

SWITZERLAND

● Active enforcement

2.0% of global exports

Investigations and cases

In the period 2016-2019, Switzerland opened at least 39 investigations, commenced at least three cases and concluded at least 12 cases with sanctions.

It was not possible to obtain data from the Office of the Federal Attorney-General (OAG) on opened and commenced investigations or on concluded cases, beyond the figures published in OAG Annual Reports.³ According to these, there were 73 investigations on international bribery at the beginning of 2016, increasing to 82 at the end of 2016, before falling in each following year to 45 at the end of 2019. The OAG stated in 2019 that it had more than 60 criminal proceedings pending in connection with the Petrobras-Odebrecht affair.

In 2016, the OAG issued a summary penalty order against the Brazilian company **Odebrecht SA** and one of its subsidiaries, **Construtora Norberto Odebrecht SA (CNO)**, in connection with international corruption involving **Petrobras**. The two companies were held jointly and severally liable to pay CHF117 million (US\$127 million) including a

fine of CHF4.5 million (US\$4.9 million).⁴ At the same time, the OAG issued an Abandonment of Proceedings Order against **Braskem SA**, in which Odebrecht has a controlling share and which also allegedly paid bribes via the same channels as Odebrecht SA and CNO, as Braskem was being held accountable for the same offences in the United States. However, the Swiss abandonment decision involved Braskem SA paying “compensation” (*Ersatzforderung*) to the Swiss state of CHF94.5 million (US\$103 million).⁵ In relation to the Odebrecht case, in October 2019, the OAG filed its first indictment in the Federal Criminal Court under accelerated proceedings⁶ against an individual on the charge of complicity in the bribery of foreign public officials and of money laundering.⁷

Fines for bribery in African commodity markets

In 2019, the OAG stated in a summary penalty order that it had convicted the commodities trading company **Gunvor** for having “failed to take all the organisational measures that were reasonable and necessary to prevent its employees and agents from bribing public officials in order to gain access to the petroleum markets in the Republic of Congo and Ivory Coast”.¹ It ordered Gunvor to pay close to CHF94 million (US\$ 96.7 million), including a fine of CHF4 million (US\$4.3 million) and almost CHF90 million (US\$98 million) in “compensation” (*Ersatzforderung*) to the Swiss state, corresponding to Gunvor’s profit in Republic of Congo (Brazzaville) and Ivory Coast.²

¹ <https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/news-seite.msg-id-76725.html>; The Swiss prosecutor said Gunvor had no code of conduct, compliance system or sufficient oversight at the time. They also found that at the time of the events, warning signs had been ignored and other irregularities had occurred, including authorisation being given for a substantial number of payments to third-party offshore companies unrelated to oil activities, and the backdating of supporting letters to banks. <https://www.reuters.com/article/us-gunvor-grp-congo-corruption/gunvor-must-pay-95-million-for-congo-oil-corruption-swiss-prosecutors-idUSKBN1WW0Z9>

² <https://www.bloomberg.com/news/articles/2019-10-17/gunvor-strikes-95-million-deal-with-swiss-to-end-congo-probe>; <https://www.reuters.com/article/us-gunvor-grp-congo-corruption/gunvor-must-pay-95-million-for-congo-oil-corruption-swiss-prosecutors-idUSKBN1WW0Z9>

³ <https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>

⁴ <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-65077.html>

⁵ <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-65077.html>

⁶ “Accelerated proceedings (Art. 358 ff. Swiss Criminal Procedure Code) make it possible, subject to certain requirements, to conclude a case more quickly. The accused must admit his or her guilt and accept the civil claims, at least in principle. The accepted facts of the case serve as the basis for the indictment, which must be approved by both the accused and the complainants. The indictment is then submitted to the court in the form of a proposed judgment [...]. If the court decides that the requirements for accelerated proceedings have been met, the indictment is transformed into its judgment. If not, the file is forwarded to the Public Prosecutor’s Office to initiate ordinary proceedings.” <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-76765.html>

