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Putting Policy Coherence for Development into Perspective:

supporting Switzerland's promotion of PCD
in commodities, migration and tax policy

Commissioned and funded by



Schweizerische Eidgenossenschaft
Confédération suisse
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Swiss Agency for Development
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Disclaimer

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The views expressed herein are those of the authors only and should not be attributed to any other person or institution.

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List of Acronyms

ACP	African-Caribbean-Pacific
AML/CFT	Anti-Money Laundering / Combatting the Financing of Terrorism
BEPA	Bureau of European Policy Advisors
BIS	Bank of International Settlements
CAP	Common Agricultural Policy
CARIN	Camden Asset Recovery Inter-Agency Network
CBCR	Country-by-country reporting
CCCTB	Common Consolidated Corporate Tax Base
CDI	Commitment to Development Index
CSR	Corporate Social Responsibility
DAC	Development Assistance Committee
DEVCO	Directorate General for Development Cooperation
DTC	Double Tax Convention
EC	European Commission
ECDPM	European Centre for Development Policy Management
ECRE	European Council on Refugees and Exiles
EITI	Extractive Industries Transparency Initiative
EOI	Exchange of information
EPAs	Economic Partnership Agreements
EU	European Union
EUR	Euros
FASB	Financial Accounting Standards Board
FATF	Financial Action Task Force
FDFA	Swiss Federal Department of Foreign Affairs
FTA	Free Trade Agreement
GAMM	Global Approach on Migration and Mobility
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDN	Global Development Network
GFMD	Global Forum on Migration and Development
IASB	International Accounting Standards Board
ICDC	Interdepartmental Committee for International Development and Cooperation
ILO	International Labour Organisation
IMF	International Monetary Fund
IOM	International Organisation of Migration
JMDI	Joint Migration and Development Initiative
LICs	Low-Income Countries
MDGs	Millennium Development Goals
MICs	Middle-Income Countries
MNEs	Multinational Enterprises
NGOs	Non-Governmental Organisations
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OTC	Over-the-Counter
PCD	Policy Coherence for Development
RMI	Raw Materials Initiative
SDC	Swiss Agency for Development Cooperation
SECO	State Secretariat for Economic Affairs, Switzerland

TIEA	Tax Information Exchange Agreement
TMP	Temporary Migration Programme
TRIMS	Trade Related Investment Measures
UK	United Kingdom
UN	United Nations
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNGC	United Nations Global Compact
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organised Crime
US	United States
VAT	Value Added Tax
WHO	World Health Organisation
WTO	World Trade Organization

Foreword

Switzerland has long acknowledged that development policies are interlinked with other policy areas, as reflected in policy statements from as early as 1976 (Federal Law on Development Cooperation and Humanitarian Aid). The institutional system to ensure policy coherence for development (PCD) is deeply rooted in the Swiss political culture of consensual decision-making and strong interdepartmental coordination.

In most recent years, the Swiss Agency for Development and Cooperation (SDC) increased its participation in domestic policy development of non-aid policies and intensified its efforts on methodological issues. Its aim was to improve in the first place its own expertise, that is, being better informed about potential policy options, underlying considerations, and solutions found in other countries. As such, SDC explored trade-offs within sector policies and knowledge gaps that may contribute to or hinder outcomes, rather than investing in the design of a set of indicators to measure impact of policies.

In the context of these increased efforts to strengthen PCD strategy and mechanisms, SDC mandated the European Centre for Development Policy Management (ECDPM) with a study on the institutional set-up of the Swiss system, its structure and procedures, as well as the potential for its future development.

In general, the present reader acknowledges progress in promoting PCD in Switzerland, though it rightly notes some gaps to fill in the current approaches and instruments. Recommendations put forward by ECDPM include: to express PCD as a whole-of-government commitment in an updated policy framework, to systematically produce evidence on the outcomes of the increased efforts, in particular in developing countries, to improve monitoring and reporting mechanisms by working on nationally defined and agreed indicators. For SDC, these are all issues worth being addressed, with due consideration given to their political feasibility and resource implications.

Given the careful description of the specific institutional set-up with its inherent potential to promote PCD, as well as the considerable amount of useful thematic information of practical relevance to PCD units in other countries, it is our pleasure to make the reader accessible to a broader public – not the least with the idea to contribute to the conceptual discussions facilitated by the OECD and its Policy Coherence for Development Unit.

Ms. Beatrice Meyer
Head of Analysis and Policy Division
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Introduction

Whereas traditional official development assistance will continue to play an important role, profound changes in the global economic and development landscape increasingly serve to illustrate that non-aid policies play an equally important role in shaping opportunities and obstacles to developing countries. As the Busan Partnership for Effective Development Cooperation of 1 December 2011, succinctly puts it: “it is essential to examine the interdependence and coherence of all public policies – not just development policies – to enable countries to make full use of the opportunities presented by international investment and trade, and to expand their domestic capital markets”.¹

The discourse on Policy Coherence for Development (PCD) has evolved considerably over the past decade, with the EU and OECD, together with organisations such as ECDPM, breaking new ground in elaborating the essential components and drivers of the concept. Aside from formal policy frameworks and (inter-)institutional structures and working arrangements, a consensus has emerged that knowledge of the effects of policies on developing countries as well as sustained political will are important part-components for promoting PCD at national level.

Building on such past work, the main objective of the studies underpinning this reader was to develop and test a replicable approach to facilitate the analysis of policy incoherencies with a potential effect on developing countries. For these studies they were focused in policy areas of particular relevance to Switzerland, which would subsequently support internal discussions in the SDC and between SDC and other Swiss government services on specific policy issues.

Hence, the approach would enhance Switzerland’s capacity to effectively promote policy coherence for development (PCD). In the context of this approach, promoting PCD is understood as improving the coherence of Swiss policies (or positions for supra-national policies) towards those development objectives as defined in Swiss development policy and international declarations. The tool was developed in collaboration with SDC and piloted on three policy areas of relevance for Switzerland’s development cooperation, namely commodities and trade, migration and development, and international tax policies and financial flows.

ECDPM hopes that the in-depth analyses of international trends, discussions, decisions and solutions developed in other countries, the EU, or international fora, prove to be valuable in informing reflections on these policy areas in Switzerland. ECDPM, as an organisation dedicated to bridging the policy to practice gap in international cooperation, also hopes that this work is useful to wider audience concerned with taking PCD from concept to reality. We would welcome any feedback on this document and its contents.

Mr. Andrew Sherriff
Head of Programme, EU External Action
ECDPM

¹ <http://www.oecd.org/dac/effectiveness/49650173.pdf>. Paragraph 9.

1. Context and objectives

Based on these pilot studies, this reader provides:

- A brief description of the concept of PCD and the key components and conditions for promoting PCD;
- An overview of the European and international debates on PCD, as well as the state of play of the promotion of PCD in Switzerland;
- A description of an approach to assess PCD-relevant incoherencies in particular policy areas;
- An overview of such incoherencies for three policy dossiers of relevance to Switzerland: (i) commodities trade policy, (ii) migration policy and (iii) tax and financial transparency policy.

This reader is structured in four sections, which present:

- An overview of prevalent concepts of PCD, past international and European debates on PCD and methodological difficulties in effectively measuring PCD (section 2);
- Current commitments, structures and policy discussions on promoting PCD in Switzerland (section 3);
- The methodological approach used to assess incoherencies in the three thematic policy dossiers (section 4);
- Concluding remarks, including notes on what aspects of PCD promoting in Switzerland could be improved upon (section 5).

Detailed analyses of the incoherencies present in the three policy dossiers (commodities, migration and tax policy) are provided in three annexes to this reader.

This reader should provide the tools necessary to analyse further discussions on other policy dossiers identified in the Dispatch on Swiss International Cooperation 2013-2016 (approved by the Federal Council and submitted to Parliament on the 15th of February 2012). This reader can particularly support activities in the context of Switzerland's Global Programs (Migration and Development, Food Security, Climate Change, Water, Finance and Trade), but may also contribute to work in relation to other priority areas noted in the Dispatch (agriculture, health, security, education/research).

2. Concepts and debates on Policy Coherence for Development

2.1. The concept of PCD

There is a growing recognition that considerable budgets of Official Development Assistance can only make a difference in supporting partner countries' own development efforts when policies other than development cooperation adopted at national, regional and multilateral levels are 'development-friendly'. The term Policy Coherence for Development (PCD) is generally accepted to refer to the practice of ensuring that all national policies do not detract from and are ideally supportive of development policy goals, and reflect the interests of developing countries in the process of reviewing existing policies and formulating new policies to improve the contribution of these policies to the achievement of international development objectives.

The concept and practice of promoting PCD predates the existence of this specific term – in the case of Switzerland, the basic concept of PCD can be read already from policy documents issues in 1976². While finding its origin in influential NGO campaigns during the 1990s as well as international policy discussions such as the United Nations Conference on Trade and Development (UNCTAD), the specific term 'PCD' only came into vogue among OECD members after 2000, and was first used by the European Commission in policy proposals published in 2005 during the EU Presidencies of Luxembourg and the United Kingdom.

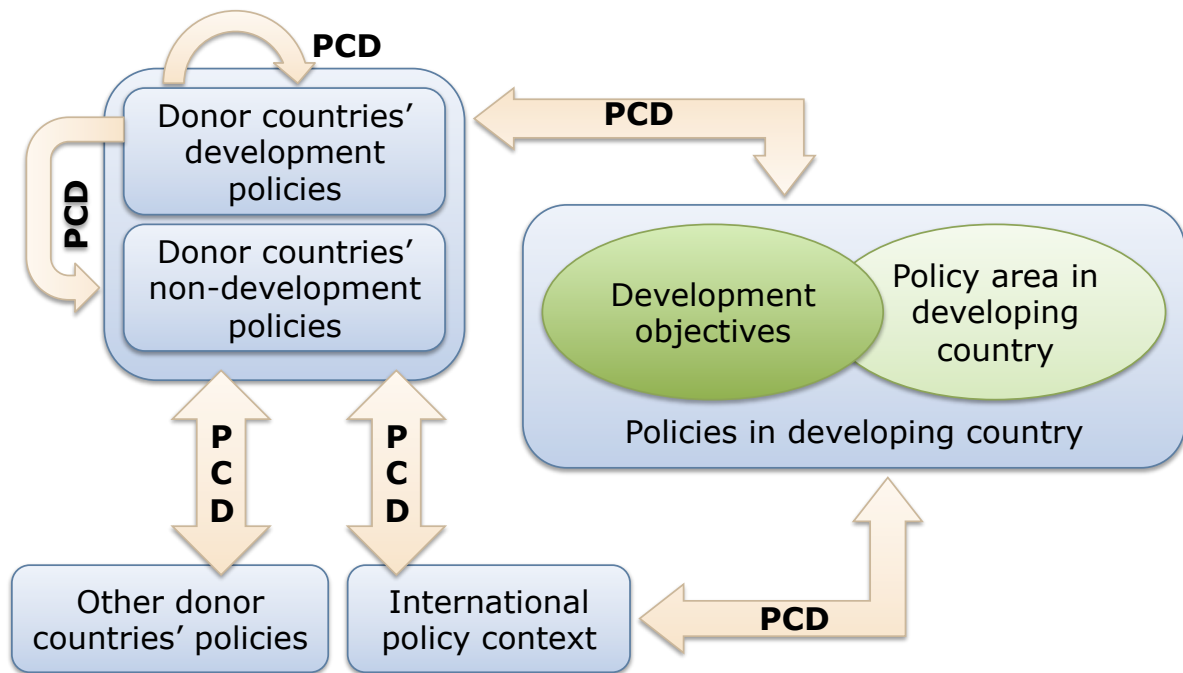
PCD can be promoted at five different levels (ECDPM and ICEI 2005; OECD, 2010), as depicted in Figure 1.

Figure 1: PCD 5 different levels

1. **Internal coherence.** Coherence in the policy field itself, which should achieve consistency between its goals and objectives, modalities and protocols.
2. **Intra-governmental coherence.** Coherence across all of the policies and actions of a donor country in terms of their contributions to development.
3. **Inter-governmental coherence.** Policies and actions should be consistent across different donor countries (as well as with policies adopted at the EU or in regional organisations) in terms of their contributions to development, to prevent one from unnecessarily interfering with, or failing to reinforce, the others.
4. **Multilateral coherence.** Coherence of the policies and actions of bilateral donors and multilateral organisations, and to ensure that policies adopted in multilateral fora contribute to development objectives.
5. **Developing country coherence.** Developing countries should be encouraged to set up policies that allow them to take full advantage of the international climate to enhance their development.

2 Bundesgesetz über die international Entwicklungszusammenarbeit und humanitäre Hilfe , March 19th 1976

Figure 2: Locating the promotion of PCD at different levels



Source: own design

This reader concentrates on the promotion of intra-governmental PCD in donor-countries, and linkages between the national and international policy context in promoting multilateral PCD (numbers 2 and 4). The definition of PCD can be broken down into several essential tasks to be fulfilled by the national political sphere, government administration and civil society:

- Ensuring that national non-development policies or policy proposals do not contradict national development policy objectives, nor have a negative impact on developing countries (i.e. “do no harm”);
- Identifying and rectifying incoherencies in existing policies with a possible harmful impact on developing countries;
- Seeking of synergies between development policy and other policy areas.

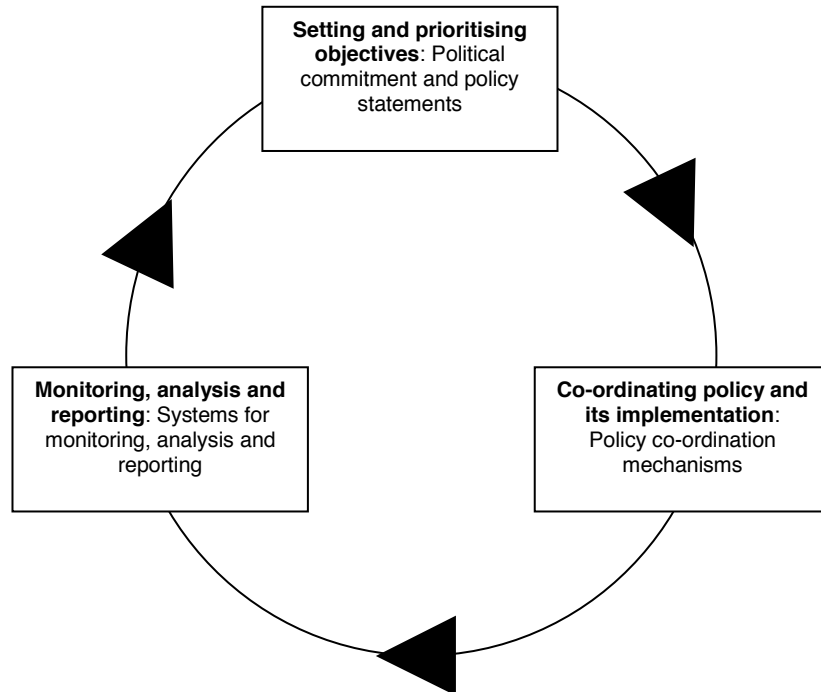
Previous research work by ECDPM, further reflected in the work of the Organisation for Economic Cooperation and Development (OECD) has noted three essential components for promoting PCD in national policy-making processes (Mackie et al, 2007; OECD, 2009):

1. **Explicit policy statements** on coherence which translate political pressures into a declaration of what the government intends to do, indicating intent, providing focus and guiding officials and other actors;
2. **Administrative and institutional mechanisms** (such as inter-departmental coordination committees in government, or a specialised coherence unit) to promote coherence in the definition, further refinement and mutual adjustment of different policies as well as the execution of the commitment;
3. **Knowledge input and assessment mechanisms** (information and analysis capacity) to support an evidence-based approach to policy formulation underpinning and informing the need for policy coherence.

Promoting policy coherence should not be considered in splendid isolation, but should be seen as part of the regular process of policy formulation, refinement, adoption and change. These components indicate that the promotion of PCD at the national level is a process that is at the same time highly

political, systemic in national policy coordination processes and knowledge-intensive. As such, the components strongly inter-relate, and can be conceptualised as a cycle for policy coherence in which the three phases are supported by one of the three components noted above to promote coherence with development objectives – see Figure 3.

