

# THE VULNERABILITY OF SWISS HIGH VALUE DEALERS TO CASH LAUNDERING BY ORGANISED CRIME GROUPS

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**SOCnet**  
Serious & Organised  
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# **The vulnerability of Swiss high value dealers to cash laundering by organised crime groups**

Research Report prepared by Stefan Mbiyavanga

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## Summary

In Switzerland, luxury watches, artworks, jewellery and other so-called *high value goods* worth up to 100'000 Swiss Francs can be purchased in cash, without the dealer having to register the buyer's identity or the origin of the cash. By contrast, dealers of high value goods in the European Union and the United Kingdom must conduct due diligence on their counterparties whenever they accept cash payments of 10'000 Euros or more.

In times of largely unfettered cross-border flows of goods and capital, this discrepancy between Swiss regulation and the laws of most Western European countries poses the risk that international organised crime groups specifically target Swiss dealers to exchange illegal cash for high value goods.

This research paper analyses the vulnerability of Switzerland's different sectors of high value goods dealers to cash laundering by organised crime groups. The report concludes that there is a need for Swiss legislative intervention due to serious vulnerabilities to cash laundering in the examined sectors. The research findings lead to three recommendations to strengthen Switzerland's resilience against cash laundering.

## About the author

Stefan Mbiyavanga holds a PhD in law from the University of Basel. His main research areas include economic criminal law and mutual legal assistance in criminal matters.

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# I. Introduction

The SuisseSecrets data leak has brought the Swiss financial centre into international disrepute as an investment and transit hub for illegal and highly suspect funds<sup>1</sup>. Swiss banks have received plenty of criticism for their involvement in international crime schemes. Meanwhile, the vulnerability of Swiss jewellers, art gallerists and other dealers of goods of high value (hereafter: *high value dealers*) to money laundering operations has received comparatively little attention.

The Swiss government and industry representatives generally view the risk of money laundering involving cash (hereafter: *cash laundering*)<sup>2</sup> in domestic sales of artworks, jewellery and other high value goods as low to moderate<sup>3</sup>. In contrast, the United Kingdom, Germany and many other countries suspect medium or even high domestic cash laundering risks in their high value goods sectors<sup>4</sup>. Therefore, high value dealers in the European Union and the United Kingdom must conduct procedures aimed at detecting, preventing, and reporting money laundering when making or receiving cash payments in an amount of EUR 10'000 or more<sup>5</sup>.

Due to international pressure, Switzerland began to subject its high value dealers to due diligence obligations in 2016. However, these obligations only come into effect for cash payments of at least 100'000 Swiss Francs (hereafter: *CHF*)<sup>6</sup> – a threshold almost ten times higher than those of the European Union and the United Kingdom<sup>7</sup>.

In times of largely unfettered cross-border flows of goods and capital, the discrepancy between Swiss regulation and that of the majority of Western European countries poses the risk that international organised crime groups are explicitly targeting Swiss dealers to exchange illegal cash for high value goods<sup>8</sup>. This report analyses the vulnerability of Swiss high value dealers to cash laundering by organised crime groups.

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<sup>1</sup> See: OCCRP, 20.02.2022, SuisseSecrets, available under: <https://www.occrp.org/en/suisse-secrets/> (retrieved 28.02.2022); OCCRP, 20.02.2022, Credit Suisse Opened Accounts for Serbian Drug Lord Known as "Misha Banana"; The Guardian, 20.02.2022, Credit Suisse leak unmasks criminals, fraudsters and corrupt politicians.

<sup>2</sup> Dealers in high value goods, also referred to as high value dealers (HVD), can operate in any business sector involving goods, see: HM Treasury/Home Office 2020, 139.

<sup>3</sup> CGMF 2021, 28 et seq.; see also below p. 15.

<sup>4</sup> HM Treasury 2020, 139 et seq.; Deutscher Bundestag, 03.09.2019, Drucksache 19/12969, Antwort der Bundesregierung auf die kleine Anfrage der Abgeordneten Frank Schäffler, Christian Dürr, Dr. Florian Toncar, weiterer Abgeordneter und der Fraktion der FDB, available under: <https://dserver.bundestag.de/btd/19/129/1912969.pdf> (retrieved: 12.03.2022).

<sup>5</sup> Art. 2 para. 1(3)(e) Directive (EU) 2015/849; As of February 2022, 93% of EU member states have fully transposed the Directive, see: [https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status\\_en](https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status_en) (retrieved 23.02.2022).

<sup>6</sup> At the time of writing, 1 Swiss Franc (CHF) corresponds to 1.02 EUR or 0.82 GBP.

<sup>7</sup> See Art. 8a of the Swiss Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997, SR 955.0, available under: [https://www.fedlex.admin.ch/eli/cc/1998/892\\_892\\_892/en](https://www.fedlex.admin.ch/eli/cc/1998/892_892_892/en) (retrieved 29.01.2022).

<sup>8</sup> One of the issues identified in the European Commissions 2017 supra-national risk assessment (SRNA) is that differences in legislation provide opportunities to circumvent cash laundering controls in EU member states via countries with no or lower control on cash expenditures, see: European Commission, 26.06.2017, Report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross border activities, available under: <https://ec.europa.eu/newsroom/just/items/81272> (retrieved 12.03.2022); see also: ECORYS/Centre for European Policy



## II. Objective and structure

This paper aims to understand the exposure and vulnerability of Switzerland's high value dealers to money laundering operations involving cash from organised crime groups. The following remarks further define the aim of the research.

Firstly, the term "cash laundering" needs to be clarified. For the purposes of this paper, cash laundering is understood as money laundering committed with cash. Money laundering is the concealment of the origin of illegally obtained assets, typically through transfers involving foreign banks or legitimate businesses<sup>9</sup>. However, according to Europol, disposing of cash proceeds of criminal activities through the purchase of high value goods is also a popular money laundering method<sup>10</sup>.

Secondly, the present research focuses on the exposure and vulnerability of high value dealers to cash laundering in Switzerland. Furthermore, it concentrates on bona fide dealers who are willed to prevent money laundering by conducting business legally. Dealers who are part of or affiliated with organised crime groups are not studied.

Thirdly, for this paper, the term "organised crime" refers to all types of criminal activity pursued by groups, including criminal associations and gangs.

Fourthly, the present research focuses on cash laundering schemes with an international dimension. According to the Global Organised Crime Index, foreign actors dominate the Swiss criminal markets<sup>11</sup>. There are only a few known domestic criminal networks, apart from those sub-contracted by foreign organisations<sup>12</sup>.

Fifthly, money laundering may occur in two forms in the high value goods trade. Firstly, high value goods that were unlawfully acquired, for example through theft or bribery, may be laundered of their illegal origin. Secondly, high value goods may be used to launder illegally obtained assets. The present research is only concerned with the second form. The reason is that counterparty due diligence obligations triggered by large cash payments are not generally intended to detect and prevent the first form.

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Studies, 15.12.2017, Study on an EU initiative for a restriction on payments in Cash, Client: European Commission, 60, available under: [https://ec.europa.eu/info/sites/default/files/economy-finance/final\\_report\\_study\\_on\\_an\\_eu\\_initiative\\_ecorys\\_180206.pdf](https://ec.europa.eu/info/sites/default/files/economy-finance/final_report_study_on_an_eu_initiative_ecorys_180206.pdf) (retrieved 12.02.2022).

<sup>9</sup> Money laundering is generally understood as the concealment of the origins of illegally obtained assets, typically through transfers involving foreign banks or legitimate businesses. In Switzerland, money laundering is a crime according to Art. 305<sup>bis</sup> Swiss Criminal Code (SR 311.0). The article defines it as the frustration of the identification of the origin, the tracing or the forfeiture of assets that originate from a felony or an aggravated tax misdemeanour.

<sup>10</sup> Europol 2015, 36; Scully 2021, 306; CGMF 2018, 4; The Times, 18.03.2021, How to prevent Monet laundering; High value goods have in common that they offer criminals an easy way to convert criminal cash into another, less suspicious class of asset. Furthermore, high value goods are usually unregistered with any official body, and they may even hold opportunities for capital growth. These qualities offer criminals the opportunity to misuse high value goods as alternative currencies or investments for illicit cash proceeds. As far as the drug trade is concerned, methods to launder proceeds remain predominantly cash-based, despite more modern methods of transferring money, see US Drug Enforcement Administration 2021, 11.

<sup>11</sup> Global Organised Crime Index, Profile of Switzerland 2021, available under: [https://ocindex.net/assets/downloads/english/ocindex\\_profile\\_switzerland.pdf](https://ocindex.net/assets/downloads/english/ocindex_profile_switzerland.pdf) (retrieved 01.03.2022).

<sup>12</sup> Ibid.



Sixthly, the present study focuses on cash transactions up to CHF 100'000. For higher amounts, similar due diligence obligations apply to high-value dealers in Switzerland and its neighbouring countries. Accordingly, there is less incentive for organised crime groups to choose a high value dealer in Switzerland for individual cash purchases of CHF 100'000 or more.

Lastly, different currencies will be mentioned in the study. At the time of writing, 1 CHF corresponds to 1.02 EUR or 0.82 GBP.

The text consists of six main sections.

- **Section III** compiles data on the inflow of cash by organised crime groups into Switzerland. It also assesses the effectiveness of the measures put in place by Swiss authorities to deter this inflow. Thereby, Section III provides an abstract impression of high value dealers' exposure to cash from organised crime groups in Switzerland.
- **Section IV** examines the counterparty due diligence obligations of high value dealers according to Swiss law.
- **Section V** examines the general vulnerability to cash laundering of three sectors of high-value dealers in Switzerland namely art, watches and jewellery as well as gold and gemstone dealers.
- **Section VI** summarises the vulnerability of Swiss high value dealers to cash laundering operations by organised crime groups.
- **Section VII** discusses ongoing regulatory developments in the European Union and reflects on how they might affect Swiss high value dealers.
- **Section VIII** concludes the paper by recommending actions to be taken by the Swiss regulator.

### III. How much cash from organised crime groups exists in Switzerland?

Europol notes that Switzerland is the most significant country in Europe regarding inbound cash movements<sup>13</sup>. What percentage of this inflow is tied to organised crime is at present unknown. Nonetheless, Section III examines two predominant methods organised crime groups use to amass cash in Switzerland. Then, the possibilities of organised crime to move cash into Switzerland are compared with Switzerland's countermeasures to detect and prevent this influx. Based on this comparison, a basic understanding of the general exposure of high value dealers in Switzerland to cash laundering by organised crime groups is developed.

The findings of this section are mainly based on open-access information published by Swiss customs, judicial and law enforcement authorities, as well as international organisations and

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<sup>13</sup> Europol 2015, 23.

media outlets. However, the author in no way intends to suggest that the conclusions drawn from the gathered data are exhaustive.

