Globethics Repository

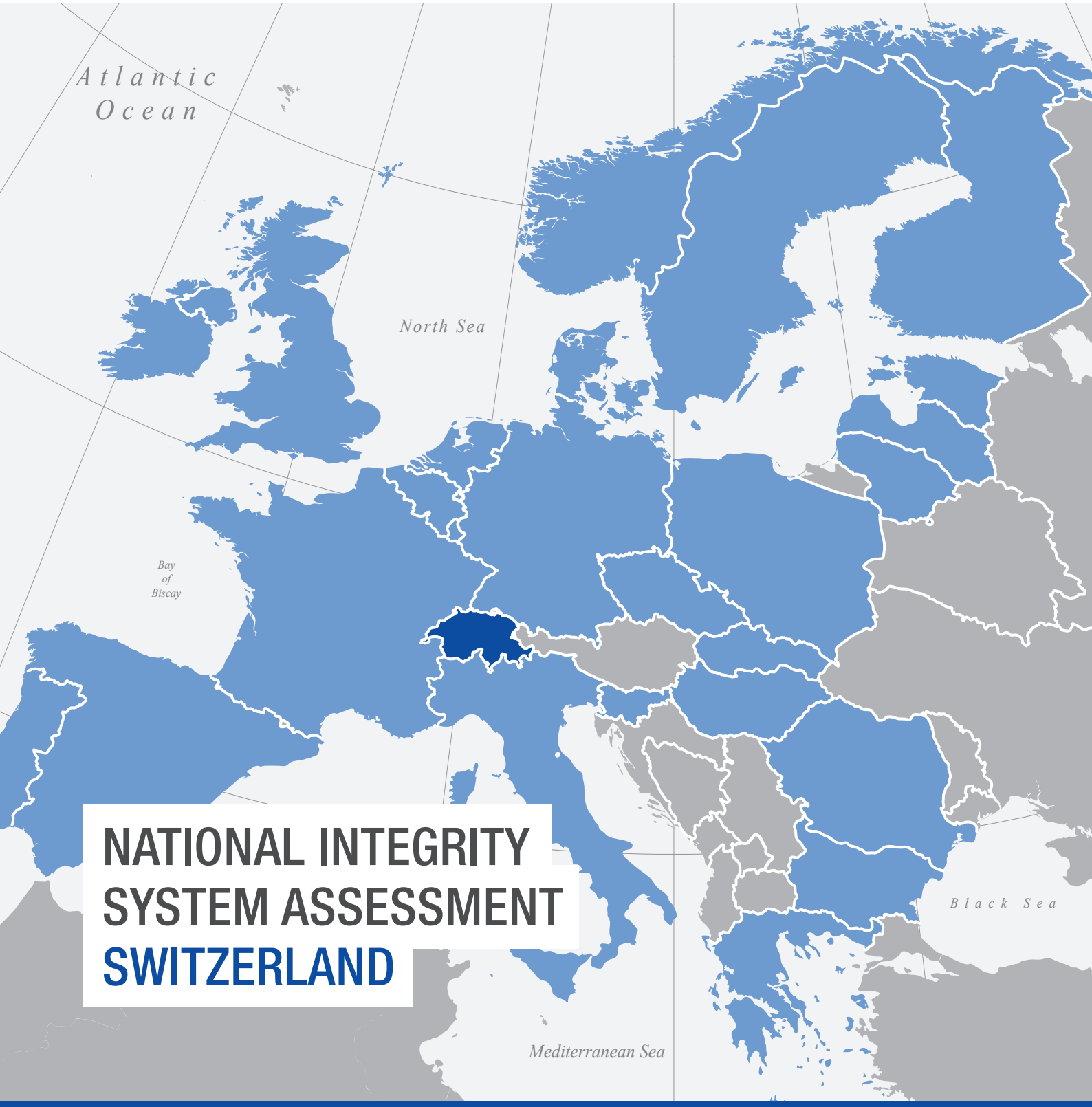


National Integrity System Report Switzerland

This page was generated automatically upon download from the Globethics Repository. More information on Globethics see https://www.globethics.net. Data and content policy of Globethics Repository see https://repository.globethics.net/pages/policy.

Item Type	Book
Authors	Hess, Regula;Hurni, Fabio;Locher, Reto;Mund, Philippa
Publisher	Transparency International
Rights	With permission of the license/copyright holder
Download date	2026-11-13 05:40:37
Link to Item	http://hdl.handle.net/20.500.12424/187577

TRANSPARENCY INTERNATIONAL
SCHWEIZ SUISSE SVIZZERA SWITZERLAND



NATIONAL INTEGRITY SYSTEM ASSESSMENT
SWITZERLAND

www.transparency.ch

National Integrity System Report
Switzerland

Transparency International Switzerland
Schanzeneckstrasse 25
P.O. Box 8509
CH-3001 Berne
Phone +41 31 382 35 50
www.transparency.ch

© 2012 Transparency International Switzerland

Our special thanks goes to abanico – interpreting & translations for their excellent translation work. Liability for subsequent changes made to the translation, however, lies with TI Switzerland.

For the complete report, please refer to our website www.transparency.ch.

Contents

Introductory information 4
Experts 5
Advisory group 7
Expert workshop participants 8
External expert 9
Sponsors 9
Information about the NIS **10**
About the National Integrity System report 10
The National Integrity System concept 11
Approach used for the NIS report in Switzerland 13
Summary **14**
Methodology, aims and limitations of the report 14
Measures for reducing susceptibility to corruption 15
Federalism and militia system 16
The political, societal, economic and cultural foundations of the NIS 17
The assessment of the various areas of the NIS 18
Deficient role in support of the integrity system and mutual influence of the weak pillars of the NIS 24
Features of corruption in Switzerland 25
Reform proposals 26
Corruption profile **31**
Introduction 31
Level of corruption in Switzerland 31
Corruption problems in Switzerland 34
Anti-corruption measures and actors **39**
Introduction **39**
Anti-corruption measures in Switzerland **39**
Specific legislative measures for combating corruption **39**
Measures in the private sector 44
Actors involved in anti-corruption work in Switzerland 44
Institutions 44
Conclusions 48

Introductory information

NIS Project Coordinator
Daniela Christen
Lic. phil., Assistant to the Management and Board of Transparency International Switzerland

Lead Researcher
Reto Locher
MLaw, Rechtsanwalt; MA in Public Management & Policy

Authors
Regula Hess
Student of International Relations at the University of Geneva
Corruption profile

Fabio Hurni
MLaw; performing community service at Transparency International Switzerland
Political parties, business

Reto Locher
MLaw, Rechtsanwalt; MA in Public Management & Policy
Executive, legislature, federal administration, supreme audit institution, media, national electoral authority and ombudsman; Summary and Conclusions

Philippa Mund
Student of Political and Administrative Science at the University of Konstanz; intern at Transparency International Switzerland
Country profile

Mimo Pfander
MLaw, Rechtsanwalt; performing community service at Transparency International Switzerland
Business, civil society; Introductory information and About the NIS report

Anja Roth
Researcher and Project Support Officer at the Basel Institute on Governance; LLM in International Human Rights Law at the University of Galway (IE) and BA in European Studies from Maastricht University (NL)
Law enforcement agencies, judiciary and Anti-corruption measures and actors

Grégoire Singer
MA in Social Science; intern at Transparency International Switzerland
Corruption profile

Experts

Pillar	External experts	Internal experts
Legislature	Prof. Dr. iur. Pierre Tschannen, Professor of Constitutional and Administrative Law at the University of Bern	Dr. iur. Urs Schwaller, Rechtsanwalt and Christian Democratic People's Party of Switzerland Council of State member
Executive	Prof. Dr. iur. Pierre Tschannen, Professor of Constitutional and Administrative Law at the University of Bern	
Judiciary	Prof. Dr. iur. Regina Kiener, Professor of Public Law at the University of Zurich	Dr. iur. Giusep Nay, former federal judge
Federal administration	Prof. Dr. iur. Bernhard Waldmann, Professor of Constitutional and Administrative Law at the University of Fribourg	Lic. iur. Hans Moor, Deputy General Secretary FDJP
Law enforcement agencies	Prof. Dr. iur. Daniel Jositsch, Professor of Criminal Law and Criminal Procedure Law at the University of Zurich as well as Swiss Socialist Party National Council member	Christian Weber, Public Prosecutor in the canton of Zurich from 1976 to 2009, 16 years of which as Senior Public Prosecutor for white-collar crimes
Political parties	Prof. Dr. Andreas Ladner, Professor at the Swiss Graduate School of Public Administration in Lausanne	Guido Schommer, lic.oec / M.A. HSG, from 2001 to 2007 Secretary General with the Free Democratic Party of Switzerland
National electoral authority	Dr. lic. rer. soc. Georg Lutz, Project Director Swiss Electoral Studies 'Selects', Centre for Social Science Research (FORS), Lausanne	Dr. iur. Hans-Urs Wili, has worked in the Political Rights Section of the Federal Chancellery since 1975, from 1993 to 2010 as Head of the Section and Electoral Officer for National Council elections
Supreme audit institution	Bertrand Perrin, Professor of Law at the Haute école de gestion Arc and the Institute de lutte contre la criminalité économique in Neuchâtel	Dr. iur. Barbara Riedi, Head of Legal Services at the SFAO
Ombudsman	Prof. Dr. Walter Haller (emeritus), from 1975 Professor of Constitutional Law, Administrative Law and Comparative Constitutional Law at the University of Zurich and from 1990 to 2004 Director of the Institute of Public International Law and Foreign Constitutional Law at the University of Zurich	Dr. Claudia Kaufmann, Ombudswoman of the City of Zürich
Media	Roger Blum, from 1989 to 2010 Professor of Media Studies at the University of Bern. Currently working as a freelance journalist and since 2008 Chairman of the Independent Complaints Authority for Radio and Television (ICA)	Beat Balzli, from 2001 to 2010 business journalist at Hamburg news magazine 'Der Spiegel' and since 1 October 2010 Chief Editor of 'Handelszeitung'
Civil society	Prof. Dr. Markus Gmür and Dr. Hans Lichtsteiner, since 2008 Directors of the Institute for Association Management (VMI) at the University of Fribourg/Switzerland	Dr. oec. HSG Martina Ziegerer, Managing Director of ZEWO Jürg Schertenleib, Head of Project Quality Management (PQM) at Brot für alle, Bern Judith Conrad, Head of Swiss Olympic's Ethics and Training Committee

Pillar	External experts	Internal experts
Business	Prof. Dr. iur. Roland Müller, since 1992 associate at Müller Eckstein Rechtsanwälte, since 2008 Titular Professor of Private, Business and Aviation Law at the University of St. Gallen and since 2009 Lecturer in Employment Law at the University of Bern	Markus E. Schulz, Chief Compliance Officer Global Life & Group Financial Crime Officer at Zurich Schweiz AG
	Prof. Dr. iur. Peter V. Kunz, since 2006 Full-Tenure Professor for Business Law at the University of Bern and also, since 2006, member of the Supervisory Council of the Swiss Institute of Comparative Law SICL in Lausanne	Dr. iur. Robert Amgwerd, Group Secretary of Schindler Management AG
		Dr. iur. Urs Zulauf, Member of the Executive Board and Head of the Strategic and Central Services Division at the Swiss Financial Market Supervisory Authority FINMA in Bern

The experts answer the questions provided according to the Transparency International methodology and refer to important publications and information to be taken into account in the study. In the process, they represent their personal views and not those of their employers. The experts assume no liability for the content of the study and recommendations made in it. TI Switzerland is solely responsible for preparing the study and for the statements and conclusions it contains.

Advisory group

	Pillar/s
Dieter von Blarer Ombudsman of the canton of Basel-Stadt	Ombudsman
Michel Huissoud Vice Director of the Swiss Federal Audit Office SFAO	Supreme audit institution
Bernard Jaggy Head of Economic Affairs Division, Federal Department of Foreign Affairs FDFA; Head of Interdepartmental Working Group (IDWG) on Combating Corruption core group	Federal administration
Prof. Dr. Andreas Ladner Professor at the Swiss Graduate School of Public Administration in Lausanne	Executive, political parties and national electoral authority
Anne Lugon-Moulin Deputy Head of CIS Division, Swiss Agency for Development and Cooperation SDC	Anti-corruption measures and actors
Dr. iur. Dick F. Marty until 2011 Free Democratic Party Council of State member, member of the Parliamentary Assembly of the Council of Europe	Legislature
Stefan Moesli Rechtsanwalt M.C.L.,General Counsel and Secretary of the Board of Directors of the Sika Group	Business
Prof. Dr. iur. Monika Roth Lucerne University of Applied Sciences and Arts, Programme Director at the Institute of Financial Services Zug IFZ	Judiciary, law enforcement agencies
Prof. Dr. Christoph Stückelberger Executive Director of Globethics.net	Civil society

The Advisory group members assist the study in their capacity as experts with their specialist knowledge, suggest key informants and refer to important publications and information to be taken into account in the study. Moreover, they review various areas of the study assigned to them for correctness and completeness in terms of content. In the process, they represent their personal views and not those of their employers. The members of the advisory group assume no liability for the content of the study and recommendations made in it. TI Switzerland is solely responsible for preparing the study and for the statements and conclusions it contains.

Expert workshop participants

- **Beat Balzli,** Chief Editor of 'Handelszeitung'
- **Vincent Baumann,** Lawyer and Senior Manager at KPMG Bern
- **Eva Maria Belser,** Professor of Constitutional and Administrative Law at the University of Fribourg/Switzerland
- **Bernard Bertossa,** Dr. h.c. Rechtsanwalt, worked from 1990 until his retirement in 2002 as Prosecutor General in the canton of Geneva.
- **Giovanni Biaggini,** Professor of Constitutional, Administrative and European Law at the University of Zurich
- **Séverine Chuffart,** Research Assistant at the Economic Cooperation and Development Division at the State Secretariat for Economic Affairs SECO
- **Judith Conrad,** Head of Swiss Olympic's Ethics and Training Committee
- **Steven Eichenberger,** Tax Justice Network
- **Mario Flückiger,** Ombudsman of the City of Bern
- **Markus Gmür,** Director of the Institute for Association Management (VMI) at the University of Fribourg/Switzerland
- **Alexandra Graf,** Research Assistant in the Political Rights Section of the Federal Chancellery
- **Carlos Hanimann,** Business journalist at 'WOZ Die Wochenzeitung'
- **Christian Hauser,** Professor and Project Manager at the Swiss Institute for Entrepreneurship SIFE, Chur
- **Sabine Jaag,** International Investments and Multinational Enterprises, State Secretariat for Economic Affairs SECO
- **Mark Livschitz,** Partner at Baker McKenzie, Zurich
- **Bertrand Perrin,** Professor at the Haute école de gestion Arc and the Institute de lutte contre la criminalité économique in Neuchâtel
- **Simon Perrin,** Senior Analyst Ethos, Swiss Foundation for Sustainable Development
- **Barbara Riedi,** Head of Legal Services at the Swiss Federal Audit Office SFAO
- **André Rothenbühler,** Managing Director of Aktion Finanzplatz Schweiz
- **Patricia M. Schiess,** Lecturer at the Faculty of Law of the University of Zurich and Programme Director for doctoral programmes in law at the Private University of the Principality of Liechtenstein
- **Guido Schommer,** Project Manager/Senior Consultant at reflecta ag
- **Meinrad Vetter,** Deputy Head Competition Policy & Legal Issues at economiesuisse
- **Bernhard Waldmann,** Professor of Constitutional and Administrative Law at the University of Fribourg/Switzerland
- **Martina Ziegerer,** Managing Director of ZEWO

External expert

Prof. Dr. Gerald Schneider
since 1997 Chair of International Relations at the Department of Politics and Management at the University of Konstanz, Germany

Sponsors

TI Switzerland would like to thank the following organisations for their generous support:

- AVINA STIFTUNG, Hurden
- Basel Institute on Governance, Basel
- Concordia, Lucerne
- Coop, Basel
- Luzerner Kantonalbank AG, Lucerne
- Migros Genossenschafts-Bund, Zurich
- Sika Services AG, Baar
- Zürcher Kantonalbank, Zurich
- University Hospital Basel, Basel

Information about the NIS

About the National Integrity System report

A series of major corruption cases in both the private and public sector has shown how important it is that a discussion takes place in both Europe and in Switzerland on the subject of corruption. Transparency International defines corruption as the abuse of entrusted power for private gain. This covers a series of criminal offences such as bribery, misappropriation or abuse of power as well as nepotism or favouritism, which do not as yet represent criminal offences per se. In contrast to corruption, Transparency International defines nepotism or cronyism as a form of favouritism based on acquaintances and/or familiar relationships, whereby someone in an official position abuses his or her power and authority to provide a job or favour to a family member or friend, even though he or she may not be qualified or deserving.

