states must also disclose the beneficial owners of companies that profit from contracts in their jurisdiction by January 2020. The OECD has also made such a recommendation, which covers trading activity.

DEVELOPMENTS IN SWITZERLAND

To date, Switzerland has been unable to significantly improve the transparency of the beneficial ownership of companies. Moreover, no progress has been seen with regard to public access to such information. The ongoing review of the Swiss Anti-Money Laundering Act, which seeks to increase controls exercised on the commercial backgrounds of offshore companies, is a direct response to the Panama Papers. The Papers highlighted the key role played by Switzerland by revealing that Swiss financial intermediaries had set up over 37,000 Panamanian companies using the services of the Mossack Fonseca law firm, making Switzerland the second most active jurisdiction behind Hong Kong.[56] Switzerland urgently needs to adopt similar rules to those that prevail within the European Union.

F DUE DILIGENCE REQUIREMENTS IN RELATION TO SUPPLY CHAINS (HUMAN RIGHTS AND THE ENVIRONMENT)

The extraction of crude oil and minerals and the production of agricultural goods can be associated with human rights violations and environmental damage. Public Eye demonstrated that gold imported by Switzerland, officially from Togo, had in reality been extracted from artisanal mines in Burkina Faso – by children. We also revealed the key role played by Swiss companies like Trafigura and Vitol in the production and sale of fuels with extremely high sulphur content to Africa.

The UN's Guiding Principles and the OECD's Guiding Principles for Multinational Companies require companies to systematically assess the risks associated with their business activities from a human rights and environmental perspective. In the field of commodities, the introduction of a due diligence requirement in relation to the supply chain would require companies to identify the origin of the resources that they trade as well as the conditions in which they were extracted and produced. By the same token, companies would have to assess the impact of the products they sell in terms of the risks posed to human rights and the environment. Companies would ultimately be held publicly accountable for the risks they identify and measures they undertake to mitigate them.

INTERNATIONAL DEVELOPMENTS

At the international level, there has been a clear trend towards implementing legally binding due diligence requirements. The EU's member states, the United States and Australia have all adopted legislation applicable to certain minerals and/or illegal logging. The European Parliament is calling for comparable legislation to be applied to the cocoa and textiles industry. Other countries, such as Italy, the Netherlands or Austria have introduced or plan to introduce a comparable law specifically applying to child or forced labour. France adopted a law on the matter in 2017, while the German government has committed to doing so unless a minimum of 50 % of companies do so on a voluntary basis by 2020. The EU is due to consider the introduction of such a duty in 2019.

DEVELOPMENTS IN SWITZERLAND

In its Background Report, the Federal Council indicated its intention to assess the need to take legislative action (recommendation 12). A report subsequently commissioned by the government outlined specific proposals on this issue.[57] Yet the Federal Council rejected any form of binding regulation and in March 2015 a slim majority in the National Council rejected a motion requesting it to legislate human rights due diligence provisions.[58]

Faced with this political situation, a coalition of NGOs launched the Responsible Business Initiative in October 2016. The Federal Council neither accepted it nor suggested a counter proposal. The National Council did however adopt an indirect counter proposal in June 2018. The text is currently under review by the Council of States.

On a regular basis, cases show the contribution of Swiss commodity trading companies to the resource curse that strike many producer countries. | © Pilar Olivares – Reuters

5 Conclusion: paving the way or acting under pressure

Nothing has changed since commodities first caught the attention of the Federal Council five years ago. The sector still poses the greatest risk to Switzerland's reputation and to the values it promotes. The scandals have not let up; on the contrary, they have appeared more frequently. At regular intervals, Swiss commodities traders are demonstrating how they contribute to the resource curse that afflicts the populations of most producer countries. Hundreds of millions of people continue to be deprived of the benefits of the revenues generated by the wealth of their country's natural resources and sorely lack infrastructure, schools and hospitals.

There is now international recognition of the significance of the sector and the problems associated with it; as the world's biggest trading centre Switzerland is in the spotlight. This observation has not only been made by OECD but also judicial authorities who have investigated cases related to the traders' practices in Brazil and the United States. The inaction of the Swiss government only increases the probability that pressure will arrive from abroad.