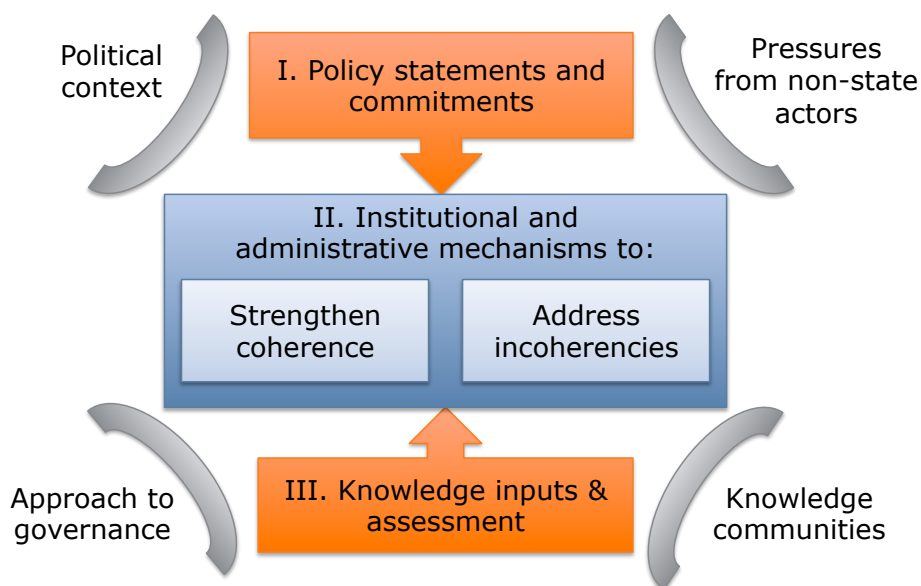
Figure 3: The policy coherence (for development) cycle



Source: OECD, 2009

The components of this cycle should furthermore be seen to exist in a particular national context with unique drivers and obstacles to promoting PCD, as depicted in Figure 4.

Figure 4: Components and drivers for PCD promotion at the national level



Source: ECDPM/Keijzer for Concord Denmark, 2012

Mechanisms for promoting PCD therefore vary from one country to another, depending on the national political and administrative context. Most formal PCD mechanisms are found in the middle layers of government. Although governments committed to policy coherence will seek to reduce or eliminate trade-offs between different aspects of policy, there will often remain moments when they are inevitable. Below the middle layers of government, efforts to promote coherence will tend to be of a more informal, consultative nature. Higher up, on the other hand, making trade-offs will be relied upon in order to overcome unresolved aspects of incoherence.

2.2. Debates on PCD

This section provides an overview of the historic and more recent debates surrounding PCD at the EU, the OECD and in other international fora, noting particularly the relevant policy statements and commitments made towards its promotion.

2.2.1. Debates at EU level

In the European Union, the Treaty of Maastricht from 1992 already points to the need to take account of development objectives in the process of formulating new policies. In the 2005 European Consensus on Development it was agreed at the highest political level that PCD should play a central role in European development cooperation. The European Consensus reaffirms Europe's "(...) *commitment to promoting policy coherence for development, based upon ensuring that the EU shall take account of the objectives of development cooperation in all policies that it implements which are likely to affect developing countries, and that these policies support development objectives.*"³

PCD has therefore been part of the legally binding objectives of EU development cooperation for more than 20 years. Article 208 of the present EU Treaty defines the overall objective of European development cooperation as follows: "*The Union's development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.*"⁴

The current EU Treaty positions this objective more explicitly against the ambition to give shape to a more assertive European external action policy. European policy in areas such as trade, finance, migration and agriculture is formulated in consultation with powerful actors and stakeholders. This creates political economy dynamics in which developing countries' interests may receive less attention. On the other hand, more public debate on particular policy issues increases the likelihood that minority positions (i.e. perspectives on the development impact of policies) are at least heard – which in some cases may lead to better taking them into account. In times of declining economic growth or recession, however, broad consultations are more likely to lead to policy outcomes that emphasise short-term interests of specific stakeholder groups rather than longer-term developmental objectives.

3 See http://ec.europa.eu/development/icenter/repository/european_consensus_2005_en.pdf

4 See <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>

2.2.2. Debates at OECD level

The OECD plays an important role in informing European and international discussions on PCD. The political mandate of the OECD was agreed in the 2002 'OECD Action for a Shared Development Agenda'. This mandate was expanded in 2008 with the adoption of a ministerial declaration on PCD⁵, which included agreements to further invest in measuring the effects of OECD members' policies and the results that are achieved through concerted efforts to promote PCD.

Since 2000 the Development Assistance Committee's (DAC) Peer Reviews of the members particularly look into the efforts made with regard to overall policy changes and innovations in terms of processes and exchange of information. The OECD has published a series of guidance and reference documents on the concept and practice of PCD, which give recommendations to OECD member countries seeking to improve their promotion of PCD. Notably, the OECD derived lessons learned from the DAC Peer Review process, as noted in Box 1. See OECD 2008, 2009, 2010 and 2011.

Box 1: Lessons learned from OECD member countries' promotion of PCD

The OECD Synthesis Report on PCD (2008) identifies nine lessons learned across the three 'building blocks' of the cycle to promote PCD, based on DAC peer review recommendations from 2003 to 2007:

Setting and prioritising objectives

- Lesson 1: Educate and engage the public, working with civil society, research organizations and partner countries, to raise awareness and build support for PCD, on a long-term basis.
- Lesson 2: Make public commitments to PCD, endorsed at the highest political level, with clear links to poverty reduction and internationally-agreed development goals.

Coordinating policy and its implementation

- Lesson 4: Ensure that informal working practices support effective communication between ministries.
- Lesson 5: Establish formal mechanisms at sufficiently high levels of government for inter-ministerial coordination and policy arbitration, ensuring that mandates and responsibilities are clear and fully involve ministries beyond development and foreign affairs.
- Lesson 6: Encourage and mandate the development agency to play a proactive role in discussions about policy coordination.

Monitoring, analysis and reporting

- Lesson 7: Make use of field-level resources and international partnerships to monitor the real-world impacts of putting PCD building blocks in place.
- Lesson 8: Devote adequate resources to analyzing policy coherence issues and progress towards PCD, drawing on the expertise of civil society and research institutes, domestically and internationally.
- Lesson 9: Report transparently to parliament and the wider public about progress on PCD, as part of reporting on development cooperation activities and progress towards meeting the MDGs.

During 2011 the Secretariat of the OECD has prepared an OECD Strategy on Development, which describes how the OECD and its members can contribute to a future in which no country should have to depend on development cooperation, which places strong emphasis on the promotion of PCD. The OECD adopted this strategy in May 2012⁶. It describes the members' ambition to deepen the OECD's work on PCD through evidence-based analysis of the costs of incoherent policies and the benefits of

5 See [http://acts.oecd.org/Public/Info.aspx?lang=en&infoRef=C/MIN\(2008\)2/FINAL](http://acts.oecd.org/Public/Info.aspx?lang=en&infoRef=C/MIN(2008)2/FINAL)

6 OECD Strategy on Development, May 2012, <http://www.oecd.org/development/50452316.pdf>

coherent policies, including the design of robust indicators to monitor progress and assess the impact of diverse policies on development.

2.2.3. Debates in other international fora

A further basis for discussions on PCD is found in the 8th Millennium Development Goal. This goal describes the UN members' ambition to give shape to a global partnership for development and includes specific objectives in the area of official development assistance (ODA), cancellation of debts, a fair international trade system, access to medicines and the digital agenda. The outcome document endorsed during the 'UN MDG review meeting' of 2010 places important emphasis on PCD.

There is recognition that the efforts made to achieve MDG 8 did not suffice to realise its ambition and that there may be need for a stronger focus on contributions from non-aid policies after 2015, in the development framework succeeding the MDGs, which includes discussions on the Sustainable Development Goals⁷. For instance, the EU Communication on the post-2015 agenda recognises that in the post-2015 framework a focus should be put on PCD as it *"plays a major role in eliminating poverty and achieving sustainable development"*.⁸

The Busan Partnership for Effective Development Cooperation, adopted on 1 December 2011 in Korea, equally stresses the need for PCD. This declaration, endorsed by the OECD members, developing countries, private donors and influential non-OECD members such as China and Brazil, acknowledges the importance of coherence: *"it is essential to examine the interdependence and coherence of all public policies – not just development policies – to enable countries to make full use of the opportunities presented by international investment and trade, and to expand their domestic capital markets."*⁹

2.3. Measuring progress on PCD

Despite such international political support, actual progress in setting up PCD mechanisms and procedures in OECD countries (on the basis of the three components noted in section 2.1) during the past decade has been rather tentative. In particular, there has been insufficient investment to assess the actual effects of the (aid and non-aid) policies of developed countries on developing countries. Most PCD-relevant research is theory-based, concentrating on the concept of PCD and lacking adequate empirical verification. Investments in research are considered a prerequisite for functional and legitimate monitoring of countries' performance on PCD. However, it remains unclear how a measurement and assessment framework for PCD would take shape.

Since 2000, all OECD DAC Peer Reviews include a fixed chapter in which the progress of OECD members in promoting development beyond their ODA budget is assessed. Since there is as yet no internationally agreed operational result framework on PCD for countries to be held accountable to, the analysis in these reports typically focuses on the process-dimensions of PCD with some more ad-hoc analysis of what happened in specific concrete changes. As a result of this, in recent years the Peer Reviews have focused on monitoring 'building blocks' in terms of formal and systematic efforts to foster PCD in given contexts, as noted in section 2.1.

⁷ <http://www.uncsd2012.org/rio20/content/documents/colombiasdgs.pdf>

⁸ http://ec.europa.eu/europeaid/documents/2013-02-22_communication_a_decent_life_for_all_post_2015_en.pdf

⁹ <http://www.effectivecooperation.org/files/Busan%20Partnership%20Document.pdf> It should be added that the objective to which coherence is linked here, namely international trade, investments and the growth of the domestic capital market, is a different objective from the one described in the EU Treaty.

A joint-evaluation led by France and co-managed by Belgium, Germany, the Netherlands and the European Commission looked into what mechanisms had been put in place in the EU (Mackie et al. 2007). Following Lijphart (1999), the joint-evaluation aimed to compare country contexts for PCD based on the degree of centralisation of power and how governments approach policy change. The evaluation concluded that the nature of a governance system in any country is an important factor in determining the government's choice and effectiveness of a PCD mechanism, as is the institutional balance of powers (parliamentary system versus semi-presidential system) and how consensus is built in this system (holistic approach through a legally binding policy or a particularistic approach entrusting PCD to a particular part of government).

A recent study by ECDPM (Galeazzi et al, 2013) reaffirms these conclusions, and further demonstrates that knowledge input and assessment mechanisms are still by far the least developed components of PCD systems, even in EU Member States who are relatively advanced in terms of promoting PCD. It is furthermore unclear to what extent research presently undertaken feeds into and is used in PCD-relevant policy processes. Ideally, such research and evidence would feed directly into the national policy coordination and assessment process. As such, it is important that any effort to devise clear indicators linked to PCD objectives are derived explicitly from the national development policy framework rather than only from international guidelines in order for national ownership of the concept and practice of PCD to ultimately be increased.

An ECDPM study (King et al, 2012) notes several political and technical considerations for developing an international standard for measuring comparative progress on PCD. Notably, the study shows that political agreement on PCD commitments will first have to be brokered in order for sufficient resources to be freed up for designing and implementing appropriate assessment- and monitoring frameworks, as well as gathering and quality control of data against which to assess. For this, key national concepts and definitions of 'development', as well as objectives for monitoring PCD have to be commonly understood and agreed.

At a technical level, identifying and agreeing on chains of causality of the impact of developed countries' policies on developing countries is fraught with difficulties. Aside from obvious data constraints, a composite index or suite of indicators for PCD would involve making trade-offs between development objectives (e.g. industrialisation and climate protection, private sector development and domestic resource mobilisation), and would furthermore need to distinguish between developed and developing countries.

These are considerable challenges, and large knowledge gaps remain in national systems for promoting PCD. Meanwhile, the OECD has in its Strategy on Development committed to contributing to the development of such indicators for specific thematic areas such as food security. This is however not enough to fill all the knowledge gaps - the findings of the report cited above suggest what is essentially a twin-track approach, consisting of (1) continuing current efforts in the OECD to develop overall strategies as well as specific progress in thematic areas, and (2) pushing for more attention to and acceptance of PCD objectives and targets in the debate on the post-2015 framework for global development.

2.4. Mechanisms for promoting PCD at EU level

Following commitments made in EU Treaties, the EU identified 12 priority areas¹⁰ for promoting and making further progress on PCD in May 2005. Subsequent EU Presidencies have spearheaded the development of a rolling work programme and a bi-annual reporting system to further and assess progress on these priority areas. The methodology for the bi-annual report follows a peer review methodology and is based on a questionnaire covering the different priority areas sent to the EU member states.

Following the second biannual report in 2009, the European Commission proposed to define a number of areas on which the EU could engage more proactively as part of its PCD agenda. In response, EU member states called for a more ‘targeted, effective and strategic’ approach: *‘Although progress has been made in improving PCD within the EU, the Council agrees that further work is needed to set up a more focused, operational and result-oriented approach to PCD in order to more effectively advance this commitment within the EU at all levels and in all relevant sectors’*¹¹ (*Ibid.*).

On the basis of the Commission’s proposal, the Council adopted five broad priority areas where the EU wanted to engage more proactively and strengthen its result-orientation, namely: (1) trade and finance; (2) climate change; (3) global food security; (4) migration; and (5) security and development. The European Commission published a Staff Working Paper entitled ‘Policy Coherence for Development Work Programme 2010-2013’¹² in 2010, concentrating on making progress on these five priority areas.

Aside from the work programme, the European Commission in 2009 revised the guidelines for its ex-ante impact assessment process for policy proposals under development to include PCD-relevant assessment indicators, noting the estimated impact of the proposed policy on third countries in general, and particularly on its social, security and environmental impact.¹³ As noted in the guidelines: *“Every IA [impact assessment] should establish whether proposed policy options have an impact on relations with third countries. In particular they should look at: impacts on developing countries – initiatives that may affect developing countries should be analysed for their coherence with the objectives of the EU development policy. This includes an analysis of consequences (or spill-overs) in the longer run in areas such as economic, environmental, social or security policy.”*

As the Council and Parliament’s negotiations might alter EC policy proposals in the process of adoption, assessments made of policy proposals before the inter-institutional political negotiation process might provide an indication of possible effects on developing countries of the proposed measures but are generally not helpful when assessing the real impact of a specific policy. Ex-ante evaluations also suffer from the fact that agreed policies might not be fully implemented.

10 Namely trade, environment, climate change, security, agriculture, bilateral fisheries agreements, social policies, migration, research/innovation, information technologies, transport and energy.

11 The Council conclusions are available at: <http://register.consilium.europa.eu/pdf/en/07/st14/st14921.en07.pdf>

12 See http://ec.europa.eu/development/icenter/repository/SEC_2010_0421_COM_2010_0159_EN.PDF

13 See http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf

3. Systems, opportunities and challenges to promoting PCD in Switzerland

3.1. Swiss political commitments towards PCD

The initial impetus for the promotion of PCD in Switzerland lies in a 1975 publication by a broad-based coalition of Swiss development and humanitarian aid organisations. These called for renewed solidarity with the global South following independent investigations of the operations of Swiss enterprises in developing countries linking to arms exports, investments and capital flight. The publication in particular noted incoherencies between Swiss foreign and development policy, and asserted that development aid should no longer serve commercial interests but support the efforts of developing countries. It marked the first instance in which aid and relief became an active part of public policy-making in Switzerland: although political parties were reticent to actively support the burgeoning development movement, they welcomed the call for a reimagining of Swiss development cooperation.

The subsequent 1976 Federal Law on development cooperation and humanitarian aid¹⁴ reflects this new perspective on solidarity, and notes that aside from technical cooperation and financial assistance, Swiss development cooperation can take the form of trade policy measures to assist developing countries in better participating and benefitting from international trade, as well as any other form that supports the objectives noted in the law. As a further principle the law stated that “the efforts of the federal government shall be provided gratuitously or on preferential terms. They generally support the own efforts of the partner countries.” (Art.2.3) Swiss private sector activities should also support the principles and objectives of the law. As such, the law presents a commitment to PCD, particularly in the area of trade and investment policy.