According to available data, foreign cash holdings of organised crime groups may end up in Switzerland in one of the following two ways<sup>14</sup>:

- Cross-border cash smuggling operations<sup>15</sup> or
- electronic transfers followed by cash withdrawals at a Swiss bank or another financial intermediary.

The two methods are reviewed separately below. Furthermore, the effectiveness of the main countermeasures put in place by Switzerland is outlined and discussed.

## **1. The inflow of suspect cash in road and air traffic into Switzerland**

This section analyses the inflow of suspect cash in road and air traffic into Switzerland. In preparing this section, the Swiss Federal Office for Customs and Border Security (FOCBS) provided data to the author on the amount of suspect cash seized during controls at Swiss border posts and airports<sup>16</sup>. The analysed data contains information such as the origin of the cash carriers and the total amount seized.

- Customs data shows that agents reported 237 infractions in 2021. Assuming that this translated to roughly 237 cash seizures<sup>17</sup>, the total number of seizures of cash by Swiss customs appears to have been consistent over the last few years (231 cash seizures in 2019, 247 cash seizures in 2020)<sup>18</sup>.
- The 237 reported infractions in 2021 concerned EUR 5'762'769 and CHF 1'272'848. Only one infraction relating to a third currency was registered in 2021, for 14'000 Albanian Lek (ca. EUR 115).

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<sup>14</sup> As was mentioned on page 2 et seq., the present research only analyses cross-border cash laundering schemes.

<sup>15</sup> See also Gerschwiler 2021, 31 et seqq.

<sup>16</sup> According to Art. 36 and Art. 102 of the Federal Customs Act, SR 631.0, Swiss customs agents may randomly carry out checks and physical searches. They generally rely on the Red Flags/Indicators set out by the FATF ("19.02.2010, Detecting and preventing the illicit cross-border transportation of cash and bearer negotiable instruments") to carry out their duties in investigating suspected cases of money laundering or terrorist financing; see CGMF 2018, 36. Where detected cash is likely to be confiscated or used as evidence in criminal proceedings, it may be provisionally seized by customs agents, see Art. 104 Federal Customs Act.

<sup>17</sup> The number of individual seizures is not directly evident from the data: It appears that customs agents register cash seizures under the more generic terms "infractions" and "events" without providing further detail. The unprecise terminology complicates the analysis of the data considerably. However, a comparison with the public reporting of the FOCBS from previous years suggests that the number of infractions roughly equals the number of cash seizures.

<sup>18</sup> Federal Customs Administration 2021, 6.

In 2021, agents reported the geographical origin of the suspect cash in 195 instances, as is depicted in Figure 1:

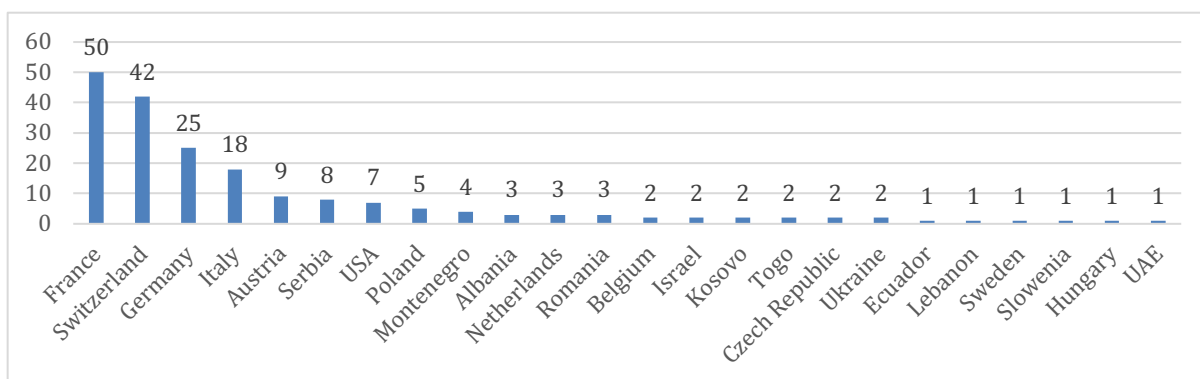


Figure 1: Origin of cash registered in the database "RUMACA" in 2021 by infractions (source: RUMACA)

Figure 1 shows that the detected cash most frequently originates from Switzerland's neighbouring countries (France, Germany, Italy and Austria).

Except for the United States, the second most frequently mentioned countries are in Eastern Europe and the Western Balkans (Serbia, Poland, Montenegro and Albania). This distribution seems to fit Swiss Federal Police reports suspecting that criminal groups from South-East Europe, especially from Kosovo, Macedonia, Albania and Serbia, have well-established money laundering operations in Switzerland<sup>19</sup>. Beyond such general inferences, however, the available data on the origin of the seized cash is too scarce to draw more concrete conclusions<sup>20</sup>.

## 2. The effectiveness of measures to detect illegal cash inflows into Switzerland

This section outlines and discusses the effectiveness of Switzerland's measures to detect the inflow of illegal cash.

The data presented in the previous subsection indicates that, on average, Swiss customs agents seized around EUR 30'000 per find in 2021. Nonetheless, the total number of detected infractions and seizures per year, along with the amounts seized, is less than one would expect, considering Switzerland's role as the largest importer of cash in Europe<sup>21</sup>.

Regulatory and law enforcement experts believe that most cases of organised crime groups laundering cash in Switzerland go unreported<sup>22</sup>. Furthermore, in its 2016 evaluation of

<sup>19</sup> Fedpol 2015, 15. The range of predicate offences ranges from smuggling narcotics, people and weapons to theft, illegal gambling and the forgery of documents.

<sup>20</sup> The reliability of any conclusions drawn from the above is further diminished by the fact that the activities of larger criminal organisations are typically not limited to a single country but may span the European continent or even extend beyond it.

<sup>21</sup> See above Footnote 13.

<sup>22</sup> In preparing the present report, the author spoke to (former) officials of the Swiss Financial Intelligence Unit, the Swiss Federal Prosecutor's Office and the Swiss Federal Office for Customs and Border Security; see also Gerschweiler 2021, 29.

Switzerland, the Financial Action Task Force (hereafter: *FATF*) found "a significant risk related to cash couriers"<sup>23</sup>.

Various factors suggest that far more criminal cash is smuggled into Switzerland than what is detected by the authorities. Firstly, unlike the European Union, which requires any imports of cash or valuables exceeding EUR 10'000 to be declared, Switzerland does not impose a cash declaration duty<sup>24</sup>. Furthermore, there is no restriction in Switzerland on the amount of cash that can be imported or transited through the country. Whilst customs agents can ask a person carrying cash equivalent of CHF 10'000 or more to declare these funds and provide information on their origin and intended use,<sup>25</sup> such searches are rarely carried out in relation to the estimated 2.2 million people who cross the Swiss border on an average day<sup>26</sup>. Even where cash is declared or discovered, it may be difficult for the customs agent to establish reasonable suspicion of an illegal origin, which is required to justify a provisional seizure<sup>27</sup>.

The small number of cash seizures at the Swiss-Italian border illustrates the potentially large discrepancy between the customs statistics and the actual threat level. Whereas in 2021, Swiss customs only registered 56 infractions at the southern border, Italy's central bank reported a significant concentration of the issuance of high denomination banknotes in Italian provinces closely bordering Switzerland<sup>28</sup>. These reports point to a much more widespread problem of cash smuggling in the region. Furthermore, in a court case involving a now-convicted Swiss diamond dealer with links to the Italian crime organisation *Camorra*, the Swiss judge was astounded upon learning about the extensive cash circulation in the city of Lugano, Switzerland's third-largest financial centre, located minutes from the Swiss-Italian border<sup>29</sup>.

Controls on cross-border cash transportation have been further weakened by a lack of feedback and coordination between Swiss Customs, Swiss law enforcement authorities and the Swiss Financial Intelligence Unit (FIU)<sup>30</sup>. The customs office is not informed if any of its provisional seizures later result in confiscations or convictions. Customs officers also do not report the grounds for the provisional seizure. These imprecise reporting practices impede progress in identifying risk areas and red flags.

Furthermore, organised crime groups have developed sophisticated ways of bringing cash into Switzerland undetected. Customs data shows that smugglers sometimes create secret

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<sup>23</sup> FATF 2016, 219.

<sup>24</sup> Federal Office for Customs and Border Security of Switzerland (undated), Cash, foreign currencies, securities, available under: <https://www.bazg.admin.ch/bazg/en/home/information-individuals/bans--restrictions-and-authorisations/cash--foreign-currencies--securities.html> (retrieved 19.02.2022).

<sup>25</sup> Art. 3 Ordinance on the Control of Cross-Border Cash Transfers of 11.02.2009, SR 631.052. The failure to make this declaration can result in fines.

<sup>26</sup> CGMF 2021, 31; CGMF 2015, 111; Gerschwiler 2021, 29; As is common in the Schengen area, many border crossings are not permanently staffed

<sup>27</sup> CGMF 2021, 31; CGMF 2018, 31. For instance, it is difficult for customs agents to identify stolen cash if the notes have not been security-stamped

<sup>28</sup> Europol 2015, 20.

<sup>29</sup> Gothen City, 02.06.2021, Un diamantaire tessinois condamné au TPF.

<sup>30</sup> FATF 2016, 43, 217; Gerschwiler 2021, with further references.

cavities inside their vehicles to hide funds<sup>31</sup>. These secret money stashes only have to be fitted for an A4 envelope, which can hold half a million Swiss francs in 1'000-franc notes.<sup>32</sup>

### Case examples

A Bulgaria-based crime group active in the cocaine trade smuggled suitcases full of cash in the car of a now-convicted Swiss resident who travelled regularly from Spain to Switzerland<sup>33</sup>. The group allegedly laundered some CHF 146 million in Swiss banks<sup>34</sup>.

A drug trafficking network, headquartered in the Balkans, created a fake private plane chartering company to facilitate drug smuggling. One of this organisation's leaders was arrested near Basel Airport in Switzerland, with a fresh shipment of 600kg of 90% pure cocaine<sup>35</sup>. It must be assumed that similarly elaborate schemes are also applied to cash smuggling.

As an interim conclusion, it can be held that road transport, and probably also air transport, enable a largely uncontrolled inflow of illegal cash into Switzerland. Theoretically, these funds can be used by organised crime groups to buy high value goods from bona fide dealers. The extent to which Swiss high value dealers' countermeasures can prevent such cash laundering schemes will be examined in Section IV and Section V. First, a second method by which organised crime groups can amass cash in Switzerland is discussed to further complete the risk panorama.