⁷ <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-76765.html>

According to Reuters, Gunvor had secured a three-year oil supply contract from the Congo state oil firm SNPC in June 2010 and signed two deals for oil cargoes with SNPC worth a total of US\$625 million in July 2011.⁸ The firm also received Ivory Coast oil cargoes between 2009 and 2010. In 2018, a Gunvor employee charged with foreign bribery admitted guilt under accelerated proceedings and received an 18-month suspended prison term.⁹ A former company employee and financial intermediaries are reportedly under investigation for foreign bribery and money laundering.¹⁰

The Swiss Financial Market Supervisory Authority (FINMA) took action against **PKB Privatbank SA** and **Gazprombank (Schweiz) AG** in 2018 for breaches of anti-money laundering requirements.¹¹ It found failures in PKB's background checks in transactions related to Petrobras and Odebrecht, and ordered the bank to pay back CHF1.3 million (US\$1.4 million) in unlawfully generated profits. FINMA also found shortcomings in the Gazprombank subsidiary's dealings with increased-risk clients during the period 2006-2016. It banned an expansion of its activities with private clients and called for strict monitoring of existing ones.

In August 2019, the Attorney General of Geneva indicted for foreign bribery and forgery three individuals related to **Beny Steinmetz Group Resources (BSGR)**, including its founder, Israeli billionaire Beny Steinmetz.¹² This followed an investigation started in 2013, reportedly into

allegations that BSGR paid a US\$10 million bribe to one of the wives of the President of Guinea in order to obtain mining rights over the Simandou deposits.¹³ Some of the funds were allegedly transmitted via Swiss bank accounts.

According to media reports in March 2018, the Attorney General of Geneva opened a criminal investigation into alleged bribery of foreign public officials and money laundering against two Venezuelan executives connected to the Geneva branch of the Panamanian company **Helsing**.¹⁴ This followed a request to Switzerland for cooperation from Venezuelan authorities and a civil complaint filed in a US federal court in Miami in March 2018 by the PDVSA US Litigation Trust, linked to Venezuela's state-owned oil company PDVSA. The civil complaint alleged billions of dollars in damages resulting from a corrupt scheme involving bribery, trading in inside information and bid-rigging, which, *inter alia*, enabled named companies to buy petroleum products below market value.¹⁵ The complaint listed more than 40 defendants, including trading companies Helsing Ltd Saint-Helier, **Glencore International AG**, **Trafigura AG** and **Vitol SA**, as well as **Lukoil Petroleum Ltd** and **Colonial Oil Industries Inc.**¹⁶ It also named two banks, **BAC Florida Bank** and **Blue Bank International NV** in Curacao.¹⁷

The mining and commodity trading company Glencore announced in June 2020 that the OAG had opened a criminal investigation into Glencore International AG for failure to have in place the organisational measures to prevent alleged

⁸ <https://www.reuters.com/article/us-gunvor-grp-congo-corruption/gunvor-must-pay-95-million-for-congo-oil-corruption-swiss-prosecutors-idUSKBN1WW0Z9>

⁹ https://entscheide.weblaw.ch/cache.php?link=28.08.2018_sk.2018.38&sel_lang=de; The employee reportedly claimed senior management was fully aware and approved the transactions, according to a Swiss prosecution document, <https://www.reuters.com/article/us-gunvor-grp-congo-corruption/gunvor-must-pay-95-million-for-congo-oil-corruption-swiss-prosecutors-idUSKBN1WW0Z9>

¹⁰ https://www.swissinfo.ch/eng/ignored-warning-signs_commodities-trader-gunvor-held-criminally-liable-for-corruption/45304836

¹¹ <https://www.spglobal.com/marketintelligence/en/news-insights/trending/uxgq28xsui7wurgk3hjgq2>

¹² <http://ge.ch/justice/licences-minieres-en-guinee-beny-steinmetz-renvoye-en-jugement>