In the early 1990s its Federal Council and parliament further emphasised the need for the country’s domestic and foreign policies to be coherent with development goals. The Swiss vision for development cooperation that relates to “*the totality of Switzerland’s political, economic and social relations with these states*” was formulated in the Guidelines North-South in 1994, which incorporates the objectives of the 1976 Law. The guidelines further stress the principle of “*(...) safeguarding Switzerland’s interests on a long-term basis.*” The Guidelines further acknowledged the need for a more fundamental change in Swiss policy-making, one which as per its overall approach to governance should also be accepted and supported by its citizens (Federal Council 1994):

“The traditional dichotomies between environmental and economic policies, between economic and migration policies, between trade and development policies, between domestic and foreign policies can no longer be applied to solve the impending problems. What is required is a “coherent policy towards the South”. For the formulation of such a policy it is first necessary to highlight potential contradictions between short-term national interests and the longer term goals of Swiss development policy. Contradictions then need to be clearly tabled in the political decision making process.

This kind of policy cannot be implemented without the Swiss population accepting that our long-term welfare also depends on the fate of the South. The present “Guidelines North-South” contribute to a better understanding of this interdependence.”

14 Bundesgesetz über die international Entwicklungszusammenarbeit und humanitäre Hilfe , March 19th 1976

In the Guidelines, Switzerland further acknowledged that its contribution to development is linked to its own self-interest (OECD/DAC 2009). Reflecting on the international community's efforts to realise a global partnership for development, the Swiss Federal Council acknowledged in June 2010 that it "(...) *is only logical for there to be conflicting interests and subsequent lack of development coherence. The interests of European farmers are often at odds with the interests of farmers in the southern hemisphere. Patent protection does not always go hand in hand with humaneness. The interests of financial markets in the northern hemisphere are not always in line with development priorities in the southern hemisphere*" (Swiss Federal Council 2010).

Statements such as these signal that the Council as well as Swiss society more generally have as yet not aligned the overall vision set out in the Guidelines. The latter are currently regarded as 'past expiry date' and in hindsight do not appear to have spurred a systematic inquiry in any contradictions between any short- and long-term interests in Swiss policy making. Through its comments the Council also underlined that PCD should be seen as a political process involving competing interests, some of which take precedence over others, rather than as a 'technical problem requiring a solution'.

Some time after the completion of the 2009 DAC Peer Review, which recommended the adoption of an overarching policy statement that should at least politically bind all government departments, the Federal Council approved the Dispatch on Swiss International Cooperation 2013-2016¹⁵, submitted to the Parliament on 15 February 2012. The Dispatch is a comprehensive policy document, including an overall strategy, specific strategies for sub-sectors, and related financial bills. The adoption effectively represents the Council's political statement for PCD and its commitment to further increase its efforts.

According to the Dispatch, Switzerland fosters PCD at four levels (SDC 2012a):

1. In **international negotiations**, Switzerland advocates for global rules fostering sustainable development.
2. In its **bilateral relations**, Switzerland has the objective that all development programs with Swiss financial support are consistent with the goals of global sustainable development.
3. As part of the **policy dialogue with partner governments**, Switzerland advocates for domestic policies of partner countries that are coherent with their development goals and with global sustainable development.
4. Switzerland aims at balancing its own **domestic sectoral policies** to the extent possible with the goals of global sustainable development.

To make progress in fostering PCD within Switzerland's domestic policies, the new Dispatch selected seven policy fields that contain potential incoherencies between those policies and development policy goals: agriculture, environment, health, the financial sector (including taxation), security, education/research and migration.¹⁶

Other Swiss policy commitments that include aspects of PCD are the Federal Council's Sustainable Development Strategy 2012-2015, the annual Foreign Policy Report to parliament, the Foreign Economic Report and the Report on International Environment Policy.

¹⁵ Botschaft vom 15. Februar 2012 über die internationale Zusammenarbeit 2013-2016 (Dispatch)

¹⁶ For comparison's sake, these issues largely overlap with the EU's 5 areas for a proactive engagement that were adopted in 2009: trade and finance, food security, climate change, migration and security. In essence the EU's targets gave less explicit attention to the importance of research and health (here being restricted to IPRs).

3.2. Swiss governance culture and institutional and administrative mechanisms for promoting PCD in Switzerland

The most recent DAC Peer Review (2009)¹⁷ notes that governance in Switzerland is typified by a strongly consensus-oriented approach to governance and an approach to policy change focusing more on mainstreaming and persuasion than on hierarchies and imposition (OECD 2009). Switzerland can be characterised as a 'consensus democracy' that has some elements in common with other federal states but as a governance system more importantly includes several unique elements. Among these unique elements are the use of referenda for those issues that are judged most important, through which citizens may challenge any law voted by federal parliament and by means initiatives introduce amendments to the federal constitution.

Whereas these referenda on the one hand offer the opportunity for policy priority areas or issues with national resonance to be focalised, giving impetus for PCD issues to be recognised and commitments realised, democratic national governments can be subject to very strong pressures of interest groups (Barry et al, 2010). Barry et al (2010) argue that interests can be reconciled if a longer term view is taken, based on the premise that all nations will mutually benefit from higher incomes, higher levels of international trade and increased security associated with sustainable and more equitable development paths. They also suggest that politicians in democratic systems are disincentivised to take such a long-term perspective by the need to retain the support of the electorate and of a time varying combination of sectional interests and swing voters.

Switzerland in principle finds a good basis in its comprehensive formal oversight procedures to ensure that internal PCD deliberations are informed and critiqued by various domestic stakeholder groups. Steffen and Linder (2006) argue that organized interests play an important role in the political process in Switzerland due to direct democracy, which effectively gives them a veto right in legislation: *"the possibility to block parliamentary decisions with a referendum led to the development of an extensive pre-parliamentary process, in which all important political actors are integrated in order to find a for all acceptable compromise."*¹⁸

The principal institutional structure for fulfilling the PCD commitments made is the Swiss Federal Council – it is a seven-member executive council that heads the federal administration, operating as a combination of a cabinet and collective presidency. Another element concerns the 26 Cantons of Switzerland, who are responsible for healthcare, welfare, law enforcement and public education and retain the power of taxation. These cantons in turn determine the degree of autonomy at the municipal level. These and other elements contribute making Switzerland the closest state in the world to a direct democracy (Linder, 2010).

Regarding development policy discussions, the Federal Council is supported by the **Interdepartmental Committee for International Development and Cooperation (ICDC)**. The Committee is chaired by the SDC and including representatives from all concerned federal offices, discusses development-policy related issues (including the MDGs, development financing, sectoral policies). It represents an informal forum in which development policy issues can be discussed prior to the Federal Council in order to more easily reach a coherent Swiss position. Its involvement in formulating the respective priority areas in the Dispatch was seen as a means to obtain buy-in and political traction beyond actors directly active in international cooperation (SDC 2012). Other

¹⁷ See <http://www.oecd.org/development/peer-reviews/44021195.pdf>.

¹⁸ It should be noted that Swiss administration is, like in other OECD DAC countries, 'populated' by political parties - this may pose limitations to some inter-departmental discussions in the sense that arguments put forward can be regarded by some as being based more on ideological predispositions than on independent evidence.

interdepartmental thematic groups with the same function (some more informal than others) may also consider PCD-relevant issues.

The 2009 DAC Peer Review highlighted the opportunities that this overall approach provided to strengthen the coherence of policies (emphasis added): *“Swiss consensus culture entails **three inherent institutional elements**, all of which provide opportunities to foster coherence. Firstly, consensus decisions by the Federal Council and the drafting of bills require an **extensive formal process of public and private sector consultation**, including with SDC and SECO [State Secretariat for Economic Affairs]. Secondly as mentioned above, Switzerland’s institutional set-up means that **two of the seven councillors have an inherent interest in ensuring that the Federal Council’s decisions take a development perspective**. Thirdly, since the last peer review, new **inter-departmental agreements** are being concluded between the FDFA [Federal Department of Foreign Affairs] and other departments to approve sector strategies with international implications (currently health, research and climate) and for which federal departments other than the FDFA are primarily responsible”* (OECD/DAC 2009).

Another important actor for the promotion of PCD in Switzerland (not highlighted in the Peer Review) is the **Advisory Committee on International Development Cooperation**. This Committee contains representatives from a wide range of stakeholders (Parliament, civil society, private sector, universities, etc.). The Committee allows for a formal way of informing government of voices, views, and experiences of stakeholders who are not formally connected with the policy development and implementation of international cooperation. Its main task is to advise the Federal Council, the various departments of the Federal Administration and in particular the Management of SDC and SECO. It meets five times a year and sets its agenda in relation to the medium- term planning of affairs treated by the Federal Council and the Parliament and on important topics relating to international cooperation (SDC 2012a). In addition to its formal roles, the Committee can help to overcome internal impasses where contested issues are not submitted to the Federal Council due to political differences between ministers leading the various departments and agencies (SDC 2012a).

The Federal Council’s decisions¹⁹ are prepared in a two-tiered process, including (first) the technical level and then, subsequently, the political level (that is consultations in writing prior to the Cabinet’s meeting among the seven Ministers or Federal Councillors). At the technical level, the competent leading office invites other federal offices to comment on proposals (draft decisions) to the Federal Council. This procedure is called “consultation of offices”. Its purpose is to discuss and, if possible, eliminate differences among the federal offices on decisions to be taken by the Federal Council. This process provides SDC and SECO the opportunity to systematically comment issues that are not coherent with a development perspective. The type of issues that SDC and SECO are consulted on can be specific policy decisions to broader government positions and strategies. Likewise, both offices consult other offices on any development policy decision requiring Federal Council approval such as the Dispatch, replies of the Government to requests from the parliament etc. Once this technical discussion is completed, the Ministry of which the competent office belongs to launches the discussion at the political level, being requested to disclose remaining dissenting views.

On average this process takes a week and primarily takes place electronically (via e-mail), often being preceded and accompanied by informal contacts among interested offices. The leading office subsequently decides whether to take them into account or not. The Swiss Federal Government therefore has in place an effective mechanism of inter-ministerial coordination. The process leaves open the possibility for ‘political escalation’ so that the conflicting interests or dissenting views can be

¹⁹ The Council as a custom seeks to avoid voting, but in important and contested issues voting is done on a regular basis.

arbitrated at a higher level (Cabinet or Federal Council level) if they cannot be reconciled at the level of the offices (OECD 2012). At this political level, the institutional set-up of the political system offers mechanisms to ensure that PCD issues can be addressed.

While being the core process, the increasing 'digital' nature of the consultation of offices process underlines the need to create space for informal (i.e. non-negotiating setting) exchange between and within offices, which can also be fed by discussions in relevant inter-departmental thematic groups (SDC 2012a). No formal mechanism however exists with regards to generating and assessing knowledge on the impact of Swiss policies on developing countries. Although the Federal Council reports on its foreign policy to parliament on an annual basis, PCD is not explicitly addressed (though parliament is involved in PCD-relevant discussions through the Advisory Committee).

The OECD response strategy further provides brief descriptions of progress made in specific areas, and presents evidence of strong potential and progress made in promoting PCD in Switzerland. Policy areas where development policy objectives have been given consideration in recent years include among others the establishment of migration partnerships as well as the inclusion of sections regarding sustainable development in Swiss free trade agreements.

3.3. Assessing Switzerland's overall performance in promoting PCD

In advance of any government decision, a consultation process is launched by the leading competent office, which invites other federal offices to comment on proposals to the Federal Council. Switzerland reported to the OECD this year that in 2011 SDC was officially consulted 275 times (2010: 166 times). SDC has commented on 43 cases of these (2010: 19). About 78% of the submitted comments have been taken into account (2010: 64%). While these numbers are interesting, they are not sufficient in order to find out whether SDC has made a difference in influencing the actual decisions made, for which additional qualitative and case-specific analysis would be needed (SDC 2012a).

While the relatively low response rate for SDC may say something about its capacity or interest to engage, it is not possible to 1) clearly assess Swiss performance on PCD on its own terms, and 2) reliably compare the Swiss performance in promoting PCD (as measurable through the aggregate net-effect of its policies on international development) with the performance of other countries. Arrangements for the promotion of PCD, both in Switzerland and internationally, are at present characterised by process-oriented commitments and an absence of institutionalised indicators for operationalizing desired levels of results. Despite the slow progress made in forging agreements within and among states on how to monitor and assess PCD as a basis for political accountability and to inform decision-making, independent actors such as NGOs and research organisations do feed this debate by providing independent analysis. Well known among these efforts is the Commitment to Development Index (CDI) that is compiled by the US-based Centre for Global Development. The CDI represents an effort to track selected policy efforts by donor countries that affect developing countries. As such, it does neither represent an indicator for a donors' overall impact on developing countries nor measure policy incoherences for development. Rather, it indicates the political will of governments to promote development across specific policy areas and aggregates this information in an overall index.

In 2012 Switzerland was placed in the 18th position on a list of 27 OECD DAC countries in terms of its performance, scoring higher than Greece, Italy, Japan and South Korea (Roodman 2012). This score can be further differentiated by looking at how Switzerland scores on the seven components that together form the composite score – Aid: 10th; Trade: 24th; Investment: 19th; Migration: 3rd; Environment: 20th; Security: 18th; and Technology: 16th. Factors affecting, for instance, the low score on Trade are high tariffs on textiles and agricultural products and the low level of manufactures imports

from poorer countries (6.6% of GDP), whereas the high score on Migration is derived from the high burden share born by Switzerland during humanitarian crises as well as the large increase of unskilled immigrants living in Switzerland.

Switzerland scored below-average for the overall sample of countries, and below the average of the EU countries. The explanation of the scores further notes that *“Switzerland admits many migrants and refugees from developing countries and the quality of its foreign aid is relatively strong. But these contributions to development are offset by Switzerland’s poor performance on other CDI components. Switzerland is one of the smallest contributors to international peacekeeping operations. It also has some of the highest barriers to exports from developing countries, especially agricultural goods, provides little support for research and development, and has poor investment practices from the perspective of developing countries; Switzerland is one of only three CDI countries without a national political risk insurance agency.”*²⁰

The lack of progress in the monitoring of results does not mean that comparison on process is not productive, as the building blocks provide an essential ‘lowest common denominator’ to engage with other OECD and non-OECD countries on discussing PCD. Continuing these discussions however does provide a means to further more concrete international discussions on PCD in particular dossiers, e.g. the OECD’s contribution which facilitated the adoption of the G20’s Anti-Corruption Action Plan in November 2010. In the past discussions on the OECD Development Strategy, Switzerland also backed proposals to include concrete targets and objectives which it may also promote in other relevant international policies over the next few years, including a possible post-2015 development framework. The adopted Strategy however did not include such goals.

4. Identifying opportunities for promoting PCD in specific policy dossiers

Whereas the concept of PCD has been widely studied and is recognised in development policy-making circles, in practice PCD concerns the application of the concept to specific, concrete policy areas and proposals. This requires in the first place the identification and analysis of those areas in policy areas where incoherencies between development goals and other policy objectives or interests do or may arise. The reliability and the validity of the analysis will to a large extent depend on a structured and inter-subjective methodology (i.e. one that makes explicit and transparent what choices have been made).

This section describes an approach for identifying and mapping incoherencies in specific policy dossiers, in view of relevant (on-going) domestic policy discussions and processes, also drawing on discussions at the international or multilateral level as a source of expertise. The information gathered would serve to inform and promote more evidence-based inter-ministerial or inter-sectoral dialogue regarding the possible implications of policies on developing countries, as well as the development of alternative policy options and arguments. The approach is designed to be replicated for (additional) policy areas or priorities arising.

20 See http://www.cgdev.org/section/initiatives/_active/cdi/. For a critique of the CDI, see Annex 5 of King et al., 2012.

4.1. An approach for assessing PCD-relevant incoherencies

In order to uncover possible incoherencies in different policy dossiers, several research ‘steps’ need to be undertaken:

1. Identify **relevant policy issues and processes** in order to understand the nature and agenda of the debate in Switzerland from a development policy perspective, paying particular attention to:
 - a. Specific policy statements or documents (government-wide or of individual ministries), Parliament discussions or Federal Council decisions under discussion;
 - b. Key stakeholders and decision-making moments;
 - c. Core arguments;
 - d. Relevance of the process for developing countries.
2. Undertake a **literature review** for the purpose of making a ‘theoretical’ analysis of what is generally at stake and what ‘development-friendly’ policy options are available for the area concerned. This analysis can draw both on general literature and policy analysis on the topic and existing studies that explicitly tackle the issue from a PCD perspective.
3. Survey relevant on-going **discussions in selected international or multilateral fora**, including other European countries, the EU, the UN, the G8 and G20.