## 3. Withdrawals of illicit cash by organised crime groups in Swiss banks

In addition to smuggled cash, high value dealers in Switzerland may also be exposed to organised crime groups' illicit cash, previously withdrawn from Swiss bank accounts<sup>36</sup>. Swiss bank accounts are indeed held by members of organised crime groups as documented here:

- The SuisseSecrets reporting has made public the existence of several Swiss accounts of people with apparent links to organised crime groups<sup>37</sup>.
- The Office of the Attorney General of Switzerland (OAG) regularly confiscates assets in Swiss bank accounts held by the Italian Mafia<sup>38</sup>.

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<sup>31</sup> Concrete examples are given in CGMF 2015, 111. In addition, there is a long line of decisions by Swiss criminal courts on cases in which cash was smuggled in innovative hiding places in or around the car. See, for example Swiss Federal Court, Decision 6B\_91/2011 of 26. April 2011; see also Scholl 2018, 521 et seq. with numerous further references.

<sup>32</sup> Public Eye 2021, 11.

<sup>33</sup> Gotham City, 13.01.2021, Un entrepreneur valaisan transportait l'argent du "roi de la coke".

<sup>34</sup> Gotham City, 02.02.2021, Credit Suisse aurait blanchi 146 millions pour la mafia bulgare.

<sup>35</sup> Europol, Media & Press, 25.07.2019, Balkan cartel trafficking cocaine around the globe in private planes busted; EU-OCS, 13.11.2019, Identity of Balkan "cocaine king" behind vast international trafficking gang revealed in Swiss courts.

<sup>36</sup> Cash withdrawals are not considered cash transactions ("Kassageschäfte") under GWV-Finma if they occur within the framework of a permanent business relationship, see Art. 2 lit. b AMLO-FINMA, SR 955.033.0.

<sup>37</sup> See: OCCRP, 20.02.2022, SuisseSecrets, available under: <https://www.occrp.org/en/suisse-secrets/> (retrieved 28.02.2022); cf. also: Federal Criminal Court, Decision RR.2019-211 of 7 November 2019.

<sup>38</sup> Fedpol 2015, 13; See for example the confiscation of CHF 1.6 million in cash in connection with an investigation against the Italian Mafia by the Office of the Attorney General of Switzerland, as reported in: Gotham City, 29.07.2020, En Suisse, les

- A criminal organisation from Bulgaria has deposited millions of Euros in cash proceeds from the cocaine trade into accounts opened in several of the largest Swiss banks<sup>39</sup>.
- Law enforcement agencies in Switzerland and other countries are identifying increasing numbers of so-called "money mules", who, often unknowingly, take part in money laundering activities by receiving and transferring illegal funds to bank accounts controlled by organised crime groups<sup>40</sup>.
- Smaller money laundering operations may even be able to circumvent regulated financial intermediaries entirely. Note should be taken of the anonymous exchange of virtual currencies for cash through decentralised online platforms lacking due oversight and of so-called Hawala-banking networks<sup>41</sup>

It is conceivable that criminal funds held in such Swiss bank accounts are withdrawn and then used, for example, to purchase high value goods from Swiss dealers.

### Case examples

In the frequently cited Postfinance-case, a criminal was able to withdraw CHF 4.6 million in fraudulent earnings from his account at a Swiss bank counter in one go<sup>42</sup>.

Members of an Italian crime organisation received EUR 1.5 million in a Swiss bank account. Under false pretences and after various attempts, they made three cash withdrawals of CHF 150'000, CHF 650'000 and CHF 1 million<sup>43</sup>.

The Italian crime organisation *Camorra* sent a total of CHF 139'000, in numerous transactions of CHF 5'000, or less to an employee of a Swiss fiduciary company. The money was then withdrawn in cash<sup>44</sup>.

## 4. Interim conclusion

Section III illustrated various ways by which organised crime groups can accumulate cash in Switzerland. However, the ultimate use of these cash funds is impossible to uncover in the present research's context. Nevertheless, it can be concluded that high value dealers in Switzerland are at risk of being exposed to cash laundering by organised crime groups.

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blanchisseurs de la Camorra n'écopent que du sursis; Gotham City, 31.10.2019, Le MPC confisque 200'000 euros à un chef de la 'Ndrangheta.

<sup>39</sup> Gotham City, 20.01.2021, Deux soeurs blanchissaient des millions en Suisse pour le clan Banev.

<sup>40</sup> Europol, Media & Press, 4.12.2019, 228 arrests and over 3800 money mules identified in global action against money laundering; see also: Gotham City, 14.09.2018, Une fiduciaire tessinoise lavait les fonds de la Camorra: jugé à Bellinzone.

<sup>41</sup> For an example of a Hawala-banking network in Switzerland, see Federal Criminal Court, Decision BE.2020.19 of 10. Mai 2021.

<sup>42</sup> The motive for the withdrawal given to the bank staff was the purchase of a precious stone, see Swiss Federal Court, Decision N°142 IV 333 of 11.10.2016, Facts A.

<sup>43</sup> Swiss Federal Court, Decision 6S.22/2003 of 8. September 2003.

<sup>44</sup> Gotham City, 14.09.2018, Une fiduciaire tessinoise lavait les fonds de la Camorra: jugée à Bellinzone.

## IV. Statutory due diligence obligations of Swiss high value dealers

In Sections IV and V, the report will now turn to the question of the likelihood of bona fide high value dealers in Switzerland becoming caught up in cash laundering schemes. As an introduction, Section IV will outline Swiss high value dealers' due diligence duties to prevent money laundering as set out by Swiss law.

Money laundering is a punishable offence in Switzerland<sup>45</sup>. Parallel to criminal law provisions, the Swiss legislator enacted administrative laws containing measures and obligations to prevent money laundering. These laws oblige financial intermediaries to identify customers and business partners and conduct enhanced due diligence for risky transactions, such as identifying the beneficial owner. The primary basis of these duties is enshrined in the Swiss Anti-Money Laundering Act (AMLA)<sup>46</sup>.

The scope of application of AMLA is determined by its second article. Primarily, AMLA applies to financial intermediaries. However, according to Art. 2 para. 1(b) AMLA, the Act also applies to "natural persons and legal entities that deal in goods commercially and in doing so accept cash (dealers)"<sup>47</sup>.

Nevertheless, not all of dealers' business activities fall within the scope of application of AMLA. Art. 8a AMLA obliges dealers to carry out counterparty due diligence only if they accept more than CHF 100'000 in cash in the context of a commercial transaction. If dealers wish to conduct cash transactions totalling more than CHF 100'000, they must either involve a financial intermediary<sup>48</sup> or comply with due diligence obligations like those of financial intermediaries:

- Identify the contracting party and determining the beneficial owner<sup>49</sup>;
- Establish and retain documentation relating to the transaction<sup>50</sup>;
- Clarify the background and purpose of a transaction if it appears unusual or if there are indications that assets originate from crime, qualified tax offences or are controlled by a criminal organisation<sup>51</sup>; and

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<sup>45</sup> Art. 305<sup>bis</sup> Swiss Criminal Code of 21 December 1937, SR 311.0.

<sup>46</sup> Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997, SR 955.0, available under: [https://www.fedlex.admin.ch/eli/cc/1998/892\\_892\\_892/en](https://www.fedlex.admin.ch/eli/cc/1998/892_892_892/en) (retrieved 29.01.2022).

<sup>47</sup> Persons who trade commercially in goods on behalf of and for the account of third parties and accept cash in the process are also considered dealers, see: Art. 13 Federal Ordinance on Combating Money Laundering and Terrorist Financing of 11. November 2015, SR 955.01 (AMLO). Dealing is deemed *commercial* if it constitutes an independent economic activity aimed at permanent acquisition, Art. 14 AMLO. If dealers use a third party to settle the transaction and thereby accept the purchase price in cash, they must ensure that the due diligence and reporting obligations stipulated in AMLA are complied with; see Art. 16 AMLO.

<sup>48</sup> Art. 8a para. 4 AMLA.

<sup>49</sup> Art. 8a para. 1 AMLA.

<sup>50</sup> Art. 8a para. 1 AMLA; cf. Art. 17 and 18 AMLO.

<sup>51</sup> Art. 8a para. 2 AMLA.

- Immediately report suspicions that cash originates from a criminal organisation or is the subject of attempted money laundering to the Swiss FIU<sup>52</sup>.

Any dealer that wilfully violates the duty to report suspicions is liable for a fine of up to CHF 500'000<sup>53</sup>. If the dealer fails to report due to negligence, a fine of up to CHF 150'000 may be imposed<sup>54</sup>.

Dealers who must fulfil the duty of due diligence under Article 8a AMLA need to appoint an audit firm. The audit firm's mandate is to verify that the high value dealer is complying with all applicable AMLA requirements<sup>55</sup>. Any dealer that wilfully violates its Article 15 duty, to appoint an audit firm, is liable to a fine not exceeding CHF 100'000<sup>56</sup>.

## V. Sector-specific assessments of the vulnerability of Swiss high value dealers

This section will explore three high value goods industries in Switzerland. It assesses their respective vulnerability to cash laundering operations by organised crime groups. The following industries were chosen for this in-depth analysis<sup>57</sup>:

- Art dealers
- Jewellery and watch dealers
- Precious materials dealers

The objective of Section V is to rate the **vulnerability** to cash laundering for each of these three industries. The vulnerability rating compares the industry-specific cash laundering risk with the countermeasures to prevent it.

The term **cash laundering risk** is understood as the probability that attempts to launder cash materialise in the respective high value goods industry<sup>58</sup>. The present research focusses on cash laundering risks related to organised crime groups.

The analysis of the cash laundering risk in the industry under review considers three factors. Firstly, the country-specific exposure of Switzerland and its legislative framework as discussed in Sections III and IV are contemplated. Second is the industry-specific differences between Swiss legislation and the laws of other jurisdictions. Lastly, the cash laundering risk analysis compares additional industry-specific features related to the high value good itself.

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<sup>52</sup> Art. 9 para. 1<sup>bis</sup> AMLA.

<sup>53</sup> Art. 37 para. 1 AMLA.

<sup>54</sup> Art. 37 para. 2 AMLA.

<sup>55</sup> Art. 15 AMLA.

<sup>56</sup> Art. 38 para. 1 AMLA.

<sup>57</sup> Several other sectors, such as real estate, also appear frequently in publications on cash laundering in Switzerland. Real estate dealers are, however, not included in the analysis. This is because transactions for acquiring real estate in Switzerland typically surpass the here-relevant threshold of CHF 100'000. See for instance: Gotham City, 09.02.2022, Fonds de la 'Ndrangheta: un fiduciaire tessinois sauvé par le Tribunal fédéral.

<sup>58</sup> Cf. CGMF 2015, 12 et seq.



Upon determining an industry's general cash laundering risk, the analysis looks at practices and instruments the industry has developed to mitigate this risk. The industry can be assigned a **low or medium vulnerability** if the countermeasures can efficiently mitigate the cash laundering risks. An **elevated vulnerability** must generally be assumed if no efficient countermeasures are available to counter the sector-specific cash laundering risks. **High vulnerability** pertains to cases with inefficient countermeasures and industry-specific cash laundering risks.