Corruption undermines the objectives of good governance, the rule of law and basic human rights. It also leads to wasting of resources, distorts the financial market and harms both citizens and the private sector. According to Eurobarometer 2009[1], 87% of Europeans believe that corruption is one of the most pressing problems in their country.

Transparency International (TI) is carrying out the National Integrity System (NIS) project between 2010 and 2012 as part of a multilateral EU project. The European NIS reports form part of the pan-European anti-corruption programme which is supported by the European Commission Directorate-General for Home Affairs. As a non-EU country, Switzerland was unable to benefit from European Commission funding and financed the project via other means. Various Swiss companies as well as the AVINA STIFTUNG have generously supported the project.

What does TI mean by a National Integrity System (NIS)? An NIS includes all key national institutions, legislation and processes that contribute to integrity, transparency and accountability in a society. Well-functioning national integrity systems provide effective safeguards against corruption as part of the larger struggle against the abuse of power, malfeasance and misappropriation in all its forms. The national integrity systems of 25 European countries, including the Swiss system, are being systematically analysed for the project and the areas susceptible to corruption identified and recommendations are being made alongside this for solving the associated problems.

[1] Cf. http://ec.europa.eu/public_opinion/archives/eb/eb71/eb71_en.htm visited on 20 June 2011].

The National Integrity System concept

Transparency International developed the 'National Integrity System' concept in the 1990s and since then more than 80 reports have been published.[2]

The methodology used in the NIS report provides a framework for analysing the effectiveness of the national institutions in terms of combating and preventing corruption. Numerous key actors involved in combating corruption in Switzerland, whether in the public sector, civil society, the private sector or academia, were asked or given an opportunity to express their opinion on various aspects of the NIS in Switzerland. The highly consultative component of the NIS report is intended to broadly underpin the results and pave the way for possible reform.

The Swiss NIS report evaluates the key institutions which are responsible for improving integrity and combating corruption in Switzerland. These institutions form the following 12 'pillars' of national integrity:

Legislature	Ombudsman
Executive	Supreme audit institution
Judiciary	Political parties
Federal administration	Media
Law enforcement agencies	Civil society
National electoral authority	Business

Defined guiding questions are used in the report to analyse both the formal framework conditions and the current practice of each pillar. Each pillar is analysed using three dimensions: capacity, governance and role in the overall system. The dimensions themselves comprise standard indicators:

Dimension	Indicators (law, practice)
Capacity	Resources Independence
Governance	Transparency Accountablity Integrity
Role in the overall system	1–3 indicators, pillar-specific (e.g. efforts in the fight against corruption)

In order to take account of important interrelationships, the evaluation of the institutions is embedded in an analysis of the political, social, economic and cultural environment in which the respective institutions operate. In addition, the report aims to provide a holistic view of corruption prevention by focussing on the relevant institutions and their relationships with each other.

There are two stages to the methodological approach: In a first stage, the desk review is supplemented on the basis of key informant interviews with key actors and

[2] http://www.transparency.org/policy_research/nis/nis_reports_by_country [visited on 6 September 2011].

organisations and structured using the indicators for each pillar. In a second stage, the indicators are assessed according to a five-point scale (0, 25, 50, 75, 100) on the basis of the information collected in order to obtain a quantitative analysis of the information.[3] In this context, a score of 100 means a comprehensive legal framework or optimum practical implementation and application respectively. In contrast to this, a score of 0 indicates that either there are no legal regulations in this area or that existing provisions fall short in terms of practical application.

The overall score for each pillar is calculated from the averages of the three dimensions (capacity, governance and role). This overall score indicates how strongly or weakly this pillar is able to perform its role in preventing and combating corruption within the national integrity system.

100–80	very strong
80–60	strong
60–40	moderate
40–20	weak
20–0	very weak

The complete 'tool kit', i.e. the full list of questions for all dimensions and indicators is available from the website http://www.transparency.org/policy_research/nis/methodology.

As far as content is concerned, the study focuses primarily on national institutions since an analysis of the cantonal and communal institutions would go way beyond the scope of the project framework, both in terms of financial and human resources and in relation to the run time. Where this is possible and indispensable, selective reference has been made to cantonal and communal idiosyncrasies and examples, such as in the case of the law enforcement agencies, judiciary and ombudsman pillars. The NIS report thus clearly contains a broad rather than an in-depth analysis. The strength of this concept lies in the fact that a large number of institutions and related positive and critical aspects are highlighted in a comparatively concise format. One weakness of the report can, however, be seen in that not all levels of the Swiss Federal State and consequently the system in its entirety, are analysed. TI Switzerland is aware of this, however, an analysis of the cantonal and/or communal institutions that are crucial to the integrity system could be tackled as a next step in order to supplement and complete the analysis of the Swiss NIS.

In an NIS, the individual institutions must not be regarded as isolated individual players. The different actors interact with each other and are mutually interrelated. A lack of integrity in a single institution can pose a serious threat to the entire integrity system. Consequently, the NIS report primarily attempts to cover all the relevant pillars and to analyse their links and connections to the other pillars instead of providing an in-depth analysis of all the pillars.

The results serve to formulate constructive recommendations for strengthening the entire integrity system and to identify possible best practices. They are also

[3] For further information about the NIS project cf. http://www.transparency.org/policy_research/nis/methodology [visited on 20 June 2011].

seen as points of reference for future assessments in order to measure developments within the individual areas.

Approach used for the NIS report in Switzerland

The NIS project was carried out in various stages in Switzerland:

In a first stage, a search was made for financial backers and supporters for the project. Reto Locher was appointed lead researcher for the NIS project in December 2010. Daniela Christen was responsible for the internal project coordination at Transparency International Switzerland. An Advisory Group was convened for the project at the same time comprising representatives from academia, the private sector, civil society and the public sector. The Advisory Group members as experts imparted their specialist knowledge to ensure that the most important questions were taken into account in the report. Furthermore, the advisors suggested possible experts to be interviewed and indicated relevant sources and publications.

The parties involved in the project began gathering data, conducting key informant interviews and drafting the report in January 2011. Each pillar includes at least one interview with a person who has worked for a minimum of five years in an executive function in an institution of the pillar (so-called 'internal expert') and a person who is familiar with the institutions as an external expert (for example, from academia or a representative from a civil society organisation).[4]

The finished draft reports for all countries were sent on an ongoing basis to the Transparency International Secretariat in Berlin for review. This is intended to ensure that a standard methodology is applied in all NIS reports. The scores for the individual countries were not synchronised by a superior body or reviewed for the use of standard information and assessment criteria. No country ranking is produced by TI for this very reason, and using the scores for making comparisons across the countries is also not recommended.

Subsequently, the report was presented to the advisors for their comments. The first Advisory Group meeting was held on 10 March 2011. The entire draft report was discussed at the second meeting on 1 September 2011 and additions suggested.

An expert workshop was finally held on 12 September 2011 to which all experts and advisors, as well as other specialists from all areas covered by the NIS report, were invited. The results and recommendations of the NIS report were discussed at this workshop and suggestions elaborated for further anti-corruption reforms.

An external expert was consulted for the purpose of further ensuring the quality of the report. Ideally, this expert should be a country specialist living abroad. The Swiss report was reviewed and commented on by Prof. Dr. Gerald Schneider from the University of Constance.

[4] Several internal and external experts from civil society and business were interviewed due to the thematic diversity in these areas. Moreover, care was generally taken to ensure that experts from various universities and from different parts of the country were interviewed.

Summary

Methodology, aims and limitations of the report

The Swiss National Integrity System (NIS) report represents an analysis of the twelve most important 'pillars' of society which play a crucial role in preventing and combating corruption. The following areas were analysed: Legislature, executive, judiciary, federal administration, law enforcement agencies, national electoral authority, ombudsman, supreme audit institution, political parties, media, civil society and business. The NIS report shows the strengths and weaknesses as well as the mutual influence of the individual areas. Conclusions regarding susceptibility to corruption on the part of the national institutions can be drawn from this.

Transparency International defines corruption as the abuse of entrusted power for private gain. This definition covers a series of criminal offences such as bribery, granting an advantage or abuse of power. It also covers nepotism or favouritism, which do not as yet represent criminal offences per se.[1] Transparency International defines nepotism or cronyism as a form of favouritism based on acquaintances and/or familiar relationships, whereby someone in an official position abuses his or her power and authority to provide a job or favour to a family member or friend, even though he or she may not be qualified or deserving.

The different pillars are reviewed on the basis of the political, economic, social and cultural foundations in Switzerland. This review does not involve an in-depth analysis of the individual pillars, but aims to provide a relatively concise overview of the most important indicators characterising the various areas. The report also demonstrates how the interplay and mutual influence of the most important institutions, which impact on the national governance system, function and takes a critical look at this.

The NIS methodology was developed by Transparency International and, where necessary, adjusted according to circumstances specific to Switzerland. Primarily, an analysis was made of the national institutions in Switzerland. Furthermore, in areas where it was indispensable for reviewing the national institutions or in order to make their functioning easier to understand, cantonal and communal legal principles and practical examples were selectively included in the analysis, namely in the case of the judiciary, law enforcement agencies and ombudsman pillars.

The NIS report essentially covers the period from January 2009 to July 2011. The analyses of anti-corruption activities and the country profile include the years 2005 to 2011. Incorporated into the report are the analysis of the legal principles and the reference literature as well as key informant interviews with key actors

[1] Alternative definitions of the term corruption can be found, for example, in SVENSSON Jakob: 'Eight Questions about Corruption', *Journal of Economic Perspectives*, Vol. 19, No. 3, 2005: 19–42 or in KAUFMANN Daniel: 'Myths and Realities of Governance and Corruption', *Global Competitiveness Report 2005–06*, 81–98.

from the various areas. The results of the report were reviewed by the Transparency International Secretariat, the project Advisory Group and an external expert. The results emerging from the report were also reviewed and discussed as part of an expert workshop. The aim of this workshop was, in particular, to elaborate recommendations designed to improve the Swiss national integrity system on a sustained basis and eliminate the existing weaknesses.

The report is not exhaustive. The NIS report also does not aim to conduct a scientific analysis of the national integrity system. It is rather about presenting sound evidence through a detailed and traceable analysis of the individual pillars which is intended to serve as a basis for political requirements and advocacy work by TI Switzerland. A next step could be to analyse cantonal and communal integrity systems and elaborate recommendations for improving these. Additional federal levels could be included in the review of the Swiss integrity system through such NIS report 'follow-up projects' since TI Switzerland is aware that Switzerland as a federal state can only be portrayed in part through an analysis of its national integrity systems. A review of all 26 cantons as well as the over 2,500 communes in Switzerland was not the aim of this report and would have been beyond the capacity of the financial and human resources available to TI Switzerland.

Measures for reducing susceptibility to corruption

Various statutory principles have been improved in recent years and additional measures taken to reduce susceptibility to corruption in Switzerland. On a legal level, the ratification of the United Nations Convention against Corruption (UNCAC), the OECD Convention on Bribery of Foreign Officials in International Business Transactions and the Council of Europe Criminal Law Convention on Corruption shall be mentioned. The implementation of the last convention referred to will be reviewed by the Group of States against Corruption (GRECO). According to the Compliance Report of 26 March 2010, Switzerland has satisfactorily implemented virtually all the recommendations made by GRECO in 2008. Active and passive bribery, granting and acceptance of an undue advantage and bribery in the private sector are criminal offences under Swiss law. Moreover, various actors take measures to prevent and combat corruption. The Federal Office of Personnel FOPER has, for example, issued regulations to ensure the integrity of Federal Administration staff, such as *inter alia* rules aimed at avoiding conflicts of interest as well as regulations regarding the acceptance of gifts and a code of conduct for Federal Administration employees. Other organisational units involved in the prevention and combating of corruption are established in the State Secretariat for Economic Affairs SECO, in the Swiss Agency for Development and Cooperation SDC, in the Federal Office for Buildings and Logistics FOBL for public procurement and at Swiss Export Risk Insurance (SERV) for foreign trade. In addition, new provisions for the protection of whistleblowers in the Federal Administration were issued at the beginning of 2011. The Interdepartmental Working Group (IDWG) on Combating Corruption (referred to below as IDWG Combating Corruption [*IDAG Korruptions-*

bekämpfung]) finally published a report in April 2011 which included an inventory of all international and national activities performed by Switzerland in combating corruption.

Federalism and militia system

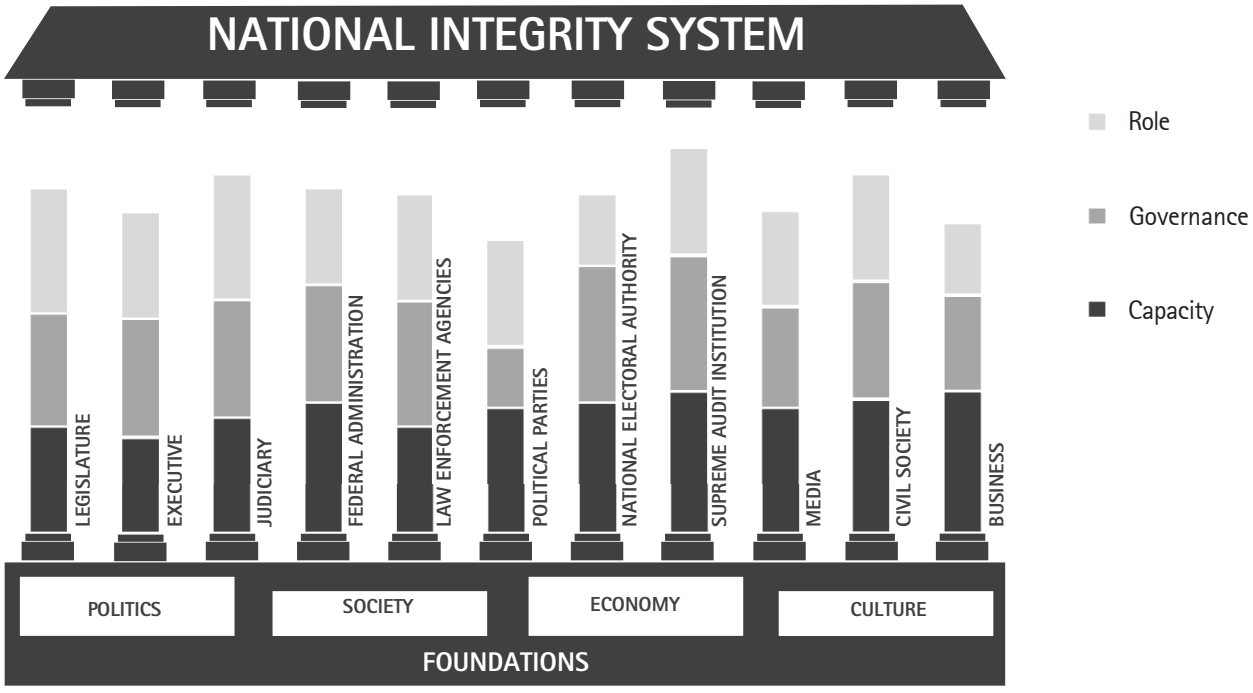
The **federalist political system** in Switzerland means that a large number of small entities have political power and resources and make political decisions. Close, personal linkages between politicians, public officials and people working in the private sector are not uncommon, particularly at communal and cantonal level. These links can promote informal, mutual monitoring thus precluding corrupt conduct (this is primarily the case if strong, political competition ensures the rotation of politicians). At the same time, it is this very intimacy that can create a climate that promotes nepotism and enables the institutionalisation of unethical or illegitimate influence. This risk exists particularly in cantons dominated by the same party and the same politicians over a long period of time. Over and above this, compared internationally, the marked, disproportionate political representation in Switzerland in the individual constituent states, i.e. the small and large cantons, is problematic. This starting position means that well-organised interest groups, such as trade associations, can win the vote of a Council of States member for themselves, who in extreme cases represents 33 times fewer voters, however, has just as much decision-making power as his colleague from the canton with the highest population.