The specific incoherencies form the basis for developing an overview table of incoherencies, as shown below:

Table 1 Overview table: Aspects of incoherence and the extent to which they are reflected in international policy discussions

Overview table: Aspects of incoherence and the extent to which they are reflected in international policy discussions		
Incoherence issues	Policy discussions in the European Union	Selected multilateral discussions
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This table allows one to quickly compare key issues/options defined under step 2 with the Swiss policy discussions of step 1, and discussions in other countries and international / multilateral fora. The purpose of this table, which is the key research output of the analysis, is to differentiate and deepen SDC and Swiss positions and policy interventions on the specific incoherencies within particular policy areas.

4.2. Selected policy discussions

The above approach was applied to three selected policy discussions currently high the political agenda in Switzerland in an effort to map incoherencies and identify policy areas and options through which they could be addressed. These policy discussions are briefly introduced below.

4.2.1. Commodities policy

Policies, trends and dynamics relating to international trade in commodities are important to both developed and developing countries. Developed countries are dependent on the import of critical raw materials from third countries for their industrial production, whereas many developing countries are dependent upon the export of key commodities, which make up significant shares of their export earnings. Developing countries are simultaneously dependent on the import of commodities that they do not produce. As such, price fluctuations in commodity markets strongly affect developing countries’ trade earnings.

In recent years, the increasing prominence of emerging economies in international trade, global population growth and increases in living standards as well as technological developments have driven demand for raw materials up. Developed countries' trade policies, in particular the export restrictions they maintain, as well as their finance and competition policies, which facilitate speculation and market concentration, have meant that prices for commodities such as minerals, metals and agricultural products have fluctuated sharply over the past decade, while at the same time restrictions on the exports of raw materials have increased.

4.2.2. Migration policy

Migration has diverse impacts on the lives of migrants, their families and people remaining in their countries of origin, as well as on the economies of the sending and receiving countries. As such, migration policies, providing the framework in which migration and mobility takes place, also have considerable influence on achieving international development objectives and are a critical dimension of PCD. In the last decades the understanding of the linkages between migration and development has developed into a substantive body of theoretical knowledge on possible linkages.

One of the most widely acknowledged positive links of migration to development is the impact of remittances sent back to families in the country of origin with degree of openness of countries towards migrants and the costs of sending remittances being prominent policy options influencing this positive link. Furthermore migrants can be a strong contributor to the host countries economic development depending on the conditions and rights received. Prominent negative links may include the issues of brain drain, brain waste, adverse effects on economies, as well as negative social effects. The links between migration and development are however very nuanced. The UN HLD 2013 will thus build on existing work and focus on 'concrete measures enhancing the benefits of international migration for migrants and countries alike and its important links to development, while reducing its negative implications'.

4.2.3. Tax policy

Domestic tax revenues are widely recognised as being the most sustainable source of resources for states to redistribute income, provide infrastructure and ensure basic services to their citizens, in addition to having important governance benefits (accountability, forging a social contract) and enabling states to capitalise on FDI inflows. However, developing countries face considerable challenges to their capacity to collect taxes. Whereas some domestic issues can be tackled with the support of ODA, there are moreover considerable international obstacles to tax collection for developing countries. Significant gaps within national tax legislation and mismatches between tax legislations internationally paves the way for large outflows of capital which are not part of commercial transactions (i.e. illicit financial flows) from countries where it is already relatively scarce. This includes not only taxation of wealth, but also the reacquisition of illegally acquired funds (through bribery or corruption).

What compounds these issues are the various mechanisms and vehicles for secrecy employed in these flows and transactions. These range from banking secrecy, where banks are not allowed or required to disclose information about their customers unless specific conditions apply, to trusts and foundations to offshore companies and other corporate vehicles masking the ownership behind transactions. Principally, these are matters of jurisdiction – national legislation determines whether the actors involved (banks, companies, individuals) are required disclose information and whether the jurisdiction shares it with anyone seeking this information. There are considerable outstanding incoherencies between states' legislature on banking secrecy and taxation, which together facilitate tax evasion and avoidance, trade and transfer mispricing, bribery, corruption and stolen assets and money laundering.

4.3. Fora and mechanisms in Switzerland for promoting PCD and addressing incoherencies

As noted in section 3.2, Switzerland has a well-developed and –suited culture and system for interagency consultation, which enables policy issues to be raised and discussed at both the political and technical level. Regarding the latter, Switzerland has in place a variety of technical fora and mechanisms to promote PCD and address incoherencies in specific policy areas – with respect to the three areas covered in this reader, the annexes can be used to inform and contextualise discussions in the following fora:

4.3.1. Commodities and Trade

Following several interpellations by Parliament, civil society and cantonal authorities regarding Switzerland's raw materials policies, the government has formed an **interdepartmental platform on commodities** in 2011, linking the department of Economic Affairs, Education and Research (EAER), Finance (FDF) and Foreign Affairs (FDFA). The platform prepared and published a Background Report on commodities to the Federal Council²¹ in 2013, highlighting environmental, social and human rights aspects of raw materials extraction from developing countries. In linking economic, political, fiscal and developmental considerations, the report recommends that the consequences of a potential introduction of transparency requirements for the Swiss commodity sector be examined. The Federal Council has approved the 17 recommendations of the report.

4.3.2. Migration

In 2011, the **interdepartmental working group on migration (IMZ)** was redefined and streamlined to enhance interdepartmental coordination on migration policy. The Federal offices represented, which include the Human Security Division (HSD), the Federal Office for Migration (FOM), SDC, SECO, Federal Office of Police (FedPol), etc., meet regularly to coordinate at the mid-level structure of the policy process. Directors and State Secretaries of these departments meet bi-annually to discuss the strategic orientation of the Swiss migration policy, and feed into the work of the **Special Ambassador on Migration**, who since 2009 is the key person in bilateral and multilateral political dialogues on international migration. The Ambassador is further supported by the **Task Force preparing the Swiss position for the Global Forum on Migration and Development**. Lastly, Switzerland has a Coordination Unit against the Trafficking of Persons and Smuggling of Migrants.

4.3.3. Tax and Illicit Financial Flows

Initiated by SECO, an **informal interdepartmental group on tax cooperation** was formed in 2009, comprising FDFA, SDC, the State Secretariat for Financial Matters (SIF) and the Swiss Federal Tax Administration (FTA). This informal group meets regularly to coordinate a position on specific issues nationally and the Swiss position in international fora on tax cooperation, such as the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. Representatives furthermore take part in joint missions to tax and development fora.

21 See <http://www.news.admin.ch/NSBSubscriber/message/attachments/30132.pdf>

5. Concluding remarks and Future perspectives

Although Switzerland has clear policy commitments and institutional arrangements in place for promoting PCD, Switzerland, and SDC in particular, could further strengthen its efforts by:

- I. Reaffirming and clarifying its ambitions towards PCD through an updated whole-of-government commitment;
- II. Continuing to measure the impact of SDC engagement in non-aid policy discussions on the coherence of policies for stated Swiss development objectives through adequate indicators, and;
- III. Investing more in research on the impact of Swiss policies in developing countries to feed back into internal PCD discussions.

First, Switzerland has clear policy commitments towards promoting PCD in place in the 1976 Federal Law on Development Cooperation and Humanitarian Aid and the 1994 Guidelines North-South. These commitments are reaffirmed and operationalized in the recent Dispatch on International Cooperation 2013-2016, which includes the promotion of PCD at several levels as well as specific priority areas, though they are losing some traction within the government. Whereas the Federal Council rightly understands PCD as a continuous political process, the current policy framework does not fully reflect this. The Council has however decided in January 2010 that there is no need for a revision. Potential improvements could nonetheless be made at the level of future government dispatches and strategies.

Such improvements could serve to strengthen government-wide consciousness of PCD, which would in turn further strengthen Switzerland's well-developed institutional mechanisms and arrangements for promoting PCD. As part of the consensus-based governance system, broad-based consultations and effective gate-keeping mechanisms allow for disagreements at the technical level to be raised and addressed in inter-ministerial fora and subsequently at Cabinet level. Several features are key. First, the elaborate system of interagency consultation and dialogue, involving both development-specific as well as non-aid and –development fora, offers opportunities for specific PCD issues to be discussed. Care must however be taken that such structures do not lose sight of the long-term consistency and coherence of policies amid the resolution of short-term political tensions. Whole-of-government commitments to PCD in the form of dispatches or strategies noting broad, longer-term development goals could provide a useful reference point as a basis for interagency discussions.

Beyond inter-ministerial dialogue, a wide range of stakeholders (including parliament and the private sector) are formally involved in the policy-making process through the Advisory Committee on International Development Cooperation. Civil society furthermore adopts an active watchdog function - SDC retains a continuous dialogue with CSOs and other national stakeholders. Interagency PCD discussions are therefore informed and critiqued by a wide variety of domestic stakeholder groups.

Second, in recent years, SDC has made concerted efforts to strengthen its expertise on relevant non-aid policy issues, and to become actively involved in strategic discussions and interagency consultations on these issues. To inform and supplement such discussions, this reader has presented an approach for identifying key incoherencies in policy dossiers of relevance to Switzerland's efforts to promote PCD, and subsequently linking these incoherencies to ongoing policy discussions and initiatives at the international and multilateral level.

The approach serves to:

- Enable stakeholders promoting PCD in Switzerland to link Swiss commitments to policy discussions at the international and multilateral level;
- Develop informed strategies by institutional mechanisms for 1) promoting PCD in new policy proposals and 2) address incoherencies in priority policy areas as identified in the Dispatch;
- Guide the monitoring of progress in promoting PCD in Swiss policies and at international level.

Other priority policy areas noted in the Dispatch, including health, education/research, agriculture and security, would benefit from having this approach applied to them.

In the meantime, some progress has been made in promoting PCD in three particular priority policy areas, namely commodities, migration and tax policy. Interdepartmental structures have been set up for each of the policy areas, each of which have addressed various PCD-relevant issues. Particularly for the migration policy area, Switzerland has developed strong interdepartmental coordination, which offers opportunities to address the developmental effects of migration and feeds into the Swiss position on migration in domestic, international and multilateral fora.

However, no systematically produced evidence is currently available on the outcomes of such increased efforts. It should be noted that whereas the approach noted in this reader serves to create a comprehensive overview of policy issues and discussions, it is no substitute for investing in research on the impact of Swiss policies on developing countries to support evidence-based policymaking. As in many other OECD DAC countries, this currently is the weakest link in the Swiss PCD cycle. Present efforts to assess Switzerland and SDC's effectiveness at promoting PCD limit themselves to measuring SDC's involvement in non-aid policy discussions, rather than the (impact of) the outcomes of such discussions.

Whereas it is important to measure and assess to what extent Swiss non-development policies take into account Swiss international development objectives and whether potential incoherencies are being discussed and addressed, the current assessment framework (which measures the number of times SDC is consulted on policy discussions; provides comments or inputs to such discussions, and; its inputs are taken into account) is incomplete. To assess whether SDC has influenced the actual policy decision made, these measurements need to be complemented by:

- An overall number of policy statements (per annum) that may hold implications for developing countries, and;
- The number of such policy statements which explicitly refer to national development policy objectives and international development commitments.

In addition, the number of cross-sectoral strategies developed and discussions held at interagency and multilateral fora can provide a useful complement to the above. Detailed case-studies of individual non-development policy areas or discussions in which SDC has played an instrumental role could also provide necessary insight.

Finally, in the longer-term, research based on nationally-defined and –agreed indicators would provide a clearer picture of how effective Switzerland's current efforts for promoting PCD are given its outcomes. The OECD Strategy on Development does not set out concrete targets and objectives to measure progress on PCD, despite being supported by several OECD DAC members including Switzerland. Comparative measurements of PCD efforts, for instance through the Commitment to Development Index (CDI), meanwhile do not touch upon the actual impact of policy outcomes and therefore lack national ownership in Switzerland. The developed approach in this reader may help with these discussions in thematic areas but more work is needed to generate better data and indicators to measure PCD at this level.

It is important that any effort to devise indicators linked to PCD objectives are informed by the national development policy framework rather than only by international guidelines in order for national ownership of the concept and practice of PCD to ultimately be increased. Switzerland is therefore encouraged to strongly involve the Advisory Committee on International Development Cooperation in the development and monitoring of such indicators.

In order to adequately assess the value of Switzerland's efforts to promote PCD, research efforts should put more emphasis on the impact of non-aid policies in specific thematic areas on developing countries. Conceptually, a methodology for such an undertaking would need to take into account the national policies of partner countries' in the respective thematic area, the development objectives of the partner country and on that basis outline the links and impact routes between Swiss policies and the development on the ground which can subsequently be investigated. Whereas initial efforts at the level of the OECD to develop indicators specific to the thematic area of food security are instructive in this regard, national efforts to promote PCD are linked to national (not only international) development policy goals and objectives – sets of (3-5) indicators could therefore be developed around the five strategic goals noted in the Dispatch 2013-2016.

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Annex I. Key policy incoherencies: Commodities policy

This section presents the results of a literature review of key studies on commodities and trade policy, with a specific focus on identifying what options for development-friendly policies are available. Following a general introductory analysis, three sub-sections look in more detail at general trade policy, finance and competition policy as well as investment policy and Corporate Social Responsibility (CSR).

1. Defining commodities and outlining policy options

There is no internationally accepted definition of what falls under the term ‘commodities’, or on what public policy options are available and best suited to manage them. Definitions of ‘raw materials’ or ‘commodities’ range from a selective group of strategic resources to all inputs used at different stages of industrial processes. In general, the term ‘raw materials’ is often seen as limited to ‘extractive resources’ and considered less inclusive a term than commodities, the term used in this paper, which also includes agricultural products. A distinction between biotic and abiotic commodities is also made in practically all documents and policies reviewed for this paper (a similar though not identical distinction is that between renewable and non-renewable resources). In terms of the trading of commodities, a distinction is increasingly made between physical and financial commodity markets.²² As per these elements, this paper uses an inclusive definition of commodities given that similar policy actions can be pursued in relation to very different commodities.

Policies, trends and dynamics relating to international trade in commodities are important to both developed and developing countries. Industrialised countries are dependent on the import of critical raw materials from third countries for their industrial production (Ramdoo 2011). Many developing countries are characterized by commodity-dependence in terms of their exports. According to UNCTAD (2012), 100 developing countries depend on commodities for at least 50% of their export earnings. More than half of African countries derive 80% or more of their export income from commodities. Furthermore, within their commodity exports, many developing countries are heavily dependent on a few commodities only. A total of 68 developing countries are dependent on just three commodities for at least 50% of their merchandise exports (UNCTAD 2012). As a result, while dependent on commodities for their exports, they are simultaneously dependent on the import of commodities that they do not produce.

²² This distinction is for instance used in the 2011 European Commission Communication titled ‘Tackling the challenges in commodity markets and on raw materials’.

Prices for commodities such as minerals, metals and agricultural products have increased sharply during the past decade. At the same time, there has also been an increase in restrictions on the export of raw materials, which has led policy makers and the private sector to the question of free trade of raw materials (OECD 2009). Although there is currently little evidence of imminent physical shortage of raw materials globally (Ramdoo 2011), the European Commission recognises the following three drivers behind the increasing demand for raw materials:²³

- Emerging economies;
- Rise in global population and in the average standard of living;
- Technological development (climate change, need for alternative energy sources and the "information age").

Whereas overall policy discussions and strategies in OECD countries focus mostly on predictability and access to trade²⁴, development considerations in these discussions focus more on equity considerations in terms of the distribution of benefits in the value chain as well as human rights and environmental considerations.

Supply and demand patterns are driven by multiple and often time-bound factors, which can only be controlled through public policy to a certain extent.²⁵ Public policy making on commodities can be undertaken in a number of areas and reflect various possible interlinking rationales that provide opportunities for synergies as well as clear trade-offs. A non-exhaustive overview of such rationales is summarised in Table 2. These rationales for the most part relate to countries that are net-importers of commodities – these are the focus of this study given that this most directly serves to inform the policy decisions of OECD DAC countries. HCCS (2011) further includes details on net-exporting countries and their rationales.