This vulnerability analysis seeks to uncover overall tendencies in the industry under review and provide general recommendations based on conclusions. However, the conclusions are general and do not make inferences about individual high value dealers.

## 1. Art dealers

Swiss art dealers are the first industry under review. To begin, the general cash laundering risk in the art sector is assessed, followed by an analysis of the countermeasures. The risks and countermeasures are then compared, and the general vulnerability of the Swiss art trade to cash laundering by organised crime groups is established.

### a) Industry-specific cash laundering risks

A market review, prepared by Art Basel and UBS, valued global art sales at an estimated USD 50 billion in 2020<sup>59</sup>. This number is down from approximately USD 67 billion worldwide just a few years earlier<sup>60</sup>. Switzerland hosts one of the four to five most important art markets in the world<sup>61</sup>. In total, there are around 1200 art galleries and 15 auction houses in Switzerland, as well as 500 antique dealers<sup>62</sup>.

The art market regularly appears in the news for its spectacular sales of artworks worth millions. However, less than 20% of works sold internationally by art dealers have values over USD 50'000. Only 10% of 2020 international sales by auction houses had values over USD 50'000, despite those sales accounting for over 85% of the total sales value<sup>63</sup>.

The United Nations Office on Drugs and Crime estimates that every year USD 3 billion of the global art market could be linked to money laundering or other financial crimes<sup>64</sup>. According to several experts and insiders, the art trade has long been marked by a culture of discretion and lack of transparency, making it intrinsically attractive to money launderers<sup>65</sup>.

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<sup>59</sup> US Treasury 2022, 1, citing Art Basel/UBS 2021.

<sup>60</sup> Ibid.

<sup>61</sup> CGMF 2015, 115; The city of Basel plays the most publicised role in the Swiss art market due to the contemporary art fair Art Basel, which takes place each June. Apart from Art Basel, the cities of Geneva and Zurich also host art hubs of international format, see Deloitte 2021a, 77.

<sup>62</sup> Ibid.

<sup>63</sup> US Treasury 2022, 3, citing Art Basel/UBS 2021.

<sup>64</sup> See Mashberg 2019, 32; Deloitte 2021, 280; The Times, 18.03.2021, How to prevent Monet laundering; Scully 2021, 306.

<sup>65</sup> Swissinfo.ch, 01.06.2015, Art: the new frontier in the fight against money laundering, citing Swiss law professor Monika Roth; see also the quotes in New York Times, 19.02.2017, Has the Art Market Become an Unwitting Partner in Crime?, where a Swiss expert is cited as follows: "The art market is an ideal playing ground for money laundering." Similar

In 2014 the Swiss Federal Police highlighted money laundering in the art trade as a growing trend<sup>66</sup>. The difficulty in assessing the objective value of individual pieces of art attracts money launderers to this trade. In many cases, it is even hard to identify artworks properly<sup>67</sup>. Furthermore, significant sums are involved, with payment in cash being common for art sales<sup>68</sup>.

### **b) Countermeasures to prevent cash laundering**

The discussion of cash laundering countermeasures in the art sector begins with an overview of self-regulation initiatives. There are several initiatives to take note of.

In 2018, the Basel Institute on Governance, a Swiss foundation working to strengthen governance around the world, issued the latest version of the "Basel Art Trade Guidelines"<sup>69</sup>. The Guidelines aim to support the art market's efficient and fair functioning. Regarding cash payments, the Guidelines suggest that "[w]here they take place and if they exceed EUR 15 000 (or the equivalent in any other currency), the art market operator should conduct enhanced due diligence on the buyer". Thus far, however, the Guidelines have remained a working paper because of a lack of support from the industry. One of the reasons could be that the existing legislation and internal anti-money laundering and terrorist financing were considered sufficient by the industry<sup>70</sup>.

The second example of a self-regulatory initiative in the art industry is the Responsible Art Market Initiative, formed in Geneva in 2015. The initiative published Guidelines and an "Art Transaction Due Diligence Toolkit" to help dealers prevent money laundering<sup>71</sup>. On the issue of cash payments, the Toolkit states: "Where Art Businesses accept cash, they should keep the amounts small."<sup>72</sup> However, the Toolkit does not specify a threshold amount for conducting due diligence.

### **c) Assessment of the general vulnerability of Swiss art dealers to cash laundering schemes by organised crime groups**

In this section, the cash laundering risks and countermeasures of Swiss art dealers are compared to determine the industry's vulnerability.

The Swiss art industry does not appear to have developed self-regulatory standards or other countermeasures that promote stricter conditions to prevent money laundering than what is prescribed in Art. 8a AMLA. This is not to say that individual art market stakeholders have not developed internal guidelines and compliance programmes to ensure lawful and ethical

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statements are made for the art markets in other leading countries, see: New York Times, 19.06.2021, As Money Launderers Buy Dalis, U.S. Looks at Lifting the Veil on Art Sales, see also: New York Times, 19.02.2017, Has the Art Market Become an Unwitting Partner in Crime?

<sup>66</sup> Fedpol 2015, 44.

<sup>67</sup> Cf. Basel Institute on Governance 2018a.

<sup>68</sup> CGMF 2015, 115; Steiner 2017, 363.

<sup>69</sup> Basel Institute on Governance 2018a.

<sup>70</sup> Giroud/Lechtman 2015.

<sup>71</sup> Available under: <http://responsibleartmarket.org/guidelines/art-transaction-due-diligence-toolkit/> (retrieved 23.02.2022).

<sup>72</sup> Guidelines on combatting Money Laundering and Terrorist Financing, Guideline 5 – Know the background and purpose of transaction – Check for transaction red flags; Art Transaction Due Diligence Toolkit, 3.3 (Source of funds).

business practices<sup>73</sup>. However, these are not uniformly applied and vary from one entity to another<sup>74</sup>. Most importantly, there seems to be no external overview or control mechanism to assess adherence to the self-imposed rules to detect cash laundering<sup>75</sup>.

The lack of broad-ranging and comprehensive self-regulation to prevent cash laundering increases the vulnerability of the Swiss art industry. There is a risk for an illegal cash pull effect as other leading art trading hubs have introduced much stricter due diligence obligations for art dealers. Most importantly, the European Union's 5th Anti-Money Laundering Directive of 2018 (5AMLD) contains specific due diligence obligations for art dealers. EU member states were given until January 2020 to expand coverage of anti-money laundering laws to persons trading in art or acting as intermediaries in the trade of art<sup>76</sup>. Art dealers are bound by counterparty due diligence obligations if the value of a transaction or a group of linked transactions equals EUR 10'000 or more<sup>77</sup>. This also applies to non-cash transactions.

Looking beyond the EU, the UK has also implemented provisions similar to 5AMLD<sup>78</sup>. Furthermore, the United States has extended the 1970 Bank Secrecy Act to persons engaged in the antiquities trade<sup>79</sup>. US antique dealers are now subjected to due diligence obligations to prevent money laundering<sup>80</sup>.

Switzerland's threshold for dealers' due diligence obligations is around ten times higher than the other leading art hubs. Furthermore, it is gradually becoming one of the only of these jurisdictions to impose money laundering obligations exclusively on cash transactions. This regulation imbalance further adds to the already elevated general risk exposure of Swiss high value dealers described in Section III.

However, it seems the Swiss government has yet to recognize the vulnerability of the Swiss art trade to money laundering operations.

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<sup>73</sup> According to swissinfo.ch (01.06.2015, Art: the new frontier in the fight against money laundering), the large international auction houses with operations in Switzerland insist that they apply the necessary controls. However, the journalists found that the auction houses "are reluctant to elaborate."

<sup>74</sup> Giroud/Lechtman 2015.

<sup>75</sup> However, investigators of the US Senate found that large auction houses and private sellers had not identified sanctioned Russian oligarchs who were buying art worth tens of millions of US Dollars between 2011 and 2019. In addition, the investigative report finds that voluntary AML policies were easily circumvented. Due diligence was only done on the buyer but not the beneficial owners; see New York Times, 29.06.2020, Senate Report: Opaque Art Market Helped Oligarchs Evade Sanctions. A US Senator added: "While the auction houses claimed to have robust anti-money laundering programs, we found that the actual employees who facilitated the transactions never asked who the art intermediary was buying the painting for or where the money was coming from.", see: New York Times, 19.06.2021, As Money Launderers Buy Dalís, U.S. Looks at Lifting the Veil on Art Sales.

<sup>76</sup> See Art. 2 para. 1(3)(e) Directive (EU) 2015/849; As of February 2022, 93% of EU member states have fully transposed the Directive, see: [https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status\\_en](https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status_en) (retrieved 23.02.2022); cf. also US Treasury 2022, 6.

<sup>77</sup> Ibid.

<sup>78</sup> HM Treasury/Home Office 2020, 141; Deloitte 2021a, 297.

<sup>79</sup> FinCEN, Notice Fin-2021-NTC2, 09.03.2021, FinCEN Informs Financial Institutions of Efforts Related to Trade in Antiquities and Art; Deloitte 2021a, 293.

<sup>80</sup> Ibid.



In 2013, Switzerland installed a permanent group (hereafter *CGMF*<sup>81</sup>) and tasked it with evaluating the nationwide money laundering risks. CGMF published a first assessment report in 2015 and a follow-up one in 2021. The 2021 report states that "there is nothing that allows us to conclude that [...] this sector's [i.e. the art trade] risk as moderate needs to be changed"<sup>82</sup>. The key reason for the CGMF's moderate rating is the general lack of Suspicious Transaction Reports<sup>83</sup> in this sector<sup>84</sup>.

However, the absence of any Suspicious Transaction Reports in relation to Switzerland's art trade should not imply only moderate money laundering risks. Swiss dealers may conceal existing money laundering problems to avoid the scrutiny of Swiss and international regulators. In any case, this lack of reporting contrasts starkly with observations made by Interpol and the FBI, who found that "the volume of legally questionable transactions is noticeably higher [in the art sector] than in other global markets."<sup>85</sup>

In addition, the CGMF's assessment of the Swiss art trade is based on the fact that the Swiss art market is subject to the Cultural Property Transfer Act (CPTA)<sup>86</sup>. However, the CPTA only states that the origin of cultural assets must be controlled. It does not, however, oblige dealers to check the identity of the customer or the origin of the (cash) assets received as payment for the cultural property<sup>87</sup>. The CPTA is therefore only of secondary importance for the prevention of cash laundering.

The CGMF's approach to risk assessment differs significantly from the United Kingdom's and the European Commission's approaches, which both consider the art market at *high* risk of money laundering, despite having much more stringent laws than Switzerland<sup>88</sup>.