In terms of corruption, the **militia system** practised in Swiss politics harbours both preventative structures against it as well as incentives promoting it. Since many politicians have a regular job in addition to their political mandate, they are not entirely dependent on the income or remuneration they receive for performing their political activities. Their prosperity is therefore not (exclusively) linked to their re-election which reduces the incentives for employing corrupt practices and taking the risks associated with this in order to secure re-election. In addition, the militia system is intended to prevent the formation of a detached, structured and, in the long term, stable 'classe politique' which could serve as a network for systematic corruption. On the other hand, the militia system harbours the risk of conflicts between private (financial) and political interests. The premise that in his function each politician makes his decision exclusively and solely in the interest of his electorate, is out of touch with reality and cannot be guaranteed in this system. This is problematic particularly with reference to vested interests, since personal relationships, for example, are still regarded as an important factor in the awarding of public procurement contracts or because private interests can play a part in the legislative process.

The political, societal, economic and cultural foundations of the NIS

The diagram below, the so-called NIS temple shows that the entire integrity system in Switzerland is built on solid foundations. Switzerland has a stable political system which is well-accepted by the population. It has a multicultural society and great relative importance is attached to the protection of minorities both in the Constitution and in real life although there is potential for improvement in this respect. Furthermore, political parties, associations and non-governmental organisations (NGOs) are closely involved in the political opinion-forming and legislative process and can actively and successfully participate in this. However, in Switzerland too, pay inequality and the associated concentration of assets are increasing. In economic terms, Switzerland comes out top internationally in various areas such as national income, competitiveness, low unemployment as well as, compared internationally, the low poverty rate. Moreover, Switzerland has a functioning social welfare system and sound retirement provision institutions. Finally, Switzerland also scores well in terms of the prevailing societal ethics, standards and values which are supportive to the NIS: Consequently, Switzerland is perceived as a safe and reliable country where most people trust one another. In addition, residents in Switzerland classify equal treatment and equal opportunities as important. Compared internationally, the average voter turnout in referenda and elections in Switzerland is rather low.

National Integrity System Switzerland



The foundations of the NIS (politics, society, economy and culture) make a significant contribution to the good score achieved by the various areas analysed in the framework of the report. The stable political system, in which the large majority of societal forces and social strata is able to participate, the extremely successful business sector, compared internationally, and the positive standards and values held in society form the basis for the pillars of the integrity system that are well-positioned in Switzerland.

The assessment of the various areas of the NIS

a) Overview

Switzerland can generally be described as a country with a well-functioning NIS. In quantitative terms, the average overall assessment for all pillars is 79 out of a possible 100 points and consequently Switzerland comes out very well in the analysis. The supreme audit institution, judiciary and civil society pillars achieved the highest scores. The federal administration, legislature, national electoral authority and law enforcement agencies pillars came out in the middle of the scoring scale. Finally, the pillars with the lowest scores were the executive, media, business and political parties.

The ombudsman pillar was not assessed quantitatively as no such institution exists on a national level. The analysis of this pillar consists rather in presenting the main features of the efforts being made to create a national ombudsman institution. In addition, it was recorded which ombudsman institutions exist at cantonal and communal level and what qualities these have in common. Finally, the analysis of this pillar includes an overview of the most important sector-specific ombudsman institutions in Switzerland.

b) Assessment of the individual areas in brief

The Swiss Federal Audit Office SFAO acting as the **supreme audit institution** in Switzerland was the strongest pillar in the NIS report. Essentially it has sufficient resources to perform its tasks and is independent. Furthermore, it operates transparently, can be held accountable for its activities and carries out effective financial audits.

In the case of the indicator 'Detecting and sanctioning misbehaviour' by the SFAO, it would be beneficial if the Federal Council were to extend the provisions regarding the duty to report, the right to report and the protection of whistleblowers to all decentralised units of the Federal Administration. In addition, the SFAO as a contact point for whistleblowers is not known at all to the general public. However, the provisions of the Federal Personnel Act regarding the protection of whistleblowers and the contact point for whistleblowers have only been in place for a short time. The Federal Government is endeavouring to make the contact point better known, but this will take some time. Unlike a parliamentary ombudsman institution, the

SFAO is also able to obtain information discretely and unnoticed since there is a regular exchange of information and it carries out inspections not only on the basis of a report.

With regard to the **judiciary**, no urgent need for action can be noted: Essentially there are adequate financial and structural resources both at federal and cantonal level although there are considerable differences in part between the various cantons. Furthermore, the judicial authorities operate transparently, can be held accountable for their activities and their internal structures are reviewed regularly by external parties.

Problematic on the other hand is the inadequate independence of judges which is attributable to their political election. The politicisation of the election of judges has negative consequences for the integrity and independence of the justice system. Furthermore, clear regulations regarding vested interests and partiality of judges should be elaborated and enforced, in particular with regard to the secondary employment of lawyers as judges. Ultimately, the judicial authorities are in a position and are willing to punish corrupt practices in a court of law. However, only few cases are referred to them for appraisal by the public prosecutor's office, which is due in particular to the lack of resources in the organisational units responsible for combating and preventing corruption.

The analysis of the **civil society** has shown that the framework conditions are beneficial to the emergence and operation of civil society organisations in Switzerland. Civil society organisations are well-anchored in the population and in politics and represent a significant economic factor. Furthermore, they have adequate resources and operate transparently. Finally, integrity is also essentially guaranteed, whereby compliance with various self-regulatory standards is reviewed by several organisations. Since most civil society organisations in Switzerland are not faced with corruption, this subject does not constitute an urgent issue of their work.

Although the latest corruption cases involving members of the FIFA Executive Committee relating to the awarding of the 2018 and 2022 World Cups are by no means representative of the conduct of most sports associations in Switzerland, these incidents have had a negative impact particularly on the independence, transparency and integrity indicators in practice as well as on the commitment to combating corruption. Since internal anti-corruption efforts by the large sports associations (FIFA, IOC) are apparently not producing the intended outcome, these organisations should fall under the scope of application of bribery in the private sector. To strengthen the civil society organisations involved in preventing and combating corruption, they should furthermore be authorized by law to file complaints in corruption-related proceedings.

The **Federal Administration** essentially functions well according to the findings drawn from the NIS report. Apart from in the area of preventing and combating

corruption, it has adequate resources, is independent and there are comprehensive legal principles regarding transparency, accountability and integrity.

As regards preventing and combating corruption, the Federal Council does not make adequate human and financial resources available to the IDWG Combating Corruption and the members of the core of this working group, e.g. to the Federal Office of Personnel FOPER or the Federal Office of Justice FOJ. This has a particularly negative impact on the enforcement of the conventions on combating corruption ratified by Switzerland. There is clear potential for improvement in terms of public procurement: The provisions according to which the principal is permitted to enter into negotiations with tenderers if certain conditions are in place are problematic. The possibility offered under law for such price negotiations (so-called bidding rounds) can lead to the favouring of individual tenderers and increases the risk of malpractice and corruption. Furthermore, in the future, it should be possible to sanction people, who fail, against their better judgement, to award public procurement contracts subject to an invitation to tender in accordance with the principles set out in public procurement law, for their conduct. The awareness of Federal Administration employees, who are competent to award public procurement contracts, of the legal principles of public procurement must also be raised and they must be given training in the context of vocational and further training programmes.

Essentially there are no serious structural deficiencies in the **legislature**. The legislature is independent from the influence of other state actors both according to legal principles and in practice. It operates transparently and can be held accountable for its actions. Together with the media it carries out adequate supervision of government activities.

The poor financial resources available to members of parliament mean that lobbyists compose many of their votes and motions. Such practices undermine the independence and integrity of the members of parliament. Vested interests of members of parliament represent a serious problem: Although there is a register which discloses vested interests, this instrument, however, is not sufficient to ensure the integrity of the Council members since there are no controls on the correctness and completeness in terms of content of the information provided there. In addition, it is not apparent how the members of parliament are remunerated for their respective activity. A constitutional court would be desirable as a corrective of the activity of the legislature so that federal acts can also be made accessible for legal review.

In the Swiss system, the role of the **national electoral authority** is in fact performed by the Political Rights Section of the Federal Chancellery responsible for the organisation and implementation of the National Council elections. The Swiss electoral system essentially functions well. The authorities operating in this area enjoy great trust among the voters. In addition, they have adequate resources in order to perform their tasks. The areas of transparency, accountability and integrity can also essentially be assessed as positive.

A risk of manipulation exists in the case of postal voting where, in addition, it cannot be guaranteed that voting secrecy is ensured. The lack of regulation of electoral campaigns and parties, where no regulations are currently in place, represents a serious problem. The lack of a ban on list sub-combinations and lists submitted spontaneously (ad-hoc committees) is problematic. Finally, the exercise of voting rights by Swiss citizens abroad cannot be completely ensured due to the in part unreliable delivery and late return of voting papers by foreign postal services.

The overall situation of the **law enforcement agencies** can be summarily assessed as good. The authorities operating in this area, i.e. in particular the Office of the Attorney General and the Federal Office of Police have good financial resources and a robust infrastructure. Furthermore, they are essentially independent, disclose their activities and can be held accountable for their actions. Their integrity is essentially guaranteed and they have appropriate investigation techniques and procedural instruments for the criminal prosecution of corruption.

Human resources shortages in the public prosecutor's office and the police, both on a federal and cantonal level, pose a problem. This means *inter alia* that investigations are not carried out at all in larger cases (so-called 'too big to investigate' problem). Moreover, at cantonal level, the system for the political election of the public prosecutor's office and the associated de facto obligation to be affiliated to a party are questionable. As a result of this, the parties have an opportunity to influence public prosecutors which can jeopardise their independence. In terms of integrity, the lack of a generally applicable code of conduct and ethics for police officers was also criticised. A negative factor is the fact that the criminal prosecution of corruption by the law enforcement agencies is rather modest in quantitative terms. This is due in particular to the lack of protection for whistleblowers in the private sector and inadequate human resources.

The analysis of the **executive** has shown that there are no fundamental structural deficiencies. The government has sufficient resources in order to perform its functions, is independent from other state institutions and is required to give an account of its activities. Supervision of the government as well as the integrity of government members are essentially guaranteed. There are regulations regarding the protection of whistleblowers in respect of persons employed in accordance with the Federal Personnel Act.

There are considerable deficiencies in practice in terms of the independence of the Federal Council, which is undermined by the strong influence exercised by the trade associations (economiesuisse, banking sector). Furthermore, the Federal Council has acted intransparently on various occasions in the recent past, for example in the destruction of files in the Tinner case or the authorisation of CIA flights over Swiss territory. In terms of preventing and combating corruption, the Federal Council has indeed ratified the relevant international conventions on combating corruption and anchored them in national law, and implemented most of

the GRECO recommendations. However, the organisational units active in connection with the prevention and combating of corruption, e.g. the IDWG Combating Corruption and the administrative units operating in the core group of the IDWG Combating Corruption (e.g. the FOPER or the FOJ), are not provided with the necessary human and financial resources required to perform their tasks. Furthermore, the government has been deferring motions in parliament for improved protection for whistleblowers in the private sector for years.

In the public sector, the mechanisms laid down in the Federal Personnel Act for the protection of whistleblowers should be extended to all decentralised administrative units. In summary, the lack of commitment on the part of the Federal Council in relation to the prevention and combating of corruption means that there is unsatisfactory enforcement of the conventions that Switzerland has ratified. In the case of public procurement, the Federal Council should ultimately provide sanctions for people who fail, against their better judgement, to award public procurement contracts that are subject to an invitation to tender in accordance with the principles set out in public procurement law.

The analysis of the **media** shows that there is a diverse media landscape in Switzerland although a process of concentration has taken place over the last few years. In addition, the integrity, accountability and information provided about the activities of the government are satisfactory.

In terms of transparency, there is a need for subsequent improvement with regard to the disclosure of media company ownership structures, editorial guidelines and reporting principles. The independence of the media is also highly dependent upon resources and the worse the overall economic situation is, the more this independence is jeopardised. Finally, only few cases of corruption are known or have been uncovered by the media in Switzerland. In this context, it appears to be the case that the importance of corruption and its impact in Switzerland is rather underestimated. There is clear potential for improvement with regard to reporting on the subject of corruption by the media.

The Swiss **business sector** is characterised by a very liberal legal order which is supplemented by self-regulations that are customary in the sector. The establishment and management of companies are very well provided for in law and in practice. Swiss companies largely enjoy legal protection against unauthorised government and private interference. The stringent liability law, the well-functioning legal action and enforcement mechanisms and the associated legal certainty lead to the fact that corruption in the Swiss business sector is generally not very common.

In terms of transparency, there are relatively weak statutory accounting requirements for companies not listed on the stock exchange compared with those that are listed. A revision of the company and accounting legislation is currently underway which is intended to eliminate these deficiencies. In terms of integrity, the lack of specific regulations for the protection of whistleblowers constitutes one of

the biggest problems of the NIS. In addition, there are compliance departments and measures relating to this primarily in major enterprises, but not in SMEs, which constitute over 99% of all Swiss companies and employ approximately two thirds of employees in the private sector. A negative factor is also that Swiss entrepreneurs demonstrate a modest commitment to combating corruption: Swiss companies and their representatives in parliament are sceptical towards statutory anti-corruption provisions, which could lead, for example, to the creation of a government anti-corruption agency, and advocate self-regulatory measures instead. Finally, there is modest cooperation between the business sector and civil society in terms of combating corruption; there are only very few committed companies in this area.

The review of the **political parties** shows that these are well-anchored in the population. Their role is limited in practice by the traditionally strong influence of interest associations as well as by direct democracy. Furthermore, there are only few statutory requirements with regard to the establishment and management of political parties whereby the law governing private associations is authoritative in this respect. The political parties are organised democratically and are independent from the government.

The reverse side of the liberal order for the political parties is the great lack of transparency. Intransparency reigns in Switzerland in overall political financing, i.e. there are neither regulations regarding the disclosure of political party financing nor regarding the financing of referenda and electoral committees. Compared internationally, Switzerland represents an exception in this respect since virtually all western democracies have set out statutory regulations regarding the financing of political parties and electoral committees. The intransparent situation makes it difficult to assess the effectiveness of political competition and to make the vested interests of the political parties and the referenda and electoral committees apparent to voters. The disproportionate resources available to the political parties mean that primarily the major, financially strong parties are heard. The smaller parties on the other hand have trouble communicating their political message to a wide population. The disparities in financial resources thus reduce not least the quality and integrity of political competition. The lack of regulations regarding transparency means that there is no independent review of party finances in Switzerland since the parties are not obliged to have their finances audited by an ordinary auditor. Finally, the lack of commitment on the part of the political parties to combating corruption is problematic. The fight against corruption has so far not been a declared aim of the political parties in their respective party manifestos.

Deficient role in support of the integrity system and mutual influence of the weak pillars of the NIS

The pillars analysed came out best on average in terms of capacity, i.e. the resources available to institutions and the independence of these institutions, achieving a score of 87/100. The various pillars came out slightly less well in the 'governance' dimension of the assessment, i.e. in relation to transparency, accountability and the integrity mechanisms that are in place in the various institutions, achieving a score of 79/100. Finally, the role taken by the various institutions in strengthening the integrity system as a whole received the worst assessment and 'only' achieved a score of 71/100. This overview of the quantitative results for the three NIS dimensions provides an accurate picture of the condition of the Swiss integrity system: The situation with regard to capacity and governance is very good; the biggest deficiencies exist in terms of the role of specific measures implemented by the individual areas to improve the corruption situation in Switzerland. This result reflects one of the most important findings of the report, namely the general underestimation in Switzerland and the lack of awareness of corruption and its impact. It is evident from the following explanations that, in this context, the weaknesses of the various pillars have a mutual influence on each other:

The **lack of regulations regarding political financing** is *inter alia* a consequence of the lack of commitment on the part of the political parties to combating corruption or the disregard for the importance of this subject respectively, which has negative consequences for the agenda setting of the legislature in this area.

