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Report on Switzerland's financial market policy

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Summary

In this report, the Federal Council sets out an overall view of Switzerland's financial market policy. Following an analysis of the challenges in the international environment, the objectives of the financial market policy are explained in a second step. Measures in line with these objectives are then put forward, on the basis of which the strategic orientation of financial market policy is highlighted. In addition, the status of implementation of the measures set out in the Federal Council's report entitled "Strategic directions for Switzerland's financial market policy" is shown.

The economic conditions of the financial centre are affected by three developments in the international environment (*Section 2)*. In addition to an intensified debt crisis, a large number of new regulations at national level have emerged alongside various requirements for granting market access to providers from other countries. As an additional factor, the fiscal policy of many countries has been increasingly focused on boosting tax receipts.

Financial market policy has to be structured on the basis of basic principles that apply over the longer term (*Section 3*). These provide guidance for the relevant authorities. Based on these principles, the financial market policy contains two elements: objectives to be targeted (*Section 3*) and appropriate measures (*Section 4*) through which these are to be achieved.

The financial market policy pursues the three objectives of quality, stability and integrity. In addition to being in the interests of both domestic and foreign clients, a high-quality offering of financial services also requires the sustainable creation of value added and employment in the financial sector. Stability, the second objective of the financial market policy, is important, as only in a stable financial system can the Swiss financial centre function smoothly. As the third objective, the preservation of integrity is not just the responsibility of participants in the private sector – the state too has a significant role to play in combating abuses.

Based on these objectives, measures are identified with the aim of strengthening the environment for the financial centre. These measures can be broken down into three areas: firstly, strengthening competitiveness, secondly, due diligence requirements and combating abuses, and thirdly, accompanying measures relating to the economy as a whole. The conclusions for Switzerland's financial market policy are described in *Section 5*.

Switzerland's financial market policy

Switzerland's economic policy should create the best possible, internationally accepted environment conducive to a strong and competitive financial market. It is the responsibility of the private sector to exploit these conditions optimally and to create value added.

Competitiveness should be strengthened by improving conditions in the areas of asset management, the capital market and pension funds. Moreover, Switzerland should play an active role in the development of global standards. It should implement international standards as a rule. In the event of the non-adoption of such standards, a credible alternative should be put forward.

Protection of privacy is important. However, bank client confidentiality should not be abused with a view to concealing criminal or untaxed funds. This issue can be credibly resolved through withholding tax agreements and targeted due diligence requirements on the part of financial intermediaries, as well as through administrative and mutual assistance in accordance with the international standard.

The financial sector is an important part of the economy, and a key contributor to Switzerland's welfare. Both businesses and households should be able to rely on high-quality financial services. This includes a developed capital market for financing companies, an appropriate degree of consumer protection and an attractive business taxation environment without distorting effects.

1 Introduction

1.1 Mandate

With this report, the Federal Department of Finance (FDF) provides the Federal Council with an overall view of financial market policy that meets the following instructions of the Federal Council[1]:

1. Concretisation of the financial integrity strategy: this report contains the fundamental concept of how the Federal Council wishes to implement the financial integrity strategy with new due diligence requirements for financial intermediaries (discussion paper of 22 February 2012 and Federal Council's decision of 14 December 2012).
2. This report sets out the basic concept of how revised international recommendations on combating money laundering and terrorist financing can be implemented (decision of the Federal Council of 18 April 2012). As the implementation of these recommendations and of the financial integrity strategy are not only closely linked conceptually, but overlap in their substance, the content of these two projects should be coordinated from an early stage.
3. Reporting on the status of implementation of the measures decided on by the Federal Council in its report of 16 December 2009 entitled "Strategic directions for Switzerland's financial market policy" in response to the Graber postulate 09.3209 hereafter referred to as the "report on the strategic directions" (decision of the Federal Council of 9 November 2011).[2]

1.2 Economic significance of the financial sector

The Swiss financial centre has economic significance for Switzerland in terms of its role in the creation of value added and employment. Key participants in the financial sector include not only banks, but also insurers, the fund industry, the stock exchange and pension funds. In 2011, these together contributed 10.3% to annual gross domestic product[3] (GDP, cf. *Figure 1*). This represents a decline of some 2 percentage points in the financial sector's share of GDP when compared with 2007 – the year prior to the outbreak of the financial crisis. While this figure of 10.3% may represent a comparatively high value by international standards (United States: 8.3%, United Kingdom: 9.4%), it still remains significantly lower than that of Luxembourg (28.3%)[4]. At just over 6%, the proportion of overall employment in Switzerland accounted for by the financial sector has remained relatively constant for many years.[5]

Switzerland's financial centre also accounts for a significant share of the country's tax revenues (natural persons and legal entities). In 2010, for example, the financial sector contributed just under CHF 6 billion (or around 7.9%) to taxes on income and assets (at federal, cantonal and communal level). Prior to the financial crisis, however, it accounted for almost double this proportion (2006: 14.1% of all taxes, or CHF 9.3 billion).

At the end of 2011, the Swiss banking sector comprised 312 banking institutions which differed with respect to their size and geographical area of activity. The total assets of all 312 banks in 2011 came to CHF 2,793 billion, or 4.5 times annual Swiss GDP, with the two big banks accounting for more than

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[1] With this report, the Federal Council is proposing abandonment of the postulate of National Councillor Leutenegger-Oberholzer 12.3513

[2] http://www.efd.admin.ch/dokumentation/zahlen/00578/01622/index.html?lang=en

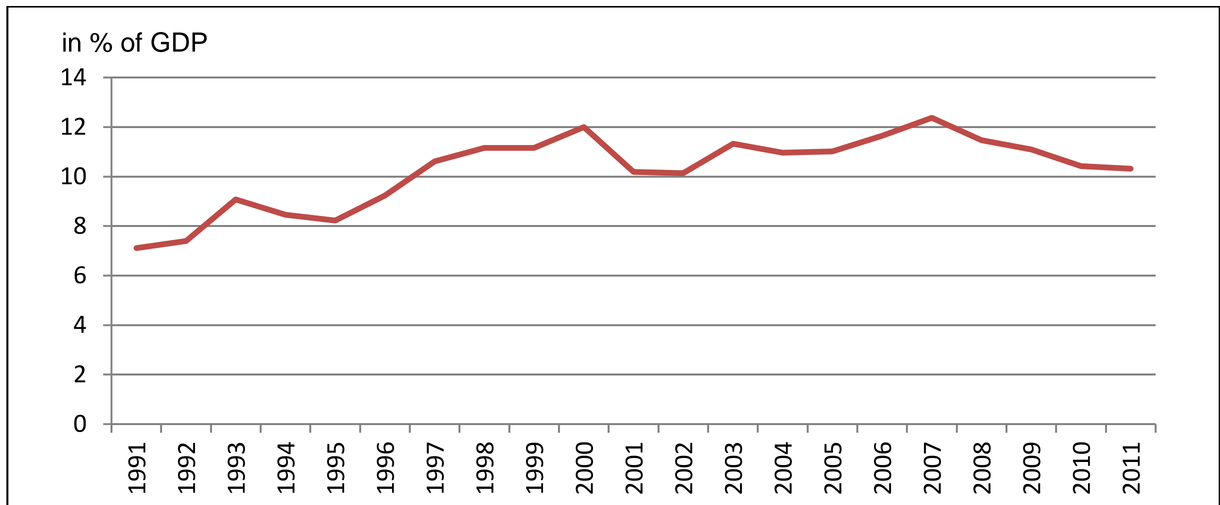
[3] Total value of all goods and services produced in Switzerland in one year

[4] Data (2011): Statistics Portal – Grand Duchy of Luxembourg, FSO/SECO (Switzerland), Singapore Department of Statistics, Office for National Statistics (UK), Bureau of Economic Analysis (USA)

[5] Source: FSO; those working in the primary sector and external workers are excluded from overall employment

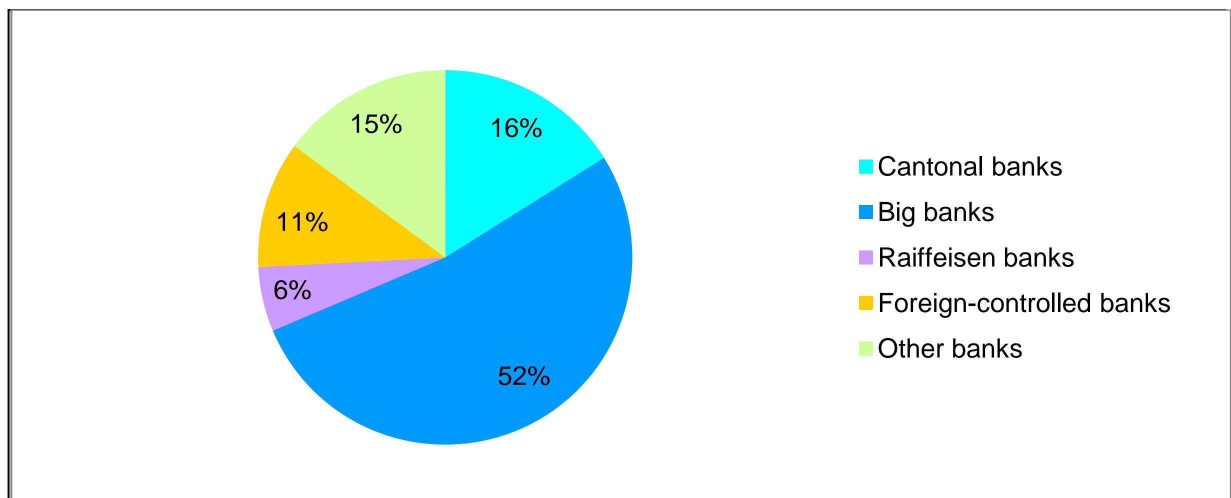
50%. Around two-thirds of all banks are either foreign banks or have an international focus – such as the big banks, the private banks, and the stock exchange banks.[6] This reflects the heavily international orientation of the Swiss financial centre. Nonetheless, it is worth noting that there is a significant cluster of predominantly domestic-oriented banks, in addition to those with an international focus. At the end of 2011, for example, the cantonal and regional banks had on their balance sheets claims and liabilities relating to Swiss counterparties that stood at 88% and 98% respectively.[7]

Figure 1: Proportion of GDP accounted for by the financial sector 1991-2011



Source: Federal Statistical Office (FSO).

Figure 2: Share of total assets of all banks



Source: Swiss National Bank (SNB).

A well-functioning financial centre is in the interests of the Swiss economy as a whole, as it provides financing to many small and medium-sized companies. In terms of credit volumes, for example, more than CHF 950 billion of the banks' outstanding loans as of mid-2012 were domestic. This figure includes more than CHF 310 billion of corporate loans, of which CHF 187 billion related to companies with fewer than nine employees.[8] With a share of 40%, the cantonal banks account for the largest share of corporate lending, followed by the big banks with 34%.

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[6] SNB, Banks in Switzerland, 2011

[7] SNB, Monthly Bulletin of Banking Statistics, August 2012

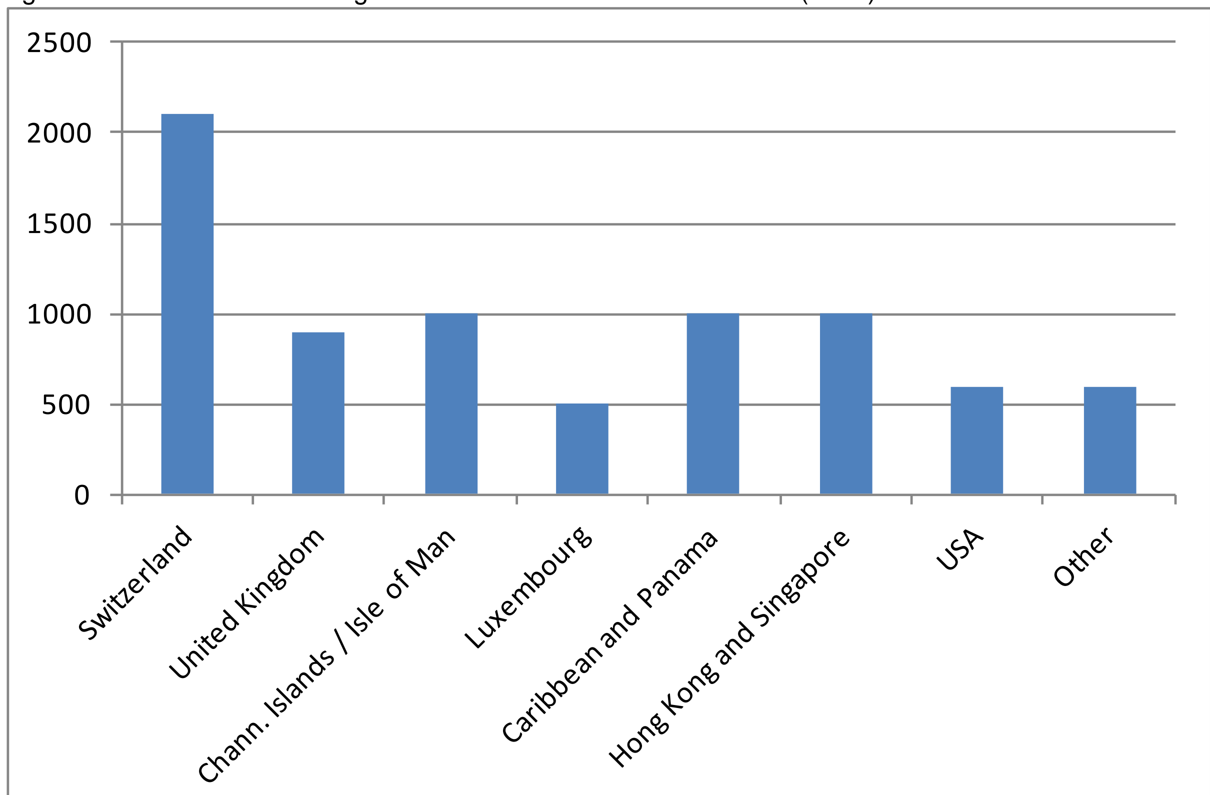
[8] SNB, Monthly Bulletin of Banking Statistics, Tables 3A, 3B, 3Ca, August 2012

In 2011, there were 228 insurance companies active in Switzerland, of which the majority were involved in the area of non-life insurance.[9] The 24 life insurers supervised by the Swiss Financial Market Supervisory Authority (FINMA) booked premium income in Switzerland of CHF 32.8 billion in 2011 (up 0.3% relative to 2010). Around two-thirds of this sum was generated in the area of occupational benefits (Pillar 2), which underlines the great significance of this business for the Swiss life insurance industry. This area was also the main contributor to the growth in premium income when viewed on a year-on-year basis (up CHF 1.3 billion, or 6.2%). In the area of non-life insurance (including health insurance in the area of supplementary health insurance), a premium volume of CHF 25.3 billion was generated in the direct Swiss business in 2011 (up 1.4% on 2010). The key drivers of this growth were the rise in health insurance premiums on the one hand, and higher revenues from vehicle insurance due to the high number of new vehicle registrations on the other. Finally, the reinsurance industry booked premium volumes of CHF 19.8 billion in 2011 (down 13.3% on 2010). This decline was as a result of structural adjustments in the previous year.

1.3 International significance of the Swiss financial centre

The Swiss financial centre is home to a wide range of specialised financial service providers with a particular focus on wealth management. With a volume of USD 2.1 trillion, Switzerland is the world's largest financial centre for cross-border financial services (cf. *Figure*).[10] This is equivalent to a market share of about 30%. By contrast, private assets managed on a cross-border basis in Hong Kong and Singapore combined amounted to around USD 1 trillion (of which 60% is accounted for by Singapore), compared with USD 0.9 trillion for the United Kingdom, USD 0.6 trillion for the United States and USD 0.5 trillion for Luxembourg.

Figure 3: Private assets managed in offshore centres in USD billion (2011)



Source: The Boston Consulting Group (2012): Global Wealth 2012 – The Battle to Regain Strength.

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[9] FINMA, Report on the insurance market in 2011

[10] The Boston Consulting Group (BCG), Global Wealth Market-Sizing Database 2012

The largest proportion of offshore wealth managed in Switzerland continues to belong to clients from Western Europe (45%).[11] Furthermore, many cross-border transactions of Swiss financial institutions are undertaken with counterparties based in the EU. The Swiss financial centre is therefore heavily interconnected with other European financial centres (such as London/UK, Luxembourg and Liechtenstein). By contrast, the proportion of offshore wealth managed in Switzerland on behalf of North American clients is minimal at around 2%. In Hong Kong and Singapore, about 75% of offshore clients are based in the strongly growing Asia-Pacific region, which is why these financial centres can be expected to increase in importance in the future.

1.4 Status of implementation of existing measures

In its report on the strategic directions, the Federal Council for the first time set out an outline of its financial market policy. The analysis contained in the report and the basic thrust of the objectives and directions have retained their validity. The direction of financial market policy pursued so far should therefore generally be adhered to. Many measures have already been implemented successfully. In other areas, implementation work is still under way, such as with respect to a functioning cross-border resolution mechanism in the event of the bankruptcy of a systemically important bank. A detailed overview of the current status of work to implement Switzerland's financial market policy is provided in *Appendix 1*.

1.5 Structure of the report

This report is structured as follows: *Section 2* describes the international environment and the challenges confronting the financial sector in this respect. Switzerland's financial market strategy contains two elements: the definition of short-term and medium-term objectives to be strived for on the basis of long-term principles of conduct (*Section 3)* and the formulation of appropriate measures (*Section 4*) for achieving these objectives. These measures are primarily geared to strengthening competitiveness and stepping up efforts to combat abuses. The concretisation of the financial integrity strategy announced on 22 February 2012 is an integral part of measures to strengthen integrity (*Section 4.2*). By contrast, the accompanying measures (*Section 4.3*) are designed to strengthen the business environment for the Swiss economy in general, or have only an indirect impact on the financial market. *Section 5* draws conclusions and summarises Switzerland's financial market strategy.

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[11] The Boston Consulting Group (BCG), Global Wealth Market-Sizing Database 2012

2 Challenging international environment

This section analyses the challenges that have arisen as a result of the changed international environment. In addition to the debt crisis (*Section 2.1*), international developments in both the regulatory (*Section 2.2*) and the taxation area (*Section 2.3*) have led to an overall deterioration of the future prospects of the financial sector. These developments are also a consequence of more intense competition between international locations.

2.1 Debt crisis in Europe

Ever since the outbreak of the financial crisis in 2008, a number of European countries have been struggling with high deficits and growing debt levels, which in some cases have led to acute financing problems. Due to the close financial interrelationship between sovereigns and banks, as well as between banks themselves, the problems of a number of countries – including Greece, Ireland, Spain and Portugal – have led to a wider European debt crisis. Despite comprehensive packages of financial assistance put together by the European Union and the International Monetary Fund (IMF) for individual eurozone countries, massive injections of liquidity by the European Central Bank (ECB) and drastic restructuring measures and reforms in individual countries, this crisis has still not been resolved. High government debt levels and high-risk assets on banks' balance sheets are continuing to spoil the economic prospects and jeopardise financial stability, particularly in Europe.

As an open economy situated in the middle of Europe, Switzerland is affected and challenged to varying degrees by the debt crisis, which has an impact on the Swiss financial sector through four channels:

1. Financial stability: the crisis poses a threat to financial stability, with direct losses on high-risk positions – such as government bonds or investments in the banks of ailing countries – a distinct possibility. The large banks of the eurozone are heavily exposed to both public and private sector borrowers in the eurozone's peripheral states. Above and beyond this aspect, the degree of international financial interconnectedness raises the prospect of indirect losses as a result of exposure to countries whose banking systems are exposed to struggling countries. Although the direct risk positions of the Swiss financial sector vis-à-vis countries such as Greece, Cyprus, Portugal and Ireland can be considered manageable, the potential losses in the event of an expansion of the debt crisis to major EU countries and their banking systems would be significantly greater, as well as more difficult to predict. Moreover, if the debt crisis were to escalate into a systemic banking crisis, the threat of the loss of banks' confidence in one another would loom large. Internationally active banks in particular would be affected by the resulting difficulties in the interbank lending market.