Even when comparing the art dealers' views, the Swiss perspective on the threat associated with money laundering differs from internationally prevailing opinions. A report prepared by Deloitte showed that globally 65% of art collectors and 63% of art professionals viewed money laundering as a great threat to the art market's reputation going forward in 2021<sup>89</sup>. The former chairman of a leading art insurer described the art trade as "the Wild West", calling it

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<sup>81</sup> CGMF officially stands for Interdepartmental coordinating group on combating money laundering and the financing of terrorism. For further information, see CGMF 2015, 8.

<sup>82</sup> CGMF 2021, 29.

<sup>83</sup> A Suspicious Transaction Report (STR) is a financial or non-financial institution's report about suspicious or potentially suspicious activity. Between 2011 and 2021, not a single STR appears to have been issued by Swiss high value dealers regarding business transactions involving cash, see CGMF 2021, 28; see also: MROS 2021, 16, according to which the Swiss FIU only received two SARs from dealers from 2011 to 2019. However, these reports were not related to the high-value goods trade.

<sup>84</sup> CGMF 2021, 29.

<sup>85</sup> Cited in Mashberg 2019, 4.

<sup>86</sup> Federal Act on the International Transfer of Cultural Property of 20 June 2003, SR 444.1; see CGMF 2015, 117.

<sup>87</sup> This is also recognised in the risk assessment itself, see: CGMF 2015, 117.

<sup>88</sup> HM Treasury 2020, 140; European Commission, 26.06.2017, Report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross border activities, 7, available under: <https://ec.europa.eu/newsroom/just/items/81272> (retrieved 12.03.2022).

<sup>89</sup> Deloitte 2020, 280. The

the "last unregulated market"<sup>90</sup>. Significantly more collectors (47%) indicated their preference for government regulation in 2021 compared to 22% in 2019<sup>91</sup>.

Taking a contrary position, the Swiss Art Market Association (SAMA) describes the tightening of money laundering rules in the art market as "problematic". It states that "the aim must be to stop introducing legislative projects that generate new burdens for market participants."<sup>92</sup> In an interview, the chairman of SAMA stated: "Yes there are some criminal activities but Switzerland is not a hub for money laundering or trafficking of looted goods. There is no evidence, no criminal sentences, just rumours"<sup>93</sup>.

#### **d) Conclusion: High general vulnerability of Swiss art dealers**

In the present view, the vulnerability of Swiss art dealers to cash laundering must be considered *high* for the following reasons:

- Firstly, Swiss art dealers are particularly exposed to cash laundering risks. Switzerland is one of the few leading art trading hubs where cash and non-cash transactions above CHF/EUR/USD 10'000 can be carried out without counterparty due diligence obligations.
- Second, the art trade has characteristics that make it inherently attractive for cash laundering.
- Thirdly, there is great difficulty in detecting criminal cash inflows at Switzerland's national borders.
- Fourthly, representatives of Swiss art dealers tend to demonstrate little awareness of the cash laundering risks faced by the industry. Arguably, this lack of awareness further increases vulnerability for art dealers.

## **2. Jewellery and watch dealers**

This section will review Swiss jewellery and watch dealers and analyse their vulnerability to cash laundering operations by organised crime groups. As in the previous section, the discussion first turns to the industry-specific cash laundering risks. It will then contrast the risks with the countermeasures and assess the general vulnerability of this industry.

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<sup>90</sup> See Scully 2021, 306, citing The Art Business Conference, London September 2015, as reported in the New York Times, 25.09.2015

<sup>91</sup> See <https://www2.deloitte.com/lu/en/pages/art-finance/articles/art-finance-report.html> (retrieved 23.02.2022).

<sup>92</sup> See <https://kunstmarktschweiz.ch/startseite-en/> (retrieved 23.02.2022).

<sup>93</sup> Managing director of the Swiss Art Market Association, cited in: Swissinfo.ch, 09.02.2017, Can the art market regulate itself against illicit activity?

### **a) Industry-specific cash laundering risks**

Swiss jewellery and watch companies hold a 12.6% share of global luxury goods sales<sup>94</sup>. 30% of the world's top jewellery and watch companies are headquartered in Switzerland<sup>95</sup>, making it the undisputed market leader<sup>96</sup>.

As a result of the Covid-19 pandemic and other global events, the Swiss watch industry has increasingly focused on sales of luxury watches worth several thousand or even several tens of thousands of francs<sup>97</sup>. Over 95% of watches that cost CHF 1'000 or more are manufactured in Switzerland<sup>98</sup>.

The various publications by the Swiss government's group of money laundering assessors (CGMF)<sup>99</sup> do not contain a specific risk rating applicable to Switzerland's watch and jewellery industry. However, in a 2018 report on cash laundering risks, the CGMF did mention the purchase of luxury goods in Switzerland with cash proceeds from the international drug trade as a "possibility"<sup>100</sup>. Nonetheless, the report states that such cases are rare<sup>101</sup>. However, as was suggested with regards to the art sector, the scarcity of reported cases can only be considered meaningful if a functioning detection system is in place<sup>102</sup>.

Public sources indicate that Swiss luxury watches and jewellery enjoy great popularity in criminal circles<sup>103</sup>. Numerous reports from across the globe describe money laundering schemes by organised crime groups that involve Swiss timepieces<sup>104</sup>. The UK's Criminal Assets Bureau stated that "luxury Swiss-made watches, each worth tens of thousands of euros, are being used as currency by organised crime gangs to buy contraband and settle debts"<sup>105</sup>. Swiss media reported several instances of confiscations of watches and diamonds held by persons linked to Italian Mafia Clans<sup>106</sup>.

Swiss luxury watches appear to be particularly popular among corrupt political elites. For instance, packaging boxes of Swiss watches were found in the home of former Ukrainian President Yanukovich. The certificates of guarantee showed that some watches were bought in Switzerland, notably in the mountain resort town of Gstaad in the canton of Bern<sup>107</sup>. Photos

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<sup>94</sup> Deloitte 2021b, 35.

<sup>95</sup> Deloitte 2021b, 44.

<sup>96</sup> Handelszeitung, 03.12.2020, Die Schweiz bleibt bei Uhren und Schmuck an der Spitze.

<sup>97</sup> Swissinfo.ch 28.01.2020, Foreign demand remains high for luxury Swiss-made watches.

<sup>98</sup> Swissinfo.ch, 22.03.2017, Six things you should know about the watchmaking industry.

<sup>99</sup> See above p. 15.

<sup>100</sup> CGMF 2018, 22.

<sup>101</sup> Ibid.

<sup>102</sup> See above p. 17.

<sup>103</sup> See for example Watchpro, 06.04.2021, Prosecutors crack down on retailers selling Rolex watches for cash.

<sup>104</sup> For example: Jerarcas chavistas usaron a un joyero para blanquear cinco millones con la compra de 250 relojes Rolex y Cartier.

<sup>105</sup> The Times, 23.05.2021, Luxury watches keep gangsters ticking over as emergency cash, says Criminal Assets Bureau.

<sup>106</sup> Gotham City, 29.07.2020, En Suisse, les blanchisseurs de la Camorra n'écopent que du sursis; Gotham City, 21.05.2021, Un diamantaire tessinois accusé d'avoir blanchi l'argent de la Camorra.

<sup>107</sup> Thelocal.ch, 16.03.2014, Swiss probe Yanukovich money-laundering. Furthermore, numerous top-level officials in the Ukrainian administration were photographed wearing Swiss-made watches worth well beyond CHF 10'000, see: <https://bashny.net/en/171299> (retrieved 11.02.2022).

of criminal individuals and politicians wearing Swiss-made watches worth well beyond CHF 10'000 can be found on numerous websites.

Except for the Yanukovych case, investigators and reporters are seldom able to prove that the criminals' Swiss watches and jewellery items were purchased in Switzerland. Only 5% of the Swiss watch industry's production is sold in Switzerland, with the remaining 95% being exported<sup>108</sup>. Therefore, many of the goods offered in Swiss boutiques are also available abroad. For this reason, foreign organised crime groups may have less incentive to target luxury and watch dealers in Switzerland with their cash laundering operations.

## **b) Countermeasures to prevent cash laundering**

The leading international self-regulation standard in the watch and jewellery industry is the Code of Practices (*COP*) by the Responsible Jewellery Council (*RJC*). The RJC is a not-for-profit standard-setting and certification organisation founded in 2005. It is comprised of more than 1'000-member organisations representing different parts of the diamond, gold and jewellery supply chain, from mining companies to retailers<sup>109</sup>. The COP defines the responsible ethical, social and environmental practices that all certified RJC members must adhere to.

Section 12 COP contains a Know Your Counterparty (*KYC*) policy<sup>110</sup>. However, the RJC's Guidance to Section 12 COP specifies that "[c]ounterparties do not include end consumers unless this is required by law within the jurisdictions in which you operate."<sup>111</sup>

Furthermore, according to Section 12.4 COP, RJC members must "maintain records of all single or apparently linked cash or cash-like transactions equal to or above 10'000 euros/US dollars or the threshold defined by applicable law (whichever is lower)"<sup>112</sup>. Section 12.4 COP also states: "Where required by law, members shall report such transactions to the relevant designated authority".

As part of the certification process, RJC members must engage an accredited auditor to visit the member's sites and verify that systems and operating procedures conform with the COP<sup>113</sup>. The auditor prepares a report, including a statement of conformance, and sends it to the member and the RJC<sup>114</sup>. If a critical breach is found, the member will face disciplinary proceedings<sup>115</sup>.

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<sup>108</sup> Federation of the Swiss Watch Industry (undated), The Swiss watch industry today, available under: <http://www.fhs.swiss/eng/watchindustrytoday.html> (accessed 28.02.2022).

<sup>109</sup> See <https://responsiblejewellery.com> (retrieved 28.02.2022).

<sup>110</sup> Section 12.1.a and b RJC COP. The identity of the counterparty must be established by checking government-issued identification. Where triggered by a risk assessment or applicable law, the beneficial ownership and principals of the counterparty must be registered. Dealers must verify that the counterparty and beneficial owners are not named on relevant government lists for individuals or organisations implicated in money laundering, fraud or involvement with prohibited organisations.

<sup>111</sup> RJC 2019, 119.

<sup>112</sup> Section 12.4 RJC COP.

<sup>113</sup> RJC 2020, 10, 49.

<sup>114</sup> RJC 2020, 60.

<sup>115</sup> RJC 2020, 18.

The third-party audit procedure's effectiveness in the RJC certification system is difficult to assess. The author of the present report requested data from the RJC on the members' compliance with the COP. However, the RJC indicated that it did not possess such data. The Swiss jewellery and watch industry was also asked to provide information on policies and practices to prevent cash laundering in retail sales. However, out of four leading dealers only one replied, stating that the matter was strictly confidential and that no information could be shared.

Publicly available information shows that the watchmakers' association has historically assessed little to no cash laundering risks from the distribution of its products in Switzerland: When the introduction of due diligence duties for high value dealers was first discussed in Switzerland in 2013, the watchmakers' association requested that their industry be exempted, arguing that the risk of cash laundering in the watch sector was marginal<sup>116</sup>.