When issuing statements in relation to transparency of the payments made by trading companies, the Swiss government champions international standards. Yet Swiss representatives have not exactly stood out for their dynamic efforts within the fora where this topic is discussed. Setting an example by taking action at the national level would strengthen Switzerland's credibility when it promotes international regulation. Moreover, such an approach would see the country live up to its important responsibility as the world's largest trading centre by far.

Five years on from the Background Report, the Federal Council's next review of the sector offers the chance to initiate a process to regulate the sector, which would see Switzerland live up to its responsibility to combat the resource curse that its policies currently contribute to. This would however require the authorities to stop focussing on preserving the current framework conditions that apply to the business and start addressing problems such as corruption and human rights violations. Waiting another five years to do so would be regrettable.

Car Wash is a gigantic corruption case in which Switzerland played a significant role through its banks and oil trading companies. | © Ricardo Moraes – Reuters

6

Annex: cases from 2013–2018

Corruption risks and business relationships with politically exposed persons (PEPs)

HOW VITOL BECAME THE KING OF OIL IN KAZAKHSTAN

In November 2018, Public Eye published an investigation into the dizzying success of a Swiss commodity trading company in Kazakhstan, a central Asian state where corruption is endemic.[59] Vitol was already selling 21 % of the oil exported from the country in 2014, and then from 2015 onwards, it gained access to the country's two largest oil fields in exchange for granting the state-owned company KazMunayGas loans totalling US$ 5.2 billion. To make it to the top, Vitol set up a discreet joint venture called Ingma Holding BV in the early 2000s; its shareholders are individuals close to the billionaire Timur Kulibayev, son-in-law of Kazakh president Nursultan Nazarbayev. Exclusive documents reveal that the partnership with Vitol indirectly benefited Kulibayev, who held managing positions within the country's biggest state-owned oil companies from 1997 to 2011.[60] Today, he remains a key figure in the energy industry. From 2009 to 2016, Ingma's revenue totalled US$ 93 billion and the company paid out over US$ 1 billion in dividends to its shareholders – through Swiss bank accounts.

The affair shows that in order to access oil markets, some trading companies choose to enter alliances with politically exposed persons (PEPs) within joint ventures and to use them to pay dividends to these individuals. This option, which enables them to circumvent the notion of paying commissions, is extremely problematic in terms of corruption risks. In contrast to banks, which are obliged by Swiss anti-money laundering legislation to practice additional caution when it comes to PEPs, traders are not subject to any due diligence requirements on their business partners except those they may impose on themselves.

LAVA JATO: THE DUBIOUS METHODS OF SWISS TRADERS IN BRAZIL

In November 2018, an investigation jointly undertaken by Public Eye and Global Witness revealed that three of the largest Swiss oil traders have been caught up in the *Lava Jato* ("car wash") scandal, which revolves around the Brazilian oil giant Petrobras.[61] The huge corruption scandal hit the Swiss financial centre four years ago. Since then, the Office of the Attorney General of Switzerland (MPC) has initiated over 100 criminal cases and has frozen over US$ 1.1 billion in assets, 20 % of which has already been repaid to Brasilia. The money is essentially commissions gleaned off inflated contracts concluded between Petrobras and private sector public works companies. The Brazilian judiciary is now looking at the activities of three of the largest trading companies based in Switzerland: Glencore, Trafigura and Vitol. These companies obtained oil contracts worth at least US$ 20 billion from Petrobras and transferred millions of dollars in commissions to intermediaries with at times dubious profiles. The Brazilian federal police opened an investigation in August 2016. According to the Brazilian media outlet *O Globo,* Petrobras was obliged to provide the police with details of contracts concluded with the three Swiss trading giants from 2004 to 2018, as well as with Cockett Marine Oil Ltd, a company which Vitol holds a 50 % stake in.

In total, an estimated US$ 10 billion has been lost through the embezzlement of funds within Petrobras from 2000 to 2014. The social, economic and political consequences are disastrous. *Lava Jato* is another example of how Switzerland plays a crucial role in transnational corruption due to its trading companies and its position as a financial centre.

