

# The “Paradise Papers”, Switzerland and Commodities

**Public Eye**



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**PUBLIC EYE** Avenue Charles-Dickens 4, 1006 Lausanne, Switzerland | Tel. +41 (0)21 620 03 03 | Fax +41 (0)21 620 03 00 | [contact@publiceye.ch](mailto:contact@publiceye.ch) | [www.publiceye.ch](http://www.publiceye.ch) | CCP 10-10813-5



On 5 November 2017, the International Consortium of Investigative Journalists (ICIJ) revealed they had access to data leaked primarily from international law firm Appleby, which specialises in the setting-up of offshore schemes. This leak consisting of more than 13 million documents exposes how wealthy individuals, senior politicians and multinational corporations use shell companies in order to conceal property ties, evade taxes or escape criminal prosecution. The Paradise Papers leak has essentially revealed legal schemes – or rather schemes pushing the limits of the law – designed to “optimise” the tax burden of their beneficiaries by exploiting loopholes in the law, or conceal activities that are harmful to their reputation. Thanks to money and power, a so called elite is able to enjoy huge yet undue advantages, at the expense of public treasuries and the interest of the large majority. These practices, which are often legal, but rarely legitimate, are all the more questionable when they operate to the detriment of people in poor countries, which are struggling to secure the resources they need for their development.

When asked about the possible damage that the Paradise Papers scandal would cause to Switzerland’s image, Minister for Economy Johann Schneider-Ammann replied that the reputational damage was “not specific” to Switzerland.<sup>1</sup> With more than 2,360 separate links with Swiss companies or individuals in the data obtained by the ICIJ, Switzerland is ranked 9<sup>th</sup> on the list of countries where Appleby customers are based, and 5<sup>th</sup> when excluding other offshore locations.<sup>2</sup> These positions bear no relation to the demographic or economic weight of Switzerland in the world. Above all, one sector in the Swiss economy is at the heart of the revelations made by the ICIJ: the commodities sector.

Glencore’s headquarters in Baar (Zug), Switzerland | © Mainrad Schade





Dan Gertler, Glencore's business partner who helped obtaining mining licenses in DRC at favourable prices, is paying visit to a mine in DRC. | ©Simon Dawson/Bloomberg



## SWITZERLAND'S MOST DANGEROUS BUSINESS

On 5 November, the Paradise Papers brought to light the secrets of mining giant Glencore, whose name appears 34,000 times in the data obtained by the consortium. This Zug-based multinational alone has set up 107 offshore companies.<sup>3</sup> In the Democratic Republic of the Congo (DRC), Glencore has been accused of securing mining licenses at very favourable prices by partnering with Dan Gertler, a businessman whose dodgy reputation could not have been missed by the company. These advantages were granted to Glencore by the Congolese authorities in dubious conditions, and to the detriment of the people, 80% of whom live with less than two dollars a day. From US Court documents, it is clear that Dan Gertler had paid more than USD 100 million in bribes to President Kabila and to Congolese officials at a time when Glencore was enlisting his services.<sup>4</sup>

The Paradise Papers also documented aggressive tax avoidance that the Swiss commodities flagship company had been employing in Australia,<sup>5</sup> Colombia<sup>6</sup> and Burkina Faso,<sup>7</sup> the latter being one of the poorest countries in the world. In this country, a series of complex schemes enabled Glencore to save substantial amounts in tax bills in 2016, sums which were several times higher than the annual contributions paid by Switzerland to Burkina Faso, a key beneficiary of its development aid programme.<sup>8</sup> Back in 2011, Public Eye had already denounced the use of similar practices in Zambia.<sup>9</sup> Glencore's obscure (and secretive) partnership through Swissmarine – a vessel chartering company – with Greek ship-owner Victor Restis, who is likely to have breached the US embargo on Iran, was also unveiled.<sup>10</sup>

On 7 November, French television made Louis-Dreyfus Commodities (LDC)'s dodgy business in Brazil public.<sup>11</sup> This Dutch group carries out a substantial part of its trading activities from Geneva, where it employs some 400 people. Determined to thrive in Brazil, LDC did not think twice before partnering with the world's leading soybean producer, a company owned by Brazil's controversial Minister for Agriculture Blairo Maggi. In addition to drawing heavy criticism for his role in deforestation, he is being prosecuted in his country for money laundering.