2. Strong Swiss franc, economic cycle and monetary policy: as an economic slowdown typically goes hand in hand with a decline in demand for financial services and a rise in non-performing loans, internationally active Swiss financial institutions would be directly affected by a recession in the EU. At the same time, the entire Swiss financial sector would be affected indirectly, as lower foreign demand for domestic goods and the strong Swiss franc would also weigh on the economy in Switzerland. On the other hand, the current state of the Swiss real estate market – which is currently being buoyed by a combination of low interest rates, sharp rises in real estate prices and robust credit growth – poses the threat of an overheating of domestic credit markets. As interest rates are low in most other advanced economies as well, institutional investors such as pension funds face the additional challenge of achieving their target returns without taking on a disproportionate level of risk in the process.

3. Fiscal policy: the governments of many European and other industrialised nations are facing serious fiscal policy challenges. One of the repercussions of this problem is an intensive international debate on issues of fiscal policy and tax matters in particular. Switzerland, which has pursued a successful

fiscal policy by international standards, is severely affected by this development. Indeed, the pressure on Switzerland in the area of taxation is likely to remain and may even increase further (cf. *Section 2.3*).

4. Structural change in the financial sector: as a direct consequence of the global financial and debt crisis, the international banking community is undergoing fundamental change. All around the world, both supervisory authorities and the financial markets themselves are calling for greater security. One consequence of this development is a drive by banks to reduce their indebtedness (now increasingly known as "deleveraging"). This is being achieved either through a reduction of short-term debt or through an increase in equity. In addition to posing a challenge for the institutions concerned, this adjustment process can also have implications for the real economy.[12] In particular, a rapid debt reduction can have a negative impact on credit lending.[13] As a result of the disappointing performance of global equity markets over a prolonged period, the fee and commission business of banks has also come under pressure. This has increased the pressure on many large international banks to adjust their business models. Finally, these structural adjustments are also likely to lead to a redimensioning of the financial industry in general. Such a change may result in both positive and negative consequences for the public sector. On the one hand, a downsizing of the financial sector makes job losses and reduced tax receipts a very real threat. On the other hand, this process is likely to increase the stability of the financial sector and therefore lead to more sustainable economic growth.

2.2 Regulation

Since the financial crisis of 2008, it has been recognised all around the world that international standards are in need of reform. Areas in which reform is particularly needed include financial stability and consumer protection. In addition, new regulations have been issued in a number of countries which hamper the global movement of capital. As a small, open economy with an internationally oriented financial centre, Switzerland is affected by this development (cf. *Section 2.2.1)*. Parallel to this regulatory intensification, the fight against financial crime has also been stepped up at a global level with the revision of the Recommendations of the Financial Action Task Force (FATF) (cf. *Section* 2.2.2).[14]

2.2.1 Financial market regulation

At a global level, the Financial Stability Board (FSB) has assumed a key role in the development of new financial market regulations. Many of these reforms are at an advanced stage, while others are still at the draft stage.

At a national level, in addition to the development of new regulations, requirements have been tightened for granting market access to financial service providers from other countries. Increasingly, cross-border financial services are likely to be accepted only if the regulatory and supervisory environments of the exporting country are recognised as equivalent or are in line with international standards. This is the case in the EU, for example. Other regulation concepts, in particular that of the United States, are increasingly stretching their scope of application to include foreign financial service providers.

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[12] Cf. regulatory impact assessment on the amendment of the Banking Act (TBTF legislative revision)

[13] This problem of widespread credit shortage has not manifested itself in Switzerland so far

[14] The implementation of other reforms of international standards such as Basel III has already been agreed on in Switzerland, and these reforms are therefore not reiterated here

Third country regimes under new EU regulations

In the wake of the financial crisis of 2008, the EU initiated a wide range of technically challenging legislative projects with the aim of increasing transparency and stability in the financial markets. Not being a member state of the EU, Switzerland is confronted with two challenges as a result: On the one hand, the EU is demanding that third countries fulfil a wide range of prerequisites under the new EU financial market regulations in order to continue to have access to the EU market in the future. On the other hand, in certain cases the EU is calling for the establishment of a branch office through which transactions must be processed, which would effectively make the cross-border provision of financial services from a third country such as Switzerland virtually impossible. In both cases, the corresponding regulations could have the effect of restricting market access, and therefore could contain protectionist elements.

Most of the new EU financial market regulations relating to third countries, some of which have yet to be formally approved, envisage the following prerequisites, among others, for accessing the EU market:

- Recognition of a third country's regulatory regime as equivalent to EU regulation
- Conclusion of a cooperation agreement between the relevant supervisory authorities (at both national and EU level) including an exchange of information

Depending on how the regulation of third country regimes is actually finalized, market access for foreign financial service providers may be dependent on a range of other prerequisites, such as that for a branch office.

Equivalence

In order to drive forward integration and harmonisation of the domestic market, the EU is increasingly applying harmonised market access regimes for third countries in order to overcome the existing fragmented nature of national third country regulations. As a result, in many cases the European Commission is responsible for evaluating the question of whether foreign regulatory or supervisory regimes are comparable with those of the EU. However, the numerous EU regulation projects contain neither standardised nor in all cases clear prerequisites for the recognition of equivalence. With respect to each individual regulatory project, therefore, the question arises as to what criteria will be applied by the EU when evaluating the equivalence of Swiss regulation. Moreover, it cannot be stated at present whether the EU will undertake an overall evaluation – in which the foreign regulatory regime has to be considered to be at the EU level from an overall perspective – or whether the regulatory level of the EU must be attained by the foreign regime with respect to certain specific criteria. This situation means that Swiss financial market participants face substantial legal uncertainty.

Questions of recognising equivalence also arise with respect to other countries. However, these are much less significant compared to the questions that arise in connection with EU regulation.

Branch requirements under MiFID II

The revision of the Markets in Financial Instruments Directive (MiFID), which entered into force in 2007 as a key component of the EU financial market reform, not only regulates EU-wide access for financial institutions from third countries, but also sets out a branch establishment obligation. The impending revision of MiFID (MiFID II) is therefore of particular significance for Switzerland. MiFID was drawn up with a view to standardising regulation of the European financial market, improving competition between financial service providers, and strengthening consumer protection. As a non-member of the European Economic Area (EEA), Switzerland itself is not required to implement the directive directly, but Swiss financial intermediaries providing financial services locally – or on a cross-border basis for clients domiciled in an EEA country – are already affected by MiFID in a number of respects.

According to a proposal by the European Commission on the revision of MiFID, market access for financial institutions from third countries is now to be regulated at EU level. Among other things,

financial institutions from a third country now face the following three prerequisites for gaining market access to retail and professional clients in the EU market: the institution must have a branch in an EU member state, the legal and supervisory framework of the third country must be deemed to be equivalent (equivalence recognition), and a cooperation agreement must be signed between the supervisory authorities of the EU and the third country. Once these prerequisites are fulfilled, the financial institution may offer its services throughout the EU ("EU passport" concept).

However, this concept of third country regulation is the subject of considerable dispute within the EU itself. Several essentially identical proposals for agreement have been circulated under different EU Council Presidencies. These even envisage an obligation for financial institutions to establish a branch in every individual EU member state in order to provide financial services in that country. The implementation of further-reaching prerequisites for market access would largely remain a matter for the individual member states themselves.

If the proposed third country regulation regime – which is currently being discussed by the EU Council and the EU Parliament – were to be passed, providing services to the EU area from Switzerland on a cross-border basis would become more difficult or even impossible in the future. Swiss financial intermediaries would then have to serve small investors domiciled in the EU as well as professional clients exclusively through their branch office located in the EEA. This obligation to establish a branch office as a prerequisite for serving clients in the EU internal market (branch establishment obligation) could result in the loss of numerous jobs in the Swiss financial centre.

Extraterritoriality of national regulation

The increasingly comprehensive regulation of the financial market area by the United States reflects a different approach to regulation from that being pursued by the EU. The US approach rests on the principle of extraterritorial application of US financial market law, which means that equivalence requirements are less pronounced. For example, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the Foreign Account Tax Compliance Act (FATCA) impose direct obligations on Swiss financial service providers vis-à-vis the US authorities on the basis of their extraterritorial validity. However, in many instances this approach results in conflicts with Swiss law, thereby subjecting Swiss financial service providers to potentially increased risks. Furthermore, the financial consequences entailed by the implementation of these obligations are substantial for the financial service providers concerned.

In summary, it can be said that it is important for Switzerland to adopt a proactive approach when contributing to the formulation of international standards. At a bilateral level, Switzerland is increasingly finding itself in the position of having to establish equivalent norms under Swiss law in order not to risk losing access to international markets. It would seem likely – on the basis of the current level of regulation in Switzerland – that this equivalence does not yet exist in all areas. In the area of consumer protection in particular, this prerequisite is unlikely to be wholly fulfilled at the current time (cf. *Section 4.3.2*).

2.2.2 Combating financial crime

In February 2012, the FATF issued a revised version of its recommendations on combating money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction. Among other things, serious tax offences (in the area of both direct and indirect taxation) were included on the list of predicate offences that had to be enshrined as predicate offences for money laundering under national law. The FATF deliberately avoided formulating a precise definition of this kind of predicate offence. Where implementation is concerned, it has been left to the individual countries to determine how these predicate offences should be defined in a way that does not clash with national law. Furthermore, the 2012 revision of the FATF Recommendations mainly concerns measures to ensure transparency of legal entities, rules for the identification of beneficial owners,

rules regarding Politically Exposed Persons (PEPs) and the powers and responsibilities of the Money Laundering Reporting Office Switzerland (MROS).

2.3 Taxation

Many countries have tightened tax policy as a consequence of the ongoing debt and budget crisis. Better enforcement of tax law (combating tax evasion) and an extension of the tax base (closing tax loopholes) are tools designed to increase national tax receipts. Accordingly, efforts have been stepped up to combat tax evasion at both national and international level. The expansion of the OECD minimum standard in the area of administrative assistance is likewise aimed at combating tax evasion (cf. *Section 2.3.1*). In addition, the area of business taxation – an important element for creating attractive business conditions – is the subject of studies being conducted by both the OECD and the EU.

2.3.1 Combating tax evasion

2.3.1.1 International initiatives

The intensification of efforts to combat tax evasion at international level has had both multilateral and bilateral repercussions. At a multilateral level, mechanisms have been introduced to ensure implementation of existing standards. The further development of existing standards is likewise being discussed. In addition, measures to implement domestic tax law which are valid in the cross-border area too are also being issued at a bilateral level. The key challenges in the area of taxation are as follows:

- The OECD minimum standard for administrative assistance envisages such assistance being provided not only in cases of tax fraud, but also in cases of tax evasion and ordinary tax assessment. In July 2012, the OECD published a further development of Article 26 of the OECD Model Convention and its amended commentary. From now on, international administrative assistance must be granted not only in individual cases, but also for group requests in connection with certain patterns of behaviour. In other words, even requests for administrative assistance that do not name individual clients may now be valid in certain situations.
- In Switzerland, implementation work is currently under way for the second phase of the Global Forum's peer review. Switzerland successfully passed the first review phase in 2011. In the following areas, Switzerland failed to fulfil the international standards or did so only partially: transfer of data through the channel of tax administrative assistance in exceptional cases even without information on the affected person, identification of owners of bearer securities and demonstration of a sufficient number of double taxation agreements (DTAs) with an administrative assistance clause in accordance with the OECD standard. In order to be admitted to the second peer review phase, one of these three areas must be completely fulfilled.
- For a considerable while now, the United States has been arguing that some Swiss banks had helped US taxpayers to circumvent their tax obligations. As a result, the United States is demanding the handover of information on certain business practices of banks as well as the names of bank employees in order to evaluate whether these parties should be held to account. Lawsuits against Swiss banks are being used to exert pressure.
- A further challenge for Switzerland with respect to the United States is the new US Foreign Account Tax Compliance ACT (FATCA). FATCA essentially requires foreign financial institutions to conclude an agreement with the US tax authorities (FFI agreement) in which the institutions undertake to report information on US accounts. If the client does not agree to this disclosure, any sums paid to them from the United States will be subject to a prohibitively high

penalty tax of 30%. All US persons are affected by FATCA, including dual US-Swiss citizens and Swiss citizens who have spent a long period of time in the United States. The implementation of FATCA is generating high costs and legal uncertainty worldwide. On 21 June 2012, Switzerland and the United States published a joint declaration announcing the initiation of negotiations on the conclusion of an agreement on the facilitated implementation of FATCA in Switzerland. The framework agreement on the simplified implementation of FATCA was initialled on 3 December 2012. This contains simplifications in particular for social security funds, pension funds and property and casualty insurers given that they are excluded from the scope of application of FATCA, as well as simpler identification rules.

- A number of EU countries are stepping up their efforts to identify taxpayers who are attempting to use Swiss bank client confidentiality to avoid tax obligations in their country of domicile. This has also involved the use of questionable means, such as the acquisition of CDs with stolen client data from Swiss financial institutions.
- The EU is currently trying to close existing loopholes in its Savings Tax Directive. In addition, it is looking to expand the savings tax agreement with Switzerland to include certain further holders of capital, as well as intermediary legal entities.
- With its competitive tax conditions for multinational companies, Switzerland has increasingly come under pressure as many countries have begun to tighten tax policy. This has included not only pressure from individual countries, but also from the EU and power groups such as the G20. Pressure has also been put on Switzerland through the OECD. In a new development, a number of major emerging markets are also voicing their concerns directly with respect to market access and the combating of tax evasion. While preserving the appeal of Switzerland as a business location is of great importance for the future, it is essential for Switzerland to carefully follow international developments such as the EU Code of Conduct and the BEPS (Base Erosion and Profit Shifting) project of the OECD Forum for Harmful Tax Practices, and react by taking the appropriate steps where necessary. As a rule, multilateral agreement in this area is preferable to bilateral solutions for individual cases.
- The exchange of information between national tax authorities has become a stand-alone issue in recent years. Depending on the nature of the agreement, exchanges of information may take place on request, spontaneously or even automatically. The EU Savings Tax Directive and the savings tax agreement with Switzerland envisage the coexistence of two equivalent models with respect to interest income, namely the automatic exchange of information and the levying of a retention tax. Within the EU, Austria and Luxembourg levy the retention tax, whereas the other EU countries exchange information on an automatic basis. The European Commission is keen to abolish the coexistence model (at least within the EU) and have it replaced by the automatic exchange of information. Within the OECD too, a number of member states are seeking to extend the minimum standard for the exchange of information between national tax authorities. The OECD is supported in these endeavours by the G20, which is seeking to strengthen the practical significance of the automatic exchange of information. According to an OECD study in which 38 countries participated, 33 of the 38 countries automatically send certain information such as interest and dividend income details to other countries.[15] However, there are considerable differences in the way that states engaging in the automatic exchange of information implement this process in practice (scope and processing of data).

2.3.1.2 Strategies of selected financial centres

Many states are currently stepping up the fight against the inflow of untaxed assets into their financial centre at national level. On the one hand, this involves the implementation of international standards (e.g. the OECD minimum standard for administrative assistance, implementation of the new FATF

[15] OECD, Automatic exchange of information – what it is, how it works, benefits, what remains to be done 2012

Recommendations on money laundering) in national legislation and bilateral agreements (e.g. DTAs), while further country-specific measures are being considered on the other. The following sections provide an overview of current strategies to combat the inflow of untaxed assets into internationally important financial centres of relevance to Switzerland, such as Singapore, Hong Kong, Luxembourg, UK/London, and USA/New York (cf. table in *Appendix 2*).

Protection of privacy (bank client confidentiality)

As well as in Switzerland, the privacy of bank clients is protected by law in countries such as Singapore[16], Luxembourg[17] and Austria[18]. In these countries, the disclosure of client data is a criminal offence (except in circumstances where there is a legal obligation to do so), as it violates bank client confidentiality. However, views on bank client confidentiality and the need to protect it have been changing in recent times. For example, the Monetary Authority of Singapore (MAS) has proposed an overhaul of Singapore banking law. In other states and financial centres, although bank client confidentiality may not be enshrined in law per se, the individual's privacy is well protected by other means. In the United Kingdom, by contrast, the legislation[19] is structured in such a way that banks are obliged to gather, preserve and deliver to the relevant national authorities all the client data necessary for the exchange of information in the area of taxation.[20]

Due diligence requirements in the area of taxation (financial integrity strategy – due diligence requirements for banks and mandatory self-declaration for clients)

Particularly in countries where privacy is still protected by law (e.g. Singapore, Luxembourg), initiatives are under way which are designed to ensure tax compliance and prevent abuses of bank client confidentiality (so-called "financial integrity strategy").

Singapore has announced that it will be combating tax crime and money laundering in a decisive way. A consultation paper published by the MAS in October 2012 announced a revision of the Corruption, Drug Trafficking and Other Serious Crimes Act (CDSA) in June 2013, and envisages – based on the revised FATF Recommendations – criminalising the acceptance of funds originating from wilful tax evasion as a money laundering offence. Singapore is therefore intending to define "serious tax crime" in broad terms as a predicate offence for money laundering. Furthermore, the consultation paper proposes that financial institutions should, in the future, be in a position to identify, manage and prevent all risks associated with tax offences relating to both new and existing client relationships. In order to achieve this goal, financial institutions should obtain all necessary information from their clients.

In Luxembourg too, efforts are under way to step up the fight against tax evasion at a national level. In October 2012, the Luxembourg Bankers' Association (ABBL) published the ICMA Private Wealth Management Charter of Quality. This is a voluntary standard which takes into account international, EU and national regulations. It is not envisaged to have an ongoing review of existing business relationships by banks to identify tax violations as is intended in Singapore.

No systematic policy of mandatory self-declaration which requires new clients to confirm their honesty in tax matters is envisaged in either Singapore or Luxembourg. By contrast, Liechtenstein has agreed

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[16] Art. 47 Banking Act; banks can disclose client data to foreign authorities directly thanks to a corresponding waiver in their General Terms and Conditions (GTC)

[17] Art. 41 of the Law of 5 April 1993 on the Financial Sector

[18] § 38 Austrian Banking Act

[19] In particular the Finance Act 2008, Tax Management Act 1970, and Money Laundering Regulations

[20] It should be noted that the statements regarding the United Kingdom apply to the financial centre in London, but not necessarily to other territories which are subject to the British Crown but do not form part of the United Kingdom (e.g. the Channel Islands, Isle of Man) or other British overseas territories (e.g. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar)

with the United Kingdom a mechanism for regularising the past through the Liechtenstein Disclosure Facility (LDF), which involves a form of self-declaration (Certification of Tax Compliance).[21] The declaration provided in the form applies to the past. However, it also involves an obligation to report any later changes. The extent to which a comparable self-declaration mechanism will apply to the period after the extended LDF[22] is not clear at the current time and is the subject of discussions between the authorities of the two countries.

The implementation of the proposed measures and strategies is still in the early stages in Singapore and Luxembourg, and a large number of issues have yet to be resolved (e.g. constituent elements of tax evasion and the documents which the client must hand over with respect to his or her tax situation).

OECD minimum standard (implementation of Article 26 of the OECD Model Tax Convention and amended commentary)

In addition to Switzerland, all OECD countries and all financial centres (e.g. the United Kingdom, Hong Kong, Singapore, Luxembourg) have committed to adopting Article 26 of the OECD Model Convention for the avoidance of double taxation with respect to administrative assistance (i.e. the exchange of information upon request), and to using this as a legal basis for the bilateral exchange of information on tax matters. Most DTAs and TIEAs[23] of the United Kingdom, the great majority of DTAs of Hong Kong and more than half the DTAs of the United States already meet the international standard. Other countries and financial centres such as Singapore have been bringing existing DTAs into line with the OECD administrative assistance standard and structuring newly concluded DTAs accordingly. The DTA between Switzerland and Hong Kong which has recently entered into force likewise meets this international standard, as does the revised agreement with Singapore. The DTA between Switzerland and the United Kingdom was adjusted to the standard through an exchange of letters.