SYSTEMATIC AND CONCERTED LOOTING IN VENEZUELA

In March 2018, Venezuela's national oil company PDVSA filed a civil complaint in the United States and filed criminal charges in Geneva.[62] PDVSA accuses the company Helsinge of having sold confidential information pertaining to the prices and tender processes to its clients using corrupt payments, resulting in an estimated US$ 5.2 billion loss in revenue for PDVSA from 2004 to 2017. Founded in 2004 by two former PDVSA executives, Helsinge was originally registered in Panama but in the autumn of 2017 it set up its main headquarters in Geneva, where it has relationships with banks. Among Helsinge's clients – designated as co-conspirators in the complaint filed in the United States – were Switzerland's largest oil trading companies, including Trafigura, Vitol and Glencore. Thanks to the information obtained, in particular by gaining access to one of PDVSA's servers, it was revealed that these traders benefitted from price reductions on their crude oil purchases from Venezuela and, vice versa, were able to inflate their prices when supplying petroleum products to the country. In October 2018, Reuters revealed that the US judiciary had forced Glencore to provide information on its business relationships with PDVSA and Helsinge.

It is not yet clear how the legal proceedings will conclude, but the scope, duration and sophistication of the allegations say a great deal about the methods and lack of integrity of the world's largest oil trading companies. For over ten years, until March 2018, their respective compliance departments have proven themselves ineffective in detecting suspected wrong doing involving the services of the company Helsinge.

THE US JUDICIARY INVESTIGATES GLENCORE'S MINES IN THE DEMOCRATIC REPUBLIC OF THE CONGO

In December 2017, Public Eye filed a criminal complaint with the Office of the Attorney General of Switzerland in relation to Glencore's activities in the Democratic Republic of the Congo (DRC), a country that typifies the resource curse. From 2007, after associating itself with Dan Gertler – a businessman with a toxic reputation – the Zug-based commodities giant obtained licences from the Congolese government to exploit copper and cobalt under very advantageous terms. Katanga Mining, the mining company that Glencore held a majority stake in, saw the cost of its mining permit reduced from US$ 585 million to US$ 140 million. It was a terrible deal for the DRC, which lost the equivalent of 10 % of its state budget through this lost revenue.

In 2001, a report for the UN Security Council pinpointed the dubious practices used by Gertler. The businessman was close to the Congolese President Joseph Kabila and had gained a monopoly over the sale of diamonds in the DRC, which he exchanged for arms shipments in a deal described as a "nightmare for the government of the DRC". In 2012, the British NGO Global Witness[63] denounced the problematic relationship between Gertler and Glencore. In November 2017, the Paradise Papers confirmed that Gertler played a key role in the DRC.

When the matter was brought to the Federal Council six years ago[64] it responded by saying that it expected companies such as Glencore to uphold "particularly strict requirements in terms of what is considered to be reasonable due diligence". However, to date no action has been taken and Public Eye's complaint has not been addressed.

In contrast, the US judiciary has shown significant determination to deal with this case and has opened proceedings against Dan Gertler. On 2 July 2018,[65] the US Department of Justice (DoJ) ordered Glencore to provide documentation pertaining to its activities in Nigeria, the Democratic Republic of the Congo (DRC) and Venezuela – Washington's interest is in alleged cases of corruption.

GUNVOR IN CONGO: LEGAL PROCEEDINGS OPENED INTO THE COMPANY AND AN EX-EMPLOYEE CONVICTED OF CORRUPTION

In September 2017, Public Eye published an in-depth investigation detailing the problematic business activities of Gunvor in the Republic of the Congo.[66] From 2010 to 2012, the Geneva-based company awarded pre-payments (i.e. loans) to the Congolese national oil company (SNPC). In exchange, Gunvor obtained US$ 2.2 billion worth of oil. Intermediaries hired to negotiate the deal received tens of millions of dollars in commissions transferred to Swiss bank accounts.

In December 2011, the Office of the Attorney General of Switzerland opened an investigation into money laundering. In May 2017, it initiated legal proceedings into the company for organisational shortcomings (under Article 102 of the Criminal Code)[67]; two former collaborators were investigated. On 28 August 2018, one of them was handed a suspended sentence of 18 months for corruption.[68] After negotiating attenuated proceedings with the MPC, the trader admitted to having participated in five corrupt deals that enabled Gunvor to access oil markets in Congo-Brazzaville and Côte d'Ivoire from 2009 to 2012. The indictment states that these corrupt activities had been planned "in collaboration with other Gunvor employees" and that the payments (of US$ 43 million), had been approved by the company's financial services department. It further states that "the employee was immersed in a working environment in which corruption appears to have been an accepted way of doing business".