On 8 November, the Paradise Papers unveiled the dubious practices of another Geneva trader: Trafigura.<sup>12</sup> Although this case had already caught the attention of Public Eye,<sup>13</sup> we had hit a brick wall... the wall of obscurity, put up to protect offshore schemes. The new data obtained by the ICIJ has enabled us to find out more about these obscure deals.

In 2011, Trafigura entered into a partnership with General Leopoldino Fragoso, nicknamed “Dino”, who then was an adviser to President Dos Santos. Thanks to this relationship, the Geneva-based giant was able to secure an oil contract worth USD 3.3 billion. The Paradise Papers have revealed that the joint venture through which Trafigura claims to have entered into a partnership with the General, presented as a mere investor, was set up and led by Mariano Marcondes Ferraz, Trafigura's trusted associate in Angola and a member of their management board. This shows the “incestuous” relationships between the trading company and Angolan senior officials. In 2016, Ferraz was

accused of corruption in Brazil, as part of legal proceedings opened in the wake of the Petrobras scandal.

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The Swiss commodities sector is at the heart of the revelations made by the ICIJ.

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## HIGH-RISK BUSINESS PARTNERS

That the Swiss commodities sector has pride of place in the investigations led by the ICIJ comes as no surprise. The companies being looked into are keen to operate in the utmost obscurity, in particular in order to conceal their dodgy activities. They often operate in high-risk areas, characterised by weak governance, extreme poverty and rampant corruption. Their activities also involve strong interaction with the state, especially when it comes to getting mining licenses or marketing the crude of state-owned oil companies. According to the Organisation for Economic Co-operation and Development (OECD), the commodities sector presents the highest risks of corruption, even more so than other sectors of dubious reputation, such as the arms and public works industries.<sup>14</sup> This sector, which is highly internationalised, involving companies whose combined turnover is close to the overall Swiss GDP, is prone to engaging in tax avoidance practices and enlist discretionary services provided by firms such as Appleby. This is very much to the detriment of the poor in commodity-rich countries, who bear the brunt of the resource curse as they are prevented from reaping the benefits of the revenues they are entitled to.

A number of cases revealed by the ICIJ involving the Swiss commodities sector have a common denominator. They show that the major Swiss traders do not hold back when it comes to entering into business with or enlisting the services of dodgy partners, particularly politically exposed persons or those closest to them, with whom business relations present clear risks of corruption or could lead to conflicts of interest. To the cases mentioned above, we can add that of Zurich-based manager of the Angolan sovereign wealth fund Jean-Claude Bastos de Moraes. It seems that the main two reasons why the management of this fund was assigned to his companies was down to Bastos' relationship with the son of President Dos Santos and his ability to rub shoulders with powerful Swiss figures.<sup>15</sup>

## A DOSE OF TRANSPARENCY

Because of the risky nature of the commodities sector and the critical impact of its activities on people in the producing countries it should be regulated in a specific way. Yet, despite

these risks having been acknowledged as far back as 2013,<sup>16</sup> the federal authorities have never taken the slightest step to rein in the sector, all in the name of safeguarding Switzerland's economic competitiveness. The best prevention against dubious behaviour, for both of private companies and state actors, is in fact a well-known medicine: a quadruple dose of transparency, especially with regard to:

- mining contracts and any contribution to the budget of the states related to the extraction of commodities;
- payments made to state entities, in particular when purchasing commodities from national oil companies;
- the beneficial owners of companies, including those with whom companies in the commodities sector do business;
- companies duty to publish the details of their tax bills country by country.

All these transparency measures could be imposed swiftly on the Swiss commodities sector by the federal authorities.

## INTRODUCING A DUE DILIGENCE DUTY ON BUSINESS PARTNERS

The companies in the sector should also be required by law to conduct a detailed due diligence of their business relationships and document any actions taken when any such relationship appears to pose a risk. These measures should be supervised by the authorities. In this respect, there can be no place for negligence or practices involving a “not wanting to know” attitude.

In September 2014, Public Eye created a fictitious supervisory authority for commodity markets and was able to sketch for the first time, and in a precise way, what the regulation of this sector could look like.<sup>17</sup> The authority in question was named ROHMA (“Rohstoffmarktaufsicht” in German), an independent body, and its mission was to make sure that Swiss commodity trading companies complied with their due diligence duties so as to ensure that they do not market commodities acquired to the detriment of the country of origin, produced in violation of human or environmental rights and, in particular, to avoid risky business relationships without proper procedures in place.