Following approval of the amended commentary on Article 26 of the Model Convention by the OECD in July 2012, group requests are now OECD standard. Switzerland has agreed to this further development, while pointing out that this aspect still needed to be implemented in Swiss law. This has now been achieved following an amendment to the Tax Administrative Assistance Act, and Switzerland can accept group requests once this Act has entered into force. Most other OECD states do not require domestic implementation. The United Kingdom can now also provide administrative assistance in response to requests where the individual is not specifically named, thanks to a legislative adjustment to the Finance Act in April 2012. As Singapore and Hong Kong are not member states of the OECD, the development of this standard does not apply to them.

Automatic exchange of information

Within the EU, Luxembourg and Austria are against the automatic exchange of information and in favour of a withholding tax instead, and have yet to decide which model to apply when implementing FATCA. Singapore and Hong Kong are also keen to avoid the automatic exchange of information. By contrast, the United Kingdom signed an agreement with the United States on 12 September 2012 to improve international tax compliance and to implement FATCA. This is in line with FATCA "Model 1", which was drawn up on the basis of a joint communiqué dated 8 February 2012 with France, Germany, Italy, Spain and the United Kingdom, and then published by the United States in July 2012. Under this agreement, the United Kingdom undertakes to create a legal basis for the procurement and automatic forwarding of the necessary information (for more on this, see also the explanations on the automatic exchange of information in *Section 2.3.1.1*). In connection with FATCA, the United States has provided an assurance of reciprocity with respect to the automatic exchange of information with a number of EU countries. In practice, however, this will be limited to the provision of information on

[21] Information on the content of the declaration: http://www.hmrc.gov.uk/disclosure/liechtenstein-faq.htm#116

[22] The final compliance date is 5 April 2016

[23] Tax Information Exchange Agreement

interests. Moreover, in FATCA agreement negotiations, the United States is only prepared to exchange information automatically with countries that have sufficient data protection provisions in place. The US-Canadian DTA provides for the automatic exchange of information.

2.3.2 Business taxation

Corporate taxes are an important element in creating attractive business conditions. Against this background, and in keeping with the desire of certain countries to protect their tax bases, the OECD and the EU have commenced a number of initiatives in the area of international tax competition. Within the context of the OECD, the Forum on Harmful Tax Practices has laid down various criteria to determine when a tax regime should be deemed harmful. The member states of the EU have acknowledged a Code of Conduct on business taxation.

In 2007, the EU criticised certain cantonal tax regimes as constituting "non-permitted state aid", arguing that such practices distort competition and breach the Free Trade Agreement between Switzerland and the EU which dates back to 1972. Switzerland firmly rejects this interpretation. A proposed compromise fell through in 2009 following resistance from certain EU member states. In 2010, the EU once again attempted to persuade Switzerland to adopt the EU's own Code of Conduct on business taxation. After intensive preliminary discussions, the EU and Switzerland agreed in 2012 to enter into a tax dialogue which would deal in particular with the different taxation of profits generated domestically and abroad.

3 Principles and objectives

According to the Federal Constitution, the economic policy of the Confederation (and the cantons) should preserve the interests of the Swiss economy as a whole and contribute to the population's welfare and economic security. Within the scope of their responsibilities, the Confederation and the cantons should create favourable general conditions for the private sector.[24] It is also the task of the Confederation to protect creditors, investors and insured persons as well as to ensure financial markets that function properly. Its remit does not stretch to industrial policy, however.[25] As an element of economic policy, financial market policy has the task of shaping the frameworks relevant to the financial market.

While financial market regulation and supervision primarily affect financial market participants, other policy areas are also relevant to economic policy as a whole. Financial market policy is affected by a broad spectrum of different areas. These include financial market regulation and supervision, tax principles and Switzerland's involvement internationally. Financial market policy therefore has a significant influence on financial service providers' scope for action. The financial market framework also includes monetary, fiscal and tax policy, the preservation of an open and flexible labour market, a high level of education and training, and a well-functioning infrastructure.

Switzerland's financial market policy is based on fixed financial market policy principles (*Section 3.1*) which have long-term validity and should serve as maxims of conduct for the relevant authorities. The way the framework is shaped influences financial market protagonists directly and to a significant degree. In observing these long-term principles, it is therefore essential that government action is in line with a financial market policy strategy which is in turn geared to achieving certain specific objectives (*Section 3.2*).

3.1 Principles

When pursuing objectives, principles which have long-term validity have to be taken into account. These can be broken down into *general* and *specific* principles. The general principles should be broadly applicable, such as in international negotiations, tax policy, or regulatory projects. These general principles include[26]:

- **Preserving and where possible improving appeal**
  The authorities should bear in mind the importance of preserving the competitiveness of the financial sector and its ability to innovate.
- **Striving for a level playing field when setting parameters**
  The regulatory authorities should take account of the repercussions of any regulation on the competitive environment, market structures and market behaviour. They should strive to implement competitive conditions that are as transparent and comparable as possible for all market participants, and avoid creating undesirable incentives.

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[24] Art. 94 para. 3 of the Federal Constitution

[25] Art. 98 of the Federal Constitution empowers the Confederation to legislate on the banking and stock exchange system, on financial services in other fields and on private insurance.

[26] Cf. the "Guidelines for financial market regulation" issued by the Federal Department of Finance in 2005. These were the result of collaboration between the Federal Finance Administration, the Federal Banking Commission, and the Federal Office of Private Insurance. FINMA developed its own "Guidelines for financial market regulation" on this basis in 2010.

- **Being aware of international freedom of manoeuvre**
  The opportunities and possibilities of conscious differentiation should be actively explored in a targeted way where possible.

- **Minimising risks**
  The authorities should identify and evaluate the risks of their actions and strive to prevent negative consequences insofar as possible.

- **Proportionality in the use of political instruments**
  The measures deployed should be geared towards the anticipated benefits. In particular, this requires a risk-based supervisory approach to be taken.

The following *specific* principles should be valid for regulation in the financial sector:

- **Economic necessity and individual responsibility**
  New regulatory interventions should be considered if serious market failures are anticipated. They should not hinder the exercising of responsible behaviour on the part of market participants, however.

- **Weighing up the costs and benefits for market participants and introducing differentiated regulation**
  The regulatory authorities should strive to ensure that regulation is highly effective and differentiated, evaluate the repercussions and costs of such regulation for affected parties (providers and clients) where possible, and weigh these against the anticipated benefits. Differentiated regulation takes into account not only the risks, but also the size and complexity of the relevant financial service providers.

- **Reviewing regulatory needs and the impact of existing and new regulations in a systematic and ongoing way**
  The regulatory authorities must be clear about the nature of a particular problem and the urgency of a planned regulation. In addition, they should review the necessity of existing regulations, as well as their success in achieving their purpose.

- **Ensuring transparency and comprehensibility of regulation and involving all relevant parties**
  The involved parties should be informed at an early stage and included in the planning and elaboration of any given regulation in an appropriate manner. Regulation should be as systematic, simple and comprehensible as possible.

- **Coordinating the content and timing of regulations**
  The regulatory authorities should ensure coherence between existing and planned regulation.

- **International standards**
  It is important for Switzerland to be actively involved in and influence the elaboration of international standards. Once such standards are set, Switzerland should in principle adopt these. Any non-adoption for political or economic reasons must be justified, and a credible alternative should be offered.

- **Guaranteeing legal security**
  Regulatory decisions should also be evaluated in terms of whether they apply over a prolonged period of time and are internationally accepted. This enables market participants to align their medium-term and long-term strategies with the regulatory environment.

> Financial market regulation should adhere to the above-mentioned principles and ensure attractive framework conditions for the financial centre. In addition, regulations should be introduced only if the added value is greater than the decline in appeal.

3.2 Objectives

The financial market policy of the Confederation consists on the one hand of the pursuit of medium-term objectives which take into account the long-term principles referred to above, and on the other of a series of measures designed to achieve these objectives (*Section 4*). Overall, the framework for the financial market should be designed in such a way that the following three objectives in accordance with the report on the strategic directions (cf. *Section 1.3*) are achieved:

- Quality
- Stability
- Integrity

Over the next few pages, these three objectives of financial market policy will be explored in greater detail, with the role of the state of being highlighted in each case. In the area of regulation in particular, it may be seen that these three objectives can sometimes conflict with one another. For example, one-sided regulations formulated with a view to improving consumer protection may damage the competitiveness of the financial industry and its capacity to add value. Conversely, the integrity of the financial centre as well as access to foreign markets may be jeopardised if regulation is too lax. The principles of public action in the area of financial market policy mentioned in *Section 3.1* should also be drawn on for orientation purposes when attempting to overcome such conflicts of objectives.

3.2.1 Quality

The state must shape the conditions for the financial market in such a way that a broad spectrum of services of outstanding quality can emerge which are sought after by both national and international clients. This promotes the sustainable development of the Swiss economy, and allows the financial sector in turn to generate appropriate margins and significant value creation through its own efforts, and to create jobs. Creating significant value as well as jobs remains the responsibility of the industry.

Providing the economy with high-quality services

The core function of the financial sector is to satisfy the needs of clients to the greatest possible degree through high-quality services. Whereas the needs of private households tend to be focused on the financing of residential property, investments, or hedging against risks, the requirements of companies tend to revolve around financing and liquidity. Here the requirements of the domestic economy may differ from those of the international client base. A large number of protagonists have specialised in the provision of these very different services across different sectors.

Although these services have to be provided by the private sector, the state can nonetheless do its bit to ensure that everything is in place for the provision of high-quality services by ensuring a suitable environment. Legal security and the reliability of the regulatory framework are crucial if the financial sector is to provide high-quality services. Efficient financial market infrastructures which facilitate smooth payment transactions and securities trading are likewise essential, as is appropriate regulation. For example, effective consumer protection in line with client needs – such as transparent declaration of the potential risk of financial products, for example – can serve the long-term interests of a well-functioning financial centre. This means investors can act on an informed basis and purchase the right products in line with their individual risk capacities more easily. That said, the final responsibility for any investment decision taken must remain with the informed client.

Value creation and jobs

Given Switzerland's small domestic market and its lack of natural raw materials, the export industry is a traditionally important pillar of prosperity and employment. Switzerland has favourable prerequisites for an export-oriented financial sector, not least due to the significant political and economic stability. Recently, however, this sector has come under both national and international pressure. In order for the financial sector to make a contribution to the creation of value added in future too, the financial

market must continue to consistently adopt an international outlook and competitiveness must be continually improved in order for the commercial opportunities that present themselves to be seized. Access to the international financial markets is absolutely crucial for the Swiss financial market. Without this access, financial services can no longer be provided from Switzerland on a cross-border basis. The direct consequence would be a shift of value added, labour and the tax base to other countries. In addition to market access, financial service providers deciding where to locate their businesses also attach great importance to optimal conditions in the tax and regulatory environment, as well as to the availability of qualified personnel.

3.2.2 Stability

The stability of the financial system is an important prerequisite for sustainable development of the economy and public finances. The preservation of stability is a key task of supervisory activity, as only in a stable financial system can a financial centre function smoothly and develop healthily. As the financial crisis of 2008 has shown, the Swiss financial centre is not immune to developments in international markets. However, this does not mean that unfavourable developments originating within Switzerland could not jeopardise the stability of the financial system.

Stability can be deemed to exist if the financial markets and their protagonists – banks, insurers, stock exchanges, processing systems, money and forex markets, etc. – can fulfil their allocation function effectively even in the event of shocks or crises. Stability may still exist even alongside significant price fluctuations in asset values and the insolvency of individual financial institutions. Price fluctuations and insolvencies present a threat to stability only if they undermine the fundamental role played by the financial system as an allocation mechanism.

3.2.3 Integrity

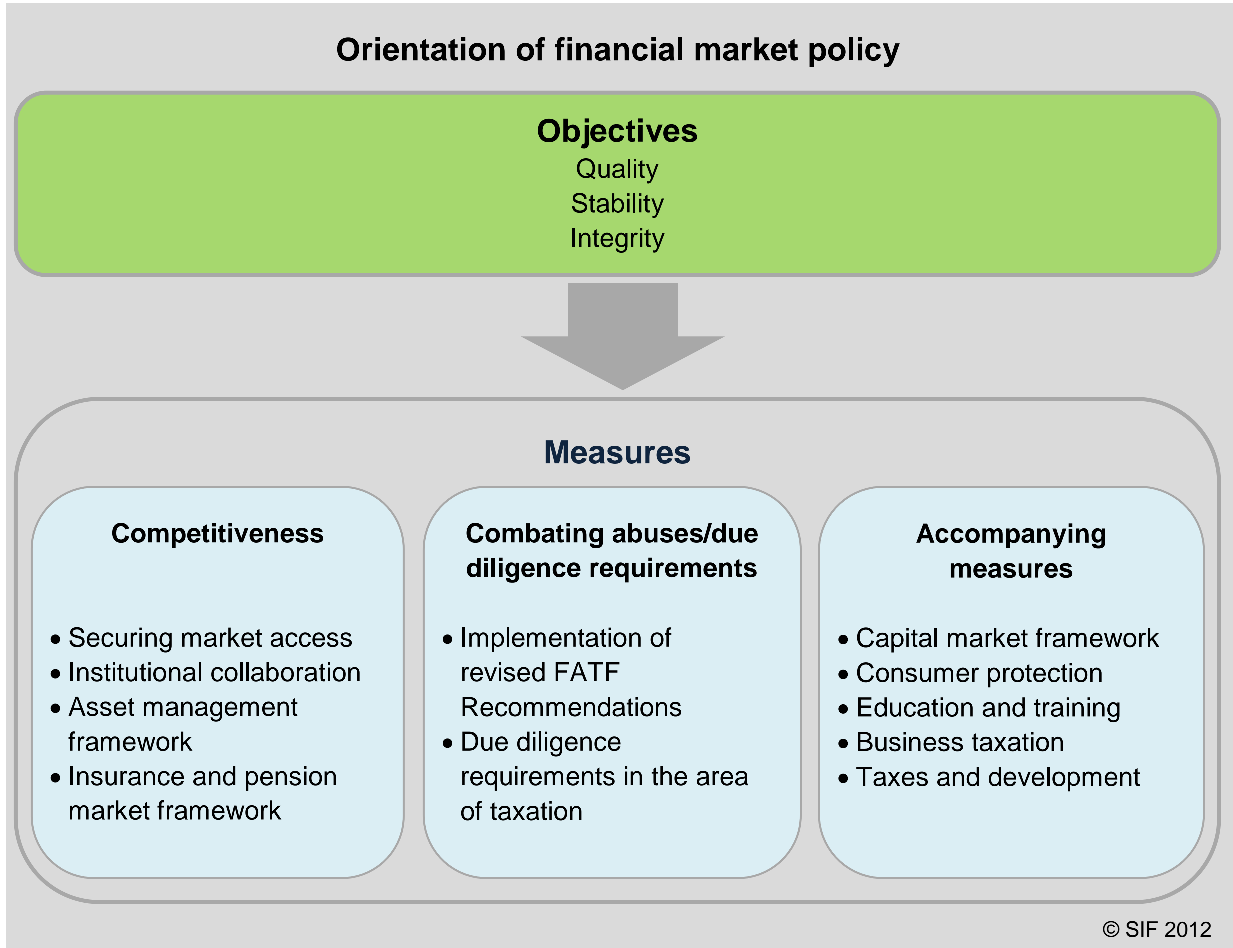
The integrity of the financial centre and concern for its reputation should be the top priority for all providers of financial services. This requires all participants to adhere to high ethical standards. Market participants play a significant role in maintaining the good reputation of the industry through their conduct and the way they deal with clients. Accordingly, the preservation of integrity is the responsibility of market participants on the one hand, while the state can contribute to combating abuses through an appropriate regulatory and supervisory framework on the other hand. Switzerland shapes this framework in line with internationally recognised standards in the areas of prudential oversight, the combating of abuses driven by criminal intent and taxation. Combating abuses in the area of taxation is given high priority. The Federal Council intends to prevent the acceptance of untaxed assets more effectively. In addition to combating abuses, financial market policy should also promote international acceptance of Swiss solutions through transparent communication and the cultivation of healthy intergovernmental contacts.

4 Measures

The increasing challenges posed by the changed international environment (see *Section* 2) are in turn having a far-reaching impact on the environment in which providers of financial services operate. Traditional business areas are suddenly confronted with less appealing prospects for the future, while other business models are affected by new regulations. The structural change required by the changed environment and the international division of labour in the financial sector should be neither prevented nor hindered by financial market policy measures. For this reason, financial market policy measures to improve the business environment have been identified through dialogue with the industry, and concepts for their implementation have been drawn up.

Several measures such as TBTF regulation, countercyclical capital buffers and self-regulation of banks with respect to minimum requirements in the mortgage area have sustainably strengthened the ability of the Swiss financial centre to resist crises. *Appendix 1* contains detailed information on the implementation on the measures adopted by the Federal Council in 2009 on the basis of the report in response to the Graber postulate. New financial market policy measures are required as a result of the challenges posed by the changed international environment (cf. *Section* 2). As these measures were designed with a view to achieving several objectives rather than just one, they need to be categorised in a different way from the objectives. Over the next few pages, these proposed measures are broken down into the categories of competitiveness, combating abuses/due diligence requirements, and accompanying measures. (*Sections 4.1* to 4.3). *Figure 4* illustrates the relationship between the proposed measures and the objectives. *Appendix 3* contains a tabular overview of these new measures.

Figure 4: Orientation of financial market policy



4.1 Competitiveness

Whereas the task of the private sector is to come up with innovations and offer services as efficiently as possible, it is the responsibility of the state to shape the framework in such a way that a competitive and innovative environment is guaranteed. In order to achieve the objectives set out in *Section 3*, a package of measures was elaborated in consultation with the financial sector with a view to strengthening competitiveness. In particular, the measures sketched out in *Sections 4.1.3* and *4.1.4* reflect the current development potential in the view of the industry. In view of the fact that the international environment is continuing to change, these measures are only a provisional list. If necessary, the measures may need to be adjusted.

4.1.1 Elimination of barriers to market entry

To eliminate bilateral barriers to market entry, a number of different measures are required with respect to international regulation, economic blocs – with a particular focus here on the EU – and individual countries.

Multilateral organisations: standard-setting and greater involvement of Switzerland

It has been internationally recognised since the outbreak of the financial crisis that many international regulatory standards are in need of reform. It is in the interests of Switzerland to help shape these regulatory standards and to create freedom of manoeuvre which also takes into account the needs of an international and export-oriented financial centre. Switzerland will therefore be more actively involved in the design and further development of international standards, as well as with respect to compliance monitoring. It will also play a more prominent role in the future in international organisations and bodies such as the FSB, the Basel Committee on Banking Supervision, IAIS, IOSCO, the IMF and the OECD.

The withholding tax agreement approach pursued by Switzerland (*Section 4.2.2*) is to be further addressed within the framework of multilateral debates. Switzerland should strive to ensure the multilateralisation of this alternative to the automatic exchange of information not only in the OECD, but also in other bodies, in order to gain international acceptance for this approach. Another possibility would be a framework agreement on the withholding tax with the EU, on the basis of which individual agreements could be concluded with member states. Switzerland has indicated to the EU its willingness to enter into negotiations on this issue.

The Swiss economy is reliant on a functioning WTO as a guarantor of the international, rule-based trade system. As far as Switzerland is concerned, the WTO's General Agreement on Trade in Services is the preferred forum for removing barriers to market entry in the area of financial services at a multilateral level. As WTO negotiations have entered difficult waters with the Doha Round of negotiations, other approaches are to be pursued for this purpose.