### **c) Assessment of the general vulnerability of Swiss watch and jewellery dealers to cash laundering schemes by organised crime groups**

In this section, the cash laundering risks and the countermeasures of Swiss watch and jewellery dealers are compared to determine the industry's vulnerability.

Section a) has shown that Swiss watches and jewellery items are suitable and popular objects for money laundering. Concerning the countermeasures implemented by Swiss art and watch dealers, the present research did not identify a reliable, broad-spanning and efficient system to detect cash laundering.

Several points are noteworthy concerning self-regulation in the form of the RJC's COP. First and foremost, not all Swiss jewellery and watch dealers are certified<sup>117</sup>. Several subsidiaries of some of the largest Swiss conglomerates, many of which run boutiques in prime locations in Switzerland, are not certified.

Secondly, the standard itself apparently does not contain an end customer due diligence obligation. This means that even in the case of cash purchases for more than EUR/USD 10'000, the trader can limit itself to registering the transaction in a so-called "cash record" and to keeping the receipts<sup>118</sup>. Also, the dealers' obligation to report suspicious transactions is still based purely on national law.

### **d) Conclusion: Elevated to high general vulnerability of Swiss jewellery and watch dealers**

It seems adequate to give a *high* vulnerability rating to Swiss art and jewellery dealers in cities and towns with a high concentration of boutiques. Places such as Geneva and Zurich, or

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<sup>116</sup> EFD, 13.09.2013, Bericht über die Vernehmlassungsergebnisse, Umsetzung der 2012 revidierten Empfehlungen der Groupe d'action financière, 54 available under: <https://www.newsd.admin.ch/newsd/message/attachments/31879.pdf> (retrieved 05.03.2022); see also: Finews.com, 24.02.2020, Swiss «Going Rogue» on Money Laundering Rules?

<sup>117</sup> Among its members, the RJC counts 104 Swiss jewellery and watch companies. Out of these, 100 have registered as manufacturers or wholesalers. Only four Swiss entities are registered as retailers. See for updated numbers and a complete list of members <https://responsiblejewellery.com/membership/find-an-rjc-member/?bycountry=Switzerland&rjccategories=8395,8396&rjccertification=13246&searchbox=omega&pagenum=1> (retrieved 28.02.2022).

<sup>118</sup> RJC 2019, 90.



even Gstaad, where the Yanukovych family purchased multiple Swiss watches, are home to many luxury goods dealers within walking distance of each other. Organised crime groups may be able to make cash purchases of up to CHF 100'000 in multiple boutiques, thereby exchanging large amounts of illegal cash for watches and jewellery within a brief amount of time.

In turn, watch and jewellery dealers in remote places with a lower concentration of luxury boutiques are less attractive for such laundering operations. Consequently, it can be assumed that dealers in remote locations generally face a lower cash laundering risk. Consequently, they are assessed at an *elevated* vulnerability.<sup>119</sup>

The following factors influence the Swiss art and jewellery sector's elevated to high vulnerability rating:

- First, Swiss watches and jewellery items are suitable and popular objects for money laundering.
- Second, the most important self-regulatory standard, the RJC's COP, is not uniformly adhered to, with important Swiss dealers abstaining.
- Third, even COP-certified dealers are not required to conduct due diligence on end consumers in cash transactions below CHF 100'000 in Switzerland, and record-keeping obligations are minimal.
- Fourth, representatives of Swiss watch and jewellery dealers tend to demonstrate little awareness of the cash laundering risks faced by the industry. Arguably, the industry's lack of awareness of its risk exposure further increases its vulnerability.

### 3. Gold and gemstone dealers

This section will study Swiss gold and gemstone dealers and analyse their vulnerability to cash laundering by organised crime groups. The analysis first turns to the industry-specific cash laundering risks. After, the risks are contrasted with the countermeasures, and the industry's general vulnerability is assessed.

In the subsequent analysis, the term "precious materials" refers to gold and gemstones (including diamonds).

#### a) Industry-specific cash laundering risks

Switzerland is an essential player in the international gold trade. In 2021, 2.2 tonnes of gold worth CHF 84 billion were imported into Switzerland, and 1.5 tonnes of gold worth CHF 79 billion were exported<sup>120</sup>.

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<sup>119</sup> The cash laundering risk of boutiques in remote locations is considered lower than that of art dealers in remote locations because of the wide availability of big-brand Swiss watches and jewellery abroad.

<sup>120</sup> Data retrieved from Swiss-Impex, an online tool provided by the FOCBS to access the Swiss foreign trade statistics online, available under: <https://www.gate.ezv.admin.ch/swissimpex/> (retrieved 06.03.2022). Gold imports hail from around ninety countries, half from the UK, the United Arab Emirates, the USA and Hong Kong alone. On the other hand, gold exports go to around seventy countries, two thirds to China, the UK, India and Hong Kong, see Federal Council 2018, 4.

Gold imports into Switzerland are primarily in the form of raw gold (mined gold of various degrees of refinement from industrial, artisanal and partially artisanal mines)<sup>121</sup>. Most imported gold is refined in one of the Swiss facilities, which specialise in refining raw gold or remelting existing gold products. Swiss refineries account for about 40 per cent of the total global capacity<sup>122</sup>. Four of the world's nine industry leaders concentrate a large part of their activity in Switzerland<sup>123</sup>.

The gemstone trade takes place on a much smaller scale in Switzerland<sup>124</sup>. According to Swiss trade statistics, gemstones, other than diamonds, worth CHF 618 million were officially imported into Switzerland, while exports amounted to CHF 543 million in 2021<sup>125</sup>. Imports of diamonds amounted to just CHF 32 million, while some CHF 37 million were exported<sup>126</sup>.

The very nature of precious materials makes them attractive to criminal organisations looking to legitimise assets: They have intrinsic value and can be bought and sold anywhere in the world<sup>127</sup>.

- Gold is a readily liquid and moveable asset that can be traded globally. Just like high denomination notes, gold offers criminals the opportunity to shrink bulky cash holdings into a discrete and portable asset that can be smuggled across borders and after that sold<sup>128</sup>.
- Gemstones are even more suitable for cross-border money laundering operations. No other tangible asset is as mobile and stores as much value in such a small space: A cut diamond weighing two carats (0.4 grams), which meets the highest standards of purity and colour, can cost CHF 50'000 – about as much as a kilogram of gold<sup>129</sup>.

It is well documented that criminal organisations have taken an interest in the precious materials trade in Switzerland, even if the sector has a low rate of reporting suspicious cases to the competent authorities<sup>130</sup>. In 2021, for instance, Swiss prosecutors showed that the Italian mafia organisation *Camorra* used a Swiss dealer to acquire CHF 750'000 worth of diamonds as well as 10 kilograms of gold<sup>131</sup>. The dealer was only found guilty of having

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<sup>121</sup> Federal Council 2018, 5.

<sup>122</sup> CGMF 2015, 97; Federal Council 2018, 5.

<sup>123</sup> CGMF 2015, 97 et seq.

<sup>124</sup> This was not always the case, however. In 2000, UN investigators seeking to uncover the illegal blood diamond trade from Liberia and Sierra Leone in 2000 named Switzerland as one of the top international trading platforms for precious stones. At that time, the Swiss trade volume amounted to two to three billion Swiss francs annually, see: Der Standard, 28.12.2000, Schweiz laut UNO-Bericht Drehscheibe für Diamantenhandel; SECO (undated), Rohdiamantenhandel, available under: [https://www.seco.admin.ch/seco/de/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/rohdiamantenhandel.html](https://www.seco.admin.ch/seco/de/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/rohdiamantenhandel.html) (retrieved 12.03.2022).

<sup>125</sup> Swiss-Impex, Tarif N°7103 – Precious stones and semi-precious stones (excl. diamonds).

<sup>126</sup> Swiss-Impex, Tarif N°7102.10 – Diamonds, unsorted; 7102.21 – Industrial diamonds unworked or simply sawn, cleaved or bruted; 7102.31 – Non-industrial diamonds unworked or simply sawn, cleaved or bruted (excl. industrial diamonds).

<sup>127</sup> RJC 2019.

<sup>128</sup> Europol 2015, 36.

<sup>129</sup> NZZ, 05.01.2018, Wie hat sich das Diamantengeschäft verändert? Ein Zürcher Händler erzählt.

<sup>130</sup> Only one to three suspicious activity reports are filed each year, see: CGMF 2015, 98.

<sup>131</sup> Gotham City, 02.06.2021, un diamantaire tessinois condamné au TPF; Bloomberg, 20.05.2021, Swiss Trader Accused of Laundering Mafia Money With Diamonds.

violated his due diligence duties for the sale of gold, as well as for having kept suitcases full of cash belonging to Italian criminals in his Swiss offices<sup>132</sup>.

## **b) Countermeasures to prevent cash laundering**

Swiss precious materials dealers have, as far as can be observed, not recorded any significant advances concerning self-regulation to prevent cash-based laundering in Switzerland, beyond what has been discussed in the jewellery and watch sector<sup>133</sup>. The author requested information from one of the market leaders on corporate policies regarding cash as payment in retail sales of gold bars. No response was given.

The further discussion of the precious materials sector's countermeasures to detect cash laundering does not focus on self-regulation. Instead, this section will deepen the examination of the due diligence duties based on the Anti-Money Laundering Act (AMLA)<sup>134</sup> as applicable to the precious materials industry. Examining AMLA is relevant because several activities of precious materials dealers are considered financial intermediation and therefore fall within the scope of application of AMLA.

According to Art. 2 para. 3(c) AMLA, persons who "trade for their own account or for the account of others in [...] precious metals [and] commodities [...]" are considered financial intermediaries<sup>135</sup>.

The Federal Council of Switzerland, the country's highest executive authority, stated that gemstones may be considered commodities in certain instances<sup>136</sup>. However, no established legal criteria are available to classify gemstones as (non-) commodities. There is no official legal definition of the term gemstone in Switzerland<sup>137</sup>. Without an established legal basis, a subordination of gemstone trading under AMLA seems hardly feasible in practice. Therefore, AMLA is unlikely to be applied to gemstone dealers unless a cash price of CHF 100'000 or more is paid directly to the dealer.

Furthermore, once the Swiss legislator had introduced Art. 2 para. 3(c) AMLA, the Swiss executive, allegedly due to industry pressure<sup>138</sup>, went on to severely limit the effect of this norm. In its Anti Money Laundering Ordinance (AMLO)<sup>139</sup>, the Federal Council exempted the commodities trade from application of AMLA, as long as the dealer acts for his or her own

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<sup>132</sup> BStGer, Decision N°SK.2021.3 of 28.05.2021, available under: [https://bstger.weblaw.ch/files/20211129\\_SK\\_2021\\_3.pdf](https://bstger.weblaw.ch/files/20211129_SK_2021_3.pdf) (retrieved 06.03.2022); Gotham City, 02.06.2021, un diamantaire tessinois condamné au TPF.