None of these measures has been seriously considered by the federal authorities, with the exception of transparency of payments to governments. However, the present draft law is almost useless since the Federal Council exempted trading activities, which are the heart of the Swiss commodities sector.<sup>18</sup> Despite a series of successive scandals, the Federal Council continues to rely on purely voluntary measures, hoping that such companies will behave “with integrity and in a responsible manner”.<sup>19</sup>

## THE OFFSHORE SYSTEM UNDERMINES THE FIGHT AGAINST CORRUPTION

According to the federal authorities, the Swiss legal framework is in full compliance with the OECD and UN conventions

designed to combat corruption, which Switzerland has implemented via its criminal code for more than a decade. However, one can call into question to what extent these provisions are effective. When a company enters into business with a person who engages in corrupt behaviour on behalf of the former, its directors may be liable for direct or indirect corrupt practices (when giving an intermediary the order to bribe, for example), or in the context of influence peddling (when they pay a third party to influence the decision of a public official in exchange for an advantageous decision). The company itself may be prosecuted because of organisational shortcomings (it can be held responsible for failing to take all the necessary steps to prevent an offense from occurring). But the Swiss criminal code contains no provision to include “influence peddling” as a criminal offence. However, to comply with international standards, the Federal Council decided to specify that this offense was nevertheless covered by legal provisions on corruption.<sup>20</sup> These Swiss legal provisions have been almost ineffective. To date, there is no record of any convictions for influence peddling and those for poor organisation can be counted on the fingers of one hand.

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There is a clear absence of political willingness to act, which has led to no credible measures having been taken to regulate the practices of this high-risk sector. Therefore, it remains Switzerland's most dangerous business.

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Even more so than to unwillingness on the part of the criminal prosecution authorities or to the “exemplary” behaviour displayed by Swiss companies (see the cases described above), the lack of convictions is due to one simple reason: the criminal prosecution authorities are not aware of these offences because they are carried out using offshore schemes, one of the main purposes of which is to make them incredibly difficult to detect. They rely on the ability and willingness of the financial intermediaries who manage such schemes and their accounts to fully comply with their due diligence duties, which can be reasonably doubted. According to the ICIJ, Appleby, which claims to meet stringent compliance standards, was pinpointed by the Bahamas financial regulators in 2014 for failing to document the economic background of the transactions it carried out in 46 % of the cases.<sup>21</sup> This requirement is the be-all and end-all of banking compliance. Even when the criminal authorities open legal proceedings, they are faced with the mammoth task of understanding these transactions which are entangled like spaghetti in a bowl, with a myriad of shell corporations located in uncooperative jurisdictions. In a nutshell, they too hit a brick wall... the offshore wall.

## SWITZERLAND IN CAHOOTS WITH THE OFFSHORE SCHEME CULTURE

It would be easy to say that the Paradise Papers do not concern Switzerland, but rather only offshore centers. In addition to the fact that Swiss residents and companies are (also) over-represented as customers of offshore providers, Switzerland is involved in the drafting of standards and regulations governing international taxation and the fight against money laundering or those relating to the transparency of companies and their beneficial owners, as part of organisations such as the OECD. While it has a certain weight, Switzerland's position has never stood out as being favourable to a stiffening of the rules. Although it does not necessarily defend the rationale behind offshore schemes, it does nothing to call them into question either.

Following the Panama Papers scandal, in 2016, at least 150 enquiries and audits were announced in 79 countries, and more than 6,500 companies or individuals were subject to tax-related proceedings or enquiries. Yet nothing has happened in Switzerland. On the contrary, the Swiss Minister for Finance

even cracked a joke condoning tax avoidance.<sup>22</sup> When asked in 2012 about the behaviour of Swiss commodities companies, Swiss Minister for Economy Johann Schneider-Ammann said he wanted to “clean up the stable”.<sup>23</sup> But there is a clear absence of actual political willingness to act, which has led to no credible measures having been taken to regulate the practices of this high-risk sector, which therefore remains Switzerland's most dangerous business.