EU: equivalent regulation of financial market infrastructure and regulatory dialogue

Equivalent regulation and supervision in the area of financial market infrastructure plays a key role for future access to the EU financial market (cf. *Section 2.2.1*). Of particular interest to Switzerland are the regulations currently planned in the area of derivatives trading (based on the resolutions of the G20 countries and the recommendations of the FSB) and MiFID II, the Markets in Financial Instruments Directive. Based on an analysis of the need for regulatory action by an internal working group of the federal authorities, the Federal Council decided at the end of August 2012 to introduce new legal provisions for over-the-counter trading in derivatives (OTC trading) and to adjust the provisions in the area of financial market infrastructure. In order to ensure the competitiveness of Swiss market participants and EU market access, regulation that is equivalent to that in the EU is to be sought in both of these areas. The FDF was instructed to prepare a consultation draft by the spring of 2013.

In April 2012, regular dialogue on regulatory issues was initiated with the European Commission. This gives Switzerland the opportunity to obtain information on specific developments at first hand through institutionalised contact with the responsible specialist authorities of the European Commission, thereby enabling it to identify any need for action at an early stage and take the necessary measures. At the same time, the dialogue will be used to put forward Switzerland's concerns regarding the EU's third country regulations. These interventions are sometimes conducted in consultation with other affected countries and can, depending on their political weight, play a significant role in the various stages of the EU legislative process.

Country level: free trade agreements, supervisory agreements and financial dialogue

It is important that Switzerland ensures access for financial service providers to foreign markets, and particularly emerging markets. In this context, Switzerland should continue to seek to conclude free trade agreements that include corresponding provisions in the financial market area. Impending negotiations include those with China as well as – within the framework of the EFTA – those with India and Indonesia, among others. Further negotiations on bilateral agreements to facilitate market access or to govern supervision in the area of financial market law should be initiated in a targeted manner.

Notwithstanding the importance of negotiations with emerging markets, access to established financial markets also needs to be ensured. The withholding tax agreements with Austria and the United Kingdom[27] also contain clauses which will make the cross-border provision of financial services easier in a number of respects. Switzerland is currently negotiating similar agreements with other countries. However, the freedom of manoeuvre for individual countries is becoming increasingly restricted in this area due to the harmonised access regulations for financial service providers from third countries.

Financial dialogues serve to establish privileged contacts with the relevant authorities of the partner country in question and facilitate the regular exchange of information, which makes them very important for Switzerland. They offer a framework for facilitating market access and creating a more favourable business environment thanks to a better understanding of regulatory procedures, as well as for initiating negotiations in the area of taxation with the corresponding partner country. Switzerland has maintained financial dialogues with the main industrialised nations for many years now. These dialogues are now being expanded to emerging markets in general and to the BRIC countries in particular.

[27] The withholding tax agreement signed with Germany was not accepted during the German parliamentary procedure.

Multilateral level and international organisations

- Switzerland's involvement in the FSB, IOSCO, IAIS, IMF, Basel Committee on Banking Supervision and the OECD is being further strengthened.
- Switzerland is using the opportunities arising in the WTO/GATS context to conclude agreements for (financial) services.

EU

- The regulatory dialogue is being continued and intensified.
- The FDF is further strengthening ongoing regulation monitoring and clarifying any need for action.
- Efforts to achieve recognition of equivalence by the EU are being stepped up. However, this is being done in a differentiated way rather than systematically. Adjustments in view of equivalence should serve to improve market access without reducing competitiveness.
- The Confederation is revising regulation in the area of financial market infrastructure and creating new legal provisions for over-the-counter trading in derivatives.

Country level

- Negotiations with potential agreement partners should be initiated if certain strategic criteria are fulfilled.
- Financial dialogue is continually being expanded.
- Regulation monitoring concerning the main target countries is to be implemented with the involvement of the private sector.

4.1.2 Continued institutional collaboration between the authorities and the private sector

The aim of collaboration between the authorities and the private sector is to involve affected parties in shaping the framework and thereby arrive at needs-oriented solutions. The Financial Centre Forum created by the Federal Council in 2010 is designed to serve this purpose.

In addition, communication can make an important contribution to counteracting the negative and one-sided picture of the Swiss financial centre and its business conditions seen abroad in recent times – driven particularly by the media – and support the credibility of financial market policy. The aim of communication must be to communicate Switzerland's financial market policy and the associated intention of the Federal Council consistently, credibility and through various channels so that they are understood by the outside world. The monitoring of foreign media reports on the Swiss financial centre and its financial market policy provides a platform for assessing the image of Switzerland in each country and initiating specific communication steps.

- The private sector is involved in the implementation of the measures set out in *Sections 4.1.3, 4.1.4* and *4.3.1* within the context of the Financial Centre Forum.
- The test phase of the platform for early identification of financial market regulation abroad (*Früherkennung Finanzmarktregulierung Ausland / FFA*) is now complete and the platform is being evaluated by the Federal Administration and the relevant associations.
- The FDF will be drawing up and implementing appropriate communication strategies and concepts with the involvement of the private sector and in collaboration with the Federal Department of Foreign Affairs (FDFA), particularly Swiss diplomatic missions abroad and Presence Switzerland.

4.1.3 Improving conditions for asset management

In the opinion of the financial industry, asset management[28] should become a pillar of the Swiss financial centre. Although certain areas of asset management such as the umbrella/fund of funds business already enjoy attractive conditions, others still have room for improvement with respect to their conditions for operating a globally-oriented business from Switzerland. In addition, consideration also needs to be given to creating new business areas.

Potential new areas of business for managing the assets of qualified investors exist in the area of long-term and illiquid assets, e.g. private equity, private debt and private infrastructure. Although a number of possibilities already exist for qualified investors, in particular the limited partnership for collective capital investments, such structures are frequently based abroad (in places like Luxembourg, the UK, or the USA) due to the restrictive regulatory requirements and practices of FINMA. An important concern is that affected asset managers in Switzerland have to acquire an "EU passport" in accordance with the AIFM Directive in order to obtain access to the European market. This in turn requires Switzerland to have regulations in the Collective Investment Schemes Act that are recognised by the EU as being equivalent. Another major issue is increasing tax competitiveness for asset managers and their products. According to industry forecasts, the additional revenue potential for the asset management business in Switzerland amounts to some CHF 700 million in the area of alternative investments and CHF 200 million in the area of theme funds. It is thus essential to offer competitive tax and regulatory frameworks in this area, as well as to ensure that the prerequisites are created to gain market access, while at the same time preserving investor protection and the financial centre's reputation.

Also in established areas of asset management, bringing Switzerland's standards closer to those in competing financial centres would enhance the appeal of the Swiss financial centre. For example, both the admission prerequisites and the level of legal security for managers of collective capital investments and new instruments in Switzerland should be examined with a view to identifying scope for optimisation. The admission procedure should be based on that in leading locations such as New York and London. The framework for collective capital investments should also be aligned with that of competing locations such as Luxembourg and Dublin.

Together with FINMA and the financial sector, the FDF is examining the following improvements to the conditions in the area of asset management:

- Evaluation of measures to promote Swiss asset management and Switzerland as a location for fund production
- Analysis of the tax burden for investors in existing and new fund structures in order not to suffer a competitive disadvantage internationally

4.1.4 Improvement of insurance and pension market conditions

Insurance companies can offer their clients protection against certain risks, whereby collective protection is less expensive than would be possible on an individual basis. They can do this because the capital required to cover potential losses can be estimated overall, even though the corresponding risk of loss in an individual case is unknown. The greater the number of insured persons opting for protection against the risk of loss, the better the insurance company is ultimately able to carry the risks in question. Open markets are therefore hugely important for insurers where expansion is concerned. Furthermore, thanks to its long-standing experience, Switzerland also has the potential to become an important European location for pension solutions according to the industry.

[28] Asset management involves the provision of financial services to large institutional investors, government bodies, foundations and companies

Insurance agreement between Switzerland and the EU

Under the insurance agreement of 1989, Swiss and European insurers in the area of direct non-life insurance share equal rights to set up or acquire agencies and branches. As a result of the expansion of the EU and the changeover in the EU from Solvency I – on which the insurance agreement is based – to Solvency II, the relevant authority is currently reviewing how this agreement can be adjusted. In connection with such an adjustment, an expansion to other insurance sectors and a broader scope of application are conceivable. In this regard, the extent to which these issues are affected by the ongoing discussions with the EU regarding institutional requirements needs to be clarified.

Equivalence of the Swiss supervisory regime and the EU's Solvency II Directive

The EU directive provides for the recognition of equivalence of insurance supervision in third countries. This is particularly important for Swiss insurance groups with subsidiaries in the EU, as these groups would be subject to prudential oversight by only one supervisory authority, namely FINMA. The EU's equivalence review is already at an advanced stage, and shows a need for adjustment in the area of disclosure in particular. Here it needs to be ensured that these gaps are closed in a timely way. The equivalence of the Swiss supervisory regime cannot be recognised until the Omnibus II Directive has been introduced, which is currently planned for 1 January 2014.

European pension market

As a result of the demographic problems confronting pension systems on a pay-as-you-go basis around the world – and particularly in Europe – occupational and private pension provision is becoming increasingly important. Due to their long-standing expertise, Swiss pension and insurance businesses believe they have a level of expertise that makes them ideally suited to this European pension business. According to the industry, however, there are various regulatory obstacles in this area. It is thus worth carefully examining what adjustments could be made while preserving the existing level of protection enjoyed by pension beneficiaries. These adjustments should contribute to the international competitiveness of Swiss providers. In addition to regulatory and supervisory aspects, the existing tax environment also needs to be taken into account (e.g. appropriate taxation of life annuities).

Together with the FDHA (FSIO), FDFA/FDEA (IO)*, FINMA and the financial sector, the FDF is currently examining improvements to the conditions for the insurance and pension markets. The following questions are being reviewed:

- Expanding the existing insurance agreement with the EU, taking into account current negotiations with the EU
- Regulatory, economic and tax conditions to strengthen Switzerland in the European pension market
- Comparison of requirements between the Swiss supervisory regime and Solvency II

*The Integration Office will become the Directorate of European Affairs on 1 January 2013 and will be attached to the Federal Department of Foreign Affairs.

4.2 Due diligence requirements and combating abuses

The Federal Council has always supported measures designed to preserve the integrity of the financial centre. In recent years, continuous adjustments have been made to legislation to combat financial crime. In March 2009, the Federal Council resolved to fully adopt the OECD standard for the exchange of information in tax matters. This standard has since been gradually implemented. In addition, the international withholding tax agreements have formed the basis for regularising the past and shaping the future.

By implementing the revised FATF Recommendations (*Section 4.2.1*) and due diligence requirements in the area of taxation (*Section 4.2.2*), the Federal Council is taking further measures in this sphere. This should ensure that no criminal or untaxed funds from abroad are deposited with Swiss financial intermediaries. Finally, these measures should also improve the recognition of the Swiss financial centre abroad.

The automatic exchange of information has major disadvantages, as this interferes with the privacy of clients. In addition, this form of exchange has flaws with respect to efficiency. It leads to the exchange of large quantities of data, and their evaluation is associated with administrative difficulties. This model can only partially address the objective of taxing all taxpayers. Switzerland has introduced the international withholding tax agreement as an alternative.

4.2.1 Combating financial crime

Switzerland's active participation in defining the international standards on financial market integrity, specifically the harmonisation of the rules to combat financial crime, is an important part of the Federal Council's strategy to ensure a healthy and flourishing financial centre. By adopting the FATF Recommendations – a set of international standards of reference to combat money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction – Switzerland ensures international recognition of its efforts (cf. Figure 5 on page 29).

Implementation of the FATF Recommendations

In February 2012, the FATF adopted a partial revision of its Recommendations, to which Switzerland contributed actively. The Federal Council took note of these revised Recommendations on 18 April 2012, and instructed an interdepartmental working group under the leadership of the Federal Department of Finance to prepare a consultation draft on implementation of the revised recommendations by the start of 2013. The FATF working group is to examine the need for measures in terms of federal laws or implementing provisions issued by the Federal Council in order to implement the changes introduced with the 2012 revision of the FATF Recommendations as well as to remedy some deficiencies found in the 2005 evaluation that have not yet been remedied. The work of the FATF working group is not yet complete. As things currently stand, the following measures could be found in the consultation:

Classification of serious tax offences as predicate offences for money laundering

Concerning direct taxation, it is planned to introduce a new classified criminal offence – which must be considered as a crime – in the Federal Act on Direct Federal Taxation and the Federal Act on the Harmonisation of Direct Taxation at Cantonal and Communal Levels. The new criminal offence will be based on a pattern of deceitfulness and the use of false documentation. Further criteria which will characterise this criminal offence have yet to be defined. Concerning indirect taxation, it is proposed to extend Article 14 para. 4 of the Federal Act on Administrative Criminal Law beyond the cross-border movement of goods. This provision – which specifically targets customs smuggling – is too restrictive in terms of indirect taxation and should thus be extended to VAT on transactions on Swiss territory and services, as well as to other taxes levied by the Confederation (withholding tax and stamp duty).

Transparency of legal entities

The revised FATF Recommendations clarify the requirements for transparency of legal entities, including companies that issue bearer shares. At the same time, the recommendations drawn up for Switzerland by the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereafter the Global Forum) concerning companies with bearer shares also call for such a revision. It is primarily proposed to introduce provisions in the Code of Obligations and the Criminal Code to ensure that the register of shareholders (or of partners) of unlisted companies contains information on the beneficial owners. In addition, an expansion of the obligation to make an entry in the commercial register is being proposed for all foundations, including family and ecclesiastical foundations. To improve the transparency of unlisted companies with bearer shares, various measures are being

reviewed, primarily based on a requirement for shareholders to register with the company. These measures should fulfil the requirements of the Global Forum.

Powers and responsibilities of the Money Laundering Reporting Office Switzerland (MROS)
Following the Egmont Group's threat to suspend the MROS, the Federal Council brought to parliament at the end of June 2012 a bill to amend the Anti-Money Laundering Act (AMLA)[29]. This bill gives the MROS the power to exchange financial information with its counterparts abroad, subject to certain conditions, within the context of administrative assistance. It also proposes to extend the powers of the MROS to obtain additional information from financial intermediaries and empowers the MROS to decide itself on the terms of cooperation with its counterparts abroad. Within the framework of implementing the revised FATF Recommendations, it is proposed to add a provision to the AMLA to enable the MROS to obtain from federal, cantonal and communal authorities, upon request, all information required for analysing reports of suspicions of money laundering or terrorist financing. The AMLA currently provides for such cooperation only with the criminal authorities and the AMLA supervisory authorities (FINMA and the Federal Gaming Board). This proposal seeks to optimise the MROS's analytical capacities by giving it access to the information needed to perform this function. Other measures in this respect are still being examined.

Extension of the AMLA to the property sector or other non-financial businesses
The FATF noted in its 2005 evaluation that the AMLA was insufficiently applied to certain non-financial occupations and companies, specifically in the property or real estate sector. Several parliamentary initiatives have also called for the examination of such an extension of the AMLA. It was decided not to subject notaries or estate agents to this law when they are involved in the sale of property, as this would depart from the criterion of financial intermediation, which forms the basis of the AMLA. However, a provision is to be added to the AMLA specifying that payments for property sales above a certain monetary threshold must be made via a financial intermediary subject to the AMLA. The extent to which this could be extended to the sale of movables above a high threshold is also being examined.

Identification of the beneficial owner
The FATF Recommendations on the identification of beneficial owners in the case of legal entities have been clarified. The current legislation on identifying the beneficial owner is to be supplemented with a general obligation to systematically identify the natural person who ultimately controls a legal entity. Furthermore, the bill provides for a formal adaptation of the AMLA, in line with the current practice of financial intermediaries, to clarify the law regarding the general principle of identifying the beneficial owner.

Politically exposed persons (PEPs):
Following the extension of the FATF Recommendations to business relationships with domestic PEPs and persons who are or have been entrusted with a prominent function within or by an international organisation, using a risk-based approach, the AMLA is to be amended to include a general obligation to identify PEPs and the definitions and special due diligence requirements regarding domestic PEPs and those of international organisations.

The FATF interdepartmental working group has also examined *other measures*. Based on the new FATF Recommendation on the risk-based approach, countries have to conduct a national evaluation of the risks of money laundering and terrorist financing. The Federal Department of Finance will coordinate the transposition work within the Administration. It will be largely based on existing instruments (risk analysis of various authorities, coordination platform between the authorities concerned). The new FATF Recommendations on the financing of the proliferation of weapons of mass destruction have also been examined with regard to the implementation of targeted financial sanctions and also from the standpoint of the system of cooperation among national authorities. This

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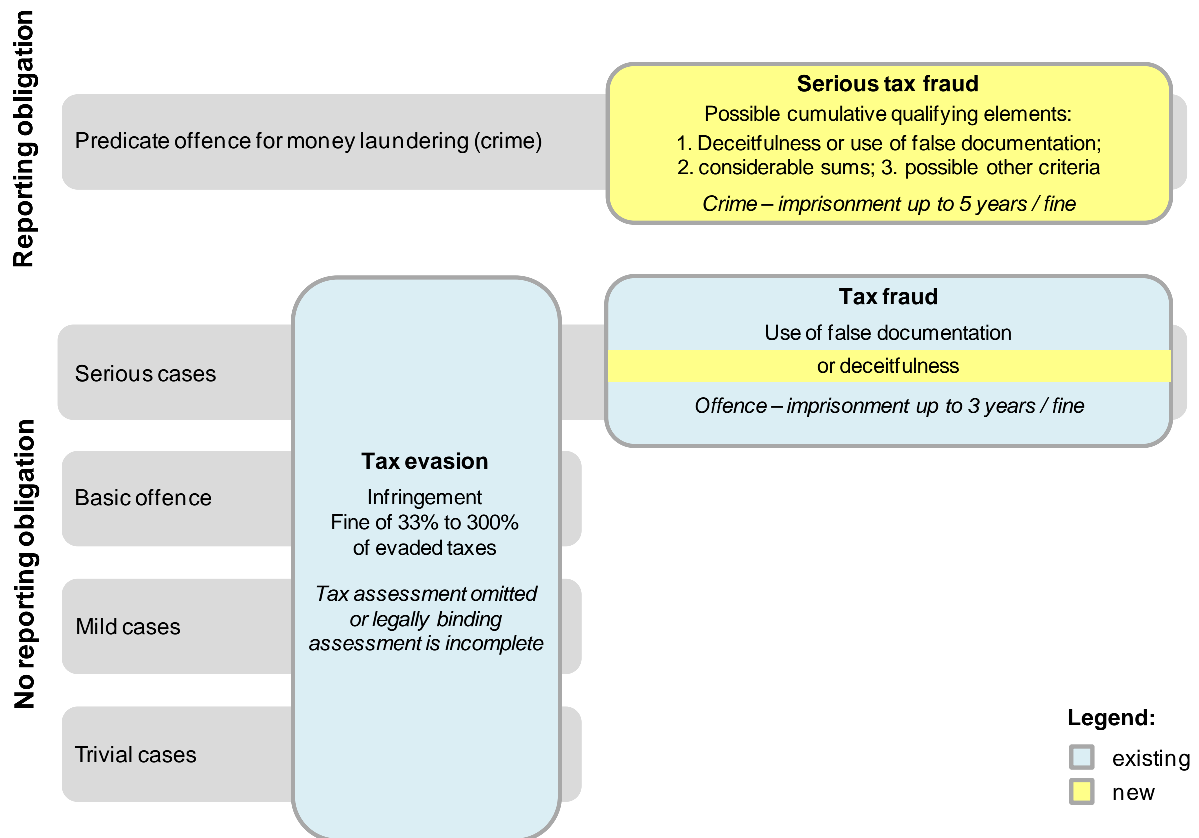
[29] http://www.news.admin.ch/message/index.html?lang=fr&msg-id=45136

analysis did not reveal a need to adapt the legal framework in this area. Finally, the FATF working group examined the procedure for implementing targeted sanctions associated with terrorist financing arising from UN Security Council Resolution 1373, considered by the FATF to be insufficient. This work of the FATF working group is still under way. A priori, this aspect will not be incorporated into the consultation draft, but it could be treated separately at a later stage. The issue is still being considered by the Federal Council.