There is **no specific protection for whistleblowers** in the private sector and consequently the employment law standards regarding unfair or wrongful dismissal, which make provision for a maximum compensation of six months' pay, are applicable in this area.[2] A revision of these regulations is currently underway according to which the maximum compensation is intended to be increased to 12 months' pay. However, advocates of effective whistleblower protection in the private sector doubt whether this change in legislation will be enough to ensure appropriate protection.

The consequences of this poor whistleblower protection can be seen particularly in the lack of enforcement of the conventions on combating corruption that Switzerland has ratified. It is therefore very difficult for the law enforcement agencies to identify alleged corrupt practices and to investigate in this context. Consequently, also only few cases can be referred to the justice system for appraisal and sentences for corrupt practices are rarely passed.

A **contact point for whistleblowers known to the general public** would be important for uncovering cases of corruption, the investigation of such cases by the law enforcement agencies and convictions by the justice system. The SFAO is such a contact point, but is as yet virtually unknown as such to Federal Government employees or to the general public. The Federal Government is striving to

[2] In the public sector, provisions regarding the protection of whistleblowers for central Federal Administration personnel have been in place since 1 January 2011. The effect of these provisions cannot, however, be assessed at the current point in time.

improve this situation. Moreover, the contact point has only been in existence for a short time. However, there is the question of whether or not a (yet to be created) national ombudsman institution as an independent contact point for whistleblowers would be more suitable than the SFAO: As the work of the ombudsman institutions at cantonal and communal level shows, these institutions make an important contribution to the precluding and combating of grievances and corruption in administration. In particular, they are easy to access and are geared towards dealing with individual cases. **The media could also play a central role in the uncovering of corruption cases.** The analysis of this area has shown, however, that the media in Switzerland rarely investigate or uncover cases of corruption and only provide the general public with scant information about corruption and its impact. This has negative consequences for the investigation of cases relevant to corruption law by the law enforcement agencies as well as on the sentencing of corrupt individuals by the justice system. The lack of awareness-raising with regard to corruption and its impact by the media also has a negative effect on building general awareness of this subject among the population as a whole. In turn, this lack of information has an impact on the other central areas of society, for example, on the civil society organisations, which might pick up on the subject of corruption more and make greater efforts in the prevention and combating of corruption in Switzerland if they were given sufficient information.

The lack of support by the business sector for the introduction of more succinct regulations relating to the combating of corruption ultimately has a negative impact on the legislative process in the area of corruption since the business sector representatives have a significant influence in parliament. Furthermore, the analysis has shown that support and cooperation between business and civil society is modest. Even more could be done in this respect to exploit potential synergies between these areas since corruption ultimately harms both the national economy and society as a whole.

Finally, **the poor commitment on the part of the Federal Council** in relation to the prevention and combating of corruption is an important reason explaining the lack of sensitivity and no distinctive awareness of the corruption problem in society as a whole. This applies to both the inadequate provision of resources for the organisational units working to prevent and combat corruption and the lack of sanctions for misconduct by Federal Administration employees in contravening public procurement regulations.

Features of corruption in Switzerland

It is evident from the explanations given so far that Switzerland basically has a robust national integrity system with developed institutions that function well. The role of the institutions in strengthening the entire integrity system comes out worst. This is a consequence of the general **underestimation of the importance** and the **lack of awareness of corruption** (what is allowed and what

is already deemed corrupt?) and its impact. A good example of this is the Swiss policy making and the **militia system** practiced in the political system in this country: The transition from personal (financial) and political interests is fluid, there is little transparency and conflicts of interest are not perceived as such. The existing register for members of parliament for recording vested interests provides no information about the remuneration that the members of parliament have received for the activities performed and the correctness of the information provided is not reviewed. Furthermore, existing vested interests do not have to be disclosed prior to votes in parliament and the voting behaviour of members of the Council of States is intransparent. There is also complete intransparency in terms of **political financing** and consequently it is not evident to the voter which financial forces are behind the concerns expressed by the parties and the politicians.

Moreover, the **secondary employment performed by judges** may lead to conflicts of interest. Lawyers can procure an advantage for themselves on the basis of their activities as judges which may be of benefit to them in the context of their activities as lawyers, for example access to unpublished verdicts. This can result not only in the distortion of competition, but can also jeopardise judicial integrity and independence.

Moreover, the **election of associates of the law enforcement agencies and of judges** by political bodies must be criticised since affiliation to the 'right' party is sometimes more crucial when appointing these persons than the expertise required for the respective post. This is extremely alarming in terms of the importance of these functions within the overall integrity system.

In summary, it can be noted that corruption within the meaning of the Swiss Criminal Code, if anything, represents an exception in Switzerland. More typical on the other hand is corruption in the sense of nepotism which is aided and abetted by the small size of the country, the often close personal contacts of important decision-makers in business and politics as well as by the militia system where sensitivity to conflicts of interest and transparency is very low.

Reform proposals

On the basis of the preceding analysis, TI Switzerland has elaborated reform proposals which are designed to contribute towards the sustained improvement of the Swiss integrity system.

A) Political financing

Creation of transparency in political financing

The intransparency in political financing, i.e. in the financing of political parties as well as electoral and referenda committees, is a major deficiency of the Swiss NIS. Regulation in this area should make it apparent to voters who finances politics thus making it possible to exercise the right of free formation of will and unbiased voting properly. The regulations to be issued should be based on the recommendations of the Committee of Ministers of the Council of Europe to member states on common rules against corruption in the funding of political parties and electoral campaigns.[3] These recommendations make provision substantially that donations to political parties exceeding a fixed ceiling must be made public. Furthermore, provision should be made for the possibility of limiting the value of donations. The regulations applicable to the parties must also apply *mutatis mutandis* to electoral campaigns and the activities of elected members of parliament. Finally, the recommendations make provision that all direct and indirect expenditure in elections by each political party, each list of candidates and each candidate should be made public. Due to the importance of referenda in Switzerland, these regulations must also apply *mutatis mutandis* to referenda committees.

B) Legislature

1. Disclosure of vested interests of members of parliament

The disclosure of vested interests of members of parliament is intended to create transparency in politics and ensure that it is apparent to voters which interests the politicians in parliament actually represent. Information in this respect must include details of the remuneration received for exercising mandates. Unlike current practice, information from members of parliament must also be complete and up-to-date and systematically reviewed by an independent body. A popular initiative heading in this direction was launched in June 2011.[4] In addition, the voting behaviour of the Council of States should, like that of the National Council, be made transparent. The Federal Government should ensure in the process that the personal interests are readily available in comprehensive format and can be easily accessed by interested parties (vested interests, motions and referenda behaviour of the individual council members should be displayed on a website).

[3] Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns (Adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies).

[4] 'Transparenz-Initiative', cf. http://www.unbestechlich.ch/ [visited on 28 June 2011].

2. *Adequate resources for members of parliament*

Furthermore, adequate resources should be made available to members of parliament for the appointment of at least one personal assistant. This measure should limit the influence of lobbyists on members of parliament and thus ensure the integrity and independence of these members. This should also enable an independent acquisition of knowledge and a critical reflection on the part of members of parliament.

C) Whistleblower protection

1. *Introduction of adequate statutory whistleblower protection for the private sector*

Adequate statutory whistleblower protection for the private sector is imperative so that corrupt practices can be uncovered in the first place and enforcement of the conventions on combating corruption ratified by Switzerland functions better. In the process, unfair dismissal on the basis of a justified internal or external report should be invalid and contestable. Furthermore, a whistleblower who has been dismissed should have the right, alternatively, to be reinstated in the same workplace or in a comparable position with the same employer or to receive appropriate compensation in consideration of the damage suffered. Maximum compensation here should amount to at least 36 months' pay in order to provide the judge with appropriate discretionary powers in clear cases of unfair dismissal. Finally, employees must not incur a professional disadvantage of any kind based on a justified internal or external report. Whistleblowers will therefore be protected against any form of discrimination, not just dismissal.

2. *Extension of whistleblower protection to all decentralised units of the Federal Administration*

The scope of application of the new provisions regarding the duty to report, the right to report and, in particular, the protection of whistleblowers pursuant to Article 22a of the Federal Personnel Act, must be extended to all decentralised units of the Federal Administration, as also demanded by the IDWG Combating Corruption. There is no convincing reason to restrict these provisions only to people employed in accordance with the Federal Personnel Act.

D) Civil society

1. *Subjection of non-profit making sports organisations (FIFA, IOC etc.) to private corruption provisions*

The FIFA corruption scandals referred to in the civil society area have made it clear that the self-regulatory measures taken by the sports associations in terms of ethics and the combating of corruption are not sufficient in practice to prevent corrupt practices. State regulation is therefore needed in this area. This strongly

suggests subjecting sports associations to the scope of application of bribery in the private sector as well. Whether this should take place in the context of the Federal Act against Unfair Competition [*UWG*] or, for example, through an article on bribery in the private sector in the Swiss Criminal Code (SCC) must be examined in detail by the competent authorities.

2. Right of appeal under special legislation for civil society organisations

The influence of civil society organisations which campaign against corruption should be strengthened through the introduction of special legislation legitimising appeals by such organisations. Such appeals could, for example, be filed against writs of nolle prosequi by the public prosecutor's office in corruption cases. This would enable organisations legitimised to file appeals, such as TI Switzerland, the Basel Institute on Governance or the *Aktion Finanzplatz Schweiz*, to proceed in a more targeted manner against corrupt practices also on a legal level, as is, for example, already provided for in law in Switzerland for environmental organisations or in France for organisations campaigning against corruption.

E) Justice system and law enforcement agencies

1. Greater consideration of specialist criteria when electing judges and public prosecutors

The election of judges and public prosecutors by political bodies has occasionally resulted in specialist criteria not being significant in respect of the election in the first instance, but rather party affiliation being substantially authoritative in terms of who is elected to such offices. Party affiliation per se is an irrelevant criterion which ought not to play a dominant role in elections to offices that are important to the integrity system. It would therefore be reasonable, for example, for a specialist body to carry out a pre-selection procedure in order to ensure that the judges and public prosecutors have the relevant specialist qualifications. At federal level this affects the election of federal judges, the Attorney General and the Assistant Attorney General (these are elected by the parliament). At cantonal level, greater consideration should be given to specialist criteria in the case of all judges and public prosecutors elected by a political authority. Furthermore, essentially only people who have a licence to practice law and therefore basic specialist training should be appointed as judges or public prosecutors.

2. Passing of clear rules on vested interests and the partiality of judges

Clear, mandatory rules for the disclosure of vested interests and the partiality of judges should be passed at cantonal level. This concerns in particular the problematic, secondary employment of lawyers as judges, which may jeopardise the integrity of judges as well as the independence and reputation of judicial authorities.

F) Federal Administration

1. Public procurement

The Federal Act on Public Procurement [*Bundesgesetz über das öffentliche Beschaffungswesen*] should be amended to the effect that price negotiations will no longer be possible in the future since these increase the risk of malpractice and corruption. Furthermore, the Federal Council as the supreme governing body must ensure compliance with public procurement law provisions. Federal Administration employees, who are competent to award public procurement contracts must have their awareness of the legal principles of public procurement raised and they must be given training in the context of vocational and further training programmes. Furthermore, it must be possible to sanction people, who fail, against their better judgement, to award public procurement contracts subject to an invitation to tender in accordance with the principles set out in public procurement law, for their misconduct.

2. Creation of a national ombudsman institution

As the work of the ombudsman institutions at cantonal and communal level shows, these institutions make an important contribution to the preclusion and combating of grievances and corruption in administration. Ombudsman institutions are easy to access and independent from the administration. They work on a case-by-case basis and at no charge. A national ombudsman institution could also serve as an independent contact point for whistleblowers.

Overview of scores for the individual pillars

Pillar	Capacity	Governance	Role	Overall score
Supreme audit institution	100	96	75	90
Judiciary	81	83	88	84
Civil society	94	83	75	84
Federal administration	92	83	67	81
Legislature	75	79	88	81
National electoral authority	92	96	50	79
Law enforcement agencies	75	88	75	79
Executive	67	83	75	75
Media	88	71	67	75
Business	100	67	50	72
Political parties	88	42	75	68
Ombudsman	–	–	–	–
Total	87	79	71	79

Introduction

Corruption ceased to be a taboo subject at the end of the 1980s, in the media at least.[1] The profile of corrupt phenomena in Switzerland has barely changed since then. It primarily involves cases of nepotism and favouritism which are played out in a grey area where it is very difficult to differentiate between unlawful and (merely) immoral or unethical influence. This leads to the same actions by different actors being assessed differently.[2] As the exemplary cases below show, the subject of money laundering in Switzerland, in particular, represents a significant problem. In the process, Swiss companies are actively or passively involved in the concealment or disguise of assets of illicit origin. Although the growing presence of foreign, primarily Italian mafia-style organisations is perceived as problematic,[3] networks, which systematically spread and protect corrupt structures, do not appear to be very common in Switzerland.[4] However, the sparse research in the area of corruption leaves many questions regarding the scale, nature and consequences of corruption unanswered.[5]

In order to explain the main features of the Swiss corruption profile, the level of corruption in Switzerland will be discussed below using various indexes. The most important corruption problems including the relevant political and societal backgrounds will then be discussed and illustrated using selected case examples.

Level of corruption in Switzerland

In international comparisons of levels of corruption, which are published primarily in the form of indexes[6], Switzerland performs very well in the majority of cases and is considered a country with a remarkably low level of corruption. Switzerland is ranked eighth among the countries perceived as least corrupt in the TI **Corruption Perceptions Index (CPI)** 2011[7]. A look at the scores for the last ten years also shows that the level of corruption during this period was perceived as very stable. A similar impression is conveyed[8] by the World Bank's **Worldwide Governance Indicators (WGI)**[9] and the fact that in the past few years only 1–2% respectively of the respondents in the TI **Global Corruption Barometer**[10] reported that they had paid bribes in the last 12 months.

1 QUELOZ Nicolas, 'La médiation croissante de la corruption', in QUELOZ et al., *Processus de corruption en Suisse*, Vol. 1 (Basel, Genf, München: Helbling und Lichtenhahn, 2000), 59–60.

2 BORGHI Marco und BALMELLI Tiziano, 'Perception des réseaux de connivences, surtout politiques, au Tessin' in QUELOZ et al., *Processus de corruption en Suisse*, Vol. 1 (Basel, Genf, München: Helbling und Lichtenhahn, 2000), 169.

3 Cf. http://www.nzz.ch/nachrichten/politik/schweiz/die_mafia_weicht_in_die_schweiz_aus_1.11034768.html [visited on 4 August 2011].

4 BOGGIO Yann, CESONI Maria Luisa, SARDI Massimo, 'Les processus de corruption en Suisse: analyse des données empiriques récoltées à la lumière de recherches nationales et internationales en sociologie en science politique' in QUELOZ et al., *Processus de corruption en Suisse*, Vol. 1 (Basel, Genf, München: Helbling und Lichtenhahn, 2000), 404.

5 No large-scale qualitative or quantitative studies on the societal phenomenon of corruption have been published in Switzerland in the last ten years.

6 All corruption indexes, and in specific comparisons between countries, must be interpreted with caution since especially indexes such as the Corruption Perceptions Index (CPI) are based on the perception of corruption. In addition to the actual level of corruption, perception is also influenced by socio-cultural backdrops such as sensitivity to fairness and preconceived expectations. (TREISMAN Daniel, 'What Have we learned About the Causes of Corruption from Ten Years of Cross-national Empirical Research?', *Annual Review of Political Science* 10, 2007, 212/215).

7 http://cpi.transparency.org/cpi2011/ [visited on 8 December 2011].

8 Further information at: http://info.worldbank.org/governance/wgi/sc_country.asp [visited on 20 April 2011] and in '*Country Data Report for Switzerland, 1996–2009*': http://info.worldbank.org/governance/wgi/index.asp [visited on 20 April 2011].

9 http://info.worldbank.org/governance/wgi/index.asp [visited on 5 April 2011].

10 http://www.transparency.org/policy_research/nis/nis_reports_by_country [visited on 7 November 2011].

Table 1: Corruption Perceptions Index

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Rank	12	8	7	7	7	7	5	5	8	8
Score*	8.5	8.8	9.1	9.1	9.1	9.0	9.0	9.0	8.7	8.8
No. of countries	102	133	145	159	163	180	180	180	178	182

* The index is based on a scale of 1 to 10, where 10 means that a country is perceived as very clean.