## NOTES

- 1 SRF Rendez-Youz, 06/11/2017
- 2 “Paradise Papers: Überblick”, *Tages Anzeiger*, 05/11/2017.
- 3 “Rooms of secrets reveals Glencore’s mysteries”, ICIJ, 06/11/2017.
- 4 “The inside story of Glencore’s hidden dealings in DRC”, *The Guardian*, 05/11/2017.
- 5 “Glencore’s Australian arm moved billions through Bermuda”, *The Guardian*, 05/11/2017.
- 6 “La maniobra con la que Glencore planeaba pagar menos impuestos en el país”, *El Mundo*, 06/11/2017.
- 7 “West African development dreams stand still while mining money moves offshore”, *Irish Times*, 05/11/17.
- 8 Stratégie de coopération suisse au Burkina Faso 2013-2016. Switzerland allocated an average of USD 10 million per year in development aid to Burkina Faso between 2013 and 2016. In 2016, Glencore reduced its tax bill in Burkina Faso by nearly USD 28 million, yet it continues to argue against the USD 1.5 million that the Burkina Faso tax authorities are still requiring it to pay.
- 9 “Circonstance spécifique visant les sociétés Glencore International AG et First Quantum Minerals Ltd pour violation des principes directeurs de l’OCDE à l’intention des entreprises multinationales en raison des activités de la Mopani Copper Mines Plc. en Zambie”, 12 April 2011.
- 10 “Paradise Papers: Glencore hid link to ghost shipping fleet during Iran scandal”, *Financial Review*, 05/11/2017.
- 11 “Paradise Papers. Au cœur d’un scandale mondial”, *Cash Investigations – France 2*, 07/11/2017.
- 12 “De verborgen relatie tussen Trafigura en Angola”, *Trouw*, 08/11/2017.
- 13 Public Eye, Les affaires angolaises de Trafigura, February 2013.
- 14 OECD (Organisation for Economic Co-operation and Development), OECD Foreign Bribery Report. An Analysis of the Crime of Bribery of Foreign Public Officials. Paris: OECD, 2014, pp. 8, 23.
- 15 “Les milliards du peuple angolais font la fortune d’un entrepreneur Suisse”, *Tribune de Genève*, 05/11/2017. The business of the businessman in question had also caught the attention of Public Eye back in 2010. See “Les relations angolaises de Walter Fust”, *RTS*, 30/06/2017.
- 16 Report of the interdepartmental platform to the Federal Council, Background Report: Commodities, 27/03/2013, p. 13.
- 17 [www.rohma.ch](http://www.rohma.ch)
- 18 Public Eye, Factsheet: Questions et réponses sur la transparence des paiements dans le secteur des matières premières, June 2017.
- 19 Report of the interdepartmental platform to the Federal Council, Background Report: Commodities, 27/03/2013, p. 2.
- 20 “Message concernant la modification du code pénal Dispositions pénales incriminant la corruption” of 30 April 2014, *FF* 2014 3433, 3444-5.
- 21 ICIJ, “Offshore Magic Circle” *Law Firm Has Record of Compliance Failures*, 05/11/17.
- 22 “Ueli Maurer verteidigt Offshore-Deals für Superreiche”, *Blick*, 8/4/2016.
- 23 “Schneider-Ammann”, *20 minutes*, 22/10/2012.

Already back in 2011, Public Eye had put its finger on it: commodity trading is in effect the most dangerous business in Switzerland. Six years on and the Paradise Papers, published by the International Consortium of Investigative Journalists (ICIJ), have now confirmed this verdict. Glencore, Louis-Dreyfus, Trafigura: Some of Switzerland's leading players in the commodities sector are globally making headlines, in connection with tax avoidance, suspicions of corruption or conflicts of interest. Some of the cases published as part of this vast media operation had already been well documented by Public Eye. The data obtained by the ICIJ, however, now let us better understand the workings of these illegitimate or even illegal schemes. Often concealed behind the smoke screens of offshore setups, these dodgy business dealings allow traders to conduct highly lucrative activities in Africa and elsewhere on the planet, to the detriment of the people in these resource-rich countries, who remain poverty-stricken. These revelations should prompt the federal authorities to regulate this high-risk sector. In this analysis, we suggest some of the measures they should take to this end and, more broadly, why Switzerland too has a duty to fight against the utter lack of transparency promoted by offshore havens.

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

Avenue Charles-Dickens 4  
CH-1006 Lausanne  
Phone +41 (0)21 620 03 03  
Fax +41 (0)21 620 03 00  
contact@publiceye.ch

Dienerstrasse 12  
Postfach | CH-8021 Zurich  
Phone +41 (0)44 2 777 999  
Fax +41 (0)44 2 777 991  
kontakt@publiceye.ch