Figure 5: Planned legislative amendment for predicate offence in area of direct taxation



At the start of 2013, the Federal Council will initiate the consultation procedure for the implementation of the revised FATF Recommendations at the same time as the bill to improve the due diligence requirements in the financial area. It is planning to present the bill to parliament by the summer of 2013.

4.2.2 Due diligence requirements in the area of taxation – financial integrity strategy

4.2.2.1 Tax-compliant financial centre

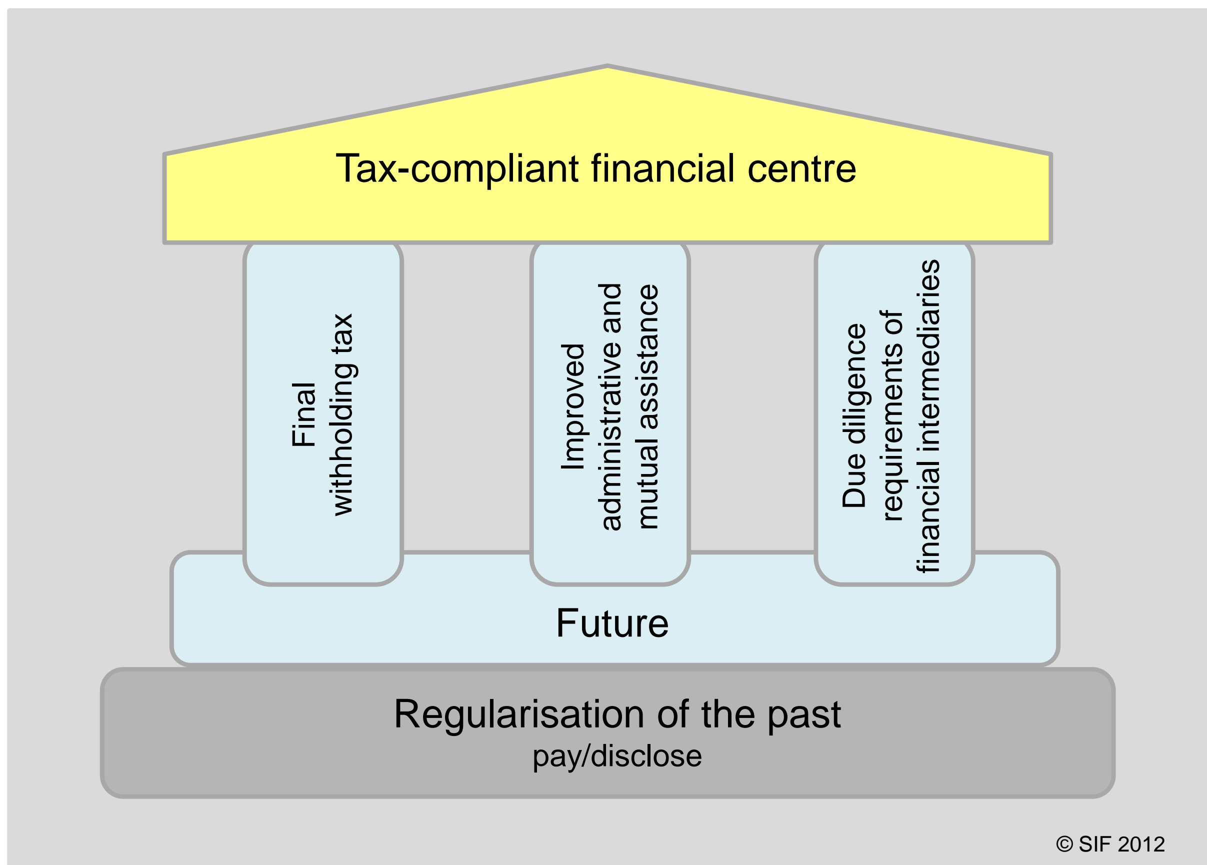
The Federal Council wants to help ensure the greatest possible degree of tax compliance and avoid abuses of Swiss bank client confidentiality by taking measures at two levels. *Figure* on page 30 illustrates this strategy schematically.

Resolving past tax problems

At the first level, past tax problems are to be eliminated, particularly cases of clients domiciled abroad whose assets have not been properly taxed. This will be achieved through the tax regularisation of assets of existing client relationships. With the withholding tax agreement, which is Switzerland's preferred model, clients are given the option of regularising their situation either by paying a one-off lump sum tax amount or by disclosing their banking relationship.

The withholding tax agreements with the United Kingdom and Austria[30] provide for regularisation of the past. This will not only facilitate the resolution of past tax problems, but will also solve the problem of potential prosecution of financial institutions and their employees. Affected clients receive a one-off opportunity to regularise their tax situation with respect to their assets held with financial institutions in Switzerland by means of a simple procedure. For the partner countries, regularisation of the past involves the receipt of tax monies to which they have hitherto had no access. The advantage of such a regularisation of the past is that in principle there should no longer be any untaxed assets from partner countries booked with Swiss financial institutions. This will make it possible to put the past to rest and establish future collaboration with the partner countries on a new basis (cf. explanations below on the final withholding tax). This system of past regularisation should serve as a model for further similar agreements.

Figure 6: Measures in the area of taxation



International cooperation and the future taxation of capital income

At the second level, international cooperation and the future taxation of capital income and gains is to be formally regulated, thereby ensuring that the regularisation of the past carried out at the first level is sustainable. This approach encompasses three components:

- *Final withholding tax* as an effective means of taxing taxpayers in accordance with the rules of their country of domicile while the same time protecting their privacy. These agreements provide for comprehensive collaboration with the partner states. This is an efficient system, as the tax is levied at source, which means that no further work to levy the tax is required. In addition, alignment with the tax rules of the country of domicile prevents distortions between the financial centres of the partner states and Switzerland.

[30] The withholding tax agreement signed with Germany was not accepted during the German parliamentary procedure

- *Improved administrative and mutual assistance* in accordance with international standards. This measure has a preventive effect insofar as international collaboration in tax matters creates a real risk of being discovered.
- *Due diligence requirements for financial intermediaries* as a complementary component. The existing due diligence requirements for financial intermediaries will be supplemented in order to prevent the acceptance of untaxed assets more effectively. The aim is to ensure that no new untaxed assets are invested in Switzerland.

This combination of withholding tax, international cooperation in tax matters and due diligence requirements is the best way of reconciling client interests in the protection of their privacy and states' entitlement to taxation of their taxpayers.

Final withholding tax
The withholding tax agreements with the United Kingdom and Austria provide for the levying of a final withholding tax on the capital income and capital gains of bank clients. Following payment, the client's tax liability vis-à-vis his or her country of domicile is generally deemed fulfilled. The tax rate and the assessment basis are broadly in keeping with those applied by the partner states themselves. Overall, this ensures that capital income and gains are taxed in the same way in Switzerland and in the partner states, thereby ensuring no competitive distortions under tax law between the Swiss financial centre and financial centres of the partner countries. The affected taxpayers have the option of disclosing their income and capital gains to their own tax authorities as an alternative to the withholding tax.

In order to prevent new untaxed funds from being invested in Switzerland and from being regularised from a tax viewpoint through abusive use of the final withholding tax system, Switzerland has reached an agreement with the United Kingdom on the transmission of information upon request (to safeguard the agreements' purpose); Austria refrained from including such a provision. Under this provision, the authorities of the partner country can submit requests for information that contain the name of the client but not necessarily the name of the relevant financial institution. Switzerland then informs the partner country whether the taxpayer in question holds accounts or deposits in Switzerland, how many such accounts are held and with what financial institution. For the taxpayer, this increases the risk of being caught. So-called "fishing expeditions" are not permissible, however. Requests for information must be justified in a plausible manner, and the number of requests is limited.

The withholding tax model combined with the provisions to safeguard the agreements' purpose will cause the Swiss financial centre to become unattractive for tax evaders and fraudsters. The system agreed with the United Kingdom and Austria should thus serve as a model for further agreements of this kind.

Improved administrative and mutual assistance in accordance with international standards
In 2009, the Federal Council resolved to expand administrative assistance in tax matters in accordance with the international standard, to revise the corresponding administrative assistance provisions in existing double taxation agreements (DTAs), and to include the revised provisions in new DTAs. In the long term, all DTAs should contain an administrative assistance provision that complies with the international standard. This means that Switzerland also provides administrative assistance in assessment procedures, irrespective of the existence of a tax-related offence. The provision of administrative assistance is governed by the Administrative Assistance Ordinance, to be followed by the new Administrative Assistance Act in the future. The Federal Council approved the dispatch on tax administrative assistance on 6 July 2011. The Tax Administrative Assistance Act was passed in the final vote of the Federal Assembly on 28 September 2012. It is subject to an optional referendum, which will expire on 17 January 2013. The Federal Council will determine the date of entry into force.

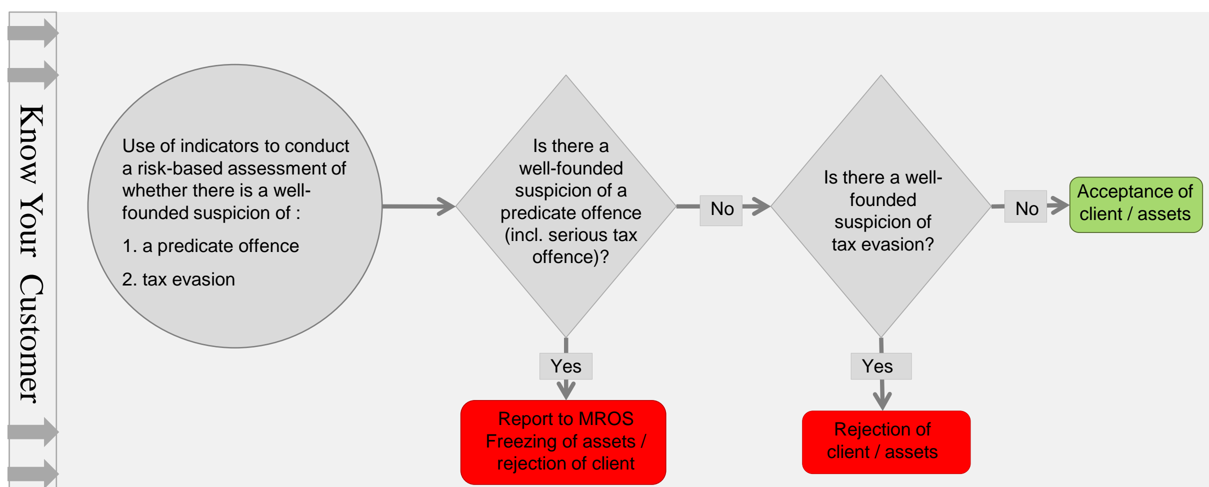
In order to avoid loopholes and contradictions, the Federal Council resolved on 29 June 2011 to further develop mutual assistance by changing the legal framework and adopting the relevant instruments of the Council of Europe.[31] Accordingly, the provision of mutual assistance will no longer be limited to tax and duty fraud, but will also extend to cases of tax evasion. On the one hand, mutual assistance is to be provided to countries with which Switzerland has concluded a new or revised DTA in accordance with the OECD Model Convention. On the other, by adopting the relevant additional protocols of the Council of Europe, cooperation with the contracting countries of these additional protocols should also be expanded. Switzerland is thus aligning its mutual assistance policy with the European standard. Standardised regulation in the area of taxation would appear necessary in view of the shared values and close partnership with the countries of the Council of Europe. With all other countries, only restricted cooperation in cases of tax and duty fraud will remain possible in the area of taxation.

4.2.2.2 Specification of the due diligence requirements for financial intermediaries

Financial intermediaries now also have to take tax compliance aspects into account when accepting assets. In addition to the classification of serious tax crimes as predicate offences for money laundering (cf. *Section 4.2.1*), due diligence requirements for financial intermediaries should also be introduced in the area of taxation. However, these due diligence requirements will not relieve clients of their own responsibility to fulfil their tax obligations and comply with the relevant laws and regulations to which they are subject.

Due diligence requirements in the area of taxation should prevent the acceptance of untaxed assets. Financial intermediaries should use previously defined tax compliance indicators to undertake an assessment of all clients. The scope of the assessment should be dictated by the degree of risk posed by the contracting party (risk-based assessment), as is the case when investigating suspicions of money laundering and terrorist financing (cf. *Figure 7*). The consequences that ensue if the financial intermediary knows (or has well-founded suspicions) that the assets involved in a business relationship are connected with tax evasion differ, however, from those that apply if a predicate offence has occurred.

Figure 7: Conduct obligations in the area of taxation



[31] In its international relationships, Switzerland has two different ways of exchanging information in the area of taxation. The exchange of information between tax authorities is carried out within the framework of administrative assistance, based on bilateral double taxation agreements (DTAs). Information can be exchanged between judicial authorities within the framework of mutual assistance.

A credibly completed self-declaration can constitute a strong indicator of tax-compliant behaviour on the part of the client. A financial intermediary should therefore be able to request a self-declaration with respect to the fulfilment of tax obligations – be it for a particular situation or as a comprehensive measure. In contrast, an obligation to obtain a self-declaration would be credible and thus effective only if it was supplemented with a comprehensive review obligation for financial intermediaries and corresponding checks by the supervisory authority. However, neither the supervisory authority nor financial intermediaries have the possibility of carrying out such investigations with the depth necessary.

Due diligence requirements in the area of taxation should essentially apply to all financial intermediaries in accordance with the Anti-Money Laundering Act. Synergies can be exploited with the harmonisation of scope, as financial intermediaries can combine their assessments in the area of money laundering with those in the area of taxation. Furthermore, due diligence requirements in the area of taxation should be applicable to all persons both in Switzerland and abroad. This will ensure a comprehensive approach, even if a person with a fixed place of residence and fixed place of work in Switzerland, for example, can essentially be classed as tax-compliant and requiring no further in-depth investigation in the absence of any indicators to the contrary.

The principles of due diligence requirements in the area of taxation will probably be established on the basis of material interfaces with the due diligence requirements that apply to the combating of money laundering and terrorist financing in the Anti-Money Laundering Act. These principles must be supplemented and fleshed out by self-regulation provisions on the part of the financial intermediaries concerned, whereby the supervisory authority recognises these provisions as a minimum standard and monitors their implementation. In the absence of such self-regulation, FINMA should issue the specific supplementary provisions required.

At the start of 2013, the Federal Council will be submitting for consultation a bill on improving the due diligence requirements for financial intermediaries (to coincide with implementation of the revised FATF Recommendations, see *Section 4.2.1*), and is planning to submit the legislative draft to parliament by the summer of 2013.

4.3 Accompanying measures

The business environment for the overall economy should be strengthened by accompanying measures relating to the objectives set out in *Section 3*. They take particular account of the close interconnectedness of the financial sector with the wider economy. These areas are as follows: improving the environment for the Swiss capital market, strengthening consumer protection, strengthening education and training, negotiations with the EU in the area of business taxation, and supporting the establishment of an efficient tax system in developing countries.

4.3.1 Improving the framework for the Swiss capital market

The financial industry believes that initial obstacles in the tax and regulatory sphere reduce the appeal of the Swiss capital market, which offers companies direct access to capital. This is particularly true for foreign and institutional investors. Particularly damaging for the Swiss capital market is the issue tax on equity. The capital market could also be strengthened by switching from the withholding tax system to a paying agent tax, as well as by creating an SME segment. Swiss SMEs in particular could benefit from this diversification potential in the area of corporate financing. When eliminating tax obstacles in the Swiss capital market, possible compensation for lost revenues would also have to be taken into account. The industry believes that now would be a good time to make it easier for Chinese

companies to access the Swiss capital market, thereby making it a hub for renminbi transactions. Another growing segment is that of commodity trade finance.[32] If Switzerland is to remain an attractive location, it needs to be careful to preserve competitive conditions. This aspect is particularly important bearing in mind the competition the Swiss financial centre faces from locations like Singapore. A capital market strengthened by all these measures would provide alternatives to corporate financing by banks, as well as offer a direct investment opportunity for institutional and foreign investors.

Abolition of the issue tax on equity

The issue tax on equity obstructs companies in their investment activity. An unfortunate side-effect of this issue tax is the negative effect it has on economic growth, which is why this is also a key element of the ongoing third series of corporate tax reforms. At the same time, the abolition of the issue tax on equity would also be an effective measure to strengthen the capital market. As part of a parliamentary initiative, the National Council Economic Affairs and Taxation Committee (EATC-N) conducted a consultation procedure on the abolition of the issue tax on equity. The decision of the EATC-N on the next steps to be taken in this respect is still outstanding.

Switchover from withholding tax to paying agent tax

If the capital market is to be strengthened sustainably, the framework in the area of withholding tax needs to be improved, particularly where bonds are concerned. The framework should be designed in such a way that bonds and money market securities can be issued from Switzerland at competitive terms in the future. In order to achieve this objective, the Federal Council proposed a changeover from the debtor principle to the paying agent principle with respect to the withholding tax levied on the interest payable on bonds and money market securities. Parliament has not followed the proposal of the Federal Council. Instead, the Federal Assembly decided in its 2012 summer session that contingent convertible bonds and write-down bonds issued by banks – which in both cases are attributable to equity – should be exempted from the withholding tax obligation for a limited period of time.[33] At the same time, parliament instructed the Federal Council to draw up an overall view in order to establish the connection with other tax dossiers, and urged the Federal Council to propose other alternatives for the changeover to the paying agent principle, as well as to examine the possibility of a general changeover to this principle. It should likewise be examined whether the withholding tax can be integrated into a concept of "ecological tax reform". Finally, the financial repercussions for the Confederation need to be more precisely analysed. As a result, the capital market for domestic and foreign issuers could be made more attractive without at the same time foregoing excessive tax receipts. These investigations are to be carried out by a mixed working group.

Renminbi transactions

In the view of the financial industry, establishing the Swiss financial centre as an offshore renminbi hub could strengthen its positioning in the international competitive environment. New business areas are opening up to international providers of financial services as a result of the increasing importance of the Chinese renminbi as an international trading, processing and investment currency. The establishment of such a renminbi hub would enable Chinese companies to access the Swiss capital

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[32] Commodity trade finance is understood to mean short-term loans to globally active trading companies (traders) which are typically earmarked for the financing of a specific commercial transaction. As a rule, the purchase price of the goods is due for payment to the supplier before the proceeds from the sale of those goods to customers can be collected. The primary role of banks is to bridge the financing gap faced by the trader and process the flow of payment and goods by using appropriate instruments. The risk taken by the bank is often limited by the fact that loans are typically collateralised by the commodities. Nonetheless, proper risk management in commodity trade finance is essential given the large sums involved.

[33] The exemption from withholding tax applies to bonds issued during the first four years following the entry into force of the revised legislation

market. Hong Kong has already established itself as such a hub, as have London and Singapore more recently.

Switzerland generally has the right prerequisites to function as an offshore renminbi hub. These include a high-quality financial market infrastructure, an innovative and liquid financial market with a broad range of financial services, a reliable legal system and robust regulatory structures. The Swiss financial centre also offers favourable conditions for the offshore renminbi business with its high levels of assets under management, key role in international commodity trading and the growing role it plays as a gateway to Europe for Chinese companies. In an initial rough assessment, the industry predicted that there is the potential to create several hundred additional jobs at Swiss banks within the first few years.

In order to establish the Swiss financial centre as an offshore renminbi hub, support would be required from the authorities, particularly in the bilateral dialogue conducted with China and with respect to regulatory issues. The corresponding discussions could be initiated as part of the financial dialogue on which Switzerland and China have agreed in principle. The technical implementation of trading in renminbi-denominated securities would be a matter for the private sector, however.

Capital market for SME segment and project financing

In the view of the financial industry, the financing of major capital-intensive projects abroad, particularly in the environmental, energy and infrastructure areas, has become more difficult due to the greater scarcity of public funds. As a result, financing through the private capital and credit markets has to be contemplated. Major projects of the kind described above would offer opportunities for the development of sustainable products and technologies, which would be advantageous for Switzerland's broad-based and innovative SME segment in particular.