Table 2: Possible rationales and areas for public policies on commodities

- **Geopolitical, foreign policy, defence rationale:** secure access to supply of essential commodities.
- **Competitiveness / trade rationale:** different levels of transparency and restrictedness are of benefit to different countries;
- **Sustainability and environmental protection:** avoid disruption of the availability of commodities over time (includes climate change and biodiversity considerations)
- **Human rights / corporate social responsibility:** this partly falls under sustainability concerns, emphasising the conditions under which commodities are produced (including equity concerns)
- **Taxation / speculation / domestic resource mobilisation:** similar to competitiveness rationale, emphasising economic development of the countries of origin that also affect long term availability of commodities (link to security rationale).

Source: adapted from HCCS 2011

Concentrating on the competitiveness and trade rationale, a number of public policy options are available, which can be given further shape through the interaction of and emphasis on one or more of the above policy perspectives. An overview of those options available to countries that are net-importers of commodities is provided in Table 2.

²³ <http://www.oecd.org/dataoecd/5/59/43980859.pdf>

²⁴ Recent studies such as Ter Velde (2012) however point at a trend of increasing protectionism in EU trade policy.

²⁵ E.g. the 2008 food price spike was partly caused by large forest fires in the Republic of Russia.

Table 3: Public policy options for countries that are net-importers of commodities (adapted from HCSS 2011).

Area	Specific measure(s)
1) Import reduction	R&D for alternatives, recycling (including urban mining), efficient use and new sources.
2) Proactive acquisition	- FDI, MOUs and joint ventures - Acquisition of land
3) Backwards or vertical integration	Taking over the production of raw materials within companies, among other means by buying these
4) Stockpiling	Government action to create stocks of biotic and abiotic commodities.
5) Multilateral cooperation	- Placing it on agendas - Take part in international initiatives - Act against disruptions
6) Military measures	(discussed in documents such as NATO Strategic Concept)

Policy actions relating to supporting the production of commodities (e.g. public export subsidies) could possibly be counted among the above. This is however problematic, as they have been decoupled from the production of commodities in order to fall under the World Trade Organisation's 'green box' (ICTSD 2009). A further measure not referred to here are measures to directly influence the volume of trade in specific goods or with specific countries, in some cases referred to as protectionist measures. (Ter Velde 2012). Protectionist measures are frequently discussed at the international levels and in mini-lateral groups such as the G8 and G20, but with few concrete results thus far.²⁶

Studies such as Ramdoo (2011), Prins et al. (2011) and HCSS (2011) emphasise that country policies on commodities differ as per the specificities of their economies, leading to various interests – despite the OECD and EC emphasising that no country is self-reliant on raw materials and that all are interdependent. Prins et al. (2011) add to this that one can distinguish between physical, economic and political dimensions, concluding that most major concerns and policy discussions focus on the latter two dimensions.

Discussions on the coherence of different policy options on commodities trade towards development objectives have in the past years focused on three key areas:

1. Economic diplomacy and general trade policy (with most attention to export restrictions);
2. Finance and competition policy (with most attention to price volatility and speculation and market concentration);
3. Investment policies and Corporate Social Responsibility (focusing on domestic resource mobilisation, human rights and transparency/reporting).

The following subsections will present selected findings based on the review of the literature, before analysing actual Swiss and European policy discussions in resp. 4.3 and 4.4.

2. Economic diplomacy and general trade policy

The economies of industrialised countries as well as their societies are dependent on a large number of commodities that are primarily imported from developing countries. Conversely, developing countries are dependent on the export of key commodities as well as the import of large number of commodities they do not produce. Export restrictions (e.g. export quotas and export taxes) and policies restricting foreign investment in, for instance, extractive sectors are therefore of importance for all countries. Countries are therefore increasingly resorting to active economic diplomacy –

26 E.g. the issue has been on the agenda of G20 Leaders' Summits since 2009.

industrialised countries traditionally have a higher capacity to engage in such diplomacy relative to developing countries, and do so with clear objectives in mind (Ramdoo 2011). For instance, in negotiations on the Economic Partnership Agreements (EPAs), the EU is negotiating the removal of export restrictions and the liberalization of investment policies. Furthermore, it has announced that it will use autonomous trade measures when developing countries do raise export taxes, as well as to increase its efforts at WTO level to strengthen disciplines on export restrictions (Ramdoo 2011).

Such economic diplomacy can be seen to limit the legitimate policy space of countries, given that it is driven by the management of overlapping or contradictory dependencies. Discussions on export restrictions are therefore often contentious, as is the case in the EPA negotiation process (Bilal et al. 2010). While short-term growth and commodity-dependence are certainly compatible, especially since commodity prices have risen enormously over the past decade, most developing country actors feel that significant economic diversification is crucial to ensure long-term sustainable and inclusive growth, for which primary commodities can be a good starting point. By imposing restrictions on the export of unprocessed commodities, developing countries could support their downstream industries and stimulate value addition and resource-based industrialization, which could in turn generate employment opportunities and as such contribute to inclusive long-term growth. This policy has been successfully applied by Asian and, to a lesser extent, Latin-American countries (see UNCTAD 2006). Such restrictions can, on the other hand, drive up global food prices and therefore have a detrimental effect to food security in developing countries.

Export restrictions can be one tool as part of a wider industrial development policy to stimulate structural transformation of the productive base, and have been used in the past by developed and developing countries alike. Curtis (2010) cites the successful use of export taxes on raw hides and skins in Kenya, which benefited the domestic leather industry. The other way around, the reduction of export taxes can lead to the collapse of local industries. This happened to the Mozambican cashew processing industry, which had been one of the country's major employers, when export taxes on raw cashew were drastically reduced in the 1990s (see Rodrik et al. 2003). There are also many examples of export taxes having resulted in the misallocation of resources and higher prices for consumers, while not leading to enhanced domestic processing and value addition.

With the Doha Development Round having stalled, current WTO rules regarding export taxes are not very clear and leave room for interpretation. The GATT 1994, which is still in effect under the WTO framework, calls for the elimination of quantitative export restrictions such as quota but remains silent on export duties (Ya Qin 2012). Thus, it would seem that countries have the freedom under WTO law to use export duties as they see fit. Recently, however, the WTO Appellate Body ruled that Chinese export restrictions on a range of raw materials, including duties, are in breach of WTO law. The EU was one of the initiators of this case at the WTO Dispute Settlement Body. However, in general it should be concluded that there is a significant lack of internationally binding legislation in the field of commodities trade – and in fact a greater global governance gap in related financial and investment policy as explored below.

The lack of an internationally binding framework at present is in part the consequence of countries' pursuit of bilateral and regional trade deals whilst simultaneously negotiating multilateral trade agreements. There remains an inherent conflict of interest in this dual role, adopted in first instance by industrialised countries, which add further divergent interests that may complicate the highly sensitive WTO negotiation process. Among developing countries, the larger, commodity-exporting countries would largely benefit from (for instance) agricultural trade liberalisation, whilst smaller developing countries would suffer from trade preference erosion (Yu 2007). Furthermore, whereas larger countries have an important stake in the negotiations, (coalitions of) defensive small countries (both industrialised, such as Switzerland, and developing) can effectively block trade deals.

Apart from the opportunities to use export taxes, import barriers and other trade-distorting measures are also relevant in relation to commodities and development. World market prices of certain commodities are depressed by export subsidies, while escalating tariffs form an obstacle for developing countries to find export markets for their processed commodities. Developing countries would benefit from a more open international trade system in that respect (OECD 2011). Against the current low prospects for concluding the Doha Round, and particularly following the economic and financial crises of 2008, there has been a global resurgence of such measures in countries worldwide. (Ter Velde 2012).

3. Finance and competition policy

Another important aspect of the commodity trade, which has been receiving greater attention in policy circles since the global financial crisis, is the so-called ‘financialisation’ of commodity markets. Much of the trade in commodities does not involve actual physical flows of commodities, but rather trade in financial products associated to commodities, or the trade of derivatives that specify the conditions under which payments or payoffs on commodities are to be made between the parties.²⁷ Financial investors have been active on commodity markets for a very long time, and can perform a very useful function. Commodity futures exchanges can provide liquidity, and can enhance price discovery and risk transfer. Since about 2000, however, financial investment in commodity markets has increased exponentially. Driven mainly by portfolio diversification motives, big institutional investors have rapidly invested into commodity markets. For instance, the outstanding amounts of over-the-counter (OTC)²⁸ commodity derivatives increased by more than 14-fold to \$13 trillion between 2002 and 2008 (Nissanke 2011). A debate has emerged over the influence of this trend on commodity price dynamics, with some stakeholders expressing concerns that this has led to increased volatility of commodity prices.

Price variability is a normal and healthy phenomenon in any free market where prices are determined by supply and demand. However, excessive volatility can have very negative effects. For industrialised countries, it means additional uncertainty for producers and consumers, but for commodity-exporting developing countries the consequences can be more far-reaching. From a historical perspective, Blattman et al. (2007) find that, within the group of commodity exporters, those countries experiencing higher price volatility have grown more slowly. A similar conclusion is reached in a recent IMF working paper by Cavalcanti et al. (2012). Studying 118 countries over the period 1970-2007, they find that volatility has had a negative impact on growth. They, as well as Van der Ploeg et al. (2009), argue that it is volatility, rather than natural resource abundance per se, that drives the ‘resource curse’. High volatility mainly affects growth through the pressure it puts on national macroeconomic management; sudden price falls directly impact on the trade balance, compromising the ability to finance essential imports, while sudden price increased may cause an unexpected currency appreciation, hindering other exports (UNCTAD 2011a). Volatility furthermore complicates fiscal management, because in many commodity-dependent developing countries, the government budget relies heavily on commodity taxation (ibid.). Finally, volatility of agricultural commodity prices is expected to undermine food security in developing countries (Concord 2012).

A debate has emerged over the extent to which the financialisation of commodity markets and speculation has led to increased volatility. The academic literature on this issue is divided. Some authors, like Sanders and Irwin (2010), find no impact of financialisation on commodity prices, and

²⁷ In fact most policy coherence issues in relation to the Swiss policies relate to transit trade of commodities that never enter Swiss soil (see 4.3 for more analysis).

²⁸ OTC-trading is bilateral trading, as opposed to trading on an organized exchange

continue to adhere to the efficient market hypothesis, meaning that fundamental supply and demand relationships are the only drivers behind commodity prices. Others, such as Gilbert (2010) and Tang and Xiong (2010) argue that the increased participation of financial investors in commodity prices has led to prices diverging from levels justified by market fundamentals. UNCTAD (2009, 2011a) also adopts this position and explains why this may happen. Financialisation has attracted increasing numbers of commodity traders who do not base their decisions on market fundamentals. Many traders are prone to herding and copycat behaviour, while index traders invest in bundles of commodities and do therefore not respond to changing supply or demand conditions for any one particular commodity. Secondly, some of the new market participants, such as certain investment and pension funds, are so large that their position changes can move prices, the so-called 'weight-of-money' effect.

The IMF (2008, 2011) is more tentative in its analysis of the assumed link, and its own research concludes that there is no general evidence of increased commodity price volatility since the onset of financialisation in the early 2000s. However, the IMF does put forward evidence of a positive but weak relationship between volatility and financialisation for certain commodities and concludes that "(...) *recent research does not rule out spot price effects of commodity market financialisation*" (IMF 2011).

Although long-term price trends reflect changes in market fundamentals, there is increasing recognition that financialisation can cause commodity prices to deviate substantially from market fundamentals in the short run. FAO et al. (2011) argues that most now agree that financialisation amplifies short-term price swings and may contribute to the formation of price bubbles, while Baffes et al. (2010), in a World Bank working paper, also hold that financial activities exacerbated the length and amplitude of price cycles, thus heightening volatility. Finally, EU policy discussions have also recently started addressing this issue. While virtually absent from the 2008 Raw Materials Communication, the issue was taken up, mainly on the insistence of France, in the follow-up communication of February 2011.²⁹

Several recommendations and proposals have been put forward as to how policy-makers can deal with the issues of financialisation and volatility (UNCTAD 2011a, FAO et al. 2011, Nissanke 2011). First of all, there is a need for improved transparency in physical commodity markets. There should be more timely, frequent and accurate information about commodities markets, including information on spare capacity, global stock holdings, expected harvests, and demand forecasts. This is needed so that market participants can determine whether price developments relate to changes in fundamentals or are more related to financial dynamics. Secondly, there should also be improved transparency in commodity futures exchanges and OTC markets. Regarding exchange trading, there is very little information available from European exchanges. In the US, there is much more information, as aggregate position data are published weekly by the Commodities Futures Trading Commission (CFTC). The transparency of Over-The-Counter (OTC) markets also leaves lots to be desired. To improve this, policy-makers could consider registering contracts in a trade repository. Finally, there could be tighter regulation of financial investors. One thing that could be considered in this respect is introducing position limits, in order to limit the size of individual financial positions and also to reduce market concentration. Other measures that could be considered are prohibiting banks from engaging in proprietary trading, or transaction taxes in order to counter high-frequency trading.

29 The French emphasis on this issue was also linked to the work they led in the G20 on this issue: <http://www.euractiv.com/sustainability/commission-unveils-updated-raw-materials-plan-news-501842>.

4. Investment policies and Corporate Social Responsibility

Foreign direct investment (FDI) to developing countries, and particularly to African countries, is concentrated in extractive sectors (UNCTAD, 2011b). Through FDI, foreign firms bring in capital and knowledge, they generate employment and in general increase economic activity and as such contribute to state revenues by paying taxes. Furthermore, FDI can help increase exports. Finally, through linkages with the local economy they can transfer knowledge, skills and technology, and thus crowd in domestic investment. The policy implications emerging from this perspective are that developing countries should liberalize their investment policies and improve the business climate in order to attract FDI. However, there are those who argue that the benefits of FDI are neither automatic nor guaranteed. Rather, the benefits depend on the conditions and policies in place (UNCTAD 2005). Three broad issues are of prime importance: i) policies to stimulate spillovers, ii) profit repatriation and tax evasion, and iii) social and environmental sustainability.

Multinational companies often have a certain degree of 'home-bias', for instance in sourcing their inputs or hiring staff, and hence positive spillovers from FDI do not automatically occur. Especially regarding extractive industries, there are concerns that foreign firms tend to operate in enclaves, with few linkages to the domestic economy (UNCTAD 2005). Mozambique presents a clear example: over the past decade, FDI inflows have increased sharply, mostly into large scale projects around aluminium and natural gas. While exports have certainly increased as a result, linkages to the real Mozambican economy are extremely limited (Castel-Branco 2004, 2010). Based on cases such as these, it can be argued that developing countries should be able to impose employment and local content requirements on foreign firms seeking to enter their markets.

Increasing attention has been given in recent years to the potential of policies for improving the transparency of foreign investment in particular sectors in developing countries, as a means of promoting responsible investment. An important driver of such discussions has been the creation of the Extractive Industries Transparency Initiative (EITI) that was announced at the World Summit for Sustainable Development in 2002 and launched in 2003. The EITI process seeks to publish government revenues generated by extractive industries such as taxes, profits and royalties in independently verified reports. The initiative is led by governments with an important role played by the private sector and NGOs (Ramdoo 2011). Partly inspired by the experiences of EITI, both the USA and the EU have put forward legislative proposals in recent years that seek to impose reporting requirements on companies involved in extractive resources.³⁰ See in addition Annex III on Tax policy, which furthermore notes the issues surrounding illicit financial flows. Illicit financial flows and tax evasion are highly relevant in relation to the extractive industries and commodities trading. According to PWYP (2012), the extractive industry is a major player in global tax evasion, and documents that the world's ten biggest extractive industry corporations have a total of 6038 subsidiaries, one third of which are located in so-called secrecy jurisdictions.