¹³ <https://www.globalwitness.org/en/blog/guineas-bribery-saga-reaches-new-peaks/>

¹⁴ https://www.swissinfo.ch/eng/business/venezuelan-ties_geneva-probe-opened-into-alleged-oil-trade-corruption/43968468; <https://www.letemps.ch/economie/deux-arrestations-geneve-une-affaire-corruption-venezuela>

¹⁵ <https://dlbjbzgknk95t.cloudfront.net/1020000/1020500/pdvsas%20complaint.pdf>; <https://apnews.com/9d6a1d796422464da09b176f22189e0f>; <https://www.reuters.com/article/us-venezuela-oil/venezuelas-pdvsas-sues-oil-traders-over-corruption-scheme-lawyer-idUSKCN1GL04U>; <https://www.bloomberg.com/news/articles/2018-03-10/oil-trading-giants-glencore-vitol-targeted-in-pdvsas-bribe-suit>

¹⁶ <https://www.courthousenews.com/venezuela-linked-trust-sues-foreign-oil-traders-for-bribes/>; <https://www.clearygottlieb.com/-/media/files/pdvsas-us-litigation-trust-what-creditors-should-know-about-the-trust-its-claims-3-16-18-pdf.pdf>

¹⁷ <https://www.letemps.ch/economie/deux-arrestations-geneve-une-affaire-corruption-venezuela>; <https://juricaf.org/arret/SUISSE-TRIBUNALFEDERALSUISSE-20190911-1B1802019>

corruption in the Democratic Republic of Congo (DRC).¹⁸ The investigation was preceded by a criminal complaint made by the NGO Public Eye in 2017 with regard to Glencore activities in the DRC.¹⁹ Glencore is also reportedly under investigation in the United States for alleged money laundering and corruption in Nigeria, Venezuela and the DRC. It is also under investigation in the UK as well as in Brazil by Operation *Lava Jato* prosecutors and police, on suspicion of bribes paid to Petrobras.²⁰ Trafigura and Vitol are under investigation in Brazil and the United States.²¹

According to news reports, the OAG opened a criminal investigation in 2020 into allegations of money laundering against **Credit Suisse**, following a criminal complaint filed by the NGO Public Eye.²² In a related matter, in the United States in 2019, three former Credit Suisse London-based bankers pleaded guilty to charges of conspiracy to commit money laundering in connection with the Mozambique “tuna bond” scandal.²³ In that deal, Credit Suisse together with the Russian bank **VTB** arranged for issuance of bonds to lend the country over US\$2 billion to boost coastal security and develop its tuna fishing industry.²⁴ One of the bankers admitted to pocketing US\$45 million in kickbacks.²⁵ Mozambique authorities have filed a

case in the High Court in London against Credit Suisse and its three former employees.²⁶ According to news reports, US prosecutors believe Credit Suisse is culpable in the scandal and have entered into talks with the bank.²⁷ A US Department of Justice indictment of the three Credit Suisse investment bankers in 2019 referred to “a brazen international criminal scheme in which corrupt Mozambique government officials, corporate executives and investment bankers stole approximately US\$200 million in loan proceeds that were meant to benefit the people of Mozambique”.²⁸ The indictment also charged senior officials in Mozambique and employees of a UAE shipbuilding company.²⁹

In another case in the United States, Credit Suisse Group AG and its Hong Kong subsidiary agreed to pay US\$77 million to US authorities to settle charges that it hired and promoted more than 100 individuals connected to influential Chinese officials, to win business for the bank in China.³⁰ The bank is also reportedly under investigation for its role in the money laundering scheme set up by a Bulgarian

¹⁸ <https://www.glencore.com/media-and-insights/news/investigation-by-the-office-of-the-attorney-general-of-switzerland>

¹⁹ <https://www.publiceye.ch/en/media-corner/press-releases/detail/glencore-in-the-drc-public-eye-calls-upon-swiss-justice-to-take-action>