Strengthening the capital market for project financing requires changes in both the tax and the regulatory sphere. These include, for example, adjustments to the OPA guidelines such as a flexibilisation of the investment provisions and admission requirements in the infrastructure area.

Many SMEs need to tap into new financing sources in order to respond to the economic uncertainties and rapid changes affecting certain market environments. Innovative forms of corporate financing (e.g. "crowdfunding") could broaden the investor base in this area. In addition, a number of financing gaps have been identified in the area of venture capital. This is particularly the case in the early phase of innovation, when research and development of a product is not yet complete and the risk involved is accordingly high.[34]

- Switzerland (FDF and FDFA, with the involvement of FINMA) is trying to clarify the necessary points with the Chinese authorities so that market participants can establish the Swiss financial centre as a hub for renminbi transactions.
- The FDF, together with the FDHA and FINMA, in consultation with the SBA, SIA, SFA and SIX, is currently examining and preparing the necessary regulatory, statutory and tax prerequisites for a further strengthening of the conditions for the Swiss capital market. This also includes new and innovative methods of corporate financing such as "crowdfunding" and risk-pooling funds, as well as facilitated access to venture capital through public-private partnerships (PPPs). Regulatory and tax changes (e.g. to admission requirements in the infrastructure area) will be required if the capital market for project financing is to be strengthened.
  The FDF is working with cantonal finance directors and academic experts to examine the possibility of a general changeover to the paying agent principle for withholding tax. This review is likely to be complete by the end of 2013.

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[34] Venture capital in Switzerland (2012), SECO
http://www.news.admin.ch/NSBSubscriber/message/attachments/27392.pdf

4.3.2 Strengthening consumer protection in the distribution of financial products

On 28 March 2012, the Federal Council instructed the FDF, in collaboration with the FDJP (FOJ) and FINMA, to draw up a legislative basis for the creation of uniform and cross-sector regulation of financial products and services, and their distribution. There are three good reasons why legislation in the area of consumer protection should be adjusted. Firstly, FINMA identified shortcomings in Swiss consumer protection legislation in its recent position paper[35] of 24 February 2012. Secondly, efforts are also under way at an international level to strengthen consumer protection in the area of financial services. And thirdly, the same conditions should apply for all providers.

Shortcomings in Swiss consumer protection – FINMA position paper
In its position paper entitled "Regulation of the production and distribution of financial products", published on 24 February 2012, FINMA concluded that consumer protection in Switzerland needed to be improved. FINMA's recommendations include measures in the following areas:

- Regulations for financial products (such as the introduction of a general prospectus obligation for standardised financial products as well as a product description for structured financial products)
- Regulations on the conduct and organisation of financial service providers (such as the financial service provider's duty to provide information to the client about itself and its offered products; enquiries and suitability clarifications with respect to the client and the recommended product)
- Expansion of supervision (closing supervisory loopholes by extension of regulations to asset managers; improvement in the specialist knowledge of persons in contact with clients combined with a corresponding register obligation; same level of protection to apply for clients in cross-border and domestic financial services)
- Facilitated enforceability of the claims of private clients against financial service providers under civil law

International developments: consumer protection and market access prerequisites
At an international level too, various efforts are under way to strengthen consumer protection in the area of financial services. These include in particular:

- Revision of the EU's Markets in Financial Instruments Directive (MiFID) with a view to harmonising and tightening the rules of conduct which apply to the sale of financial products. This is part of the EU's ongoing reform of financial market regulation
- The analyses on consumer protection drawn up by the OECD and the FSB on behalf of the G20 (FSB study: Consumer Finance Protection; OECD paper: Principles on Financial Consumer Protection)
- The principles of "Point of Sale Disclosure" published by the International Organization of Securities Commissions (IOSCO)

In the EU in particular, these efforts go hand in hand with a general trend for demanding uniform regulatory standards to protect consumers in the cross-border provision of financial services. Specifically, new EU regulatory projects such as MiFID II and the Alternative Investment Fund Managers Directive (AIFMD) provide for third country regulations[36] which make access to the EU financial market dependent on certain criteria, including equivalence of the legal and supervisory framework of the third country in question (cf. *Section 2.2.1*). As a result, the level of consumer protection influences not only the quality of financial services, but also market access and therefore the competitiveness of Swiss providers of those services.

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[35] http://www.finma.ch/e/finma/publikationen/Pages/positionspapiere.aspx

[36] Alongside further requirements such as a branch requirement to provide financial services to retail customers

Level playing field for providers of financial services
Another important prerequisite for strengthening competition between Swiss providers is the uniform structuring of regulatory requirements relating to the provision of financial services. The requirements and supervision should revolve around technical aspects such as the complexity of products or the need for consumers to be protected, and should essentially be applied to the same degree for all providers, with the necessary differentiation. By having similar prerequisites, competitive distortions between providers can be avoided.

In autumn 2013, the Federal Council will submit for consultation a bill which eliminates the shortcomings in Swiss consumer protection and takes account of international developments in this area.

4.3.3 Training and education

Well-educated and qualified specialists are of crucial importance to the competitiveness and reputation of the Swiss financial centre. Ensuring a high level of education generally and continually adapting education to changing requirements are key prerequisites for the market success of financial institutions, and therefore count as important framework conditions in themselves.

In recent years, three competence centres in the area of banking and finance have been created under the auspices of the SBA, namely the Center for Young Professionals in Banking (CYP) for basic training, the "Höhere Fachschule Bank und Finanz" (HFBF) for further training, and the Swiss Finance Institute (SFI) for the training of executives. Comparable developments have also taken place in other areas, in some cases also under the auspices of the industry associations. It is worth renewing this commitment to promoting research and teaching beyond 2020.

The promotion of the development of asset management clusters (cf. *Section* ***Fehler! Verweisquelle konnte nicht gefunden werden.***) contains measures in the area of education and training, as well as regulatory measures. The creation of training modules in the asset management area is being overseen by industry associations in conjunction with recognised educational institutions.

- The Confederation is continuing its financial support of research in the area of finance, and is contributing as much as it can to ensuring the corresponding coordination and bundling via the Swiss Finance Institute.
- The efforts of Confederation to ensure consumer protection in the distribution of financial products (cf. *Section 4.3.2*) take appropriate account of the private sector education and training strategies geared towards quality and professionalism, and give them the recognition they deserve.

4.3.4 Dialogue with the EU on business taxation issues

In 2010, the EU invited Switzerland to adopt the EU Code of Conduct on business taxation. In response, the Federal Council instructed the FDF to enter into exploratory talks on the conditions for such a dialogue. On 4 July 2012, the Federal Council approved the mandate for the dialogue with the EU on business taxation. The aim of the dialogue with the EU is to find a solution in the area of business taxation which preserves and further enhances the appeal of Switzerland as a business location, while at the same time encouraging international acceptance of the Swiss corporate tax code and securing the tax receipts of the Confederation, the cantons and communes for financing government activity. The mandate was approved by the cantons and by the responsible parliamentary committees within the framework of consultations.

The negotiations with the EU are being led by the FDF together with the FDFA and the FDEA, and also involve the cantons. The focus of discussion is on the concept of "ringfencing", i.e. the unequal

tax treatment of domestic and foreign revenues. The question of Switzerland adopting the EU Code of Conduct is not up for discussion. The sovereignty of Switzerland and its federal tax system form the basis for the talks with the EU, which among other things include acknowledgement of the need for sufficiently long transition periods to implement any legislative amendments. Another issue is that of tax countermeasures against Switzerland. The negotiations with the EU are closely linked to the ongoing third series of corporate tax reforms, which was assigned to the FDF by the Federal Council on 10 December 2008.

Switzerland has embarked on a formal dialogue with the EU on business taxation issues. However, Switzerland is not prepared to adopt the EU Code of Conduct on business taxation.

4.3.5 Collaboration with developing countries

Within the scope of international cooperation, Switzerland is committed to effective measures to combat poverty and promote sustainable development. It supports countries in their own efforts to overcome poverty and development problems. This also includes the promotion of effective and morally sound tax structures in developing and emerging market countries. An efficient partner country that uses its own resources to combat poverty has a stronger basis for achieving development objectives.

Switzerland has a development policy interest in improving the collection of taxes in developing and emerging market countries. In addition to measures such as improving tax collection with respect to individuals and companies and concluding double taxation agreements (DTAs) and tax information exchange agreements (TIEAs) with developing countries (cf. *Section 4.2.2.1*), it makes sense to help developing and emerging market countries strengthen the effectiveness and integrity of their tax structures within the scope of economic development cooperation.

These development cooperation concerns of Switzerland are based on the belief that transparent and reliable receipts and expenditure are part of the foundation for sustainable growth and balanced development. The technical assistance provided by Switzerland places emphasis on the creation of efficient and fair tax systems, as well as on the institutions and regulations in individual countries which can ensure sustainable budget processes and acceptable debt management. Furthermore, Switzerland is a strong advocate of well-functioning local, regional and international financial systems.

In January 2011, the OECD launched a three-year programme to help developing countries mobilise their resources with a view to levying correct and appropriate taxes. As a key platform to support this endeavour, a task force was deployed (Informal Task Force on Tax and Development), which included not only OECD delegates from the tax and development assistance area, but also representatives of developing nations, the private sector, NGOs and international organisations. Switzerland is a member of this task force, and strives to ensure that the needs of developing countries are taken into account in the four thematic areas of the programme. Switzerland has also participated by making a financial contribution. The key aspects from Switzerland's perspective are training and the establishment of a functioning administration. However, it is also important to Switzerland that the rules in relation to developing countries can be implemented. It is therefore arguing for a simplification of transfer prices in relation to developing nations, but without losing sight of the key principles of the OECD. In the area of reporting by internationally active companies, Switzerland also advocates purpose-oriented transparency which takes account of the interests of tax authorities as well as those of companies.

In addition to its work in the OECD, Switzerland cultivates a close partnership with the IMF in a number of areas of technical assistance, both bilaterally and together with other countries. A key focus here is on financial support for technical assistance in the strengthening of tax systems. This also includes providing technical assistance to strengthen the financial sectors of emerging and developing countries, strengthen their budget and debt administration, manage natural resources and combat money laundering and terrorist financing.

Finally, Switzerland also makes its own experts available in selected areas. This typically occurs in response to requests from countries with which Switzerland collaborates closely, such as members of its constituency in the IMF and World Bank. In the past, for example, experts in debt management and combating money laundering have been made available for short-term assignments, and country delegations have been invited for presentations on budget management, expenditure controls, fiscal equalization and fiscal rules.

In the future, these bilateral and multilateral services in technical assistance should be strengthened where possible and deployed in a more targeted way. This will occur, for example, by providing Swiss expertise in tax matters for specific work of the Informal Task Force on Tax and Development.

5 Conclusion

Based on the challenges in the international environment, the objectives of financial market policy together with the long-term principles were described in *Section 3*. The objectives of financial market policy are to be achieved by means of the measures set out in *Section 4*. In summary, this produces the following current orientation of financial market policy:

In the future, Switzerland should continue to have a strong, internationally competitive financial market which makes a substantial contribution to prosperity in Switzerland, provides employment for many people and yields significant tax income. This in turn requires the creation of an ideal, internationally accepted framework which is shaped in such a way that the Swiss financial market:

- Offers services of outstanding quality which are valued by clients from all over the world
- Can stand firm even in the face of the severest shocks in volatile international financial and capital markets, and
- Acts as an international role model by vigorously combating abuses

Switzerland's financial market policy is based on strengthening competitiveness, creating due diligence requirements to combat abuses and improving the framework for the economy as a whole. By putting together three packages of measures consistently geared towards the objectives of quality, stability and integrity, the framework for the Swiss financial centre should be optimised within the limits of what is internationally acceptable.

Strengthening competitiveness

Internationally, Switzerland is an opponent of the protectionism flaring up particularly in the financial sphere. Only with open markets can prosperity gains be achieved through the international division of labour. Furthermore, it is important to take into account the regulations that apply in the banking, insurance and pensions areas in major international markets so that competitiveness can be preserved.

A globally oriented financial industry requires global standards. Switzerland must actively participate in the elaboration of these standards and help shape them. Global standards should generally be adopted as long as there are no key political or economic reasons for not doing so. In the case of non-adoption, a robust justification and a credible alternative should be put forward. It should thus be clarified precisely in which areas independent Swiss regulations make sense. The costs and benefits of new regulations must be weighed up in each case and the appeal of Switzerland as a location improved where possible.

In the view of the financial industry, Switzerland has growth potential above all in the areas of asset management, pension funds and the capital market. In order to exploit this potential better, the Federal Council is willing to undertake an in-depth analysis of the business environment for the Swiss financial centre. Regulatory and tax adjustments should not only improve the conditions for existing business areas, but also enable the private sector to develop new business areas. In the capital market area, for example, Switzerland could profile itself as a platform for international trading transactions in the Chinese currency (renminbi).

Due diligence requirements and combating abuses

The Federal Council is stepping up its efforts to combat abuses in the area of money laundering and taxation. By swiftly implementing the revised FATF Recommendations, Switzerland is emphasising that it attaches high priority to the obligations it assumes through its international engagement. Furthermore, withholding tax agreements, administrative and mutual assistance in accordance with the international standard and additional due diligence requirements represent an effective and forward-looking means of combating abuses in the area of taxation. At the same time, they can also ensure that the legitimate need for protection of clients' privacy is preserved. Switzerland will therefore continue to consistently pursue the route that it has followed since 2009 to resolve problems in the

area of taxation. The agreements with the United Kingdom and Austria should be followed by agreements with other countries both within and outside Europe. Combating abuses must be a focal point of future financial market policy. The reputation of the financial centre and confidence therein are key. Switzerland is therefore prepared to lead by example in this area and go beyond the international standard.

When accepting new assets, financial intermediaries should take into account not only the risks of money laundering and terrorist financing, but also tax considerations. Serious tax offences will now be punishable also under the heading of money laundering. In the event that they suspect money laundering, financial intermediaries must report these cases to the Money Laundering Reporting Office Switzerland. Financial intermediaries should also check whether there is a justified suspicion of tax evasion. However, the repercussions are different from those in the case of a predicate offence. The consultation procedure on the improvement of due diligence requirements in the area of taxation will commence in January 2013, to coincide with the bill on the implementation of the revised FATF Recommendations.

Accompanying measures

The accompanying measures take particular account of the close interconnectedness of the financial sector with the wider economy. Both Swiss companies and households are reliant on a functioning financial centre which can satisfy the various client needs with a cost-effective and multifaceted product range. This includes not only a developed capital market for corporate financing, but also regulations that ensure that clients are appropriately informed. A further key locational factor is an attractive business taxation system which is also internationally accepted. At the same time, the Federal Council's financial market policy aims to contribute to sustainable global growth by supporting effective and morally sound tax structures in developing countries.

List of abbreviations

AIFM	Alternative Investment Fund Managers Directive (EU)
BankO	Banking Ordinance
BCBS	Basel Committee on Banking Supervision
CAO	Capital Adequacy Ordinance
CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
DTA	Double taxation agreement
EATC	Economic Affairs and Taxation Committee
EBA	European Banking Authority
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force on Money Laundering.
FDEA	Federal Department of Economic Affairs
FDF	Federal Department of Finance
FDFA	Federal Department of Foreign Affairs
FDHA	Federal Department of Home Affairs
FDJP	Federal Department of Justice and Police
FFI	Foreign financial institution
FINMA	Swiss Financial Market Supervisory Authority
FSB	Financial Stability Board
FSIO	Federal Social Insurance Office
FSO	Federal Statistical Office
FTA	Federal Tax Administration
G20	Group of 20 key industrialised and emerging nations
GDP	Gross domestic product
IAIS	International Association of Insurance Supervisors
IO	Integration Office
IOSCO	International Organization of Securities Commissions
IMF	International Monetary Fund
MiFID	Markets in Financial Instruments Directive (EU)
MROS	Money Laundering Reporting Office Switzerland
OECD	Organisation for Economic Co-operation and Development
QI	Qualified Intermediaries
SBA	Swiss Bankers Association
SFA	Swiss Funds Association
SFPD	Sectoral Foreign Policies Division
SIA	Swiss Insurance Association
SICAV	Investment company with variable capital
SMEs	Small and medium-sized enterprises
SNB	Swiss National Bank
SST	Swiss Solvency Test
TBTF	Too big to fail
TIEA	Tax information exchange agreement

Appendix 1: Measures to implement the strategic directions

In its report on the strategic directions, the Federal Council formulated specific objectives and measures for Switzerland's financial market policy. In order to oversee and monitor implementation of the individual measures, the Federal Council appointed a Financial Market Policy interdepartmental working group led by the Federal Department of Finance (FDF). In addition to representatives of the FDF, this body also includes representatives from the Federal Department of Foreign Affairs (FDFA), the Federal Department of Economic Affairs (FDEA), the Federal Department of Justice and Police (FDJP), the Swiss National Bank (SNB), and the Swiss Financial Market Supervisory Authority (FINMA).

Many measures have already been implemented successfully. A detailed overview of the current status of work on implementing Switzerland's financial market policy is provided in the table below. The most important are as follows:

- **Strengthening of stability in the financial sector**
  Stability in the financial sector has been significantly strengthened by the too big to fail (TBTF) legislative revision for the regulation of systemically important banks. The revision was approved by parliament on 30 September 2011 and put into force by the Federal Council on 1 March 2012. This means that Switzerland has already incorporated the requirements of the Basel III reform package into national legislation, while many other industrialised nations have yet to complete this process. The corresponding amendments to the Capital Adequacy Ordinance (CAO) and the Banking Ordinance (BankO) were passed by the Federal Council and approved by parliament on 18 September 2012. The amendments will enter into force on 1 January 2013.
- **Stamp duty and withholding tax adjustments**
  The issue tax on debt capital was abolished with effect from 1 March 2012. Ever since that date, an exception has also applied to the issue tax on equity capital in the case of bank participation rights created or increased through the use of convertible capital.[37] Furthermore, the Federal Assembly has approved an exception subject to certain conditions in the case of the withholding tax on interest payable on contingent convertible bonds and write-down bonds. This exceptional provision is likely to enter into force on January 2013, and will apply for a limited period to bonds issued during the first four years following its entry into force.

  Following the abolition of the issue tax on debt capital and the abolition of the issue tax on equity capital envisaged in the third series of corporate tax reforms, the Federal Council resolved on 1 December 2011 to refrain from further abolition measures in the area of stamp duty which would result in significant reductions in receipts, e.g. in the area of transfer stamp tax. This resolution was based on a study published by the Federal Tax Administration (FTA) on 1 June 2011.
- **Capital and liquidity requirements for big banks**
  More rigorous capital and liquidity requirements for the big banks entered into force on 30 June 2010, i.e. even prior to the TBTF legislative revision.
- **Improvement of depositor protection**
  The temporary provisions of 2008 on improving the financial restructuring procedure, shortening the payout deadline, recognising foreign financial restructuring procedures and further enhancing depositor protection were written into permanent law and have been definitively in force since 1 September 2011.
- **Strengthening of engagement in international financial bodies**
  Since receiving a second seat on the Plenary of the Financial Stability Board (FSB), Switzerland has increasingly contributed to international efforts in the area of financial market

[37] Convertible capital in accordance with Article 13 para. 1 of the Banking Act

reform. It is represented in the FSB's Steering Committee as well as in its main working groups. Switzerland also made an important contribution to the revision of the Recommendations of the Financial Action Task Force (FATF) of February 2012 to combat money laundering, terrorist financing and proliferation financing. Furthermore, FINMA has strengthened its cross-border collaboration with other supervisory authorities.

Switzerland is also contributing USD 10 billion to the USD 456 billion extraordinary increase in IMF resources approved in April 2012. As a result of this increase, the IMF will be in a better position to support countries that find themselves in a dire predicament.