Contrary to the stable scores in the index, the respondents in the Global Corruption Barometer expect, for example, that the level of corruption in Switzerland will rather rise.

Table 2: Assessment by respondents on past and future development of corruption in Switzerland (Global Corruption Barometer)

	has increased/ will increase	has stayed/ will stay the same	has decreased/ will decrease	Don't know/ no answer
(2010) over the *last* three years	53%	41%	6%	–
(2007) over the *next* three years	43%	50%	7%	–
(2005) over the *next* three years	47%	38%	11%	4%
(2005) over the *last* three years	50%	36%	8%	7%
(2004) over the *next* three years	51%	35%	12%	2%
(2003) over the *next* three years	47%	33%	14%	5%

The perception that corruption is not very common can be explained at least in part by the good socio-economic conditions[11], which contribute to the high quality of public services, the balanced distribution of public offices as well as largely non-discriminatory access to the Service Public. In the process, the comparatively high wages, diverse social benefits and good protection of employees in the public sector act as an incentive for employees not to risk their position by engaging in corrupt conduct.[12] Employees in the public sector are also described as honest and loyal and are considered largely efficient. This integrity and efficiency are an important basis for the fact that petty corruption[13] is not an established, common, everyday phenomenon in Switzerland.[14]

Statistics on convictions for corruption offences thus also fluctuate between ten and twenty cases a year, which confirms the assessment that corruption, at least in the conventional sense, is not very common in Switzerland. However, the number of misdemeanours, which never come to light, is unclear.

11 Many scientific analyses reach the conclusion that the per capita GDP of a country and its level of corruption are linked in a negative manner. In the process, causality goes in both directions. See, for example, SVENSSON, 2005: 26–30.

12 BOGGIO, CESONI, SARDI 2000, 413.

13 The World Bank defines petty corruption as corruption involving small amounts of money paid to junior officials.

14 BOGGIO, CESONI, SARDI 2000, 406.

Table 3: Convictions of adults for a felony or misdemeanour* under the Swiss Criminal Code (SCC)**[15]

Year		2001	2002	2003	2004	2005	2006	2007	2008**	2009**
Total	**Bribery**	**3**	**12**	**6**	**14**	**12**	**10**	**16**	**10**	**11**
322ter	Bribery of Swiss public officials	2	7	4	7	11	9	12	9	5
322quater	Acceptance of bribes	0	4	0	1	1	1	3	1	5
322quinqies	Granting an advantage	0	1	1	0	0	0	0	0	0
322sexies	Acceptance of an advantage	0	0	1	6	0	1	1	0	1
322septies	Bribery of foreign public officials	1	0	0	0	0	0	0	0	1

* Only felonies and misdemeanours were taken into account in the evaluation since not all infringements are entered in the criminal record. The provisions regarding entry in the criminal record were revised in 2007.

** The statistics on the conviction of adults is based on the verdicts entered in the criminal record. Convictions are entered in the record as soon as the verdict enters into force. Since dealing with potential appeals can take years, it takes several years for all verdicts passed in one year to be entered in the criminal record and appear in the statistics. Therefore, caution and reservation is advised when interpreting trends in verdict figures in the most recent survey years.

With regard to corruption in specific sectors, it is clear from the TI **Global Corruption Barometer (GCB)**[16] that in Switzerland since 2004, the private sector, political parties and the media are perceived as the sectors most affected by corruption.

Table 4: Average assessment of the level of corruption in various sectors and institutions (GCB)

	Political parties	Parliament/Legislature	Justice system/Judiciary	Police	Business/Private sector	Tax authorities	Customs	Media	Medical services	Education system	Registry & permit services	Service Public	Military	Non-governmental organisations	Religious bodies
2010	2.9*	2.6	2.3	2.1	3.3	–	–	3.0	–	1.8	–	2.6	2.2	2.2	2.5
2009	2.9	2.6	2.2	–**	3.2	–	–	3.1	–	–	–	2.5	–	–	–
2007	2.8	2.5	2.2	2.2	3.0	2.4	–	2.9	2.2	1.9	2.2	–	2.2	2.3	2.4
2006	3.0	2.6	2.3	2.2	2.9	2.5	–	2.9	2.2	1.9	2.0	2.2	2.4	2.4	2.5
2005	3.2	2.7	2.3	2.2	2.9	2.5	2.1	2.9	2.3	1.9	2.0	2.3	2.3	2.3	2.3
2004	3.2	2.8	2.3	2.3	3.0	2.7	2.3	3.1	2.3	2.1	2.1	2.3	2.4	2.4	2.3

* The exact question was: "To what extent do you perceive the following institutions in your country to be affected by corruption?" (1: not at all corrupt, 5: extremely corrupt).

** '–' means that no scores were published for this category in the respective year.

The willingness of national companies to pay bribes abroad is determined by the TI **Bribe Payers Index (BPI)**[17]. In the 2011 BPI[18], Swiss export companies with a score of 8.8 were considered along with Dutch companies as least likely to bribe. However, the difference between 8.8 and 10 on the scale shows that Swiss companies too are willing to pay bribes abroad.

15 Bundesamt für Statistik: http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/22/lexi.Document.21954.xls [visited on 5 April 2011].

16 http://www.transparency.org/policy_research/surveys_indices/gcb [visited on 7 August 2011]

17 http://www.transparency.org/policy_research/surveys_indices/bpi [visited on 5 April 2011].

18 TRANSPARENCY INTERNATIONAL, *Bribe Payers Index 2011*, (Berlin: Transparency International, 2011) 5: http://bpi.transparency.org/ [visited on 2 November 2011].

Table 5: Overview of BPI scores for Switzerland

Year	1999	2002	2006	2008	2011
Rank	5	2	1	3	1
Score*	7.7	8.4	7.8	8.7	8.8
No of Countries**	19	21	30	22	22

* Scores range from 0 to 10; the higher a country's score the less likely it is that companies in this country pay bribes abroad.
** The BPI only analyses the most important export countries.

Corruption problems in Switzerland

Perception of the corruption phenomenon in Switzerland

The information in the following two sections originates, unless otherwise indicated, from a study[19] that was carried out in the cantons Valais, Ticino and of Geneva and published in 2000. Unfortunately, a more up-to-date analysis, which empirically analyses corruption as a social phenomenon, is not available. The study in which people from both the public and the private sector were surveyed, has shown that corruption is not associated with a standard definition.[20] Furthermore, the definition varies from canton to canton which the authors of the study attributed to the economic and cultural differences between the cantons which result in different experiences with corruption. Great uncertainty thus also exists in relation to whether a specific influence is classified as illegal, unethical or as usual in a specific context and therefore not as reprehensible. This is particularly serious for the very reason that most cases of corruption take place in a grey area between legality and illegality. The public sector employees surveyed would for that reason welcome the communication of a clear definition of corruption that could be applied in practice and hold the view that this would contribute towards preventing corruption. In this context, competent supervisory bodies and as few discretionary powers as possible were also viewed as helpful.[21] There is also no clear concept of the exact risks and consequences of corruption. Most respondents do not perceive corruption as a general, systematic problem which has developed as a (functional) response to grievances in the public sector, but as individual cases which occur in isolation and, first and foremost, serve the pursuit of personal interests. The function and legitimacy of the public institutions is not, however, called into question through this.

The lack of clarity referred to and the superficial perception of corruption contribute to the fact that corruption is often something that the Swiss population is not generally aware of as a serious problem.[22] However, it has been recognised in recent years that vigilance towards and building awareness of corruption problems has increased particularly among the authorities, also in response to international pressure.[23] This has led to improvements in many areas which are discussed in the chapter entitled 'Anti-corruption measures and actors'. Nevertheless, 54% of re-

19 BOGGIO, CESONI, SARDI, 2000, 397–415.
20 CESONI Maria Luisa, 'Perception de la corruption: analyse des entretiens d'orientation dans les trois cantons' in: QUELOZ et al., *Processus de corruption en Suisse*, Vol. 1 (Basel, Genf, München: Helbling und Lichtenhahn, 2000),105 et seq.
21 This view is shared by academics. See, for example, JAIN K. Arvind, 'Corruption: A Review', *Journal of Economic Surveys*, Vol. 15, No. 1, 2001, 77 et seq.
22 INTERDEPARTEMENTALE ARBEITSGRUPPE KORRUPTIONSBEKÄMPFUNG, *Bericht der IDAG Korruptionsbekämpfung – eine Bestandsaufnahme der nationalen und internationalen Aktivitäten in der Korruptionsbekämpfung* (Bern: Schweizerische Eidgenossenschaft, 2011), 3–4. (http://www.news.admin.ch/NSBSubscriber/message/attachments/22790.pdf, [visited on 10 August 2011])
23 BERICHT IDAG KORRUPTIONSBEKÄMPFUNG, 2011: 3.

spondents in the **Global Corruption Barometer (GCB) 2010**[24] described the anti-corruption measures implemented by the Federal Government as inefficient.

Federalism, militia system and linkage between politics and business

Switzerland has a **federalist system** where many important political decisions are devolved.[25] Whether or not a political system of this nature promotes or inhibits corruption is disputed in the reference literature.[26] The system operated in Switzerland creates a situation where a large number of small entities have political power and resources and make political decisions. Close, personal linkages between politicians, public officials and people working in the private sector are not uncommon at communal and cantonal level, which leads to a type of 'village mentality'. In other words: 'Everyone knows everyone else'.[27] On the one hand, these links can encourage informal, mutual monitoring and thus preclude corrupt conduct. This is primarily the case if strong political competition ensures the rotation of politicians. On the other hand, however, the familiarity between the circle of people referred to reduces the general vigilance towards corruption and nepotism which promotes the institutionalisation of diffuse unethical or even illegitimate influence. This risk exists particularly in cantons or communes dominated by the same party and the same politicians over a long period of time.

A specific case, which illustrates the problem of favouritism and the difficulty in differentiating between gifts and bribes, is represented by the proceedings that have been on-going since 2010 regarding investments made by the Civil Service Insurance Fund [*Beamtenversicherungskasse (BVK)*] of the canton of Zurich.[28] The principal charge in the BVK case concerns the former BVK chief investment officer, who admitted having accepted golf vouchers, free holidays, monetary payments and complimentary visits to brothels, which he, however, considers gifts. The advantages referred to were given by various companies who were commissioned to invest BVK money. These companies generated losses of well over half a billion Swiss francs with risky or poorly audited BVK investments. What is explosive about this case is that the chief investment officer was friends with various employees of these companies. Moreover, one of these undertakings (which was commissioned to invest CHF 2.3 bn.) was managed by former employees of the inspection body for BVK investments. The same company is also accused[29] of paying retrocessions[30].

An additional feature of federalism is the bicameral system[31], where, in Switzerland, the Council of States is constituted according to the federalist principle 'every canton carries the same weight' rather than according to the democratic principle 'one person, one vote'. "An individual voter from a small constituent state thus has a higher weighting of votes than one from a constituent state with a large population".[32] Compared with other federal systems, this imbalance between the individual constituent states, i.e. the large and small cantons, is particularly marked in Switzerland.[33] This starting position means that well-organised interest groups, such as trade associations, can win the vote of a Council of States member for

24 TRANSPARENCY INTERNATIONAL, *Global Corruption Barometer 2010*, (Berlin: Transparency International, 2010) 47: http://www.transparency.org/policy_research/nis/nis_reports_by_country [visited on 7 August 2011].

25 Cf. in this respect the detailed explanations by LINDER, 2005: 139 et seq.

26 Cf., for example, meta-analysis by SERRA Danila, 'Empirical determinants of corruption: A sensitivity Analysis', *Public Choice* 126(1/2): 225-256 or article by TREISMAN Daniel, 'The causes of corruption: A Cross-National Study', *Journal of Public Economics* 76 (3), 399–457. The connection between the system of direct democracy and corrupt practices is also unclear. A scientific analysis was carried out in the 1980s which looked into the influence of associations on political decisions, *inter alia* on the outcome of referenda, cf. SCHNEIDER Friedrich, *Der Einfluss von Interessengruppen auf die Wirtschaftspolitik* (Bern: Haupt, 1985). In the more recent past, however, there have been no comparable systematic studies on this subject.

27 BOGGIO, CESONI, SARDI, 2000: 414.

28 Sources relating to this case: *Tagesanzeiger*, 27 April 2010: http://www.tagesanzeiger.ch/wirtschaft/unternehmen-und-konjunktur/How-to-become-a-millionaire-nach-Zuercher-Art-/story/29043370?dossier_id=618, *Tagesanzeiger* (CH), 14 April 2011: http://www.tagesanzeiger.ch/wirtschaft/unternehmen-und-konjunktur/How-to-become-a-millionaire-nach-Zuercher-Art-/story/20948495?dossier_id=618, *Tagesanzeiger* (CH), 26 April 2011: http://www.tagesanzeiger.ch/zuerich/stadt/Koennen-die-Richter-in-der-BVKAffaere-ohne-Groll-urteilen-/story/21952417?dossier_id=618, Berner Zeitung, 25 June 2011: http://www.bernerzeitung.ch/wirtschaft/geld/BVKSkandal-Die-Verantwortlichen-sollen-zahlen-/story/12132225, *NZZ Online* 22 June 2010: http://www.nzz.ch/nachrichten/zuerich/staatsanwalt_sichert_in_der_bvk-affaere_weitere_dokumente_1.6201941.html [all visited on 9 August 2011].

29 The full extent of the case is not yet known in detail. However, it can be said with certainty that corrupt practices were involved in the process of investing the pension fund assets. A Parliamentary Inquiry Committee of the Cantonal Council of Zurich is currently investigating the reason why the chief investment officer was able to enrich himself unnoticed for years.

30 Retrocessions are defined as commissions or return payments, e.g. as remuneration from sales offices for the sale or holding of financial and insurance products (sale of funds to third parties, provision of brokering transactions etc.) http://www.banken-test.ch/de/lexikon/retrozession.htm [visited on 9 August 2011].

31 "Following the example of the United States Constitution, a bicameral system was introduced when the Swiss Federal State was established in 1848. The National Council represents the whole population and the Council of States represents the constituent states, the cantons. The two councils are on a par with one another." (http://www.parlament.ch/d/wissen/parlamentswoerterbuch/seiten/zweikammersystem.aspx, [visited on 7 November 2011]).

32 LINDER 2005: 184.

33 "The 10% of the Swiss population (citizens from the smallest cantons) represented to the best advantage have 38.9% of the seats in the

themselves, who in extreme cases represents 33 times fewer voters than his colleague from the canton with the highest population who, however, has just as much decision-making power.

In terms of corruption, the **militia system** practiced in Switzerland, i.e. "(...) the voluntary and honorary assumption of public duties and offices alongside primary employment"[34], harbours incentives both preventing and promoting it. Since many politicians have a regular job in addition to their political mandate they are not entirely dependent on the income or remuneration they receive for these mandates. Their prosperity is not exclusively linked to their re-election which reduces the incentive to act in a corrupt manner and to take the risks associated with this in order to secure re-election. In addition, the militia system is intended to prevent the formation of a detached, structured and, in the long term, stable 'classe politique' which could serve as a network of systematic corruption.[35] In contrast to this, there is the risk of conflicts between private, professional and political interests. The premise that in his function each public official makes his decision exclusively and solely in the interests of his electorate, is out of touch with reality and can in no way be guaranteed in this system.[36] This is problematic with reference to corruption since personal relationships are regarded as an important factor in the awarding of public procurement contracts or because private interests can play a part in the legislative process.[37] Additionally, the dual work load and the lack of professionalism lead to the increasing influence of technical experts on political decision-making processes. Their advisory function often contains considerable discretionary powers. This situation harbours the risk that, in addition to scientific criteria, private interests will also influence the solutions proposed. These hidden private interests are difficult for politicians to understand due to the often superficial knowledge of technical details.

An additional problem is that of **political financing** as this is not regulated at federal level and only minimally at cantonal level in the cantons Ticino and of Geneva.[38] This means that the general public is not informed about financial flows in the area of political financing.[39]

Switzerland's Financial Centre[40]

Switzerland's financial centre is of significant importance for the national economy and has an important international position at the same time. Roughly one third of all private assets invested abroad are managed in Switzerland. Banking secrecy[41] is a special feature of Switzerland's financial centre. The fact that companies based in Switzerland often fall into disrepute on account of **money laundering** and the acceptance of monies from dictatorial regimes, so-called **potentate funds**, is attributable to banking secrecy. Although money laundering and the acceptance of potentate funds do not represent corruption offences per se, they are strongly associated with such offences because the money involved is often generated or used in connection with corrupt practices.