²⁰ <https://www.theguardian.com/business/2019/dec/05/serious-fraud-office-investigates-glencore-over-suspected-bribery>; <https://www.theguardian.com/world/2018/dec/05/brazil-car-wash-scandal-drags-in-glencore-trafigura-vitol>

²¹ <https://www.reuters.com/article/us-brazil-corruption-petrobras-trader-ex/u-s-opens-probe-into-brazilian-oil-bribery-scheme-sources-idUSKCN1PW2LT>; <https://www.theguardian.com/world/2018/dec/05/brazil-car-wash-scandal-drags-in-glencore-trafigura-vitol>

²² <https://www.nzz.ch/wirtschaft/credit-suisse-mocambique-affaere-erreicht-die-schweiz-ld.1559372>

²³ <https://www.law360.com/articles/1197839/3rd-ex-credit-suisse-banker-cops-to-2b-mozambique-fraud>; <https://allafrica.com/stories/202001300928.html> ; <https://allafrica.com/stories/201909130748.html>

²⁴ <https://www.law360.com/articles/1197839/3rd-ex-credit-suisse-banker-cops-to-2b-mozambique-fraud>; <https://allafrica.com/stories/202001300928.html> ; <https://allafrica.com/stories/201909130748.html>

²⁵ <https://www.thetimes.co.uk/article/credit-suisse-banker-took-45m-bribe-9f8bx203n>

²⁶ <https://www.bbc.com/news/business-47405071>; <https://www.bloomberg.com/news/articles/2019-08-09/mozambique-indicts-20-people-over-2-billion-hidden-debt-scandal>

²⁷ <https://www.reuters.com/article/us-credit-suisse-gp-mozambique-exclusive/exclusive-u-s-prosecutors-believe-credit-suisse-is-culpable-in-mozambique-scandal-sources-idUSKBN2130E3>; <https://allafrica.com/stories/202001300928.html>

²⁸ <https://www.justice.gov/opa/pr/mozambique-s-former-finance-minister-indicted-alongside-other-former-mozambican-officials>

²⁹ <https://www.reuters.com/article/mozambique-usa-trial/lebanese-salesman-acquitted-in-case-over-2-bl-mozambique-loans-idUSL2N2821LZ>; <https://www.reuters.com/article/mozambique-usa-trial/lebanese-salesman-acquitted-in-case-over-2-bl-mozambique-loans-idUSL2N2821LZ>; Prosecutors had alleged that the sales representative of the UAE company had paid kickbacks to bankers and Mozambican officials, which some news reports say he did not deny, <https://www.reuters.com/article/mozambique-usa-trial/lebanese-salesman-acquitted-in-case-over-2-bl-mozambique-loans-idUSL2N2821LZ>. Three Mozambique companies – Proindicus, Ematum and MAM – were the alleged recipients of the loans, <https://allafrica.com/stories/202001300928.html>

³⁰ <https://www.sec.gov/news/press-release/2018-128>; <https://www.justice.gov/opa/pr/credit-suisse-s-investment-bank-hong-kong-agrees-pay-47-million-criminal-penalty-corrupt>

mafia boss, imprisoned for importing drugs from South America.³¹

In response to the first voluntary disclosure by a company, **KBA Notasys** was sentenced by the OAG to pay a fine of CHF 1, and to pay a total of CHF35 million (US\$38 million) consisting of CHF 30 million (US\$32.7 million) compensation to the Swiss state and CHF5 million (US\$5.4 million) to set up an Integrity Fund to be spent on promoting ethics, integrity and compliance in the banknote printing industry.³² In 2018, the KBA-NotaSys Integrity Fund began distributing grants, but without any reference to the penalty order on the Fund's web page and without oversight arrangements.³³ The voluntary disclosure by the company leading to the penalty order referred to wrongdoings in Brazil, Kazakhstan, Morocco and Nigeria.³⁴ In 2019, Brazilian authorities opened investigations into alleged bribery and money laundering in connection with the company's efforts to secure a US\$60 million contract with the Brazilian money printing authority *Casa da Moeda*.³⁵