- **Amendment of the Stock Exchange Act to combat stock exchange offences and market abuse**
  Stock exchange offences and market abuse can now be efficiently sanctioned thanks to the amendment of the Stock Exchange Act. The corresponding dispatch was adopted by the Federal Council on 31 August 2011. The revision of the Stock Exchange Act was approved by parliament on 28 September 2012 and could therefore enter into force in the spring of 2013, subject to a possible referendum being called.
- **Agreements with the United Kingdom, Germany and Austria**
  During its 2012 summer session, the Swiss parliament approved the three agreements with the United Kingdom, Germany and Austria. These provide for the regularisation of existing assets from a tax perspective and the introduction of a final withholding tax on capital income. The agreements with the United Kingdom and Austria have also been approved by the parliaments of those countries. They will enter into force on 1 January 2013. The agreement with Germany was not accepted during the German parliamentary procedure. Switzerland has conducted exploratory talks on negotiating similar agreements with other countries. Discussions have already begun with some of these countries.
- **Federal Act on International Withholding Tax (IWTA)**
  The IWTA serves to implement the new agreements with the United Kingdom and Austria, and any agreements with other countries too. It will enter into force at the end of 2012.
- **Expansion of administrative assistance in tax matters in accordance with the international standard**
  44 double taxation agreements with administrative assistance provisions in accordance with the new OECD standard have been initialled to date. 39 of these have been signed and 23 have already entered into force.
- **Creation of the State Secretariat for International Financial Matters (SIF)**
  SIF is responsible for coordination and strategic management regarding international financial, monetary and tax issues (operational since 1 March 2010).
- **Institutionalisation of dialogue between the Federal Administration and the financial sector**
  The dialogue between the authorities and the private sector has been improved through the creation of the Financial Centre Forum (headed by the SIF and including representatives of other authorities as well as the private sector). The body meets as required, but at least once a quarter.

Table 1: Overview of the status of implementation of existing measures

Direction		Measures	In charge	Status	Further steps
Increase the financial sector's international competitiveness	1	Examine the abolition of the existing withholding tax in favour of a paying agent tax with a lower rate and a broader tax base, possibly final in nature.	FDF (FTA)	In August 2011, as part of the TBTF regulation, the Federal Council proposed to parliament a switch from the debtor principle to the paying agent principle for the withholding tax on interest on bonds and money market securities. The tax would continue to have a securing feature rather than a final settlement feature. In June 2012, parliament rejected this proposal and returned it to the Federal Council. **Interactions:** Political and technical interrelationship with the introduction of a cross-border withholding tax (Measure 24). Anticipation of a measure from the third series of corporate tax reforms (Measure 3): improvement of tax conditions for group financing.	Following parliament's rejection of the Federal Council's bill to amend the Withholding Tax Act (to invigorate the Swiss capital market), the FDF is analysing the background situation and will submit a proposal for further steps to the Federal Council (cf. *Section 4.3.1*).
	2	Examine possible ways of financing the gradual abolition of stamp duty over a prolonged period of time.	FDF (FTA)	The abolition of stamp duty was evaluated and the results published in a study at the beginning of July 2011. This study evaluated the individual stamp duty categories with respect to appeal of location and efficiency. On 30 November 2011, the Federal Council decided that the abolition of issue tax should be given priority. In the area of insurance tax, the Federal Council gave the FDF an additional review mandate. The issue tax on *debt capital* was abolished with effect from 1 March 2012 (TBTF bill). Regarding the abolition of the issue tax on *equity capital*, the EATC-N conducted a consultation procedure which ended on 10 May 2012. **Interactions:** Any change to the legal framework conditions or the international environment could have an impact on the urgency of this measure.	The Federal Council would like to abolish the issue tax on equity capital as part of the third series of corporate tax reforms. It is nonetheless possible that parliament will deal with this measure in advance in a separate project (cf. *Section 4.3.1*). In the area of insurance tax, the FTA is currently executing the review mandate given to it by the Federal Council. No specific steps are currently being prepared in the other stamp duty areas. Parliamentary initiatives are pending, however.

Direction		Measures	In charge	Status	Further steps
	3	Initiate consultation on the third series of tax reforms (CTR III).	FDF (FTA)	The preparatory work is at an advanced stage, and involves collaboration with the cantons as well as consultation with interested business circles. The dialogue with the EU on business taxation issues is closely linked with the third series of corporate tax reforms. **Interactions:** Fiscal policy interrelationship with Measure 2.	Fundamental decision on direction by Federal Council. Initiation of a consultation procedure (date unknown).
	4	Improve due diligence, disclosure and information requirements in the distribution of financial products.	FDF (GS/SIF), FINMA, FDJP	In November 2010, FINMA published its *Distribution Report*. Following the corresponding hearing, it published the *FINMA Position Paper on Distribution Rules* in February 2012. This calls for regulations for financial products, regulations for the conduct and organisation of financial service providers, an extension of supervision to all asset managers and facilitated enforceability of the claims of private clients under civil law. **Interactions:** Following their implementation, the new rules could possibly also have (positive) impacts on market access in the EU, as well as on the crackdown on unauthorised providers.	On 28 March 2012, the Federal Council instructed the FDF to prepare statutory provisions in collaboration with the FDJP (FOJ) and FINMA, and to submit a consultation draft to the Federal Council by autumn 2013 (cf. *Section 4.3.2*).
	5	Step up efforts to combat unauthorised providers.	FINMA	FINMA pursues all leads to identify legal entities and natural persons operating without authorisation, recognition, accreditation or registration. The main focus is on procedures targeting providers in areas subject to prudential supervision/oversight. In the case of illegally active institutions, the lawful status is immediately clarified, which can lead to their liquidation. Entries on FINMA's negative list will now also appear on the IOSCO Investor Alerts Portal. This will create additional and internationally-oriented transparency with respect to unauthorised providers in Switzerland. **Interactions:** Ensuring the integrity of the financial centre.	Consistent continuation of the communicated enforcement policy (establishing whether there has been an infringement of supervisory law) in the area of combating unauthorised providers. With the revision of the CISA, the obligation to obtain authorisation is to be introduced for all asset managers of foreign collective capital investments.

Direction		Measures	In charge	Status	Further steps
	6	Develop new key figures and improved assessment mechanisms and make targeted use of audit firms and investigators to enhance the risk-oriented approach to supervision. Also, extend risk-oriented supervision in the area of collective capital investments.	FINMA	FINMA breaks down all supervised entities into supervisory categories in keeping with their risk impact for creditors, investors, insured, the overall system and the reputation of the Swiss financial centre. In addition to this *categorisation*, each institution receives a *rating*. These two measures form the basis for determining the intensity of supervision and the deployment of supervisory instruments. This ensures supervisory activity that is systematically risk oriented and intensive discussions with relevant institutions from a risk perspective. In the case of larger and more complex supervised entities, the focus lies on increased onsite deployment as well as FINMA's own data capture and analysis. FINMA implements improvements in the deployment of audit firms in order to have a stronger influence on their mandates in the future, derive greater benefit from risk-based audit activity and receive more meaningful assessments. FINMA regularly conducts loss potential analyses and stress tests at the big banks, as well as cross-sector surveys and cross-checks in the event of warning signs in any given area. **<u>Interactions</u>:** Strengthening the financial sector's resistance to crises / ensuring the integrity of the financial centre.	The operational development and creation of a technological infrastructure to support supervisory processes is being driven forward. An additional aim is to implement an efficient and secure exchange of data with the supervised institutions by means of electronic interaction via a portal. FINMA intends to extend the stress tests to medium-sized banks too.
	7	Increase Switzerland's commitment to the main international standard-setting bodies in order to achieve international agreement on standards in key areas. The focus here lies on the recognition of the equivalence of the	FINMA, FDF, SNB, IO	The main international standard-setting bodies are the FSB, IMF, FATF, OECD, BCBS, IAIS and IOSCO. The FDF (SIF), FINMA and the SNB are represented in these bodies and participate actively in their work. FINMA has further strengthened its contacts with the EU supervisory authorities (EBA, EIOPA and ESMA) regarding technical regulatory and supervisory issues. Establishment of a relationship with the European Systemic Risk Board (ESRB) is via the SNB.	The FDF (SIF), FINMA and the SNB will continue to work towards an international agreement on relevant standards and increase their involvement in relevant bodies in a targeted way where possible. By February 2013, the FATF should have formulated the

Direction		Measures	In charge	Status	Further steps
		Swiss supervisory system and the SST with respect to Solvency II.		In addition, FINMA holds talks at expert level with the responsible units of the Internal Market and Services Directorate General of the European Commission in the areas of banks, insurers and markets. At the international level, the development of the IAIS Common Framework for the Supervision of Internationally Active Insurance Groups is the focal point. In 2011, FINMA was appointed a member of the Multilateral Memoranda of Understanding (MMoU) by the IAIS. This will strengthen the global exchange of information and collaboration between IAIS members in the area of insurance supervision. With regard to international regulation to combat financial crime, Switzerland actively participated in the revision of the FATF Recommendations to combat money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction adopted in February 2012. As Co-Chair of the FATF Working Group in charge of coordinating the revision, Switzerland was able to defend its interests effectively. Switzerland is also committed to raising awareness among its G20 partners by submitting concrete proposals in the regulatory areas in which it can create added value.	framework conditions for the fourth round of mutual evaluations, to begin at the end of 2013. In particular, this entails developing a methodology to evaluate a country's technical compliance with the FATF Recommendations and the effectiveness of the mechanisms to combat money laundering and terrorist financing.
	8	Intensify and improve coordination between the various federal authorities and with the private sector.	FINMA, FDF, SNB	In mid-January 2011, the FDF, FINMA and the SNB signed a tripartite Memorandum of Understanding governing the collaboration between the three authorities. It includes the exchange of information on financial stability and financial market regulation issues, as well as collaboration in the event of a potentially stability-threatening crisis afflicting the financial system. The Financial Centre Forum has been meeting regularly since March 2010. From the authorities' side, the SNB and FINMA are involved along with the FDF (SIF, FTA).	The institutionalised dialogue between the authorities and the private sector is to be continued within the framework of the Financial Centre Forum (led by the FDF [SIF]) and the Financial Market Policy interdepartmental working group. Both bodies meet on a quarterly basis.

Direction		Measures	In charge	Status	Further steps
				The private sector is represented in this body by the Swiss Bankers Association (SBA), the Swiss Insurance Association (SIA), the Swiss Funds Association (SFA) and SIX Group. At the same time, the Financial Market Policy interdepartmental working group was created, consisting of representatives of the FDF (SIF, FTA), FDEA (SECO), FDJP (FOJ), the SNB, FINMA, the FDFA (SFPD) and the FDFA/FDEA (IO). *Early identification (FFA project)*: The project on the early identification of financial market regulation abroad (*Früherkennung Finanzmarktregulierung Ausland / FFA*) consists of a closed electronic platform for the exchange of information between the represented authorities and associations, information on contacts at international level and information on planned regulation in major financial centres. If required, a situational analysis can be conducted by a body and scope for action identified. *Financial crime (ISFIN)*: The "International Standard-Setting in the Area of Financial Market Crime" technical working group institutionalises the dialogue between the authorities and the private sector in the area of financial crime. It is responsible for standard-setting in the areas of combating money laundering, terrorist financing and subsidiary tax crimes. It has the task of enabling a reciprocal exchange of information between the authorities and the private sector on international regulatory developments as well as an exchange of opinions on the positions that Switzerland should defend internationally. The working group has convened at regular intervals since August 2010. **<u>Interactions</u>:** Strengthening the financial sector's resistance to crises / ensuring the integrity of the financial sector. As part of the work on macroprudential oversight, the Federal Council introduced a countercyclical capital buffer in July 2012.	The "International Standard-Setting in the Area of Financial Market Crime" (ISFIN) technical working group has been operational since August 2010 (led by the FDF [SIF]) and is continuing its work.

Direction		Measures	In charge	Status	Further steps
				According to the procedure, the SNB consults FINMA and then instructs the Federal Council to activate the buffer as necessary. The Federal Council decides on the request.	
Secure and improve market access	9	Proactive stance on the part of Switzerland in the area of bilateral and multilateral foreign economic policy (including WTO, free trade agreements and OECD) to combat discrimination against market participants.	FDEA (SECO) and interested parties	*WTO*: Regular work as part of the General Agreement on Trade in Services (GATS) in the financial services area. *Free trade agreements*: As part of the EFTA, Switzerland is negotiating free trade agreements (to include financial services) with India, Indonesia and certain Central American countries. This year, Switzerland has continued negotiations on a bilateral free trade agreement (to include financial services) with China. Switzerland also regularly reviews free trade agreements already in force. *Activities as part of the OECD* (*Trade Committee*): Switzerland supports the avoidance of protectionist tendencies. **Interactions:** Measures taken in the financial sector are to be examined for their compatibility with the bilateral and multilateral instruments of foreign economic policy.	The FDEA has been stepping up its efforts vis-à-vis selected trade partners in 2012. Negotiations on free trade agreements with China, India, Indonesia and certain Central American countries have been continued on the basis of the respective negotiation mandates.
	10	Intensify FINMA's dialogue in international bodies as well as bilaterally with key supervisory authorities and relevant EU bodies (European Commission, supervisory committees and future EU supervisory authorities, as well as the ESRB) in order to promote international recognition of	FINMA	FINMA defined its strategy for managing the relationship with the EU in the autumn of 2009. The focus is on constructive and efficient collaboration on regulatory and supervisory issues, as well as the recognition of the equivalence of the Swiss supervisory system by the EU. In August 2011, EIOPA presented its draft report to the European Commission on the results of its equivalence investigation, essentially judging the Swiss supervisory regime to be on a par with that of the EU. **Interactions:** Strengthening the financial sector's international	FINMA is continuing its technical dialogues with the European Commission in the area of banks, insurers and markets. Contacts with the EBA, EIOPA, and ESMA are being nurtured at all levels.

Direction		Measures	In charge	Status	Further steps
		the equivalence of Swiss supervision and regulation.		competitiveness; strengthening Switzerland's commitment to the main international standard-setting bodies (cf. Measure 7).	
	11	Conclude bilateral supervisory law agreements with key partner countries in order to improve market access.	FINMA, FDF in consultation with the FDEA (SECO), FDFA and FDFA/FDEA (IO)	Within the framework of fundamental Memoranda of Understanding, FINMA is conducting talks with China and Hong Kong on the distribution of collective capital investments. Negotiations with Germany and Austria are also under way.	FINMA is in regular contact with the relevant supervisory authorities. As part of the AIFMD, third countries will require an EU passport in the future, which will necessitate agreements on collaboration and the exchange of information.
	12	Examine the advantages and disadvantages of a (financial) services agreement with the EU.	FDFA, FDEA (SECO), FDFA/FDEA (IO), FDF (SIF)	In October 2009, the Federal Council issued a mandate to examine the disadvantages of the absence of a services agreement with the EU. A partial dossier on financial services was produced by the FDF. In February 2010, the Federal Council initially resolved not to pursue a "comprehensive services agreement", and instead mandated the FDF, the FDFA and the FDEA to explore the issues surrounding a financial services agreement in greater depth. In August 2010, the Federal Council held a discussion on this topic. A further investigation focusing on additional measures to improve market access and specific industry interests was conducted by the Federal Council in December 2010. Finally, in October 2011 the Federal Council was informed of the assessment of the current developments regarding access to the EU market for financial service providers.	As part of the EU monitoring process (under the aegis of the FDF), questions on market access and possible agreements are given priority (cf. *Section 4.1.1*).
Strengthen the financial sector's resistance to	13	Gradually increase the capital requirements for big banks up to 2013 (already approved). Examine further	FINMA, SNB	The phased implementation of more stringent capital requirements in accordance with Basel III is virtually complete: • Questions on the interpretation of international minimum standards and their implementation in the CAO were	Following approval of the ordinance provisions by parliament, they will enter into force on 1 January 2013,

Direction		Measures	In charge	Status	Further steps
crises and the treatment of systemically important financial institutions		extensive adjustments in the light of international developments.		discussed by a working group. • Based on this discussion, a total revision of the CAO was initiated and submitted for a hearing until January 2012. • The completely revised CAO is due to enter into force on 1 January 2013. Parliament approved the amendment of the Banking Act on 30 September 2011. The Federal Council put this into effect on 1 March 2012. The corresponding provisions (CAO and BankO) were completed following the hearing in the spring of 2012 and approved by parliament on 18 September 2012. In view of the current situation on the mortgage market, FINMA, the SNB and the FDF have drawn up measures in conjunction with the SBA which may have a restrictive effect on domestic credit development. Furthermore, FINMA is monitoring progress at the big banks with respect to the build-up of eligible capital in accordance with Basel III. **Interactions:** Gradual introduction of a leverage ratio for big banks (cf. Measure 14).	together with the provisions of the completely revised CAO.
	14	Gradually introduce a leverage ratio for big banks by 2013 (already approved). Examine further extensive adjustments in the light of international developments.	FINMA, SNB, FDF (GS)	The leverage ratio for systemically important banks is part of the amendment of the Banking Act approved on 30 September 2011. It will be implemented in the CAO. **Interactions:** Gradual increase in the capital requirements for big banks (cf. Measure 13).	As part of both the Basel Committee (FINMA, SNB) and the FSB (FDF, SNB), Switzerland is actively involved in the elaboration of international standards for a leverage ratio that will apply to all banks. During an observation period that will run from 1 January 2013 to 1 January 2017, the definition and calculation of the leverage

Direction		Measures	In charge	Status	Further steps
					ratio will be examined.
	15	The efforts to increase liquidity requirements are already far advanced. The BCBS will issue global minimum standards regarding liquidity.	FINMA, SNB, FDF (GS)	The current liquidity regime of FINMA and the SNB should increase the stress resistance of the two big banks in the event of a bank-specific loss in confidence, combined with a general market crisis. The liquidity regime for the two big banks is part of the TBTF legislative package. Existing agreements with the two big banks will be transferred to a newly created liquidity ordinance based on the new legislative framework. The Basel Committee published the new global minimum standards with respect to liquidity at the end of 2010. For the time being, however, these are still subject to an observation phase and may yet be subject to change. The new standards will not enter into force until 2015 (Liquidity Coverage Ratio – LCR) and 2018 (Net Stable Funding Ratio – NSFR).	On 30 November 2012, the Federal Council passed a new liquidity ordinance which takes over the provisions on liquidity from the BankO, continues the specific regime for the big banks and introduces an international LCR reporting obligation for all banks. The ordinance will be brought into force gradually from 1 January 2013. As soon as international standards have been definitively agreed, they will be incorporated into Swiss regulation via a revision of the liquidity ordinance.
	16	Examine measures for dealing with systemically important companies in the event of a crisis.	FDF	On 4 October 2010, the Commission of Experts appointed by the Federal Council published its final report. The TBTF dispatch was adopted by the Federal Council on 20 April 2011 and by parliament on 30 September 2011. On 15 February 2012, the Federal Council put the new provisions into effect from 1 March 2012. As a result of this legislative change, the BankO and the CAO also had to be amended. The Federal Council held a public hearing on these amendments from 5 December 2011 to 16 January 2012. Following the Federal Council's resolution of 9 March 2012, given that the ordinances needed to be submitted to the Federal Assembly for initial approval, the ordinances were submitted for consultation to the EATC-N (26/27 March	The amendments to the Capital Adequacy Ordinance (CAO) and the Banking Ordinance (BankO) were approved by the Federal Council and submitted to parliament for consultation (autumn session 2012). The ordinances will enter into force on 1 January 2013.