The EITI, as a fully voluntary initiative, demonstrates that while industrialised countries may support and promote certain standards and practices for 'their' multinational enterprises (MNEs), there are in effect few tools available to actively monitor and sanction the activities of MNEs. Multinationals operating in extractive industries are often active in countries where local state capacity is weak and where corruption is pervasive. In such countries, the enforcement of labour and environmental legislation is often very weak, or such legislation is simply not present. Investigative journalists have

³⁰ See Ramdoo 2012 for a concise description of these policies. In the case of the EU there are currently different views between the European Parliament and the EU Member States, with the former being supportive of the Commission's proposal to disclose information on a project-to-project level while the latter prefer companies to publish what they pay to central and local governments without breaking down per project (Ramdoo 2012).

documented many cases where activities by extractive sector multinationals or their subsidiaries have involved environmental damage, exploitation of local labourers, or even human rights abuses. The Berne Declaration (2012) documents such effects in the case of copper-rich Zambia. The engagement of multinational companies in extractive sectors in corruption in order to win business contracts is also damaging to development prospects, as it undermines good governance and general public service delivery (OECD 2011).

Over the past decade, international efforts and initiatives to stimulate multinational companies to adhere to principles of Corporate Social Responsibility have gathered pace. Examples include the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. The OECD (2011) calls for efforts to further strengthen the guidelines to promote responsible business conduct. However, the various initiatives have so far retained a largely voluntary character, and few multinational companies have actually been held liable for caused damages (Curtis 2010). In terms of dealing with the wider problem of illicit outflows, Concord (2012) emphasises that increased transparency is the overarching solution. Apart from stressing transparency, the OECD also mentions the need to raise the capacity of tax administrations. UNCTAD (2010) furthermore notes that the use of capital controls could also be considered in order to stem illicit capital outflows, although most multi- and bilateral trade agreements do not allow for capital controls.

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Annex I. Key policy incoherencies: Commodities policy

Table 4: Overview table – Commodities policy

Overview table – Commodities policy

Aspects of incoherence and the extent to which they are reflected in international policy discussions

I. Trade policy and economic diplomacy		
Incoherence issues	Policy discussions in the European Union	Selected multilateral discussions
<p>1. Countries conduct active economic diplomacy - industrialised countries have higher capacity to successfully negotiate agreements, and as such succeed in reducing developing countries' export taxes or other distortionary measures to facilitate their access to raw materials and commodities.</p> <p>Whereas ODA is often used to help developing countries to integrate into the world market through 'Aid for Trade', policy measures such as export taxes can be a critical tool to enhance value-addition and job creation, though could have negative externalities (for instance, price increases triggered by export restrictions may affect food security).</p>	<p>* In the 2008 Raw Materials Initiative, the EU indicates it will take 'vigorous' action to challenge distortionary measures on raw materials trading by third countries.</p> <p>* EU has pushed to include clauses on removal of export restrictions (EC 2009, 2012) in WTO accessions as well as EU trade negotiations with third countries. The EU has also proposed to include disciplines on export restrictions in the Doha negotiations.</p> <p>* EU discussions recognize that in context of developing countries, export restrictions may be justified and that there could be grounds for exception. However, there are no clear criteria for exception, so the granting of exceptions has remained ad hoc (EC 2009).</p>	<p>* WTO Doha Development Round has stalled, and current WTO rules on export taxes are ambiguous. GATT 1994 calls for elimination of export quota, but not of export duties. Recently, WTO Dispute Settlement Body has ruled that Chinese export restrictions on a range of raw materials are in breach of WTO law.</p> <p>* OECD judges that effects of export restrictions are unambiguously negative, promotes alternatives to export restrictions and has built up an inventory of export restrictions.</p> <p>* The Russian Presidency of the G20 in 2013 commits to enhancing the multilateral trade system, including progress in the Doha negotiations.</p> <p>* UNCTAD provides a space for states to exchange views about policy options on trade and economic diplomacy.</p>

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	<p>* Raw materials are also included in the negotiations on EPAs with ACP countries; the latest EC report on the Raw Materials Initiative (EC 2012) makes no mention of leniency towards export restrictions in EPAs.</p> <p>* May 2009 EU Council Conclusions propose to consider opportunities for furthering the goals of the EU's raw materials diplomacy through projects undertaken in the context of development cooperation. This has raised concern that ODA might be used to secure access to commodities.</p>	
<p>2. Industrialised countries promote a multilateral trading system through the WTO while actively engaging in bilateral and regional trade negotiation. Development concerns need to be negotiated for each deal, and thus risk to be undermined.</p> <p>The Doha Development Round has stalled, and the result is the absence of an international framework that combines global rules on commodity trading and the need to take account of development objectives.</p>	<p>* Issue not recognized as an incoherence. There is implicit recognition of the expectation of no progress in Doha.</p> <p>* The EU is seeking to secure the WTO Trade Facilitation Agreement in 2013 as a first step towards concluding the Doha Round.</p>	<p>* WTO Doha Development Round has stalled. No prospects for new multilateral agreement anytime soon.</p> <p>* OECD supports the WTO Trade Facilitation agreement, noting that the reduction in trading costs would benefit both net importers and exporters.</p> <p>* Possibilities for OECD debates and international debate in non-binding fora such as UNCTAD.</p>
<p>3. Agricultural subsidies and import restrictions by industrialised countries continue to hamper prospects of developing countries to benefit from the production and export of their commodities and raw materials.</p> <p>Agricultural subsidies suppress world prices of developing countries' exports. Tariffs, especially escalating tariffs, create obstacles for developing</p>	<p>* Discussions in the EU focus on the distribution of the agricultural subsidies, not on their desirability, and are conservative as they are linked to the discussions of the EU's Multi-Annual Financial Framework and the net-payers versus –recipient debate. Some Member States, including Germany, are more vocal about removing agricultural subsidies.</p>	<p>* OECD stresses that Doha negotiations need to be intensified and given another impulse, for conclusion of Doha round would be very beneficial for developing countries.</p> <p>* G20 Leaders' Summit of 2009 included a commitment to "(...) <i>support open trade and investment to advance global prosperity and growth sustainability, while actively rejecting protectionist measures.</i>" Similar commitments made in more recent meetings.</p>

countries to process their raw materials and export more sophisticated products. Incomplete international legislation is among the main reasons why industrialised countries can continue this practice.	<p>* Council agreement on the 2014-2020 MFF reduces market-related expenditure and direct payments under the Common Agricultural Policy by 17%. The proportion of the overall EU budget used for the CAP and the distribution between Member States was the main point of discussion – little attention for the effects on commodity markets.</p> <p>* Least Developed Countries have duty-free access to EU market, but these are not taken sufficient advantage of due to Technical Barriers to Trade linked to supply side constraints.</p>	* The Russian Presidency of the G20 is driving the development of briefs on addressing protectionism and strengthening the multilateral trade system.
II. Finance and competition policy		
Incoherence issues	Policy discussions in the European Union	Selected multilateral discussions
<p>4. Financialisation of commodity markets in the form of increased trading of commodity derivatives, both on exchanges and through bilateral Over-the-Counter contracts, as well as the entrance of large institutional investors in commodity markets have amplified commodity price volatility.</p> <p>This leads to fluctuations in export revenue for developing countries, as well as for developing country populations that spend a large proportion of their incomes on food.</p>	<p>* 2011 EC Communication on Commodity Markets acknowledges that commodity markets and financial markets have become increasingly intertwined and that this financialisation of commodity markets can be linked to the heightened volatility of commodity prices. In particular, the roles of institutional investors, index traders and OTC-contracts are discussed in this regard.</p>	<p>* The financialisation of commodity markets and its effect on price volatility has been researched and discussed at UNCTAD (2009, 2011). However, their inputs only serve as recommendations, and will not result in binding legislation.</p> <p>* In 2011, the G20 Agriculture Ministers launched an Action Plan on Food Price Volatility and Agriculture. The plan does not explicitly link volatility to market financialisation. The link is recognized implicitly, however, since financial regulation is one of the main pillars of the Action Plan to reduce food price volatility.</p> <p>* G20 Leaders' Forum of 2009 tasked Financial Stability Board to monitor implementation of tougher standards on OCTs (see discussions under item 6 below).</p> <p>* The G20 appointed an Energy and Commodities Markets Working Group in 2012, whose Sub-Group of Commodity</p>

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		Markets (lead by UK and Brazil) is tasked to develop and implement policy recommendations to enhance market transparency and mitigate effects of excessive commodity price volatility on economic growth. It recently published a summary report on the impact of excessive commodity volatility on growth.
5. Higher and more volatile commodity prices (partly driven by speculation/transit trade) undermine macro-economic management, food security and social stability in developing countries, and as such exert a negative influence on developing countries' economic prospects. 31	* 2011 EC Communication on Commodity Markets recognizes that high volatility of food prices has serious effects on food security in food-importing developing countries and that food price increases can result in higher malnutrition, humanitarian needs, and social tensions.	* The 2011 G20 Action Plan on Food Price Volatility and Agriculture implicitly recognizes the negative effect of volatility on food security. One of the five objectives of the Action Plan is to reduce the effects of price volatility for the most vulnerable. In this light it calls for the strengthening of targeted safety nets and to set up risk management tools for smallholders and other vulnerable groups. * The G20 Leaders Declaration following the June 2012 G20 summit recognizes that excessive commodity price volatility hampers national financial and macroeconomic planning and management.
6. In the absence of increased financial regulation and transparency , commodity price volatility will remain high, thus undermining development in developing countries (see 5). Industrialised countries are generally neither pro-active nor responsive in taking such legislation forward, especially now that they tend to respond defensively with reference to assumed inaction on the side of emerging economies.	* 2011 EC Communication on Commodity Markets contains several policy proposals to improve the regulation of financial markets. One proposal from 2010 is to increase transparency of OTC derivative markets. From the Communication, the Council has noted that position limits are to be set by competent national authorities, based on ESMA criteria, with some exceptions. * Oct 2011 EU Council Conclusions call on G20 to reform OTC derivatives, strengthen financial regulation and tackle	* The 2011 G20 Action Plan on Food Price Volatility and Agriculture seeks to enhance the regulation and transparency of commodity markets. It launched the Agricultural Market Information System (AMIS) to increase the provision of information on market conditions, which can serve as early warning system. Better regulation of OTC contracts is also mentioned. * In the G20 Declaration following the June 2012 summit, the leaders commit to ensuring that all standardized OTC

31 It is noted that although policy discussions do not recognise the effects of trading of commodities on political/societal stability, recent examples such as interruption of cacao trade in Côte d'Ivoire were decisive in resolving the conflict and in 2011 many Arab and Sub-Saharan instability was related to food and fuel prices.

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	<p>excessive volatility of commodity prices. G20 Action Plan is seen by EU as important step forward.</p> <p>* Mar 2012 EU Council Conclusions prioritise the implementation of the G20 Action Plan and the enhancement of transparency in commodity markets. EU policies on taxation and financial transactions require unanimity.</p>	<p>derivative contracts are traded on exchanges by the end of 2012, and that all OTC derivative contracts are reported to trade repositories, in order to increase the transparency of OTC contracts.</p> <p>* UNCTAD (2011) offers research and recommendations on regulation of commodity markets.</p>
III. Investment policies and Corporate Social Responsibility		
Incoherence issues	Policy discussions in the European Union	Selected multilateral discussions
<p>7. Foreign direct investment can have both positive and negative effects for countries. Developing countries wish to capitalize on the benefits of FDI, but are urged to liberalize their investment policies, mostly in the context of trade agreements. This constrains their policy space to impose employment or local content requirements.</p>	<p>* 2010 EC Communication calls for the development of an integrated EU international investment policy. Under such an integrated policy, investment clauses would be introduced in trade agreements to ensure the protection and fair treatment of EU investments in third countries. In practice, this can compromise the regulation of such investments by host country governments.</p> <p>* 2012 EU Communication on Trade, Growth and Development proposes to improve FDI-related instruments in EU FTAs to grant investors greater legal certainty regarding market access in areas of telecommunications, transport, banking, energy, environmental services, construction and distribution. Regulative rights of government are not noted.</p>	<p>* While multilateral trade agreements negotiated under the WTO loosely call on members to liberalise/flexibilise trade and investment as much as possible, investment policy is not incorporated comprehensively in the work of the WTO. The Doha agenda does not cover investments.</p> <p>* The WTO Agreement on Trade-Related Investment Measures (TRIMS Agreement) bans the use of local content requirements on foreign investors.</p>
<p>8. Through multilateral and bilateral treaties, developing countries are discouraged from imposing capital controls, which could serve a role in the fight against tax evasion and capital flight.</p>	<p>* EU Bilateral Investment Treaties often include a chapter on financial services, which tend to impose restrictions on the use of capital controls.</p>	<p>Under WTO rules enshrined in the General Agreement of Trade in Services (GATS), there is not much policy space for the use of capital controls.</p>
<p>9. Whereas countries maintain labour and environmental standards for private sector</p>	<p>* 2010 EC Communication on CSR: Regards international CSR initiatives and guidelines as providing authoritative</p>	<p>* There are several international initiatives and guideline to promote sustainable practices by multinational companies and</p>

<p>operations in their countries, few tools and frameworks exist to enforce these standards and address misconduct by MNEs.</p> <p>MNEs active in commodities sectors frequently operate in developing countries with poor labour and environmental standards, where enforcement capacity is weak, or corruption levels high. When multinationals take advantage of such circumstances, by engaging in corruption themselves or by neglecting international labor and environmental standards, inclusive and sustainable development is undermined.</p>	<p>guidance. Stated that CSR should be led by companies themselves. The EC hopes to have large European companies make a commitment to the OECD Guidelines, UNGC, the ILO Tripartite MNE Declaration and ISO 26000 in 2014. Past EU initiatives to develop and adopt guidance for CSR have however been strongly opposed by some Member States and business lobbies.</p> <p>* The EU is finalising its agreement to adopt the amended Transparency and Accounting Directives, and will require larger companies to report on non-financial areas such as diversity and environment policies. Some EU Member States have already introduced disclosure legislation going beyond EU legislation.</p>	<p>CSR. These include the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the ILO Tri-Partite MNE Declaration, and the ISO 26000 Guidance Standards for Social Responsibility, already supported by many countries. They remain voluntary-based initiatives and guidelines, however; there are no punishments attached to non-compliance.</p>
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Key resources:

- UNCTAD (<http://unctad.org/en/Pages/Home.aspx>)
- European Commission Directorate-General for Trade (<http://ec.europa.eu/trade/>)
- European Commission Directorate-General for Enterprise and Industry (http://ec.europa.eu/enterprise/index_en.htm)
- World Trade Organisation – Doha Development Round (http://www.wto.org/english/tratop_e/dda_e/dda_e.htm, http://www.wto.org/english/tratop_e/invest_e/invest_e.htm)
- G20 calendar of events (<http://www.g20.org/events/>)
- G20 Energy and Commodity Markets Working Group (http://www.hse.ru/data/2013/01/21/1305652588/Energy_Commodities_Group_ToR.pdf)
- OECD Trade Committee (<http://www.oecd.org/trade/>)

Annex II. Key policy incoherencies: Migration policy

Migration has diverse impacts on the lives of migrants, their families and people remaining in their countries of origin, as well as on the economies of the sending countries. This, as well as the general difficulty to manage human mobility, makes the interaction between international migration and development policies difficult to examine.

Based on the exploration of main PCD issues that the literature identified in relation to migration, this thematic dossier on migration identifies issues that play a role in policy discussions on the matter taking place in Switzerland, the EU and in international forums. Incoherence and associated trade-offs will be identified along the following five dimensions:

1. Facilitation of legal migration and recruitment.
2. Remittances and non-economic transfers.
3. Protecting migrants rights.
4. Curbing irregular migration.
5. Engaging with diaspora.

The five dimensions were identified by the authors as a useful way to group and present the different issues as identified in the literature, and often also appear as standard categories in related studies. Due to the absence of international agreement on where migration policy stops and non-migration policy begins the authors acknowledge that any categorisation or scoping of issues presents but a snapshot of the development-dimension of this evolving policy field.

This dossier will mainly focus on incoherencies of developed countries and their effect on the human development of migrants themselves as well as their contribution to the development of the country of origin. Despite the fact that benefits as well as less beneficial impacts on receiving countries in the developed world exist, as well as in Southern destination countries depending on various policies in place, the focus of this document is mostly on the development of poorer countries of origin."

1. Exploring the links between migration and development policy

There are currently estimated 215 million migrants in the world, of which about 90% are moving abroad for work. South-South migration is almost as common as South-North migration (about 73 million international migrants residing in the South were born in the South and about 74 million living in the North originated in the South) (UNDESA, 2012). Yet, in the last decade South-North migration has been the strongest trend of global migration. While a large number of international migration takes place within regions, the majority of migrants originating in the South move to countries outside the immediate region of their home country (ibid.).