The investigation demonstrates that taking significant risks and using dubious methods are common business practices of one of the largest Swiss commodity trading companies. It also highlights the shortcomings of financial intermediaries in terms of diligence. Clariden Leu, the bank that managed the accounts of the intermediaries, did not bat an eyelid at the size of commissions paid by Gunvor to an advisor to the Congolese president, a politically exposed person (PEP) under Swiss law. For its part, BNP Paribas, the bank that had awarded part of the oil pre-financing to Gunvor, only became concerned once the legal proceedings had been initiated.

LOUIS DREYFUS'S DANGEROUS LIAISONS WITH THE BRAZILIAN MINISTER OF AGRICULTURE

In November 2017, in the wake of the Paradise Papers, a French television broadcaster shone a spotlight on the problematic dealings of Louis Dreyfus Commodities (LDC) in Brazil.[69] The Dutch company carries out a significant part of its business from Geneva, where it employs some 400 people. To facilitate its business in Brazil, LDC was happy to join forces in a subsidiary based in the Cayman Islands with the world's biggest soya producer Amaggi, which is owned by Brazil's controversial minister of agriculture, Blairo Maggi. He has been denounced for his role in deforestation and is under investigation by the Brazilian judiciary for corruption and money laundering. Moreover, in 2010 LDC funded Maggi's campaign to be re-elected to the Senate.

Much like Trafigura in Angola, Louis Dreyfus Commodities relied on an individual classed as a politically exposed person under Swiss law for its business activities in Brazil. When it set up the partnership in 2010, Blairo Maggi already had an important role in government, which he had already mixed with his private-sector activities – creating clear risks of conflicts of interest.

PHILIA'S REFINERY CONTRACT IN CONGO-BRAZZAVILLE

In 2015, Public Eye published an investigation into a contract to export refined petroleum products that the Swiss trading company Philia obtained from the Congolese state refinery Coraf in 2013, a few months after it was set up.[70] Concluded with no tender process, the contract contains numerous clauses that harm Congo-Brazzaville's public finances. It was signed by Denis-Christel Sassou-Nguesso, the Congolese president's son, who has a notorious reputation for his luxurious lifestyle which is completely beyond the salary he earns from his official duties. Philia's sole shareholder, Jean-Philippe Amvamen-Ndong, is close to a Congolese national known as "Kiki". There is no business case for choosing Philia as Coraf's commercial partner because the trader immediately resells its cargos to other traders, including numerous Swiss traders such as Mercuria and AOT Trading – without adding any financial or logistical value. Moreover, under Congolese law it is illegal to award public contracts without a tender process and in this case none took place.

TRAFIGURA'S INCESTUOUS RELATIONS WITH THE ANGOLAN ELITE

In 2013, Public Eye revealed the (joint venture) partnership concluded by Trafigura two years previously with the Angolan general Leopoldino Fragoso do Nascimento, known as Dino, who was at the time an advisor to President Dos Santos.[71] Its relationships enabled the Geneva-based giant to obtain an oil contract of an estimated value of US$ 3.3 billion per annum from 2011 to 2016. In November 2017, the Paradise Papers provided further information on the matter.[72] Presented by Trafigura as an investor, General Dino participated in the joint venture via a company originally set up and managed by Mariano Marcondes Ferraz, who at the time was the right-hand man of Trafigura in Angola and member of its management. This fact feeds suspicions about the incestuous nature of relations between Trafigura and the ruling elite in Angola. Moreover, in March 2018 Ferraz was handed a heavy sentence for corruption in Brazil in a trial which took place in the wake of the Petrobras scandal *(Lava Jato)*.[73] However, in the end he was convicted for the role he played for another company.

He is also being investigated in Switzerland by the MPC,[74] yet neither Trafigura nor Ferraz were investigated for their business activities in Angola.