Direction		Measures	In charge	Status	Further steps
				and 21/22 May 2012) and to the EATC-S (24 April 2012). On 1 June 2012, the ordinances were approved by the Federal Council. **Interactions:** Measures 13 (increase capital requirements for the big banks), 14 (leverage ratio for the big banks) and 15 (liquidity requirements); elaboration of preventive measures in the area of prudential regulation (cf. Measure 17).	
	17	Elaborate preventive measures for dealing with systemically important financial institutions (prudential regulation).	FINMA, SNB	In August 2009, a joint project was initiated by FINMA and the SNB to tackle the TBTF problem. The results of this project can be found in the work of the TBTF Commission of Experts (cf. Measure 16). FINMA and the SNB played a key role in preparing the TBTF dispatch and elaborating the corresponding amendments to the Banking Ordinance and the Capital Adequacy Ordinance. **Interactions:** Examine measures for dealing with systemically important companies in the event of a crisis (cf. Measure 16).	The amendment of the Banking Act was passed by parliament and put into effect by the Federal Council on 1 March 2012. The amendments to the CAO and the BankO were approved by the Federal Council and submitted to parliament for consultation (autumn session 2012). The ordinances will enter into force on 1 January 2013.
	18	Improve the depositor protection system.	FDF	Based on a Federal Council dispatch of 12 May 2010, parliament decided on 17 December 2010 to extend the temporary provisions approved in 2008 until the entry into force of the amendment to the Banking Act concerning the protection of deposits, but at the latest until the end of 2012. This amendment of the Banking Act was subsequently approved by parliament on 18 March 2011. Under this amendment, the temporary provisions will become permanent law and the regulations which were positively received during the consultation will be adopted. The latter include improvements in financial restructuring, a reduction in the time taken for payouts from deposit insurance, recognition of foreign	In force since September 2011.

Direction		Measures	In charge	Status	Further steps
				insolvency measures and regulations regarding unclaimed assets. Furthermore, insolvency provisions in the Stock Exchange Act, Mortgage Bond Act, Collective Investment Schemes Act, Insurance Oversight Act and Debt Enforcement and Bankruptcy Act were amended.	
	19	Examine how current international developments in the area of clearing and settlement of OTC products can be supported by regulatory measures in Switzerland, for example by creating incentives which support the processing of transactions through a central counterparty.	FDF, FINMA, SNB	The analysis of a working group consisting of representatives of the FDF (SIF, GS), SNB, FINMA and FDEA (IO) investigated the need for regulatory action in the areas of over-the-counter trading in derivatives (OTC derivatives) and financial market infrastructure in Switzerland. Based on this, the Federal Council held a discussion at the end of August 2012 and resolved to introduce new statutory provisions for over-the-counter trading in derivatives and to amend the regulation in the area of financial market infrastructure. The FDF was instructed to draw up a consultation draft by the spring of 2013.	Elaboration of a consultation draft on the regulation of OTC derivatives and financial market infrastructures by the FDF (GS).
Ensure the integrity of the financial centre	20	Step up active involvement in international bodies such as the FSB, the Global Forum and the FATF in order to combat financial crime and to implement an appropriate level of monitoring as well as a level playing field globally.	FDF, FINMA, SNB	The main international standard-setting bodies are the FSB, IMF, FATF, OECD, BCBS, IAIS and IOSCO. The FDF (SIF), FINMA and the SNB are represented in these bodies and actively shape their work – including through contributions to or leadership of international working groups (cf. Measure 7).	The FDF (SIF), FINMA and the SNB will continue to work towards international agreement on relevant standards and expand their collaboration in the relevant bodies in a targeted way where possible.
	21	Amend legislation in the area of stock exchange offences and market abuse.	FDF (GS)	On 31 August 2011, the Federal Council adopted the dispatch on amending the Stock Exchange Act (stock exchange offences and market abuse). Norms were created in criminal and supervisory law which sanction market abuse efficiently while at the same time taking account of international regulations. In particular, the offence of insider trading under criminal law was expanded. Both insider trading and price	The final vote was held on 28 September 2012. Subject to a possible referendum, the amendment of the Stock Exchange Act could enter into force in the spring of 2013.

Direction		Measures	In charge	Status	Further steps
				manipulation have now become predicate offences for money laundering. In the area of supervisory law, insider trading and market manipulation are now prohibited for all market participants. In the area of corporate takeovers, the possibility of paying a control premium was abolished, among other changes. The Council of States approved the Federal Council's bill without reservation on 20 December 2011 (Official Bulletin 2011 1226). On 14 June 2012, the National Council took a different view from the Council of States by resolving to drop the criterion of achieving financial gain in the criminal offence of insider trading (Art. 40 SESTA bill). **Interactions**: FINMA supervisory measures in connection with the strengthening of the international competitiveness of the financial sector.	
	22	Further expand the DTA network with administrative assistance on the basis of the standard set out in Art. 26 of the OECD Model Convention.	FDF (SIF)	In March 2009, the Federal Council decided to incorporate OECD Article 26 on international cooperation in tax matters in new DTAs and to revise existing agreements accordingly. Since then, DTAs with such an administrative assistance provision have been negotiated with 44 other countries. Already, 24 agreements (United Kingdom, Denmark, Germany, Faroe Islands, Hong Kong, India, Japan, Canada, Malta, Netherlands, Norway, Austria, Poland, Romania, Russia, Sweden, Singapore, Slovakia, Spain, South Korea, Taipei, Turkey, Uruguay and United Arab Emirates) with administrative assistance provisions in accordance with the latest standard have entered into force. Another 8 agreements (Finland, France, Greece, , Kazakhstan, Luxembourg, Mexico, Qatar and United States) have been approved by Switzerland. Agreements and/or protocols with Bulgaria, Ireland, Peru, Portugal, Slovenia, the Czech Republic and Turkmenistan	Efforts to agree a standard-compliant administrative assistance provision with other states are being continued. Corresponding negotiations are under way with Belgium, Brazil, Costa Rica, Israel, Italy, Saudi Arabia, South Africa, the Ukraine and Cyprus. Based on the Federal Council's resolution of 4 April 2012, Switzerland can also use a tax information exchange agreement (TIEA) with states and jurisdictions to govern administrative assistance in tax matters, provided they have submitted a corresponding request to Switzerland or

Direction		Measures	In charge	Status	Further steps
				have been signed but have not yet been submitted to parliament for approval. Furthermore, there are initialled agreements and/or protocols with Australia, China, Colombia, Oman and Hungary. **Interactions:** Issue of internal legal guidelines on implementation of amended administrative and mutual assistance (Measure 23).	provided Switzerland is interested in such an agreement for tax or development policy reasons. Initial negotiations have commenced with Jersey, Guernsey and the Isle of Man. Further negotiations will follow with offshore centres and developing countries.
	23	The issuance of internal legal guidelines on implementation of amended administrative and mutual assistance, particularly the formal legal basis for administrative and mutual assistance in tax matters, is far advanced (issuance of a basic ordinance, to be replaced later by a formal legal basis).	FDF (SIF), FDJP (FOJ)	On 20 January 2010, the Federal Council instructed the FDF to start drawing up an administrative assistance act. Because for reasons of legal security and standardised practice a decree governing the enforcement of the administrative assistance provision newly incorporated in DTAs became necessary as early as autumn 2010, the Ordinance on Administrative Assistance under Double Taxation Agreements (AAODTA) entered into force on 1 October 2010. The Tax Administrative Assistance Act will replace the AAODTA. **Interactions:** Further expansion of the DTA network with administrative assistance in accordance with Art. 26 of the OECD Model Convention (cf. Measure 22).	The Tax Administrative Assistance Act was approved by parliament on 28 September 2012. Subject to a possible referendum, it could enter into force in the first half of 2013.
	24	Examine introduction of a final withholding tax.	FDF (SIF)	In April 2012, the Federal Council adopted the dispatches on the withholding tax agreements with Germany, the United Kingdom and Austria, as well as the Federal Act on International Withholding Tax (IWTA). The three agreements contain the following components: • Regularisation of the past (lump-sum retrospective taxation of existing bank relationships or voluntary disclosure) • Final withholding tax on future capital income, capital gains and in the event of inheritance (D and UK) or	The three withholding tax agreements were dealt with and approved in a special procedure by both parliamentary chambers in the 2012 summer session. The agreements with the United Kingdom and Austria have now also been approved by the parliaments of those countries. They will enter into force on 1 January 2013. In contrast, the

Direction		Measures	In charge	Status	Further steps
				voluntary disclosure • Further points: regulation of immunity from prosecution for clients, banks and bank employees; solution for dealing with stolen bank data; improvement in market access **Interactions:** Technical and political interrelationship with the introduction of a national paying agent tax to replace the withholding tax; review of further measures to promote the tax honesty of bank clients and reduce legal risks (cf. Measure 25).	agreement with Germany was not accepted during the German parliamentary procedure. SIF will start talks on similar agreements with further countries.
	25	Examine further measures to promote the tax honesty of bank clients and reduce legal risks.	FDF, FINMA, SBA	On 22 February 2012, the Federal Council published a discussion paper which sets out its strategy for a tax-compliant and competitive financial centre. Among other things, this envisages a more precise formulation of the due diligence requirements for financial intermediaries with a view to preventing the acceptance of untaxed assets more effectively. Regarding the implementation of the strategy for a tax-compliant and competitive financial centre, the Federal Council appointed an interdepartmental working group on 18 April 2012 and instructed it to draw up the measures required for implementing the revised FATF Recommendations and, in particular, to develop a predicate offence for money laundering (a crime under Article 10 para. 2 of the Swiss Criminal Code) in the field of direct taxation. The draft legislation on these topics will be submitted for consultation in January 2013 (cf. *Section 4.2*).	

Appendix 2: Selected countries' strategies for combating tax evasion

Singapore:

Protection of privacy: To what extent is bank client confidentiality protected?	**Financial integrity strategy:** Do countries with bank client confidentiality pursue such a strategy?	**Mandatory self-declaration for clients:** yes or no; planned?	**Due diligence require-ments for banks:**	**New FATF Recommendations:** Are "serious" tax crimes considered as predicate offences for money laundering?	**Art. 26 OECD Model Convention / amended commentary** Status of implementation of Art. 26 of OECD Model Convention (administrative assistance) and amended commentary (group requests)	**Automatic exchange of information:** pro or contra; to what extent implemented?	**DTA with Switzerland:** Has Art. 26 of OECD Model Convention been implemented?
Yes, statutory bank client confidentiality (as per s. 47 of the Banking Act and s. 49 of the Trust Companies Act). Banks can disclose client data directly to foreign authorities by means of a waiver signed by clients in GTC. Other disclosure possibilities are set out in the Banking Act.	**Yes**, wants to be perceived as a **clean financial centre** and is trying to combat tax crime and money laundering decisively. Since September 2011, the **guidelines** of the supervisory authority **on integrity also contain provisions to combat the inflow of untaxed assets**.	**Not systematically envisaged.** In the future, banks should acquire client information (both new and existing clients) necessary to identify, manage and avoid the risks of tax evasion.	Exist for client identification and examination of the origin of funds. Reporting possibility to the Suspicious Transaction Reporting Office.	**Intended.** Planned revision of the CDSA by June 2013, with the aim of making the acceptance of assets arising from deliberate tax crimes a punishable offence. **Broad definition of "serious tax crimes"** envisaged.	To date, has concluded **7 limited and 69 comprehensive DTAs.** **Has undertaken to adopt Art. 26 of OECD Model Convention since September 2009.** A number of DTAs have since been expanded or adjusted (e.g. with the UK in 2010). According to OECD statistics, approx. 25 of the analysed DTAs meet the OECD standard on administrative assistance. Amended commentary not binding for non-OECD states. Takes a **fairly negative stance towards group requests generally**.	**Against the automatic exchange of information.**	**Revised DTA with Switzerland** in force **since August 2012.** **DTA meets OECD standard on administrative assistance.**

Luxembourg:

Protection of privacy: To what extent does bank client confidentiality exist?	**Financial integrity strategy:** Do countries with bank client confidentiality pursue such a strategy?	**Mandatory self-declaration for clients:** yes or no; planned?	**Due diligence requirements for banks:**	**New FATF Recommendations:** Are "serious" tax offences considered as predicate offences for money laundering?	**Art. 26 OECD Model Convention / amended commentary** Status of implementation of Art. 26 of OECD Model Convention (administrative assistance) and amended commentary (group requests)	**Automatic exchange of information:** pro or contra; to what extent implemented?	**Imposition of a withholding tax on capital income on behalf of another state?**	**DTA with Switzerland:** Has Art. 26 of OECD Model Convention been implemented?
Yes, statutory bank client confidentiality (as per Art. 41 of the law of 5 April 1993 on the financial sector).	**Yes, wants to avoid untaxed money** to minimise reputational risk.	**Not systemat-ically envisaged.**	In October 2012, the Luxembourg Bankers' Association (ABBL) published the ICMA Private Wealth Management Charter of Quality. This is a **voluntary standard** which takes into account international standards, EU and national regulations.	Has **not yet implemented new FATF Recommendation**.	So far, **73 DTAs** which guarantee the exchange of information **have been signed**. Of these, **28 are compatible with Art. 26 of the OECD Model Convention (administrative assistance standard).**	**Against the automatic exchange of information.**	Yes. In application of the European Savings Tax Directive, Luxembourg levies a withholding tax on interests paid to natural persons from another EU member state. The corresponding revenue is then forwarded to the EU member state in question.	Revised administrative assistance clause with Switzerland in force since November 2010; does not fully meet international standards. **Amended agreement** of 11 July 2012 brings **administrative assistance clause in line**

			Development could lead to mandatory self-regulation component.					**with OECD standard.**

Hong Kong:

Protection of privacy: To what extent does bank client confidentiality exist?	**Financial integrity strategy:** Do countries with bank client confidentiality pursue such a strategy?	**Mandatory self-declaration for clients:** yes or no; planned?	**Due diligence requirements for banks:**	**New FATF Recommendations:** Are "serious" tax offences considered as predicate offences for money laundering?	**Art. 26 OECD Model Convention / amended commentary** Status of implementation of Art. 26 of OECD Model Convention (administrative assistance) and amended commentary (group requests)	**Automatic exchange of information:** pro or contra; to what extent implemented?	**DTA with Switzerland:** Has Art. 26 of OECD Model Convention been implemented?
No statutory bank client confidentiality; bank clients are protected by a **law on the protection of privacy, however**.		**No mandatory self-declaration, nor is such an obligation currently envisaged**	Since 1997, there has been a **Code of Banking Practice** which is regularly revised. Compliance with this code is voluntary. Aims include the implementation of quality standards and an increase in the transparency of banking services.	**Tax crimes are considered predicate offences for money laundering.**	So far, **34 DTAs have been signed** (five of which have yet to enter into force). **Has committed to adopt Art. 26 of OECD Model Convention since July 2009**. The **vast majority of DTAs already meet the OECD standard on administrative assistance**. Amended commentary is not binding for non-OECD states.	**Against the automatic exchange of information.**	**DTA with Switzerland in force since October 2012**. **DTA meets OECD standard on administrative assistance**.

UK/London[38]**:**

Protection of privacy: To what extent does bank client confidentiality exist?	**Financial integrity strategy:** Do countries with bank client confidentiality pursue such a strategy?	**Mandatory self-declaration for clients:** yes or no; planned?	**Due diligence requirements for banks:**	**New FATF Recommendations:** Are "serious" tax offences considered as predicate offences for money laundering?	**Art. 26 OECD Model Convention / amended commentary** Status of implementation of Art. 26 of OECD Model Convention (administrative assistance) and amended commentary (group requests)	**Automatic exchange of information:** pro or contra; to what extent implemented?	**DTA with Switzerland:** Has Art. 26 of OECD Model Convention been implemented?
No statutory bank client confidentiality.		**No mandatory self-declaration**, nor is such a mechanism envisaged.	Money Laundering Regulation (MLR) encompasses measures for companies, including **due diligence** requirements with respect to clients. For example, the FSA Handbook lists **principles**	**Tax crimes are considered money laundering offences in UK legislation.**	**122 DTAs and 24 TIEAs** in force so far. Vast majority of all **DTAs and TIEAs meet the OECD standard on administrative assistance.** Following a **legal adjustment in April 2012, requests which do not specifically state individual names can also be**	**Agreement with United States** of 12 September 2012 to improve international tax compliance and implement FATCA **(Model 1)** commits the **UK** to creating a **legal basis for the procurement and automatic forwarding of required information**. **Automatic exchange of**	**Revised DTA with Switzerland in force since August 2010.** **Exchange of letters** between the UK and Switzerland in May 2012 brings **DTA up to OECD standard.**

[38] Statements do not necessarily apply to territories which are subject to the British Crown but do not form part of the United Kingdom (e.g. the Channel Islands, Isle of Man), or to British overseas territories (e.g. Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar).

			of due diligence requirements and serves as a Code of Conduct.		**submitted**.	**information within the EU**.	

United States/New York:

Protection of privacy: To what extent does bank client confidentiality exist?	**Financial integrity strategy:** Do countries with bank client confidentiality pursue such a strategy?	**Mandatory self-declaration for clients:** yes or no; planned?	**Due diligence requirements for banks:**	**New FATF Recommendations:** Are "serious" tax offences considered as predicate offences for money laundering?	**Art. 26 OECD Model Convention / amended commentary** Status of implementation of Art. 26 of OECD Model Convention (administrative assistance) and amended commentary (group requests)	**Automatic exchange of information:** pro or contra; to what extent implemented?	**DTA with Switzerland:** Has Art. 26 of OECD Model Convention been implemented?
Yes, statutory protection – confidentiality of personal financial records (as per the Right to Financial Privacy Act (RFPA) 12 U.S.C. § 3401-22). The disclosure of personal financial data is permitted, however, as long as the client has consented to it, or if a legal summons, subpoena or warrant has been issued.		**No mandatory self-declaration;** nor is such a mechanism envisaged.	US financial entities were criticised in the last FATF and Global Forum Peer Review for lack of "Know Your Customer" guidelines. Currently, an obligation to inquire into beneficial ownership is not mandatory for all clients but rather recommended for those situations judged to pose a	Has **not yet implemented new FATF Recommendation**.	In the **United States, 60 DTAs (and 30 TIEAs) are in force**. **Of these agreements, 42 DTAs and 23 TIEAs meet the OECD standard on administrative assistance**. DTA **protocols that meet the OECD standard have been signed** with Luxembourg, New Zealand and Switzerland (although these have yet to enter into force).	Essentially takes a positive stance towards the automatic exchange of information in tax matters. The US-Canadian DTA provides for the automatic exchange of information. A number of EU countries have been assured of reciprocity in the context of FATCA by the United	The current DTA, which entered into force on 19 December 1997, does not meet the OECD standard. The **new DTA protocol**, which was signed on 23 September 2009, **meets the OECD standard** but has yet to enter into force. The ratification process is currently

Furthermore, there are classes of exceptions in which certain financial records are not protected by the Act. In these situations, disclosure by a financial institution is always permitted, and no authorisation, subpoena, or warrant is required. In certain US federal states (e.g. **Delaware**), it is possible to establish **business structures** which permit the **concealment of beneficial owners**.			risk of evasion of existing regulations. The Financial Crimes Enforcement Network (FinCEN) has issued a proposal that seeks to create a legally binding regulation whereby banks and securities firms have to review the beneficial ownership of their corporate clients and their accounts.		There is no requirement that the United States be provided with the name of the account holder in order to obtain bank information in respect of that person, but, as a practical matter, sufficient identifying information (account number, tax identification number) will be required in order to fulfil the request. Otherwise, information regarding an ascertainable class of account holders that can be identified with specificity may be obtained (group request).	States, but in practice this will be limited to the provision of information relating to interest. Moreover, in FATCA agreement negotiations, the United States has stated that it is only prepared to engage in the automatic exchange of information with countries that have sufficient data protection provisions in place.	pending within the US Senate due to a procedural blocking put in place by Senator Rand Paul (this also affects other DTAs).

Appendix 3: Overview of measures

	Description
	Competitiveness
1	Ensuring market access
2	Institutional collaboration
3	Asset management framework
4	Insurance and pension market framework
	Combating abuses / due diligence requirements
5	Implementation of FATF recommendations
6	Due diligence requirements in the area of taxation
	Accompanying measures
7	Capital market framework
8	Consumer protection
9	Education and training
10	Business taxation
11	Taxes and development