Various positive and negative links between migration from developing to developed countries and development have been identified in the literature.

Accordingly, key policy actions and measures that aim at maximizing the benefits migration can yield for development outcomes while minimizing negative side effects have been presented and discussed by academic researchers and policy makers. Regarding policy coherence for development, the OECD argues that "*migration policies and instruments of OECD countries have considerable influence on the*

MDGs and are [thus] critical to the achievement of PCD" (OECD, 2009, p. 34). Migration policies should thus support rather than hinder investment in international development (IOM, 2008).

In general, possible positive effects of international migration for the migrant and sending countries include (OECD, 2009):

1. The likely increase of migrant's income and through remittances the income of family in the country of origin,
2. Skill improvement,
3. Strengthening of economic and cultural ties between sending and receiving countries, and
4. Higher female labour market participation in the country of origin.

In addition, benefits for destination countries may include amongst others the reduction of labour shortages and the contribution of immigrant labour to overall production, innovation and economic growth and increased cultural diversity.

On the other hand, possible negative effects are considered as including (ibid.):

- a. Brain drain and a resulting skill shortage in the sending country.
- b. Destitution and a trap of illegal migration, links with organized crime.
- c. The increase of inequality in the country of origin.
- d. Possible negative social impacts for the migrant itself and both sending and receiving countries.
- e. In the short term more unfavorable conditions for certain groups of domestic workers (e.g. a decrease in wages) in receiving countries.

In the following, the most important links between migration and development as well as policies to address these will be outlined in more detail as a basis for the overview table on incoherence issues and associated trade-offs. The review analyses the interaction between migration, development and human rights policy aspects. The latter is included in the analysis as migrants' basic rights. These are not only important from the point of view of the human development of the individual migrant and to safeguard the individuals concerned. But also in light of the increased positive contributions migrants can make to the development of host and sending countries if their basic human rights are respected and they are socially and economically empowered (IOM, 2008, p. 9).

The results of the analysis made is categorised in the following five groups³²:

- a. Facilitation of legal migration and recruitment
- b. Remittances and non-economic transfers
- c. Protecting migrants rights
- d. Curbing irregular migration
- e. Engaging with diaspora

While the understanding of the effects of migration and migration policies on development is improving, it should be stressed here that a large research agenda remains to be addressed. Roodman (2012) gave the following concise description of the state of play of research on migration: *"Though it is widely agreed that migration and migration policy greatly affect many poor people in poor countries, the effects have not been as extensively studied as those of aid and trade policies. There is no widely accepted analytical framework from the perspective of development, and little empirical evidence. In addition, there are data problems, including lack of comprehensive information on remittances and illegal immigration, and a paucity of internationally comparable information on rich countries' migration policies."*

32 http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/index_en.htm

2. Facilitating legal labour migration and recruitment

This section will highlight links between high and low-skilled labour migration as well as circular migration and development. It will also cover policies that can maximize developmental impact or lead to incoherence with regards to development.

Labour migration can have positive as well as negative economic and social effects, which often depend on economic and socioeconomic circumstances in the sending country as well as the question who can migrate and how costly migration is. Many studies confirm a positive economic impact of labour migration both for the migrants and for households remaining in the country of origin. Negative impacts tend to be small and are often outweighed by higher income and remittances. An increase in opportunities for legal migration, especially for lower-skilled migrants and efforts to reduce migration costs would provide immense gains, not only for labour migrants themselves, but also through indirect and direct effects in countries of origin. It would also make opportunities for labour migration more inclusive as currently mostly individuals with more resources can afford to migrate. Yet, there are negative socio-economic impacts associated with labour migration. These are noted psychological or social consequences for children of migrant parents left behind or rising divorce rates (see ERD 2013, forthcoming). These consequences must be adequately taken into account in designing response policies in the countries of origin.

In countries of destination labour migrants often perform important functions, fill skill gaps or labour shortages and thus contribute significantly to the economy. In the OECD as well as in emerging countries that face ageing populations (notably China), immigration of all skill-levels may be part of a policy package to address this challenge. In countries such as Thailand, the immigration of lower-skilled labour has contributed to GDP growth and has enabled Thai nationals to engage in better employment opportunities by taking up the 'dirty, difficult and dangerous' (3-Ds) jobs (Martin, 2007). In most OECD countries "immigrants have made an important contribution to employment growth during the past decade" (OECD, 2009b, p.12). International recruitment has limited wage increases and has contributed to economic expansion. This phenomenon is illustrated by the big rise in the construction sector in several OECD countries (ibid.).

Yet, the economic impact of immigration in destination countries in the South as well as Northern countries shows a nuanced and strongly context-dependent picture. While many empirical studies observe an economic net benefit for countries of destination, these benefits may not be equally distributed and some particular groups in society may be disadvantaged in the short-term (see ERD, 2013 forthcoming). However, increasing restrictions of legal migration routes (especially after the economic crisis) in the short-term without taking into account long-term structural labour needs and curbing on integration and social cohesion measures may have negative long-term effects for developed countries themselves (OECD, 2009b).

In the global discussions on the post-2015 development framework, labour migration has emerged as a topic put forward as an enabler for development when better linked to population dynamics and accompanied by policies that better tap its potential for migration while reducing its negative effects (see ERD, 2013 and the Recommendations of the Global Thematic Consultation on Population Dynamics and the post-2015 Development Agenda)

3. Skilled Labour: Brain Drain vs. Brain Gain

Although some of the literature points to the fact that “*migration of low skilled workers typically has a greater impact on poverty reduction in the countries of origin*” than those of higher-skilled labour migrants (Dayton-Johnson and Xenogiani, 2006, pp.140), high-skilled workers are de facto primarily attracted by current immigration policies of developed countries, including the EU. This has sparked a debate over the costs and benefits of migration associated to ‘brain drain’ i.e. the depletion of highly skilled and educated people as a result of international migration. Brain drain is often viewed as a loss of return on investment made by sending countries in the education of people leaving the country (see JMDI, 2011, p.25).

The International Organization of Migration (IOM) has described the occurrence of “brain drain” as one of Africa’s “most serious migration issues” with possible negative development implications (IOM, 2003, p.215). This case has especially been made in the health sector, where the loss of physicians from African countries for example is said to result in the deterioration of health systems in these regions. Other affected sectors, especially in the African, Caribbean and Pacific Group (ACP) of countries, are the education sector and engineering or applied sciences, though the nature of the problem varies considerably amongst countries (see Higazi, 2005, p. 12). As a possible solution the restriction of highly skilled workers in sensitive sectors has for example been proposed in the EU, but these policy discussions on ‘ethical recruitment’ have not yet resulted in concrete legislative proposals. Rather, a number of voluntary ethical standards and codes of conducts regarding high-skilled recruitment (especially in the health sector) have been adopted in EU countries (ICMPD and ECDPM, 2013).

Recent research, evidence and discussions surrounding the problem of “brain drain”, point to more multifaceted links of migration of the highly skilled and development.

Clemens (2009), applying a ‘development as freedom perspective’, points out that “*limitations of skilled workers’ movement are useless or counterproductive [for development purposes] at the international level*” as restricting the choices of high-skilled individuals can itself be seen as negative development in terms of their own freedom of movement. Moreover, it does not follow automatically that the stay of these workers would raise positive externalities benefitting people in the countries of origin, since “*externalities skilled workers can exert on those around them are often severely limited by large underlying forces*” (ibid. pp.22). In the case of health workers from Africa living abroad, there seems to be no correlation to worsened general health outcomes or less general availability of health care in their home countries (Clemens, 2007). Indeed, studies that find positive correlations between skilled migration and adverse conditions in the sending country have troubles establishing a clear causality between the two factors investigated, such as the findings by Bhargava and Docquier (2008) for physician migration from sub-Saharan Africa and HIV rates of adults or by Rogers (2008) for schooling rates and skilled worker emigration.

On the other hand, it has been argued that migration of high skilled can have a positive effect on development outcomes, similarly to the effect of learning of low-skilled migrants.

The literature identifies two ways through which ‘Brain Gain’ can occur and benefit the country of origin. The first has to do with the knowledge benefits that are shared between sending and receiving country. The return of skilled persons that have furthered their education abroad increases local human capital and can contribute to promoting the integration in to global markets, such as with Taiwan for example (see Wickramasekara, 2002, pp.6). But even if skilled migrants are to stay in their new country they emigrated to, technology transfers, links to professional networks and knowledge flows can take place (see JMDI, 2011, p. 25). Agrawal et al. for example find that even though local

knowledge might be weakened when innovators leave from India, remaining innovators gain access to valuable technological knowledge accumulated abroad through connections to diaspora (see Agrawal et al, 2011).

Second, there is the possibility that the domestic stock of skills actually increases despite skilled people leaving the country. Beine et al (2001) find that prospects of greater returns and wages abroad acts as incentive and induces higher investments in education. As not all of the highly educated will de facto be able to leave the country, human capital increases if investment in education has been sufficiently large (Beine et al 2001). A counter argument comes from Commander et al (2004) as well as from Schiff (2005) who argue that regardless of emigration prospects, those with high skill abilities will invest in their skills. But it is the highest skilled that are then more prone to being recruited away when migration prospects increase. As a result higher investments in education may increase the supply of more moderately skilled individuals.

Despite these new arguments regarding brain gain in developing countries through migration, Collyer (2011) points to the lack of wide-ranging empirical tests of the gains beyond theoretical arguments.

A third terminology has entered the debate which relates to the under-utilization of migrants knowledge occurring when highly educated migrants are hired for jobs for which they are overqualified. This phenomenon has been titled 'Brain Waste'. (JMDI, 2011, p. 25) This can for example be caused by the fact that degrees or diplomas of migrants from developing countries are not automatically formally accepted or accredited in their country of destination. As the European Think Tanks Group (2010) notes, "*many highly skilled migrants work as taxi drivers or dish washers in Western Countries*" (European Think Tanks Group, 2010) thus diminishing the positive contributions those migrants could make for development. These and other publications however implicitly assume that the use of the migrants skills at home is optimal, whereas highly skilled individuals often engage in lower skilled labour because of non-financial barriers or irregularities associated with higher skilled labour (e.g. becoming or being employed by government in general, or being in jobs such as teaching and hospitals that involve being transferred to different parts of the country).

Given the conflicting findings in the debate surrounding brain drain, brain gain and brain waste as well as the lack of clarity regarding causal relations between skilled migration and development, Collyer (2011) notes the fact that "*skilled migration was considered as neutral, rather than negative, in the most recent Commitment to Development Index.*" (Collyer, 2011; see also Roodman, 2012)

The OECD (2009) points out that policies, encouraging highly skilled individuals that have been educated at the expense of developing sending countries, such as health professionals for example, and where evidence exists that this might lead to skill shortages are incoherent with development objectives. For this reason, there has been a call for policies restricting the admission of highly skilled workers from developing countries in some sensitive sectors such as health or education. Ethical Recruitment principles in developed countries that exclude certain sectors from recruitment in the name of development, is one proposed measure. Another measure might be limits on exit visas or emigration taxes for highly skilled or workers with skills needed in developing countries themselves (Bhagwati and Dellalfar, 1973). However, there is no consensus whether these measures are legitimate, from a development perspective that takes into account the freedom of movement of people.

For Clemens (2009), the coercive restriction of substantive freedom of skilled workers should be avoided. Rather than implementing policies to restrict the migration via punishment and coercion, there seem to be better targets for policy aiming at the use of skilled workers abilities for development, where the loss of skilled workers might be a problem. The first set of policies is aimed at the

underlying causes of migration with the aim to build incentives for high skilled people to stay in their home country. These include special training, accelerated promotions or early retirement schemes for certain experts in their country of origin as well as matching and subsidizing higher education with local conditions and needs. Regarding the health sector for example, many medical schools in sub-Saharan Africa train staff according to “international” standards and to use high technology standards that are scarcely available in regions where health service is required (Clemens, 2009).

With regards to ‘brain waste’, the EU Commission has noted to scale up efforts to analyze policies addressing this phenomenon in its Global Approach on Migration and Development (GAMM).

3.1 Low skilled labour migration

Whereas high skilled migration is usually welcomed by receiving countries and viewed critically by the countries of origin, it is usually the other way around with regard to the movement of low-skilled labour. It is the most difficult area of concession for migrant-receiving countries (ERD, forthcoming), yet Winters (2003, p.4) argues that “global gains from unskilled labour mobility exceed those from skilled labour mobility, essentially because the workers lost to developing country production as a result of the mobility are so much less productive in the former case.” Moreover, the most significant amount of the global labour migration is characterised by lower-skill labour.

Low-skilled labour to the EU is usually based on the labour market needs of the EU member states and happens on a short term and temporary basis (BEPA, 2010). Along the lines of the “Brain Drain” argument, some academics have also pointed toward to negative effects of “lost labour”, which supposedly has a negative effect on local production, especially agriculture (Taylor, 1984, see also Lewis 1986; for a summary of the theoretical arguments see De Haas, 2007). However, empirical research on this phenomenon seems to be quite rare. On the other hand, JMDI (2011) has pointed out that skills and knowledge transfer is not only valid for already educated migrants, as these *“may also be transferred by people of lesser educational and professional standing”* (JMDI, 2011, p. 25) if they engage in temporary migration. For some, an area of concern has been the low standards of rights and safety of some low-skilled workers, even though in general the Human Development Index of migrants to OECD countries seem to increase quite substantially (on average +24%) compared to non-migrants in the country of origin (see UNDP, 2009, p. 67). BEPA, the Bureau of European Policy Advisers of the European Commission, points out that *“temporary low-skilled migrants are more prone to exploitation and rarely enjoy the protection of even minimal labour standards.”* (BEPA, 2010, p. 7)

Kapur (2004) argues that *“if migrants are low skill or unskilled workers, the beneficial impact on poverty and inequality is maximized for the sending country. It is not just that the ensuing remittances are directed at poorer households, but that the supply of unskilled labour in the source country is reduced, thereby increasing unskilled wages”* (Kapur, 2004, p.12). Putting high constraints on the admission of lower skilled workers is thus seen as incoherent with the aim of maximizing the developmental outcome of migration (see UNDP, 2009) and going against commitments to promote PCD (see OECD, 2009). As pointed out above, an economic case for admitting lower skilled workers exists, as the potential income gain for countries of origin can be high due to the fact that the difference between wages at home and developed countries is high. This is true even for low wages in the country of destination (ibid. 2009).

Migrants and developing countries are not the only beneficiaries from low-skilled migration. Despite the focus in OECD countries to attract and retain highly skilled migrants, labour market shortages also appear in many lesser skill categories, as fewer non-migrant society members are willing to perform jobs in the low-wage and low-skill category. These labour market needs are partially met by immigrant workers. Measures aimed at limiting low-skilled migration to developed countries have not been very

successful as many OECD countries still see a significant number of low-skilled migrants enter irregularly (OECD, 2008). Most of these irregular migrants are participating in (informal) labor markets and contribute to economic output while having less protection and recognition of their rights.

3.2 Circular Migration

Circular migration has emerged as one of the policy areas to maximize the beneficial impact of low and high skilled migration for development purposes, as it presumably leads to a win-win-win situation. The argument has been summarized by Skeldon (2009): First, the temporary stay of migrants does not require to 'integrate' the migrant in the host country. In the current climate, in which the admission of migrants is often sensitive with the population in developed countries, *"migration can be 'sold' to the populations of democracies on the basis that migrants will go home."* Host economies win, as required labour can be recruited for a period of time. Secondly, temporary migration will have a positive effect on the sending country, as remittances will be sent, skills and knowledge will not irretrievably lost to the home economy, knowledge and skill flows will be encouraged and domestic unemployment is reduced (as well as related political tensions). Lastly, the migrants themselves benefit from experience abroad, as their income is likely to improve and they can absorb new ideas (Skeldon, 2009, p.2). Indeed, current research seems to confirm the beneficial impact of circular or temporary migration, as *"research has shown that temporary labour migration is a win-win strategy for sending and receiving countries"* (European Think Tank Group, 2010). Legal options for circular migration also provide secure avenues for migrant workers who otherwise may turn to irregular migration channels (IOM, 2008).

