

Evaluation of the strategy for the restitution of illicit assets

Federal Department of Foreign Affairs

Key facts

The Swiss Federal Audit Office (SFAO) examined the practice of returning illicit assets. These are the assets of politically exposed persons (PEPs) that were frozen and then confiscated following legal proceedings. The Confederation is committed to returning the funds as quickly as possible and in a transparent manner. The projects financed with these funds must benefit the populations that were victims of corruption. Furthermore, the aim is to prevent funds of dubious origin from flowing into Switzerland.

Over the past 20 years, the Swiss Confederation has returned some USD 2 billion in connection with around ten cases. Almost USD 1 billion could be returned in the coming years. After the Arab Spring and the Abacha funds in Nigeria, other cases continue to make headlines, such as the 1MDB scandals in Malaysia, Petrobras in Brazil and the Karimowa affair in Uzbekistan.

In general, the SFAO believes that the Confederation should continue to strengthen the consistency between the various legal frameworks and clarify the criteria for restitution. More transparency is necessary with regard to the use of frozen and confiscated funds. Better integration of different anti-corruption and anti-money laundering strategies is needed, especially in terms of communication.

Inconsistent rules and lack of clear criteria for restitution

The Federal Act of 2016 on the Freezing and the Restitution of Illicit Assets is only subsidiary in nature and concerns only exceptional cases involving a sudden change of regime. It has only been used to a limited extent. It includes concepts that are difficult to apply, such as the failure of a country's judicial system. International mutual legal assistance and criminal proceedings in Switzerland remain the main channels of investigation. These are governed by other legal frameworks and do not define the conditions for returning funds. An exception is the restitution on the basis of a negotiated agreement between the Confederation and the requesting country on the use of the returned funds. There are no clear criteria that explain why restitutions follow one approach rather than another. This undermines the coherence of the Confederation's work.

As a consequence, there is no overview of the cases of PEPs or of what happens to frozen funds. The Federal Department of Foreign Affairs (FDFA) monitors only those cases for which restitution procedures have been defined. Information on unconditional restitution cases involving PEPs is very patchy and incomplete. It is scattered between the Federal Office of Justice (FOJ) and the prosecutors' offices. By way of illustration, the FOJ returned CHF 20 million between 2015 and 2019 under international mutual assistance. At the end of 2019, the Office of the Attorney General of Switzerland returned more than CHF 400 million to Brazil in connection with the Petrobras case. In 2018, some CHF 88 million was returned to the Confederation under mutual assistance and CHF 36 million as a result of federal criminal proceedings.

Difficulties in reconciling management of expectations with the length of proceedings

Cases involving PEPs, or even former leaders, create high expectations in the countries concerned. There is a significant discrepancy between the length of legal proceedings and the political concerns. It takes between 10 and 15 years to obtain a confiscation ruling. The Confederation has often promised too many results, too quickly. However, the federal authorities do not set themselves any internal deadlines or targets. This is frustrating and creates a real discrepancy with the stated intentions.

The FDFA has consolidated its resources to ensure that existing expertise is maintained. An interdepartmental group is dedicated to monitoring cases involving PEPs. It has a broad overview of politically sensitive matters. However, its activities are limited to exchanging information only. It does not contribute to decision-making and has no role in operational activities.

Negotiation process is more formalised and civil society involvement is rare

With regard to negotiated restitutions, the FDFA has taken past experience into account to improve its approach. The process has become more structured and the FDFA engages in negotiations only once the funds have been definitively confiscated. In the past, discussions on the possible use of the restituted funds took place before the negotiations. However, the SFAO is surprised that a judicial authority can impose a decision on the FDFA without first discussing its implementation.

The FDFA takes a pragmatic approach and seeks tailor-made solutions depending on the situation. Other than not returning funds unconditionally, the FDFA has defined few binding criteria, in particular with regard to external monitoring and the involvement of civil society; it adapts them to the context.

The SFAO found that the recent agreements are being implemented as planned. Delegating the implementation of programmes to international organisations does not provide a sufficient guarantee of transparency. The FDFA often keeps a low profile during project implementation. Although presented as a major principle of restitution, the involvement of civil society in the monitoring process remains an exception.

International commitments: initiatives have been launched but resources are fragmented

Switzerland is among the first countries to be actively involved. At the international level, the FDFA has undertaken initiatives to promote Swiss experiences. It seeks to promote common rules and to put into practice the principles adopted in the international conventions on restitution. In the SFAO's view, the lack of clear criteria for conditional and unconditional restitution blurs the coherence of the Confederation's actions both at home and abroad. In addition, Switzerland has difficulty finding support among southern countries and emerging economies.

The fragmentation of resources within the Confederation between different interdepartmental working groups active in the fight against corruption and money laundering prevents a comprehensive overview. This hampers communication efforts with the outside world.

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