Council of States". In other countries, this over-representation percentage in the chamber representing the constituent states is as follows: USA 39.5%, Australia 30.4%, Germany 31.5%, Canada 31.2% and Austria 12.8% (cf. LINDER 2005, 184 with reference to LIJPHART).

34 Cf. LINDER 2005: 73.

35 On a national level, the idea of the militia parliament is described as mere 'fiction' by political scientists, which has long since not been a reflection of reality. Cf. LINDER, 2005: 204.

36 LINDER 2005: 76. This is, however, not exclusively a problem of the militia system, and cannot be guaranteed in other systems either.

37 The National Council and Council of States' Commissions for Health and Social Security, for example, have already been accused on several occasions of representing the interests of the pharmaceutical industry, medical profession, health insurance companies etc. instead of those of the population. In the respective bodies, 11 out of 26 and 9 out of 13 members of the commissions respectively, have active links with interest groups in the health sector. (*SF TV* (CH), 21 June 2011: http://www.entscheidung11.sf.tv/Nachrichten/Archiv/2011/06/21/Hintergrund/Parlamentarier-als-Lobbyisten-wen-vertreten-unsere-Politiker-wirklich?WT.z_rss=schweiz [visited on 10 August 2011]).

38 GEISER Jean-Christophe, *Financement des partis politiques et des campagnes électorales, Rapport de droit comparé* (Bern, Office fédéral de la justice, 2011), 4–5.

39 Not only secret, but also publicly known donations can, however, lead to conflicts due to the non-regulation of political financing in Switzerland. In 2011, for example, the part state-owned telecoms company, Swisscom, supported a party congress of the Young Christian Democratic People's Party of Switzerland (JCVP). This raises the question as to whether a part state-owned company may offer financial support at all to political parties.

40 The information in this chapter is taken from the 'Financial Centre Switzerland' brochure: TRANSPARENCY INTERNATIONAL SCHWEIZ, *Finanzplatz Schweiz*, (Bern: Transparency International Schweiz, 2009). The brochure can be accessed from www.transparency.ch/finanzplatz.

41 Official information on banking secrecy can be found on the following website: http://www.efd.admin.ch/dokumentation/zahlen/00579/00607/00621/index.html?lang=de [visited on 3 November 2011].

Money laundering is prohibited by law in Switzerland. Articles 305bis and 305ter of the Swiss Criminal Code make provision *inter alia* that all persons employed in the financial sector are subject to due diligence obligations which stipulate the precise identification of clients. In addition, the institutions are obliged to report justified suspicion of money laundering to the Money Laundering Reporting Office. As the following examples show, money is still being laundered in Switzerland in spite of these precautions, whereby this is practised both by Swiss companies and financial intermediaries as well as by foreign companies.

In 2007, the Office of the Attorney General of Switzerland ordered an investigation into allegations of money laundering in connection with British company, **BAE Systems**. It was accused of having laundered part of the money it needed as bribe payments to secure a Saudi Arabian arms deal in Switzerland.[42] The investigations were widened in 2008 by instigating three further criminal proceedings.[43]

Furthermore, numerous Swiss companies were involved in the scandal surrounding the UN **Oil-for-Food** Programme where the Iraqi regime under Saddam Hussein was alleged to have purloined funds amounting to CHF 1.8 billion. Some of the 36 proceedings instigated in Switzerland ended in a writ of nolle prosequi ordered by the Office of the Attorney General or in a conviction. Overall, CHF 17 million was confiscated which, compared internationally, represents a good result.[44]

Another investigation that began in 2004 and ended in 2011 essentially affected Alstom Prom, the Swiss subsidiary of French company, **Alstom SA**.[45] The head of Alstom Prom was placed on remand pending trial for 50 days in 2008 and house searches[46] were carried out.[47] Alstom SA is accused of making bribe payments and laundering money amounting to over USD 100 million worldwide; investigations in this context are being carried out *inter alia* in France, Great Britain, Poland and Australia. The Office of the Attorney General issued a summary punishment order against Alstom Network Schweiz AG (formerly Alstom Prom AG) for breach of Article 102 (2) of the Swiss Criminal Code (Corporate Criminal Liability – Liability under the criminal law) in conjunction with Article 322^{septies} of the Swiss Criminal Code (Bribery of foreign public officials) and fined Alstom Network Schweiz AG with 2.5 million Swiss francs and imposed a compensatory claim of 36.4 million Swiss francs.[48]

The **PostFinance** case caused a stir in spring 2011. The financial company of Swiss Post was the first company to be ordered in application of Article 102 of the Swiss Criminal Code[49], i.e. Corporate Criminal Liability, to pay a fine of CHF 250,000 on account of money laundering. Both the public prosecutor's office and PostFinance have stated that they will appeal against the verdict of the court of first instance.[50]

The so-called **potentate funds** constitute the second problem in connection with corruption and Switzerland's financial centre. Potentate funds are assets which are illegitimately acquired by politically exposed persons (PEPs)[51] and invested in international financial centres.[52] Switzerland has detailed legislation regarding

42 *NZZ Online*, 15 May 2007: http://www.nzz.ch/2007/05/14/il/newzzF1P168FK-12.html [visited on 18 July 2011].

43 *Swissinfo*, 10 July 2008: http://www.swissinfo.ch/eng/business/BAE_corruption_probe_widens.html?cid=6792518 [visited on 10 May 2011].

44 TRANSPARENCY INTERNATIONAL SCHWEIZ, *Geschäftsbericht 2007*, (Bern: Transparency International Schweiz, 2007) 16.

45 *NZZ Online*, 28 October 2008: http://www.nzz.ch/nachrichten/wirtschaft/aktuell/verdaechtige_alstom-transaktionen_unter_der_lupe_1.1181925.html [visited on 19 July 2011].

46 *FCPA Blog* (US), 25 August 2008: http://www.fcpablog.com/blog/2008/8/25/swiss-police-raid-alstom.html [visited on 19 July 2011].

47 *Der Bund*, 11 April 2011: http://www.derbund.ch/wirtschaft/konjunktur/Fall-Holenweger-loeste-in-Brasilien-einen-Bestechungsskandal-aus-/story/30229859 [visited on 19 July 2011].

48 http://www.admin.ch/aktuell/00089/index.html?lang=de&msg-id=42300 [visited on 12 December 2011].

49 Article 102 of the Swiss Criminal Code (SCC) of 21 December 1937 (amended as of 1 January 2011), SR 311.0: "If a felony or misdemeanour is committed in an undertaking in the exercise of commercial activities in accordance with the objects of the undertaking and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the undertaking, then the felony or misdemeanour shall be attributed to the undertaking. In such cases, the undertaking shall be liable to a fine not exceeding 5 million francs (...)".

50 *Handelszeitung,* 11 April 2011: http://www.handelszeitung.ch/unternehmen/geldwaescherei-urteil-postfinance-kuendigt-berufung [visited on 19 July 2011].

51 These include heads of state and government, ministers, members of parliament and certain high-ranking officials as well as their trusted entourages.

52 http://www.transparency.ch/finanzplatz/ [visited on 7 August 2011].

such funds based on the following five tenets: prevention of corruption, identification, seizure, judicial assistance, and restitution.

According to law, suspicious assets belonging to PEPs must be identified, reported and seized. In order to return funds to their rightful owners (restitution), in most cases the countries of origin of the respective PEPs, it has to be established in said country through court proceedings that the funds have been acquired illegitimately. Switzerland provides active judicial assistance in this process. If the illegal nature of the funds is undisputed, they can be restituted without a legally valid and enforceable confiscation order on the part of the country affected.[53] Moreover, an additional Federal Act on the Restitution of Assets illicitly obtained by Politically Exposed Persons (RIAA, commonly referred to as 'Lex Duvalier') entered into effect in 2011.[54]

Although Swiss legislation is progressive in various respects, it still has serious deficiencies and implementation does not appear unproblematic.[55]

In spring 2011, the swift freezing of the assets of former Tunisian president, Ben-Ali, former Libyan head of state, Gaddafi, former Egyptian ruler, Mubarak and former Ivory Coast president, Gbagbo (as well as the freezing of the assets of their personal circle), attracted attention in connection with the insurgencies in the Arab world and the conflicts following the 2011 presidential election in the Ivory Coast.[56] Voices were also being raised criticising the timing of such freezing and the international cooperation in these decisions. In this context, the Swiss Financial Market Supervisory Authority FINMA initiated investigations and announced in November 2011 that it had instigated proceedings against four Swiss banks in connection with the acceptance of potentate funds. The financial institutions that were not named are accused of 'alleged serious misconduct' contrary to the provisions set out in the Swiss Money Laundering Act.[57]

53 http://www.eda.admin.ch/eda/de/home/topics/finec/intcr/poexp.html [visited on 2 November 2011].

54 See also information in chapter entitled 'Anti-corruption measures and actors'.

55 More on this subject at: http://www.evb.ch/p19040.html [visited on 25 October 2011].

56 See NZZ Online, 10 May 2011: http://www.nzz.ch/nachrichten/politik/schweiz/viel_aufmerksamkeit_fuer_die_schweizer_potentaten-politik_1.10527222.html [visited on 7 August 2011] as well as NZZ Online, 16 May 2011: http://www.nzz.ch/nachrichten/wirtschaft/aktuell/potentatengelder_im_visier_1.10603089.html [visited on 7 August 2011].

57 See NZZ Online of 10 November 2011, http://www.nzz.ch/nachrichten/wirtschaft/aktuell/finma_verfahren_potentatengelder_1.13278946.html [visited on 11 November 2011] as well as the critical remarks made by money laundering expert, Mark Pieth, on the conduct of FINMA and the Swiss banks in dealing with potentate funds, Der Bund online of 11 November 2011, http://www.derbund.ch/wirtschaft/geld/Es-gibt-keine-Ausreden-/story/14200812 [visited on 11 November 2011].

Introduction

Switzerland has taken various measures to contain and combat corruption. These include legislative measures as well as international conventions and sector-dependent regulations. In addition to the measures relevant in terms of anti-corruption there are various actors in Switzerland which include combating corruption within their area of responsibility. An overview will be given below of the most important measures for combating corruption that are in place in Switzerland and the actors which are active in this area thus allowing readers to obtain a quick overview of the status quo in this field. In addition, reference will occasionally be made to this subchapter in the analysis of the individual pillars in order to confine the respective analysis to the key messages. This chapter does not claim to be exhaustive. It aims rather to provide an insight into the areas covered by the various measures and actors that are relevant to anti-corruption work.

At this point it can be further noted in the sense of a preliminary remark that Switzerland has no stand-alone anti-corruption agency. Nevertheless, virtually all the tasks of a stand-alone anti-corruption agency are covered by the various actors referred to below, in particular by the IDWG Combating Corruption which acts as a coordinating body for all anti-corruption measures at confederate level. Moreover, the various Departments have stand-alone competences in terms of combating corruption which they can resort to depending on the tasks and problems in their offices. Finally, the cantonal authorities also have the competence to take anti-corruption measures within their areas of responsibility.

Anti-corruption measures in Switzerland

Specific legislative measures for combating corruption

National law on corruption

The Swiss law on corruption is regulated[1] in Articles 322ter to 322^{octies} of the Swiss Criminal Code (SCC) as well as in Article 4a (1) of the Federal Act against Unfair Competition [*UWG*][2]:

Active bribery (Article 322ter and Article 322^{septies} (1) SCC)

Active bribery is committed by any person who offers, promises or gives a public official an advantage which is not due to him in order to cause that public official to carry out an act in connection with his official activity which is contrary

1 The Swiss Criminal Procedure Code also contains provisions that are relevant to anti-corruption; cf., for example, Article 4 Independence of criminal justice authorities and Articles 56, 57, 58 Grounds for recusal and Duty to notify. Swiss Criminal Procedure Code (Criminal Procedure Code, CPC) of 5 October 2007 (Status as of 1 January 2011), SR 312.0.

2 Federal Act against Unfair Competition [*UWG*] of 19 December 1986 (Status as of 1 January 2001), SR 241.

to his duty or dependent on his discretion.[3] Active bribery is illegal in the case of Swiss public officials (Article 322ter SCC) as well as foreign public officials (Article 322^{septies} (1) SCC) and is subject to a custodial sentence not exceeding five years.

Passive bribery (Article 322^{quater} and Article 322^{septies} (2) SCC)

Passive bribery is the opposite of active bribery and refers to public officials who accept, secure the promise of or demand some form of undue advantage. Passive bribery is illegal in the case of Swiss public officials (Article 322^{quater} SCC) as well as foreign public officials (Article 322^{septies} (2) SCC). If a public official commits passive bribery, he shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.

Bribery in the private sector (Article 4a (1) (a) and (b) Federal Act against Unfair Competition [UWG])

Unlike the offences in the SCC, this only involves actors in the private sector. The person bribed can be an employee or an agent who abuses the trust of his employer or principal to gain an undue advantage.[4]

Granting and acceptance of advantages (Article 322^{quinquies} and Article 322^{sexies} SCC)

Granting and acceptance of advantages involves undue advantages which are not directed towards a particular action by a public official, but rather are granted and accepted with the focus being on future acts.[5] Granting and acceptance of advantages is only illegal in the case of Swiss public officials.

Digression: Federal Act on the Restitution of Assets illicitly obtained by Politically Exposed Persons (RIAA)[6]

This act, which entered into force on 1 February 2011, enables Switzerland to freeze, confiscate or restitute the assets of politically exposed persons (PEPs) or their close associates even in cases where there is no promising request for mutual legal assistance from the respective country available. The RIAA, also known as 'Lex Duvalier', takes effect if the state structures in the requesting state have failed and an international request for mutual legal assistance in criminal matters fails to produce an outcome.[7] Under certain circumstances, the presumption of innocence is reversed and it must be proven that the assets in question have been obtained legitimately. The Federal Administrative Court rules on the restitution of illicitly obtained assets and its verdicts can be referred to the Federal Supreme Court. The act aims to safeguard the reputation of Switzerland's financial centre and endorse Switzerland's role as an international pioneer in the restitution of illicitly obtained assets.[8] Although criticism has been voiced that this act is not far-reaching enough and moreover, is only applicable to[9] 'failing states' and also only if a request for mutual legal assistance has already been received[10], the RIAA is, however, a step in the right direction. It remains to be seen in how many cases it is

3 The advantage can be of material or intangible nature and can be directed towards the public official himself as well as a third party. The service provided by the public official in return must refer to a definite action that is contrary to his duty or is at the personal discretion of the public official. It can also involve neglect if for example the public official refrains from issuing a fine. Cf. JOSITSCH Daniel, *Das Schweizerische Korruptionsstrafrecht, Art.322ter bis Art. 322^{octies}* (Zürich, Basel, Genf: Schulthess Juristische Medien AG, 2004), 330 et seq.

4 Bribery in the private sector is regulated in the Act against Unfair Competition because fair competition is the object of legal protection. Cf., in this respect, Federal Act against Unfair Competition [*UWG*] of 19 December 1986 (Status as of 1 January 2011), SR 241.

5 In contrast to bribery there is therefore no (direct) connection to an action by the public official that is either illegal or at his personal discretion. The granting or acceptance of an advantage usually also includes facilitation payments. This involves smaller amounts of money or other payments that are aimed at expediting or guaranteeing an entitled official business transaction at an authority, cf. JOSITSCH, 2004: 370 et seq.

6 http://www.admin.ch/ch/d/sr/1/196.1.de.pdfhttp://www.admin.ch/ch/d/sr/1/196.1.de.pdf [visited on 10 November 2011].

7 BERICHT IDAG KORRUPTIONSBEKÄMPFUNG, 2011: 13.

8 http://www.eda.admin.ch/eda/de/home/recent/media/single.html?id=37478 [visited on 8 June 2011].

9 http://www.handelszeitung.ch/invest/gestohlenes-geld-zurueckgeben-nicht-so-einfach [visited on 8 June 2011].