Recent developments

Parliament has adopted an amendment of Art. 53 of the Swiss Criminal Code that limits the application of Abandonment of Proceedings Orders to cases where the maximum applicable penalty does not exceed a suspended custodial sentence of one year or a suspended penalty or a fine. This excludes the use of such orders for cases of foreign bribery brought against individuals, as the maximum penalty for such cases is a custodial sentence of five years. However, it does not exclude it for cases involving corporations, as the penalty is a fine and

there is no limit to the amount of the fine that may allow the abandonment of the proceedings. However, in its recent practice, the OAG has not used Abandonment of Proceedings Orders in cases involving corporations.

Transparency of enforcement information

The Office of the Federal Attorney-General (OAG) publishes some statistics on foreign bribery at the end of each year, but they are limited to ongoing criminal investigations.³⁶ There is no statistical information on criminal investigations conducted by cantonal (local) authorities. There are also no published statistics on mutual legal assistance (MLA) in cases of international corruption, although the Federal Office of Justice publishes, in its annual report, statistics on the total number of MLA requests.³⁷ This lack of adequate statistics makes it hard to get a clear picture of the enforcement system.

The decisions of the Swiss Federal Criminal Court are published in full and made available online.³⁸ There is no systematic official publication of cantonal decisions. Decisions issued by the OAG – including summary penalty orders and abandonment orders with sanctions – are available on request, in person, in a summarised format and anonymised. Access to these decisions may be denied if the authorities find that the interest of preserving secrecy outweighs the right to information.³⁹ The OAG may also issue statements on the results of big cases.⁴⁰

³¹ <https://eu-ocs.com/credit-suisse-accused-of-launders-money-for-bulgarian-drug-trafficker/>

³² https://www.swissinfo.ch/eng/business/kba-notasys_chf35-million-corruption-fine-for-printing-press-firm/42986930 ;
<https://www.printweek.com/news/article/kba-notasys-settles-bribery-case>

³³ <https://notasys.koenig-bauer.com/en/company/corporate-responsibility>

³⁴ <https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>

³⁵ <https://www.gov.br/cgu/pt-br/assuntos/noticias/2019/07/cgu-investiga-multinacional-suica-envolvida-em-irregularidades-com-a-casa-da-moeda>

³⁶ <https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>

³⁷ <https://www.bj.admin.ch/dam/data/bj/sicherheit/rechtshilfe/strafsachen/taetigkeitsberichte/jb-irh-2017-d.pdf>

<https://www.bj.admin.ch/dam/data/bj/sicherheit/rechtshilfe/strafsachen/taetigkeitsberichte/jb-irh-2018-d.pdf>

³⁸ <https://bstger.weblaw.ch/index.php>

³⁹ <https://www.bundesanwaltschaft.ch/mpc/en/home/zugang-zu-amtlichen-dokumenten/strafbefehle--einstellungs--und-nichtanhandnahmeverfuegungen.html>

⁴⁰ <https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/news-seite.msg-id-76725.html>

Beneficial ownership transparency

There is no central register of beneficial owners of companies or trusts. Authorities (such as law enforcement authorities) generally have access to this information, which must be kept by some legal persons (AG and GmbH corporate entities).⁴¹ This should be seen against the background of the OECD WGB's finding in its 2018 Phase 4 Report on Switzerland that the country is home to a large number of "letterbox" or "domiciliary" companies.⁴² Consequently, the OECD WGB said it would follow up on efforts by Swiss authorities to encourage greater transparency in relation to legal persons and complex legal structures, including domiciliary companies in Switzerland.