<sup>133</sup> For instance, several Swiss gold refiners are listed among the member organisations of the Responsible Jewellery Council.

<sup>134</sup> Cf. above p. 9 et seq.

<sup>135</sup> Commodities are unprocessed raw materials that originate, for example, from the mining industry (translated), see: FINMA, Circular on Financial Intermediation under the Anti-Money Laundering Act comes into force on 1 January 2011, available under: <https://www.finma.ch/de/~media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finma-rs-2011-01-01-01-2017.pdf?la=de> (retrieved 12.03.2022).

<sup>136</sup> Erläuternder Bericht zur Vernehmlassungsvorlage, Änderung des Bundesgesetzes über die Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung, 01.06.2018, 14, available under: <https://www.news.admin.ch/news/message/attachments/52554.pdf> (retrieved 06.03.2022).

<sup>137</sup> The Federal Council has indicated that the term gemstones ("Edelsteine") encompasses the most expensive stones such as rubies, smaragds and diamonds.

<sup>138</sup> Pieth 2019, 201.

<sup>139</sup> Federal Ordinance on Combating Money Laundering and Terrorist Financing of 11. November 2015, SR 955.01 (AMLO).



account and not for the account of a third party<sup>140</sup>. The AMLO provision in question is openly contradictory to Art. 2 para. 3(c) AMLA<sup>141</sup>.

Due to the Federal Council's intervention, gold sales count as financial intermediation only when made for the account of third parties. As a second criterion, gold transactions are generally categorised as financial intermediation only where they concern bars and granules with a minimum gold content of at least 99.5 per cent<sup>142</sup>. Consequently, unrefined and recycled gold sales are unlikely to fall within the scope of application of AMLA unless a cash price of CHF 100'000 or more is paid directly to the dealer.

The above shows that, in principle, AMLA's counterparty due diligence obligations for precious materials dealers are comparable to the obligations it imposes on other types of high value dealers. Where sales of gemstones or gold are made for the dealer's account, as is typically the case, AMLA generally only applies if the dealer accepts CHF 100'000 or more in cash<sup>143</sup>.

In 2016, Switzerland received criticism from the Financial Action Task Force (FATF) for its lax regulation of the precious materials trade. FATF Recommendation 22(c) states that precious materials dealers should face due diligence duties in cash transactions of USD/EUR 15'000 or more<sup>144</sup>. Following this criticism, the Federal Council, in 2019, proposed lowering the threshold applicable to the Swiss precious materials trade to cash transactions of CHF 15'000 or more<sup>145</sup>. Due to strong industry opposition, the proposed amendment to AMLA would only have concerned precious metals and gemstones that had not yet been processed into jewellery or other products<sup>146</sup>.

Nevertheless, the Swiss parliament rejected the proposal<sup>147</sup>. The reasons for this voting result are difficult to discern. According to the official minutes reported of the parliamentary sessions, no parliament members presented substantive arguments against the Federal Council's proposal. The fact that a majority voted against the proposal shows that opinions were formed outside of the transcribed debates.

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<sup>140</sup> Art. 5 para. 1(c) AMLO.

<sup>141</sup> See Pieth 2019, 200 et seq.; Mühlemann/Mbiyavanga 2018, 12 et seqq.

<sup>142</sup> Art. 178 para. 2(a) Ordinance on the Control of Trade in Precious Metals and Articles of Precious Metals, SR 941.311; Art. 5 para. 1(a) AMLO.

<sup>143</sup> Art. 8a AMLA; Federal Council, Message, Federal Gazette 2019 I, 24, available under: <https://www.newsd.admin.ch/newsd/message/attachments/57536.pdf> (retrieved 12.03.2022).

<sup>144</sup> FATF, The FATF Recommendations, Updated March 2022, Interpretive Note to Recommendations 22 and 23 (DNFBPS), 88; FATF 2016, 197.

<sup>145</sup> Ibid, 22.

<sup>146</sup> Erläuternder Bericht zur Vernehmlassungsvorlage, Änderung des Bundesgesetzes über die Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung, 1. Juni 2018, 13, available under: <https://www.newsd.admin.ch/newsd/message/attachments/52554.pdf> (retrieved 06.03.2022); see also: <https://www.goldor.ch/personen/vsgu-news-082017/> (retrieved 13.03.2022).

<sup>147</sup> SDA-Meldung, 02.03.2020, Nationalrat will Geldwäschereigesetz nicht verschärfen, available under: <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20190044> (retrieved 12.03.2022).

### **c) Assessment of the general vulnerability of Swiss gold and gemstone dealers to cash laundering schemes by organised crime groups**

Following the overview of cash laundering risks in the gold and gemstones sector and the discussion of the countermeasures, this section will assess the general vulnerability of Swiss gold and gemstone dealers.

In its national money laundering risk assessment of 2015, the Swiss government's specialist group on money laundering (CGMF)<sup>148</sup> found that the money laundering threat in the precious metals industry is underestimated<sup>149</sup>. The report highlights the use of precious metals as a laundering vehicle for criminal organisations<sup>150</sup> and assigned sales in refined precious metals a medium risk level, while retail trade of scrap gold received an elevated risk score<sup>151</sup>. The higher rating of scrap gold matches findings of the FATF, which also discovered that cash laundering risks are particularly apparent in cash-for-gold dealerships<sup>152</sup>. Gemstone dealers were not part of the CGMF's assessment.

Then, in its 2021 follow-up assessment, the CGMF lowered the risk rating of the precious metals industry. The assessors considered an increase in the number of licensed foundries audits by the Swiss Central Office for Precious Metals Control (hereafter *Central Office*) cause to reduce the money laundering risk rating.

The Central Office is the supervising authority of licensed foundries for gold and other precious metals in Switzerland. Prior to the recent increase in the number of audits, the Central Office had previously failed to detect that 21 out of the 45 foundries it was supposed to supervise were no longer active and should have seen their licence revoked<sup>153</sup>. However, the CGMF does not take issue with the apparent deficiencies in the Central Office's performance as a supervising entity. Instead, it found "the fall in the number of licensed foundries, together with the systematic stance and consequently increased frequency of audits by the Central Office, has contributed to a reduction of risks [...] also, indirectly, under the AMLA." <sup>154</sup>

Again, the divide between the Swiss approach to risk assessment and that of other European countries becomes apparent. Reference can be made to Germany, which has taken drastic measures to counteract cash laundering in the precious metals trade. Since January 2020, Germany has forbidden cash sales of precious metals beyond EUR 2'000. Precious metal purchases over EUR 2'000 must not only be made in a non-cash format, but the dealer must

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<sup>148</sup> See above p. 15.

<sup>149</sup> CGMF 2015, 99.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid, 5.

<sup>152</sup> FATF 2015, 8; according to the FATF, organised crime groups needing to launder cash are very willing to participate in the cash-for-gold business.

<sup>153</sup> CGMF 2021, 32; see also: SFAO 2020, 34.

<sup>154</sup> CGMF 2021, 32.

also register them<sup>155</sup>. Similarly, the UK considers precious metals dealers among those high value goods sectors at the highest risk of criminal abuse<sup>156</sup>.

In contrast, several current developments in Switzerland do not suggest a "reduction of risks" in the precious metals sector. The first concerns the Central Office. The Swiss legislator appointed the Central Office as the new supervisory authority to monitor the gold refineries' compliance with AMLA<sup>157</sup>. Previously, the gold refineries were subject to the supervision of the Swiss Financial Market Supervisory Authority (FINMA). While FINMA's supervision mandate was very limited, as was shown above<sup>158</sup>, it had years of experience supervising the adherence of private sector entities to AMLA.

In comparison, the Central Office is largely inexperienced with the issue of money laundering. It is a relatively small agency with an annual budget of only CHF 10 million<sup>159</sup>. Furthermore, a report by the Swiss Federal Audit Office in 2020 encountered serious flaws in the Central Office's overall approach to supervision, particularly regarding its autonomy and independence vis-a-vis the precious metals industry<sup>160</sup>.

The links between the Central Office and the industry reflect the legal mandate of the office to maintain and protect the good reputation of the products of the Swiss precious metals industry in international markets<sup>161</sup>. Entrusting a single authority with the defence of the same industry's reputation that it ought to supervise causes a conflict of interest. This conflict of interest appears to be unresolved at the time of writing. For this reason, allowing the Central Office to supervise this industry could result in a loss of effectiveness.

A second development likely to increase the cash laundering risk and the vulnerability of Swiss precious materials dealers is the unchanged high threshold for counterparty due diligence duties. After the Swiss parliament rejected an industry-specific threshold of CHF 15'000, the gap between Swiss practices and those of neighbouring countries is likely to persist.

#### **d) Conclusion: High vulnerability of gold and gemstone dealers**

In conclusion, the Swiss precious materials industry is assessed a *high* vulnerability to cash laundering operations by organised crime groups.

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<sup>155</sup> Deutscher Bundestag, 03.09.2019, Drucksache 19/12969, Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Frank Schäffler, Christian Dürr, Dr. Florian Toncar, weiterer Abgeordneter und der Fraktion der FDB, available under: <https://dserver.bundestag.de/btd/19/129/1912969.pdf> (retrieved: 12.03.2022).

<sup>156</sup> HM Treasury 2020, 139.

<sup>157</sup> CGMF 2021, 36.

<sup>158</sup> See above p. 24 et seq.

<sup>159</sup> SFAO, 24.02.2020, Audit of the effectiveness of the precious metals control, Key facts, available under: [https://www.efk.admin.ch/images/stories/efk\\_dokumente/publikationen/\\_wirtschaft\\_und\\_verwaltung/oeffentliche\\_finanzen\\_und\\_steuern/19476/19476BE\\_WiK\\_e.pdf](https://www.efk.admin.ch/images/stories/efk_dokumente/publikationen/_wirtschaft_und_verwaltung/oeffentliche_finanzen_und_steuern/19476/19476BE_WiK_e.pdf) (retrieved 16.03.2022).

<sup>160</sup> SFAO 2020, 34.

<sup>161</sup> See for instance Swiss Federal Court, Decision 2C\_1008/2012 of 01.03.2013, para. 2.1 with further references. The Central Office's closeness to the industry likely also factored into the industry's push to have the Central Office replace FINMA.

The gold and gemstone industry's high vulnerability is based on many of the same factors that apply to watch and jewellery dealers. In addition, the present conclusion is supported by the following factors:

- Firstly, gold, diamonds and other gemstones are highly suitable objects for cash laundering.
- Secondly, precious metals dealers in Switzerland are, in particular, exposed to cash laundering risks due to the rudimentary regulation. The parliament's refusal to adopt FATF standards in this area further isolated the Swiss precious materials sector at the international level.