10 The argument is that precisely such a request for mutual legal assistance from a 'failing state' cannot be made in normal cases because it is a feature of such dysfunctional states that the people who have misappropriated funds are often still in power and know how to obviate the filing of such a request for mutual legal assistance: http://www.alliancesud.ch/de/ep/internationale-finanzen/lex-duvalier-mit-luecken [visited on 8 June 2011].

successfully applied. The restitution of illicitly obtained assets is in any case a key element in the combating of corruption and reparation.

Digression: Whistleblowing[11]

Switzerland has very different regulations for protecting whistleblowers in the public and private sectors: New regulations have been in force at federal level in the public sector since 1 January 2011: Federal Government employees are obliged to report crimes and offences that they become aware of in the course of official work activities.[12] Other irregularities can be reported to the Swiss Federal Audit Office SFAO which must clarify the respective facts and take appropriate measures.[13] Furthermore, the act of reporting in good faith or giving evidence as a witness may not be detrimental to a whistleblower's position.[14] Moreover, dismissal is null and void if notice has been given because the employee has, in good faith, filed a report according to Article 22a (1) FedPerA or Article 22a (4) FedPerA respectively, or has given evidence as a witness.[15] When these provisions entered into force, the amount of anonymous information received by the Swiss Federal Audit Office SFAO initially increased, but this has since levelled off again.[16]

Individual Federal Administration organisations have already set up a reporting office. However, according to the IDWG Combating Corruption, coordination efforts on the part of the individual contact points for whistleblowers are still lacking.[17] The information strategy regarding the role of the SFAO is also in need of improvement: Since 2003, there has only been one broad information campaign within the Federal Administration: In 2009, a flyer on the subject of combating corruption was printed in which reference was made to the option of reporting indications to the SFAO. However, this flyer, which was aimed at the around 35,000 Federal employees, was unfortunately not sent by post, but was distributed via hierarchical channels and consequently it is not certain whether the information actually reached all staff.[18] Furthermore, the fact that staff, in particular in independent administrative units of economic and security governance do not fall under the Federal Personnel Act is also still deserving of criticism. For this reason, the duty to report, the right to report and protection for whistleblowers is still not regulated in some administrative units.[19]

There are currently no specific regulations for the protection of whistleblowers in the private sector. Therefore, the general provisions regarding protection against dismissal set out in employment contract regulations apply which provide for a maximum compensation of six months' pay in the event of unfair or wrongful dismissal.[20] However, a revision of the CO is currently under way: According to this revision, the legitimate reporting of grievances in the workplace shall be stipulated explicitly in the CO and, to improve protection against dismissal, the maximum compensation shall be increased from six to twelve months.[21]

11 Whistleblowing is an effective, citizen-oriented instrument for exposing mismanagement, fraud and corrupt practices. The prerequisite for this is that the necessary institutional conditions which adequately ensure the receipt and follow-up of reports and the protection of whistleblowers need to be in place. Transparency International therefore attaches great importance to the protection of whistleblowers, cf. http://www.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers/the_need_for_whistleblower_protection [visited on 24 October 2011]. There are, however, other mechanisms for exposing corruption, which include, in particular, the targeted, systematic evaluation of data. Cf., in this respect, e.g. article by Cho and Gaines on detecting fraud in campaign finance (CHO Wendy and GAINES Brian, 'Breaking the (Benford) Law: Statistical Fraud Detection in Campaign Finance', *American Statistican* 61 (3) 2007: 218–223) or article by Della Vigna and La Ferrara on illegal arms trade (DELLA VIGNA Stefano and LA FERRARA Eliana: 'Detecting Illegal Arms Trade', *American Economic Journal: Economic Policy* 2(3) 2007: 26–57).

12 Reports can be filed with the law enforcement agencies, to superiors or to the Swiss Federal Audit Office SFAO, cf. Article 22a (1) FedPerA of 24 March 2000 (Status as of 1 January 2011), SR 172.220.1. An overview of the legislation on the subject of protection against dismissal and whistleblowing can be found on the FDJP website, http://www.ejpd.admin.ch/content/ejpd/de/home/themen/wirtschaft/ref_gesetzgebung/ref_whistleblowing.html [visited on 1 March 2011].

13 Article 22a (4) FedPerA, cf. information on the SFAO website, http://www.efk.admin.ch/pdf/whistleblowing/Meldestelle_Whistleblowing_d.pdf [visited on 3 March 2011].

14 Article 22a (5) FedPerA.

15 Article 14 (1) (d) FedPerA.

16 BRUPPACHER Balz, 'Noch wenig Licht ins Dunkel', Neue Luzerner Zeitung, 28 November 2011.

17 BERICHT IDAG KORRUPTIONSBEKÄMPFUNG, 2011: 5.

18 BERICHT IDAG KORRUPTIONSBEKÄMPFUNG, 2011: 9.

19 BERICHT IDAG KORRUPTIONSBEKÄMPFUNG, 2011: 9.

20 Article 336 et seq. of the Federal Act of 30 March 1911 on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations, CO), SR 220.

21 An overview of the revision of the CO in connection with the protection of whistleblowers is available on the Federal Office of Justice (FOJ) website, cf. http://www.bj.admin.ch/bj/de/home/themen/wirtschaft/gesetzgebung/whistleblowing.html [visited on 25 March 2011]. See also BERICHT IDAG KORRUPTIONSBEKÄMPFUNG, 2011: 13.

International conventions

Switzerland has ratified four international conventions in connection with the fight against corruption:

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[22]

This convention, which has been in force in Switzerland since 30 June 2000, establishes minimum legally binding standards for the Contracting States, which they must implement in national law. Provision is made in particular that the bribery of foreign public officials is a criminal offence[23], which Switzerland implemented by passing Article 322^{septies} SCC.[24] Furthermore, the OECD Convention obliges the signatories to establish the liability of legal persons. Switzerland complied with this requirement by passing Article 102 SCC.[25] The last OECD report on Switzerland reviewing and evaluating its implementation of the OECD Convention was written in 2007. This is a peer review-based report which reviewed anew the extent to which Switzerland had implemented the recommendations that were formulated in the preceding 2005 report[26]. The 2007 report concludes that Switzerland has fully implemented Recommendation 3a and 3d and partially implemented the remaining eight recommendations.[27] Recommendation 3a called upon Switzerland to establish formal obligations to report indications of possible acts of foreign bribery to the competent judicial authorities. The OECD Working Group suggests that Switzerland establishes such an obligation for federal authorities and public officials and to encourage cantonal authorities to do the same at their level. Recommendation 3d suggests establishing formal obligations for company auditors to report to prosecutorial authorities indications of possible acts of foreign bribery. Switzerland has since complied with both recommendations.[28]

Council of Europe Criminal Law Convention on Corruption[29]

Unlike the OECD Convention, the Council of Europe Criminal Law Convention on Corruption (and Additional Protocol), which entered into force in Switzerland on 1 July 2006, is not just confined to international business transactions. It rather sets out the requirements to be met to establish the various forms of bribery in the public and private sectors as criminal offences. Ratification of the convention has led to the establishment of Article 4a of the Federal Act against Unfair Competition [*UWG*][30]. Moreover, in addition to active bribery, passive bribery of foreign public officials has also been established as criminal offence.[31]

The Group of states against Corruption (GRECO) monitors the implementation of the convention.[32] In the context of its monitoring procedures, GRECO drafted an Evaluation Report on Switzerland on 4 April 2008 in which it made 13 recommendations for ensuring the implementation of the convention.[33] In the Compliance Report of 26 March 2010 which is devoted to the implementation of these recommendations, "GRECO concludes that Switzerland has satisfactorily implemented almost all of the recommendations contained in the (...) Evaluation Report."[34]

22 SR 0.311.21.

23 Cf. Article 1 (1) OECD Convention.

24 This provision entered into force on 1 May 2000 whereby the existing definition in Switzerland of the bribery of Swiss public officials was extended to include foreign public officials.

25 Other provisions in the OECD Convention address Money Laundering, Accounting and various aspects of implementation (Mutual Legal Assistance and Extradition), cf. Article 7 et seq.

26 OECD, *Switzerland: Phase 2 Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 2005.

27 OECD, *Switzerland Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations,* 2007, no. 12, 13.

28 The eight remaining recommendations deal *inter alia* with the amplification of awareness-building efforts to promote the OECD Convention, greater transparency in corporate accounts and ensuring greater independence of auditing bodies. These recommendations had only been partially implemented by 2007.

29 SR 0.311.55 as well as the Additional Protocol (SR 0.311.551).

30 Cf. no. 1.1.3.

31 Article 322^{septies} SCC. It should be noted for the sake of completeness that Switzerland entered reservations to two provisions, i.e. improper influence (Article 12) and jurisdiction of the different Parties (Article 17) (cf. page 18 of the convention).

32 Cf. Article 24 of the convention.

33 GRECO, 2008: No. 188.

34 GRECO, First and Second Evaluation Round, Compliance Report on Switzerland, Greco RC-I/II (2009) 2F, Strasbourg, 26 March 2010, p. 21, no. 81. An overview of the activities of GRECO and further links on this subject are available on the FDJP website, cf. http://www.ejpd.admin.ch/ejpd/de/home/themen/kriminalitaet/ref_korruption_greco.html [visited on 8 April 2011]. The Third Evaluation Round was carried out in 2011 and addressed *inter alia* political party funding, cf. information on GRECO website http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp [visited on 8 April 2011].

United Nations Convention against Corruption (UNCAC)[35]

The UNCAC "is probably the most comprehensive agreement in the area of combating corruption and has been signed by 140 countries to date."[36] It entered into force in Switzerland on 24 October 2009. Switzerland did not need to adapt its national law in order to meet the requirements of the convention. This also indicates that, compared with the conventions referred to above, this convention does not contain any fundamental innovations apart from the provision concerning the return of assets and their disposal.[37]

United Nations Convention against Transnational Organized Crime[38]

The United Nations Convention against Transnational Organized Crime, which entered into force in Switzerland on 26 November 2006, addresses the criminalization of corruption.[39] It sets out which offences should be established as criminal offences, when committed intentionally. The direct or indirect bribery of foreign public officials, "the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity in order that the official act or refrain from acting in the exercise of his or her official duties", is mentioned *inter alia* here. The convention stipulates also establishing as a criminal offence participation as an accomplice in an offence.[40] Furthermore, the convention also specifies the prevention of corruption and measures to promote the integrity and to prevent, detect and punish the corruption of public officials.[41]

State measures at cantonal and communal level

Several cantons have introduced freedom of information acts as a result of the introduction by the Federal Government of the principle of the freedom of information in administration. Public financial control has been improved in many cantons. Independent bodies controlling cantonal finances have been strengthened in many places, or, as in the cantons Graubünden and Basel-Landschaft, established in the first place. There is a duty to report cases of corruption in most cantons, however, in some cantons it was only introduced on the recommendation of the Federal Council. The majority of cantons are now also acquainted with clear rules on the acceptance of gifts which are mostly defined in the respective Cantonal Personnel Act. According to the IDWG Combating Corruption report and a survey that was carried out, nearly half the cantons refer to cantonal legal principles that supplement the duty to report criminal offences which has been applicable since 2011. The situation is similar in the cities. The same survey also showed that the majority of cantons and cities do not have a special contact point for whistleblowers. Training programmes on specific measures for raising awareness of corruption issues do not appear to exist in most cantons. Only in the canton of Geneva individual categories of public officials (in the area of public procurement and finance administration) are expressly advised of the duty to report cases of bribery through codes of ethics.[42]

35 SR 0.311.56.
36 Cf. http://www.unodc.org//unodc/en/treaties/CAC/signatories.html [visited on 15 June 2011]. "The UNCAC contains *inter alia* provisions on the prevention of corruption, international cooperation and technical assistance for developing countries and countries with economies in transition", cf. BERICHT IDAG KORRUPTIONSBEKÄMPFUNG, 2011: 19.
37 Cf. Article 57 of the convention. For a critical analysis of this Article see: PERRIN Bertrand, *La répression de la corruption d'agents publics étrangers en droit pénal suisse (*Basel: Helbling und Lichtenhahn, 2008), 277–278.
38 SR 0.311.54.
39 Article 8.
40 Article 8.
41 Article 9.
42 BERICHT IDAG KORRUPTIONSBEKÄMPFUNG, 2011: 14 et seq.

Measures in the private sector

Swiss companies are essentially well-positioned in terms of the fight against corruption and raising awareness of this issue. The legal order regarding the regulation of the private sector is rather liberal; self-regulatory measures are, however, in place that take effect in part. The relevant criminal law measures have already been described above. There are no real sanctions in the event of contravention of the measures referred to in the context of self-regulation. Therefore, compliance with these minimum standards is for the most part voluntary. This is, however, taken into account in courts of law and the media is increasingly also taking a critical watchdog role with regard to corporate governance. Examples of such self-regulation are the 'Swiss Code of Best Practice for Corporate Governance', published by the trade association economiesuisse and the 'SWX Swiss Exchange Corporate Governance Directives'. Experts are, however, sceptical that these codes are actually being followed.[43]

Important drives in the context of developing so-called 'industry standards', i.e. codes of conduct for individual business sectors, have recently been undertaken on the part of the private sector in cooperation with civil society organisations. The Basel Institute on Governance, for example, developed such standards in 2000 together with eleven private global banks. These so-called 'Wolfsberg Anti-Money Laundering Principles' aim to standardise the strategies employed by private banks to prevent money laundering and bring these strategies up to a common standard.[44]

Furthermore, it is finally worth mentioning the Swiss GAAP FER 21, a standard for non-governmental organisations that focuses on accounting. Here, the objective of greater transparency "is achieved *inter alia* through a consolidation duty (irrespective of legal form), the disclosure of changes in earmarked funds or information on administrative costs or the remuneration to governing bodies."[45]

Actors involved in anti-corruption work in Switzerland

Institutions

Interdepartmental Working Group (IDWG) on Combating Corruption (IDWG Combating Corruption)[46]

The IDWG Combating Corruption was set up by the Federal Council at the end of 2008 on the basis of a GRECO recommendation. It comprises the most important actors in the Federal Administration and the Office of the Attorney General as well as representatives from the business sector, the cantons, cities and civil society. The IDWG Combating Corruption develops common national and international strategies in the fight against corruption and publishes reports on a regular basis. Its first report was published in April 2011 and provides information about the biggest challenges in the area of combating corruption.[47] It aims to make an important

43 Interview with Roland Müller, interviewed by Fabio Hurni and Mimo Pfander, Staad SG, 31 March 2011.
44 http://www.baselgovernance.org/gov/industry-standards/ [visited on 10 August 2011].
45 http://www.fer.ch/inhalt/fachempfehlungen/swiss-gaap-fer-standards/swiss-gaap-fer-21.html [visited on 4 August 2011].
46 http://www.eda.admin.ch/eda/de/home/topics/finec/intcr/corrup/idwg.html [visited on 10 June 2011].
47 http://www.evd.admin.ch/aktuell/00120/index.html?lang=de&msg-id=38727 [visited on 30 May 2011].

contribution to corruption work in Switzerland by bringing representatives from various, but equally important, actors in this area together for the first time and having them work with each other to develop approaches. Moreover, it will continue to regularly compile and publish reports on the corruption situation in Switzerland in the future. This shall contribute, in particular, to building awareness of corruption issues among the population. Finally, the IDWG Combating Corruption regularly holds workshops on subjects that are specifically relevant to corruption.

Federal Office of Personnel FOPER

The Federal Office of Personnel FOPER is the competence centre for Federal Administration personnel matters.[48] In this role the FOPER is actively involved in corruption prevention and has published a flyer on combating corruption and whistleblowing.[49] Reference is made in this flyer *inter alia* to the fact that employees of the Federal Administration are not allowed to accept gifts within their professional environment.[50] Furthermore, Federal employees are obliged to withdraw if a conflict of interest appears due to a specific constellation.[51] Moreover, reference is made to the duty to report and the right to report in connection with whistleblowing as well as to the problem of conflicts of interest in the context of secondary occupation. Finally, it is recommended to report suspicious behaviour to superiors or the SFAO.