Inadequacies in legal framework

There is insufficient legal protection for whistleblowers in the private sector.⁴³ A new revised draft law was submitted to Parliament in September 2018,⁴⁴ but was rejected after passing back and forth between both chambers in March 2020.⁴⁵

Regarding corporate liability, the OECD WGB in its 2018 Phase 4 Report recommended that Switzerland clarify the concept of "defective organisation", which is a requisite for corporate liability.⁴⁶ Across multiple cases, the OAG has not indicated the standards for the necessary and "reasonable organisational measures" – such as internal control systems and codes of conduct – which a company must adopt to prevent it from having a "defective organisation" and therefore

being liable.⁴⁷ Guidelines would help companies adopt adequate compliance programmes. Although the merits of self-reporting have been recognised in the case of KBA-Notasys SA,⁴⁸ there is no known clear and transparent framework for self-reporting by companies.

The maximum fine for legal persons charged with foreign bribery remains too low, at CHF5 million (US\$5.4 million).⁴⁹ This has been criticised by the OECD WGB, which suggested that "sanctions imposed are not effective, proportionate or dissuasive as provided for in the Convention, particularly in relation to legal persons".⁵⁰ No legal framework or guidelines have been established for compensation of victims in foreign bribery cases.

According to the Financial Action Task Force (FATF), the current Anti-Money Laundering Act has too narrow a scope and does not extend to certain non-financial activities, especially those conducted in connection with the creation, management or administration of companies or trusts.⁵¹ This would be addressed if a draft law submitted to Parliament in June 2019 is approved.⁵² This draft law also seeks to rectify the gaps identified by FATF relating to the general obligations to verify the identity of persons designated as beneficial owners and to update client data.

Inadequacies in enforcement system

The decentralised nature of foreign bribery enforcement in Switzerland creates cooperation challenges. It is still divided between the federal and the cantonal authorities, and there is no clear

⁴¹ <http://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf>

⁴² <https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>, p.9

⁴³ <http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>

⁴⁴ Swiss Federal Gazette <https://www.admin.ch/opc/fr/federal-gazette/2019/5237.pdf>

⁴⁵ https://www.parlament.ch/fr/services/news/Pages/2020/20200305085645310194158159041_bsf038.aspx

⁴⁶ <https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>

⁴⁷ <https://globalcompliancenews.com/anti-corruption/handbook/anti-corruption-in-switzerland/>

⁴⁸ <https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>, Section 4.10

The Summary Penalty Order against the company did not prevent the separate prosecution of the officers personally involved in the corrupt practices, <https://www.24heures.ch/suisse/deux-excadres-kba-notasys-juges/story/24763619>

⁴⁹ Art. 102 of the Swiss Criminal Code, <https://www.admin.ch/opc/en/classified-compilation/19370083/index.html>

⁵⁰ <http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>

⁵¹ <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Report-Switzerland-2020.pdf>

⁵² <https://www.admin.ch/opc/fr/federal-gazette/2019/5237.pdf>

overview of activity at both levels and how they can be integrated to prevent loopholes.

The summary penalty order is a poor substitute for the model of deferred prosecution agreements found in other countries, lacking transparency and predictability. Additionally, there is no framework providing incentives for self-reporting by companies and no guidance for adequate corporate preventive measures.

Recommendations

- Systematically publicise and make available online information on all foreign bribery cases, including those concluded through summary penalty orders
- Improve the collection and publication of statistics on corruption, especially data from the cantons
- Create a publicly accessible central register of beneficial owners of companies and trusts
- Develop corporate compliance standards and a clearly defined framework of voluntary disclosure for companies
- Adopt the amendment to the Anti-Money Laundering Act, addressing deficiencies identified by FATF, especially enlarging the scope of the Act
- Enact protection of whistleblowers in the private sector, based on the highest international standards
- Make provision for compensation of victims in foreign bribery cases
- Ensure judicial authorities do not adopt a restrictive interpretation of foreign bribery-related offences
- Increase enforcement and impose tougher sanctions
- Improve awareness-raising among small and medium-sized enterprises, encouraging them to take internal measures to prevent and detect foreign bribery
- Improve the process of summary penalty orders to make it more transparent and predictable.