THE BENY STEINMETZ GROUP: SUSPICION OF CORRUPTION IN GUINEA

In 2013, Public Eye revealed how Israeli billionaire Beny Steinmetz, whose fortune is three to six times Guinea's national budget, spun a very complex web that he manages from Geneva. All of the key figures in the Beny Steinmetz Group (BSG) live on the shores of Lake Geneva or in neighbouring France. This sophisticated set-up enables him to dilute his legal liabilities and optimise his tax burden. The organisational chart compiled by Public Eye[75] depicts the extreme complexity that prosecutors are confronted with when investigating such companies.

Since 2013, six countries including Switzerland have opened legal proceedings into alleged acts of corruption of public official in Guinea. Steinmetz is suspected of having bribed one of the wives of the former president of Guinea in 2009 to obtain concessions at a low price – US$ 165 million – for the exploitation of large iron ore reserves in Simandou. In 2010, the Brazilian company Vale bought a 51 % stake in the company that owned the concessions for US$ 2.5 billion; these funds should have gone into Guinea's state coffers, not BSG's account.

Human rights violations

SWISS TRADERS FLOOD AFRICA WITH TOXIC FUELS

In September 2016, Public Eye published a comprehensive investigation showing that Swiss commodity trading companies dominate the market in West Africa of producing, supplying and selling fuel harmful to human health and to the environment.[76] The sulphur content of these petroleum products, and in particular that of diesel, were up to 378 times the threshold permitted in Switzerland and elsewhere in Europe. The revelations regarding this problematic business model were met with huge media attention in both Europe and Africa and Ghana swiftly changed its legislation.[77]

In July 2017, inspectors at the Dutch environmental authorities published a report confirming the facts revealed by Public Eye. Following this in-depth investigation[78], the Netherlands assumed its responsibility as the centre of production and export of toxic fuels. In parallel the OECD's National Contact Point assessed whether the companies involved were violating the organisation's guidelines on respecting human rights and the environment. Switzerland, the country where most of the main companies active in this business are registered, ultimately concluded that it was up to importer states to act,[79] and so did nothing to rectify the situation.

GOLD FROM BURKINA FASO PRODUCED BY CHILDREN AND REFINED IN SWITZERLAND

How can Switzerland import tonnes and tonnes of gold from Togo every year when the country does not produce any? In September 2015, Public Eye published an investigation revealing that this gold comes from artisanal mines in Burkina Faso, where it is extracted by children working in atrocious conditions[80]. The fruit of their labour is transported to Togo by smugglers, from where it is imported by a Geneva-based trading company to the Valcambi refinery in the canton of Ticino. The problematic origin of the gold reveals the shortcomings of voluntary measures undertaken by companies to prevent human rights violations in their supply chains. Following Public Eye's revelations, in December 2015 former Senator Luc Recordon introduced a postulate which was endorsed by the Council of States. In addition to a call to map the Swiss gold sector, the postulate called on the authorities to introduce reporting on the trade in gold in cases where human rights have been violated during the production process and to assess the options for forcing companies to uphold the due diligence requirements outlined in the UN's Guiding Principles on companies and human rights. In November 2018, after numerous delays, the long-awaited report on gold was published in which the Federal Council admitted that it could not with any certainty rule out the possibility that gold imported into Switzerland originates in conditions that violate the human rights of those who mine it.[81]

In the artisanal gold mines of Burkina Faso, children work under disastrous safety conditions. | © Pep Bonet – Noor/Keystone

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The current report outlines the developments in relation to the Swiss commodities trading sector over the past five years. It details the corruption risks linked to this activity and summarizes the major cases that have highlighted the negative impact of companies' behaviour in producer countries. It then reviews the positions of the Swiss federal authorities and the actions they have undertaken. Finally, it outlines the measures we consider necessary to contain the risks, describing how they apply – or would apply – in a national or international context.

The authorities have achieved very little. Their action falls far short of the scope of the problems. Mitigating the risks posed by commodity trading companies requires, as the OECD recommended to Switzerland, "tailored, binding regulations".

PUBLIC EYE (formerly the Berne Declaration) is a non-profit, independent Swiss organisation with around 25,000 members. Public Eye has been campaigning for more equitable relations between Switzerland and underprivileged countries for fifty years. Among its most important concerns are the global safeguarding of human rights, the socially and ecologically responsible conduct of business enterprises and the promotion of fair economic relations. **www.publiceye.ch**

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