Furthermore, the FOPER has developed a code of conduct, which anchors professional ethics in day-to-day working life using guiding principles. The code stresses *inter alia* the principles of customer-orientated and friendly working practices, loyalty to one's employer, credibility and integrity as well as independence and the avoidance of conflicts of interest.[52]

Swiss Federal Audit Office SFAO

The Swiss Federal Audit Office SFAO is the supreme audit institution of the Confederation.[53] It assists parliament and the Federal Council, is independent and is bound only by the Constitution and the law. The SFAO audits the financial conduct of the Federal Administration and of numerous semi-government bodies and international organisations. It is also the contact point for whistleblowers if they have irregularities to report. Such reports are also received anonymously, the facts are investigated and measures might be imposed.[54] The SFAO is currently still little known as a contact point, but with appropriate public relations on the part of the Federal Government, the SFAO could further increase its contribution to combating corruption.

State Secretariat for Economic Affairs SECO

SECO is responsible for issues relating to economic policy and sees itself "as an interface between business, social partners and government. It supports the regionally and structurally balanced development of the economy and ensures the protection of employees."[55] SECO is involved in combating corruption both with bilateral measures and on a multilateral level. Its most important activities in terms of combating corruption include the active formulation of efficient, fair and

48 http://www.epa.admin.ch/ [visited on 10 June 2011].
49 Cf. http://www.news.admin.ch/NSBSubscriber/message/attachments/22245.pdf [visited on 29 March 2011].
50 With the exception of small and socially or traditionally motivated offers.
51 Based on personal interest, relatives, friendship, ill will etc.
52 General Federal Administration Code of Conduct, available from http://www.epa.admin.ch/dokumentation/publikationen/index.html?lang=de [visited on 31 March 2011].
53 http://www.efk.admin.ch/deutsch/index.htm [visited on 30 May 2011].
54 Cf. Federal Council response of 6.5.2009 to motion no. 09.3286 'Federal Council report on prevention of corruption of 16 June 2003', Federal Gazette (FG) 2003 5144 5153 and http://www.efk.admin.ch/pdf/whistleblowing/Meldestelle_Whistleblowing_d.pdf [visited on 30 May 2011].
55 http://www.seco.admin.ch/ [visited on 10 June 2011].

transparent rules for the world economy. In 2003, for example, SECO published a brochure entitled 'Preventing corruption – Information for Swiss businesses operating abroad' which provides advice for Swiss companies on the active prevention of corruption. Corruption in international business transactions is addressed in the brochure and details given of the instruments available to companies for preventing corrupt conduct and actively combating such conduct. SECO supports programmes in developing countries for improving transparency in relation to budgeting and the awarding of public contracts, reforms in the area of customs administration or the introduction of corruption-prevention clauses in all contracts and agreements with partner countries or executive agencies.[56]

Swiss Agency for Development and Cooperation SDC

The Swiss Agency for Development and Cooperation SDC is Switzerland's organisational unit for international cooperation within the Federal Department of Foreign Affairs (FDFA).[57] In operating with other federal offices concerned, SDC is responsible for the overall coordination of development activities and cooperation with Eastern Europe, as well as for the humanitarian aid delivered by the Swiss Confederation. The geographical focus of its activities in terms of combating corruption is in developing countries where the SDC endeavours to reduce the negative consequences of corruption. Furthermore, the SDC supports non-governmental organisations involved in international anti-corruption work.[58]

The SDC also has a Compliance Office together with the FDFA which "receives SDC-intern and external notifications on cases of corruption or misuse of assets which have been discovered in any SDC-financed activities".[59] Furthermore, all SDC contracts contain anti-corruption clauses.[60] The DEZA website provides an overview of its anti-corruption activities.[61]

Public procurement

Various measures have been taken in the area of public procurement in terms of preventing and combating corruption: The Federal Office for Buildings and Logistics FOBL, which is the Federal Administration's competence centre for public procurement, has developed an integrity clause, which ought to be included in every contract and, in the event that obligations arising from this clause are disregarded, makes provision for a contract penalty.[62] Incidentally, there are internal control systems within the FOBL for preventing corruption, such as the four eyes principle or periodic rotation of the servants responsible.[63] Furthermore, vocational training and further training programmes are offered, which aim *inter alia* "to raise awareness of the risks of corruption among those responsible for public procurement".[64] Finally, provision is made for an extensive transparency with regard to contracts offered for public tender: The Internet platform, Simap.ch, ensures namely that companies are able to quickly access all the relevant information electronically which leads to an increase in transparency.[65] "Bidders and companies interested are given an overview of all existing contracts across Switzerland and can download both the tenders and tender documents".[66]

56 http://www.seco.admin.ch/org/00686/index.html?lang=de [visited on 9 June 2011].

57 http://www.deza.admin.ch/ [visited on 10 June 2011].

58 http://www.deza.admin.ch/de/Home/Themen/Rechtsstaatlichkeit_Demokratie/Korruptionsbekaempfung [visited on 4 August 2011].

59 http://www.sdc.admin.ch/de/Home/Themen/Rechtsstaatlichkeit_Demokratie/Korruptionsbekaempfung/Korruption_Veruntreuung_Missbrauch_und_Verluste_melden [visited on 15 June 2011].

60 DEZA, *Lignes Directives contre la Corruption*, 1998.

61 http://www.sdc.admin.ch/de/Home/Themen/Rechtsstaatlichkeit_Demokratie/Korruptionsbekaempfung [visited on 15 June 2011]. Fighting Corruption SDC Strategy 2006 can be downloaded from the following website: http://www.deza.admin.ch/ressources/resource_de_92770.pdf [visited on 10 August 2011].

62 In this clause the contracting parties undertake *inter alia* not to offer or accept payments, gifts or other advantage. The contract penalty will amount to 10% of the contract value or a minimum of CHF 3,000. Moreover, a contravention of the integrity clause generally results in the annulment of the tender. The integrity clause is available from the following website: http://www.bbl.admin.ch/bkb/00389/02580/02585/index.html?lang=de [visited on 31 March 2011].

63 http://www.bbl.admin.ch/bkb/00389/02580/02587/index.html?lang=de [visited on 31 March 2011].

64 "Knowledge regarding measures for the effective prevention and combating of corruption is conveyed on the one hand. Information is also provided on the legal consequences of corrupt conduct", cf. http://www.bbl.admin.ch/bkb/00389/02580/02586/index.html?lang=de [visited on 1 April 2011].

65 Cf. explanations relating to this on the Federal Office for Buildings and Logistics FOBL website, http://www.bbl.admin.ch/bkb/02015/index.html?lang=de&msg-id=27750 [visited on 28 March 2011].

66 Cf. information on simap.ch website, https://www.simap.ch/shabforms/COMMON/application/applicationGrid.jsp?template=1&view=1&page=/MULTILANGUAGE/simap/content/start.jsp&language=DE [visited on 29 March 2011].

SERV Swiss Export Risk Insurance[67]

SERV Swiss Export Risk Insurance, which insures exports of consumer and capital goods as well as construction and engineering projects thus guaranteeing Swiss companies their global competitiveness, has integrated the fight against corruption into its business policy.[68] The uncovering of facts pointing to corruption leads to an application for export risk insurance (ERI) being declined or to the cancellation of an ERI that has already been arranged. SERV also encourages "exporters to develop, apply and document appropriate management control systems that combat bribery."[69] Both the banks involved and the exporting companies undertake to sign an anti-corruption declaration when arranging insurance cover.[70]

Auditor for companies

Alongside the partial revision of the Code of Obligations (CO) of 16 December 2005 (with amendments of the Swiss Civil Code and the Merger Act[71]) as well as the complete revision of the Commercial Register Ordinance[72], a revised version of the Auditor Oversight Act (AOA) was also introduced as of 1 January 2008.[73] According to this legislation, publicly traded companies[74] and companies corresponding to a certain threshold[75] are bound by law to have their annual accounts reviewed by a so-called ordinary auditor. The ordinary auditor must be a state supervised audit company according to the provisions of the Auditor Oversight Act, to which more stringent requirements apply that meet the International Standards on Auditing (ISA).[76] Smaller companies must have their annual accounts reviewed by a licensed auditor in a limited audit according to the provisions of the AOA.[77] The audit provisions essentially apply to all companies[78] irrespective of their selected legal form.[79] The auditor must be independent, it must not be truly nor apparently adversely affected and must form its audit opinion objectively.[80] Infringements or misdemeanours respectively with regard to the Auditor Oversight Act or the principles of independence within the meaning of Article 728 CO are sanctioned with a fine of up to CHF 100,000 or a custodial sentence of up to three years.[81]

Civil society

Swiss civil society makes an important contribution to the fight against corruption in this country. As has already been established, the attention of the Swiss public is currently not focused on corruption issues. This subject is not regarded as a pressing national problem in Switzerland.[82] Nevertheless, there are various civil society organisations that are actively involved in anti-corruption work. These include *inter alia* Transparency International Switzerland and the Basel Institute on Governance. As described in the civil society pillar, civil society organisations in Switzerland have good framework conditions in which to develop and are able to participate in opinion-forming and legislative processes. Moreover, they are accepted by the population and taken seriously.

TI Switzerland makes an important contribution to the prevention of corruption and the provision of information through various campaigns and public relations

67 http://www.serv-ch.com/de/ [visited on 10 June 2011].

68 Comprehensive information on SERV's tasks, objectives and procedures is available on the SERV website, cf. http://www.serv-ch.com/de/ [visited on 29 March 2011].

69 Cf. http://www.serv-ch.com/de/nachhaltigkeit/korruption/ [visited on 29 March 2011].

70 Cf. links to the respective documents on the 'Corruption' page of the SERV website.

71 Federal Act on Merger, Demerger, Transformation and Transfer of Assets (Merger Act, MerA) of 3 October 2003 (Status as of 1 January 2010), SR 221.301.

72 Commercial Register Ordinance [*HRegV*] of 17 October 2007 (Status as of 1 April 2011), SR 221.411.

73 Cf. information on the Federal Department of Justice and Police, Federal Office of Justice (FOJ) website: http://www.bj.admin.ch/content/bj/de/home/themen/wirtschaft/gesetzgebung/abgeschlossene_projekte/revision.html [visited on 21 April 2011].

74 Article 727 I (1) CO: Publicly traded companies are companies that: (a) have shares listed on a stock exchange, (b) have bonds outstanding, (c) contribute at least 20% of the assets or of the turnover to the consolidated accounts of a company in terms of letter a or b.

75 Article 727 et seq. CO, Article 727 I (2): Companies that exceed two of the following thresholds in two successive financial years must have their annual accounts reviewed by an auditor in an ordinary audit: (a) a balance sheet total of 20 million francs, (b) sales revenue of 40 million francs, (c) 250 full-time positions on annual average.

76 Article 727b CO in conjunction with Article 6 et seq. AOA.

77 Article 727a and 727c CO in conjunction with Article 5 AOA.

78 Exceptions are still the simple partnership (Art. 530 et seq. CO) as well as the partnerships partnership general (Art. 552 et seq. CO) and limited partnership (Art. 594 et seq. CO).

79 Article 727b II (1) CO: for publicly traded companies the auditor must be a state supervised *audit company* (Article 6 of the Federal Auditor Admission and Audit Supervision Act (Auditor Oversight Act (AOA) of 16 December 2005 (Status as of 1 September 2007), SR 221.302); Article 727b II (2) CO: companies of a certain threshold (Article 727 I (2) CO) shall require an *audit expert* (Article 4 AOA), whilst all other companies may only appoint an *auditor* (Article 5 AOA).

80 Article 728 CO.

81 Article 39 et seq. AOA.

82 BERICHT IDAG KORRUPTIONSBEKÄMPFUNG, 2011: 3.

work geared towards the media. With regard to Switzerland's financial centre, in coalition with other organisations, TI Switzerland campaigns for a democratic restitution of stolen assets into their country of origin.[83] The Basel Institute on Governance and, in particular, the International Centre for Asset Recovery affiliated to it, has wide-ranging expertise in this field. The Institute regularly holds issue-specific training seminars and conferences thus making an important contribution on both a national and an international level to combating corruption and providing information for the general public on issues relevant to corruption.[84]

Finally, various Swiss university professors also make a valuable contribution to awareness-raising and debate relating to anti-corruption issues. In the past, important drives, especially with regard to legal reforms, emanated from the field of research.[85]

Conclusions

It is evident from the explanations just given that Switzerland has taken far-reaching anti-corruption measures. In addition, there are various important actors in this field in Switzerland which perform an important role in anti-corruption work. On the other hand, it should be noted that the implementation of the GRECO recommendations, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions as well as the United Nations Convention against Corruption hardly has any significance since these instruments are not enforced in practice or only in an unsatisfactory manner due to a lack of resources on the part of the organisational units involved in combating corruption.[86] As will be outlined in detail in the explanations given below there is also, particularly in the private sector, inadequate protection for whistleblowers.

Switzerland does not technically have an anti-corruption agency which is equipped with far-reaching competences and involved in preventing and combating corruption. However, the interdepartmental organisation of this body makes sense since corruption is a horizontal problem. Furthermore, as the IDWG Combating Corruption has only been in existence for a short time, no conclusions can be drawn as yet regarding the broad effects of its activities.

It is also questionable whether Federal Administration employees are aware of the activities of the FOPER, for example, regarding the code of conduct for Federal Administration staff. Finally, the Swiss Federal Audit Office SFAO is also largely unknown to the general public as a contact point for Federal employees. The Federal Government is, however, endeavouring to raise the profile of the SFAO both within the Federal Administration and to the outside.

It is evident from these explanations that Switzerland must continue its efforts to prevent and combat corruption also in the future and optimise these efforts in a targeted manner in order to make improvements in this area which is important for

83 http://www.transparency.ch/de/aktivitaeten/potentatengelder/index.php?navanchor=2110020 [visited on 9 June 2011].

84 www.baselgovernance.org [visited on 9 June 2011].

85 Cf., for example, proposal by Prof. Mark Pieth to introduce an amendment to the law in the case of sports associations based in Switzerland, according to which international umbrella sports associations would be on a par with international organisations in the Swiss Criminal Code. http://www.swissinfo.ch/ger/sport/Fifa-Praesidentenwahl_als_Schmierentheater.html?cid=30325026 [visited on 3 August 2011].

86 Interview with Daniel Jositsch, interviewed by Anja Roth and Reto Locher, Bern, 17 March 2011. Daniel Jositsch has been Professor of Criminal Law and Criminal Procedure Law at the University of Zurich since 2004. He has also been a Social Democratic Party of Switzerland National Council member since 2007.

the whole of society. The lack of interest on the part of politics, the business sector and the general public in the subject of corruption could be tackled in particular through awareness-raising and awareness-building measures.

Analysis of strengths and weaknesses

	Main strengths	Main weaknesses
Legislature	Transparent activities, independence from state actors, accountability, oversight of government	Unsatisfactory resources for members of parliament, intransparency of vested interests
Executive	Resources, independence from state actors, supervision and integrity guaranteed	Independence undermined by trade associations, poor transparency, lack of anti-corruption efforts
Judiciary	Financial and structural resources, transparency, accountability	Independence and integrity jeopardised by political election, no standard rules on vested interests and partiality
Federal administration	Independence, adequate legal principles regarding transparency, accountability and integrity	Inadequate financial and human resources for anti-corruption efforts, no sanctions for contraventions of public procurement law by Federal employees
Law enforcement agencies	Financial resources and infrastructure, transparency, accountability	Human resources shortages in public prosecutor's offices and the police, independence jeopardised by political election, no general codes of conduct and ethics for police officers
Political parties	Well-anchored in the population, easy to set up and manage, democratically organised, independent from the government	Complete intransparency in all political financing, lack of commitment to combat corruption
National electoral authority	Great trust from the population, adequate resources, transparency, accountability and integrity	Risk of manipulation in postal voting, no regulation of electoral campaigns and parties, voting right of Swiss citizens living abroad not always guaranteed
Supreme audit institution	Resources, independence, transparency, accountability, effective financial audits	Protection of whistleblowers only for Federal Administration staff employed in accordance with the FedPerA, contact point for whistleblowers not known
Ombudsman	Independent, easy access, free of charge	Only present in few cantons and communes respectively
Media	Diverse media landscape, integrity, accountability, information about government	No transparency in terms of ownership structures, independence jeopardised during economic downturn, reporting on corruption inadequate
Civil society	Well-anchored in the population and politics, resources, transparency, integrity	Major sports associations (FIFA, IOC) do not fall under rules regarding bribery in the private sector
Business	Independence, good statutory accounting requirements for companies listed on the stock exchange	Statutory accounting requirements and compliance inadequate in the case of SMEs, lack of whistleblower protection in the private sector