## VI. General Conclusion

The analysis of the vulnerability of Swiss high value dealers to cash laundering by organised crime groups has brought certain commonalities among the different sectors to light.

In most sectors of high value dealers, the Swiss government's expert group on money laundering (CGMF)<sup>162</sup> appears to rate the money laundering risks more mildly than national assessors in other European countries.

Meanwhile, Switzerland and Swiss high value dealers are under increasing pressure to adapt laws and trade practices to European standards. Nevertheless, there are few signs of the Swiss legislator's willingness to do so. In addition, Swiss high value dealers and their industry associations generally dismiss the prospect of adding further statutory due diligence requirements for their customers and other counterparties.

Another similarity among the analysed industries is that Swiss high value dealers seldom, if ever, report suspicious clients to the authorities. In light of the lack of reporting, it is not surprising that there are few court cases involving cash laundering at Swiss high value dealerships. The few cases involving Swiss high value dealers and cash laundering operations by organised crime groups were primarily triggered by alerts of foreign law enforcement agencies, especially from Italy.

The present report has identified signs of serious general vulnerabilities of Swiss high value dealers to cash laundering of organised crime groups. These are based on:

- the ease with which organised crime groups can smuggle cash into Switzerland undetected;
- the stark differences in statutory due diligence obligations that make cash laundering much more feasible in Switzerland compared to surrounding countries;
- the virtual non-existence of industry-wide self-regulatory standards that oblige high value dealers to conduct end consumer due diligence;
- the little awareness of Swiss industry representatives of the cash laundering risks faced by high value dealers in Switzerland; and

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<sup>162</sup> See above p. 15 et seq., p. 25 et seq. and p. 19 et seq.

- the lack of objectivity in the CGMF's risk assessments making it difficult for Swiss law enforcement agencies to allocate resources efficiently.

Due to these circumstances, the present report assigns an elevated or high vulnerability to cash laundering to all the high value goods industries analysed. This conclusion digresses from the CGMF's national assessments but corresponds to the prevailing views throughout Europe: The European Commission considers the risk posed by high value goods dealers accepting cash payments over EUR 15'000 as significant "because of the inherent risk exposure and the weak level of controls"<sup>163</sup>.

## VII. Outlook

It must be assumed that the vulnerabilities of Swiss high value dealers to cash laundering will become more acute unless the Swiss legislator introduces more robust countermeasures.

The European Union strengthens and expands its repertoire of measures to prevent cash laundering, thereby making it increasingly difficult for organised crime groups to launder cash in high value dealerships in its member states. In 2017, the European Commission concluded that for the prevention of cash laundering, banning cash payments beyond a certain threshold is more efficient and less burdensome than imposing counterparty due diligence obligations on high value dealers<sup>164</sup>. The Commission initially decided not to ban cash payments beyond a particular ceiling. However, in May 2021, the European Union's Financial Services Commissioner announced that the Commission was planning to introduce a ceiling of EUR 10'000 for cash payments<sup>165</sup>.

Several of Switzerland's neighbouring countries have already taken the step to outlaw cash payments above certain thresholds<sup>166</sup>:

- Italy has limited cash payments to EUR 1'000 or less. The minimum fine in case of violation is set at EUR 1'000.
- France has introduced an upper limit for cash purchases by French taxpayers at commercial dealerships of EUR 1'000<sup>167</sup>. The limit for foreign taxpayers acting as consumers is set at EUR 10'000.

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<sup>163</sup> European Commission, 26.06.2017, Report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross border activities, 6, available under: <https://ec.europa.eu/newsroom/just/items/81272> (retrieved 12.03.2022).

<sup>164</sup> European Commission, 26.06.2017, Report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross border activities, available under: <https://ec.europa.eu/newsroom/just/items/81272> (retrieved 12.03.2022); see also: ECORYS/Centre for European Policy Studies 15.12.2017, Study on an EU initiative for a restriction on payments in Cash, Client: European Commission, 60, available under: [https://ec.europa.eu/info/sites/default/files/economy-finance/final\\_report\\_study\\_on\\_an\\_eu\\_initiative\\_ecorys\\_180206.pdf](https://ec.europa.eu/info/sites/default/files/economy-finance/final_report_study_on_an_eu_initiative_ecorys_180206.pdf) (retrieved 12.02.2022).

<sup>165</sup> Süddeutsche Zeitung, 09.05.2021, EU will hohe Barzahlungen verbieten.

<sup>166</sup> For a comprehensive overview over cash ceilinging regulation in Europe, see: Europäisches Verbraucherzentrum Deutschland, 14.09.2021, Bargeldzahlung: Gibt es eine Bargeld-Obergrenze im EU-Ausland?.

<sup>167</sup> There is, however, no upper limit for cash payments between private individuals.



- Germany has forbidden cash sales of precious metals beyond EUR 2'000. The dealer must register all precious metal sales over EUR 2'000.

The differences between Switzerland's regulations and that of its neighbouring countries are thus considerable and likely to increase further given the ongoing initiatives in the European Commission. If Switzerland does not introduce enhanced measures to prevent cash laundering, its high value dealers risk becoming more attractive targets for organised crime groups. Undoubtedly, an increased presence of organised crime entails harmful consequences for the general population.

## VIII. Recommendations

The following recommendations intend to serve as a basis for discussions on the further development of Switzerland's approach towards preventing and detecting cash laundering.

### **Recommendation 1: Cash transactions of CHF 10'000 or more should lead to due diligence obligations for high value dealers**

Lowering the threshold for due diligence duties of cash transactions is not only an essential step in the fight against cash laundering, but also timely. In today's age, end consumers and other counterparties using cash for payments over CHF 10'000 generally ought to expect having to comply with due diligence measures<sup>168</sup>. Accordingly, lowering the threshold for due diligence duties of high value dealers to CHF 10'000 is likely to be met with approval by the general population<sup>169</sup>.

### **Recommendation 2: Non-cash transactions of CHF 100'000 or more should also trigger due diligence obligations for high value dealers**

The second recommendation is to introduce a due diligence obligation of high value dealers for non-cash transactions of CHF 100'000 or more<sup>170</sup>.

This addition to the high value dealers' current responsibilities to prevent money laundering in the non-cash area makes sense, as it is generally much easier for a high value dealer to identify money laundering risks posed by its counterparty than it is for a bank or another financial intermediary<sup>171</sup>. The expenditure involved in obtaining the relevant information from the counterparty should not substantially impair the dealer's profit margin. After all, the

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<sup>168</sup> Cf. also Deloitte 2021a, 295. Furthermore, the usage share of cash by the Swiss population compared to other payment methods has dropped significantly in recent years. The coronavirus pandemic has given additional impetus to this shift from cash to non-cash payment methods, see: SNB 2020, 4.

<sup>169</sup> See for example: Zürichsee-Zeitung, 01.03.2022, Die Schweiz muss auch unbeliebte Massnahmen prüfen.

<sup>170</sup> A call for greater involvement of high value dealers have already been formulated in 2017 by Prof. Ursula Cassani, an honorary professor of law at the University of Geneva, when she said: "Preventive measures exist for people who accept cash payments over CHF100,000, but there are no preventive rules for other dealers, merchants and art players. This is where I see a big need.", see Swissinfo, 09.02.2017, Can the art market regulate itself against illicit activity?

<sup>171</sup> Zürichsee-Zeitung, 04.10.2021, «Wir wissen in der Branche, dass es schwarze Schafe gibt».

financial intermediary ought to reduce the transaction cost if the dealer conducts part of the due diligence duties.

**Recommendation 3: Ensure adequate supervision of high value dealer's compliance with counterparty due diligence obligations**

The entity tasked with supervising high value dealers must ensure compliance of the supervised dealers with legal prevention and detection obligations. Notably, the supervisory authority must have the necessary expertise. Furthermore, the entity's supervision mandate must not conflict with its other duties. The organisational and financial independence of the supervisory entity from the supervised industry must be ensured. In addition, the supervisory entity must have adequate means at its disposal to dissuade and sanction violations and prevent recurrences.

# IX. Indexes

## Index of main sources

Art Basel/UBS (2021), Resilience in the Dealer Sector<sup>172</sup>

Basel Institute on Governance (2018a), Basel Art Trade Guidelines<sup>173</sup>

Basel Institute on Governance (2018b), Basel Art Trade Anti-Money Laundering Principles<sup>174</sup>

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<sup>172</sup> Available under: <https://www.artbasel.com/about/initiatives/the-art-market> (retrieved 22.02.2022).

<sup>173</sup> Available under: [https://baselgovernance.org/sites/default/files/2019-06/190613\\_WP\\_12.pdf](https://baselgovernance.org/sites/default/files/2019-06/190613_WP_12.pdf) (retrieved 12.02.2022).

<sup>174</sup> Available under: <https://baselgovernance.org/sites/default/files/2019-01/Basel%20Art%20Trade%20AML%20Principles%202018.pdf> (retrieved 12.02.2022).

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<sup>176</sup> Available under: <https://www.sif.admin.ch/sif/en/home/documentation/specialist-information/report-money-laundering.html> (retrieved 09.02.2022).

<sup>177</sup> English: Report on the use of cash and the risks of it being misused for money laundering and terrorist financing in Switzerland; available under: <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-73465.html> (retrieved 29.01.2022).

<sup>178</sup> Available under: <https://www.newsd.admin.ch/newsd/message/attachments/42276.pdf> (retrieved 04.02.2022).

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## Index of main abbreviations

AMLA	Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997, SR 955.0
AMLO	Federal Ordinance on Combating Money Laundering and Terrorist Financing of 11. November 2015, SR 955.01
CHF	Swiss Francs
CGMF	Interdepartmental coordinating group on combating money laundering and the financing of terrorism
COP	Code of Practices by the Responsible Jewellery Council
CPTA	Federal Act on the International Transfer of Cultural Property of 20 June 2003, SR 444.1
Fedpol	Federal Office of Police of Switzerland
FATF	Financial Action Task Force
FINMA	Swiss Financial Market Supervisory Authority
FIU	Financial Intelligence Unit
FOCBS	Federal Office for Customs and Border Security of Switzerland
HVD	High value dealers
MROS	Money Laundering Reporting Office Switzerland
OAG	Office of the Attorney General of Switzerland
RJC	Responsible Jewellery Council
SECO	State Secretariat for Economic Affairs of Switzerland
SFAO	Swiss Federal Audit Office
SNB	Swiss National Bank
STR	Suspicious Transaction Reports
SR	Classified Compilation of Federal Legislation of Switzerland
USD	United States Dollar

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<sup>203</sup> Available under: [https://home.treasury.gov/system/files/136/Treasury\\_Study\\_WoA.pdf](https://home.treasury.gov/system/files/136/Treasury_Study_WoA.pdf) (retrieved 22.02.2022).

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