In this context, it seems advisable for receiving countries to create the possibilities for circulation. Yet, translated to policy, circularity often translates to 'one-time-only' temporary admissions. To date, the strict immigration laws of receiving countries have been counterproductive in this regard, since they lead to long stay periods due to the fact that migrants tend to stay in a country once they have been admitted and do not want to loose their status when departing. *"Destination countries of skilled – worker movement should [therefore] eliminate needless barriers to temporary return"* (Newland, 2009; see also Clemens, 2009). Circular migration schemes with multi-entry visas instead of single-entry increases the likelihood that migrants will return home instead of pushing them into settlement, as the uncertainty of being granted re-entry is reduced (see Dayton-Johnson and Xenogiani, 2006, pp. 145). It has been pointed out that work permits for a limited period of a few years, which, for example, makes reissuing dependent on a minimum residence stay in the country of origin, could be extended especially to low-skilled workers to give them the opportunity to earn money and skills in richer states (ibid., pp.145). Looking at eleven EU countries' policies, ICMPD and ECDPM find that *'despite the [OECD and EU Commission] proposals to facilitate circular migration, there are still few or no possibilities for migrants to establish their 'locus' of circularity in the host-country itself'* (ICMPD and ECDPM, 2013, p. 51)

The difficulty of managing circular migration lies in the balance between efficient regulation with clear incentives to return home for at least some time and the degree of accessibility and flexibility to have an impact on development. Policy proposals to put incentives for return into place can include a *"possibility [...] to withhold a portion of workers' earnings until return takes place"* (Rodrik, 2002, p.23) by for example depositing an amount of the salary on a savings account which is accessible only in a country of origin.

Another important ways to facilitate return and make it more attractive is to enable transferability of social security benefits (see Hertog and Siegel, 2011, p. 7) and provide other incentives for circularity. In the same way countries of origin should keep good relations with migrants and create policies that welcome their return through for example developing incentive packages to initiate temporary return –

if not permanent (Hertog and Siegel, 2011). It becomes clear that migration through circular schemes is most likely to be beneficial for development if it is embedded in a wider strategy including national policies of countries of origin. Strengthening capacities and organizational knowledge to manage migration in the sending countries is thus crucial. Development cooperation and dialogue with regards to migration is an integral part to achieve policy coherence for development.

Yet, Skeldon (2009) warns to see circular migration schemes as a silver bullet for the migration-development nexus, especially in the form currently established in developed countries. Forcing migrants into one or the other category of migration, be it *“temporary or permanent or, at the least short-term and long-term”* in a managed form, might be in fact impeding free circulation. His criticism is best understood when looking at the two branches in the policy debate that currently exist regarding circular migration. One sees it as an inherent pattern of mobility which can either be encouraged or discouraged. The other strand of the debate views circular migration as a tool to manage migration through formal programs and projects set by the receiving country’s government. Migrants do circulate, though often not freely but according to the options they have through the visa legislation of the receiving country. This often obliges migrants to leave after a certain period with possibilities of repeat sojourn (see Newland, 2009).

Skeldon, positing himself in the former camp, especially criticises the fact that “circular movement” which is natural to migration, is mostly interpreted as “temporary” stay in the host country with few or none possibilities to establishing the locus of circular migrants in the host country itself. Looking at eleven EU countries’ policies, ICMPD and ECDPM confirm this finding (ICMPD and ECDPM, 2013, p. 51). The policy implications Skeldon draws from his analysis of circular migration is that it *“operates most effectively in areas where population movements are relatively free”* (Skeldon, 2009 p. 7; Newland et al. 2008 arrive at similar conclusions).

From a perspective of feasibility of such temporary schemes if they are managed in line with the second policy branch outlined above, the OECD International Migration Outlook points out that it is not realistic to expect temporary migration schemes to be the *“cornerstone of any future labour migration policy”* (OECD, 2008, p.20). OECD Secretary-General Gurría argues that: *“[C]onstructing a country’s migration policy on the assumption that labour immigrants will stay only for a short time is not the way to go. It is neither efficient nor workable.”* (Gurría, 2008) Instead, the OECD proposes innovative circularity schemes, with flexible multi-use, multi-entry visas and work permits as a promising avenue.

To sum up, despite the debate over what form circular migration policies should take, it is widely acknowledged that circular migration can be beneficial for development if the “right” policies are in place from both destination and sending country. Consequently, Circular Migration *“is a step toward policy coherence between immigration and development policies, which is a goal proclaimed by virtually all donor countries”* (Newland, 2009, p. 20). The research on the matter, however seems to indicate that policies and schemes enabling circular migration works better than enforced and restricted temporary movement schemes limited to one period only.

4. Curbing Irregular Migration

The reduction or limiting of irregular migration is a priority area in many developed countries. With regards to development prospects irregular migration is mainly a concern due to the vulnerable situation that irregular migrants find themselves in jeopardizing health, wellbeing and human development of individual migrants as well as the difficulty to protect their rights. The provision of rights will be discussed further below.

Policies by developed countries responding to irregular migration can be categorised in two groups (IOM, 2008):

- 'carrot' approaches, such as offering quota-based temporary legal schemes, create other possibilities for legal migration or support sending countries to improve their migration management.
- as well as 'stick' approaches, such as penalizing countries that do not cooperate with regards to return of irregular migrants.

Often developed countries, driven by security concerns, also provide incentives and funding to improve the border management capacities of sending or transit developing countries. Over the last decade there has been a strong increase of readmission agreements and bilateral cooperation methods between African and European countries for example. Cooperation methods of the EU have been primarily conducive to judicial and police reforms as well as to capacity building for better border management capabilities (Cassarino, 2009). The strong focus on security and border enforcement in order to curb irregular migration may hinder the facilitation of South-South regional labour migration. As Cassarino (2009) points out, bilateral readmission agreements may impede the developmental beneficial free circulation of individuals part of regional integration initiatives such as the Economic Community of West African States (ECOWAS). It is likely that states involved in cooperation methods on migration and border management and readmission have to balance competing requirements of their commitments with regards to European counterparts and those of their regional integration schemes. It is noteworthy that the EU also supports the implementation of the regional integration schemes, including the facilitation of free movement, with technical assistance and funding.

Another concern has been that readmission agreements often aim at the expulsion of irregular migrants while not foreseeing mechanisms to support the social and professional reintegration persons subject to return (Cassarino, 2009.).

If security concerns of developed countries and the goal of reducing the number of irregular migrants are prioritized over regional mobility and development needs of developing countries, inconsistencies with PCD and migration policies may occur. The European Parliament has mentioned in this context that bilateral readmission agreements with transit countries may undermine the respect for the rights of migrants and may result in 'cascade' readmissions jeopardizing migrants safety and lives (European Parliament, 2012)

Discussions in the Global Forum on Migration and Development have highlighted that temporary and circular labour migration schemes, which engage a wide array of stakeholders including government, private sector and international agencies, are more likely to reduce irregular migration than stricter border controls. Cooperation that include readmission agreements should thus include a broader set of measures, such as legal opportunities for migration, vocational training, traineeships, and exchange programmes etc. (see GFMD, 2011)

Rather than focusing on expensive but not necessarily effective measures to control illegal migration, the OECD sees development policy as a means to help supporting objectives of migration that

address the underlying causes of illegal migration. With regards to visa policy, there can be potential incoherence if admission requirements become too restrictive, so that even for business travellers, students or health “tourism” visa are difficult to obtain, which benefits neither the sending nor the destination countries (OECD, 2009).

The EU has put its focus on achieving humane and effective return policies in line with the Charter of Fundamental Rights as well as readmission agreements with third countries to counter irregular migration.

Another area of movement concerns illegal movement of trafficked people. The link to development is given through the direct curtailing of capabilities and freedom of the people trafficked as well as the repercussions this has to their countries of origin, to which they might be transferred back. As a result of their experiences, trafficked persons are *“highly unlikely to be able to exercise all their skills and talents”* and cannot contribute to development of their country (Chappell and Glennie, 2009, p.13). The research on the links between human trafficking and development is still in its early stages, and the relation is believed to be very complex and multidimensional. Developing countries themselves have a stake in maximizing the impact of migration for development and contribute to PCD with regards to trafficking. This includes amongst others the fight against trafficking and better control over criminal operators, but also engaging in cooperation arrangements to manage associated risks of temporary worker migration forms or ensuring that the investment in education of future migrants is compensated by remittances for example (see *ibid.*). Developed countries can help here through development cooperation in the respective fields and by strengthening capacity of developing countries.

5. Remittances and non-economic transfers

5.1 Remittances

Even though today several links between migration and development have been established in the literature, remittances have attracted the greatest deal of attention in research and policies as it presents one of the more visible factors, that link migration to development (see Orozco and Paiewonsky, 2007; Collyer, 2011). Ratha and Mohapatra (2007) assume that *“the benefits [of international migration] to origin countries are realized mostly through remittances”* (Ratha and Mohapatra, 2007, p.1). Remittances are important in two ways. Firstly, they directly augment the income of migrant’s families and relatives who stayed behind, thus augmenting consumption and investment possibilities and improving access health and education. Through multiplier effects poverty can potentially be alleviated (*ibid.*, pp.3). Second, as pointed out by de Haas, remittances provide foreign currency to governments helping to balance current accounts, when formally transmitted (de Haas, 2005).

Remittances, in total being much larger than global official development assistance (ODA), are one of the largest sources of external income of developing countries and are a relatively stable source of income for many people in developing countries. As the World Bank’s Global Development Finance 2003 Report states: *“While capital flows tend to rise during favourable economic cycles and fall in bad times, remittances appear to react less violently and show remarkable stability over time.”* (Ratha, 2005 p.26; see also Ratha, 2003; Kapur, 2004). Barajas et al (2010) come to a similar conclusion for the impact that the current financial crisis has on remittances regarding Africa. Their examination finds that *“the impact on African nations’ GDP of the expected drop in remittances caused by the global financial crisis [...] will be small for most countries”* (Barajas et Al. 2010, p. 11). However, countries with stronger migration ties to Europe will experience larger declines in GDP due to a decline in remittances (*ibid.*, p.11). The reason for the low impact of the crisis can be found in low GDP shares of remittances going to Africa from outside the continent. Almost half of African countries’ have

remittance-GDP ratios of less than one percent and those with a more significant share receive them mainly from within Africa (ibid.). Yet, this research focuses on the remittance-GDP effect only and a drop in the level of remittances due to economic crisis may have detrimental effect on individual households.

This points to another important aspect when looking at the benefits of remittances. While, as stated above, remittances seem to benefit developing countries at large, it is not the poorest countries that benefit, nor the worst-off and most vulnerable individuals in developing countries, who profit. Whereas China, India and Mexico are the largest gainers of total remittances in 2008, Sub Sahara Africa gets the least share of remittances from all developing regions. In fact, middle income countries receive over 90% of remittances that have been sent to the developing world (see Ratha, Mohapatra and Silwal, 2009). Moreover, the least advantaged individuals in a poor country generally do not have the resources to emigrate, combined with the fact that developed country migration policies are skewed towards facilitating mobility of high-skilled individuals from sending countries. Thus migrants tend to be usually from backgrounds with more resources and are better educated (see Kapstein, 2006, p. 130). For these reasons, Collyer (2011) emphasizes that *“despite the undeniably positive impact of remittances at the micro and macro economic level in recipient countries, current research cautions against the identification of migrant’s remittances as a panacea for development”* (Collyer, 2011, p. 5). Orozco and Paiewonsky (2007) add to this that *“the fact that [remittances] are scattered in a multiplicity of small amounts means that very often they can barely cover the most basic survival needs of their households”* Considering all this, it becomes clear that private money, sent to individual families, cannot substitute for development assistance to poor countries, which is essential for governments to invest in public services covering all their citizens. Development assistance can play an important role in helping to set up the infrastructure in remote areas that will facilitate the transfer of money and make it more secure.

Another strand of research looks at the actual effects of remittances in receiving countries. The Global Development Network (GDN) for example conducted the “Development on the Move” Project, measuring migration’s economic and social impact. The project specifically looked at how remittances are spent in sending countries. While spending on education and health services in households receiving remittances generally increases. However, the study also finds although the quality of children’s education in households with migrants might be improved, as more money is spent on books and other materials, no impact on the year of schooling is observed. This seems also true for health: *“Migration appears to have positive impacts on spending on health and education, on the whole, but not to the extent that outcomes such as household members’ health, or school attendance, improve.”* (GDN and IPPR, 2010)

Remittances flow either through formal (official banking systems) or informal (eg. carrying money directly or via friends) channels usually using the most efficient means that are available. The advantage for development is that when official channels are used, remittances are not only easier to count to assess the benefits but also have a positive impact on the macro-economic situation of the country receiving them (Orozco and Paiewonsky, 2007).

The system to send and receive remittances is characterized by high costs of cash transactions, inefficient processes and fragmentation of delivery chains. Banks as well as non-bank financial institutions offering remittances services encounter high regulatory barriers in many countries, which leads to high transfer fees of up to 20% the amount sent. A very large amount of remittances is sent through non-formal channels, which, though incurring less formal costs, bears a greater risk.

The average cost of sending money from G8 countries, including the world’s major sending countries, has declined during the past years and lies now by 8.3% for sending USD 200. This is slightly lower than the global average total cost (8.96%) but it is still far away from the objective to reduce the global

average costs to 5% by 2014 as has been agreed in the 2009 G8 summit in l'Aquila (5x5 objective). Moreover, there are significant differences in cost structures across G8 countries, with *“Japan, France, Germany and Canada maintaining an average total cost above both the global average and the G8 average”* (World Bank, 2012). Italy is below the global average cost after a significant decline to 7.47% in 2012. Besides the G8 commitment of 2009, the G20 pledged to work towards a significant reduction in the cost of remittance services' in 2010. Massimo Cirasino of the World Bank points out that achieving the 5x5 objective globally could 'deliver more than \$15 billion in cost savings for migrants and their families' (Cirasino, 2013).

Remittances flows can be enhanced by making them cheaper, faster, and more secure. Identified policy options to enhance the developmental impact of remittances mainly look at encouraging migrants to use formal banking systems, reducing costs and fees of remittance transfer and encouraging easy or innovative ways of transferring money such as mobile phone transfers.

The World Bank has established General Principles for International Remittance Services in cooperation with the Bank of International Settlements (BIS) and based on consultations with Central Banks and International Organizations. These principles, that were adopted by the G8 as well as the G20 include:

1. Transparency and consumer protection.
2. Payment system infrastructure: improving infrastructure for increased efficiency of services.
3. Legal and regulatory environment: establishing a sound, predictable, nondiscriminatory and proportionate legal and regulatory framework in relevant jurisdictions.
4. Market structure and competition: fostering competitive market conditions, including appropriate access to domestic payment infrastructures.
5. Governance and risk management: supporting remittance services through adequate governance.

As discussed above, remittances are doing a great deal in reducing poverty but are generally not seen as being a panacea for economic development of a country. Research by Abdi et al (2012) even points to the possibility of deterioration of the quality of institutions in association with growing remittance flows to developing countries *“that are similar to those of large resource flows”* (Abdi et al, 2012, p. 22). For this reason it is important that the improvement of remittance flows toward developing countries is not crowding out other forms of finance which facilitate and promote the economic governance and growth.

5.2 Non-economic transfers

Besides the aforementioned transfer of expertise that skilled workers can bring to their countries of origin or the flow of remittances, networks between migrants and communities in origin countries can further create a range of other positive externalities conducive to development: business links might be established, new trade-channels created, philanthropic donations can help local communities and information and other resources could flow from emigrants to their home countries (see for example Boswell and Crisp, 2004, pp. 16 and Newland et al., 2010). Lastly, migration has the potential to positively influence the socio-political sphere in developing countries. Skilled migrants have been said to possibly be able to play an important and positive role in triggering political and social reform by participating in public debates, as they often have more opportunities and freedom to express their opinion abroad than in their countries of origin.

As de Haas (2005) points out, *“migrants can contribute to shaping a better societal climate in countries of origin in general”* (de Haas, 2005, p. 1273). Moreover, migration processes can lead to the

development of certain groups in societies such as the empowerment³³ of women. Either women can directly become empowered through their own movement often away from patriarchal contexts or indirectly through greater authority in the household if their husbands or brothers emigrate. Even though some forms of movements pose great risks for women, such as exploitation through trafficking or sex trade, *“the majority of [...] international women migrants are empowered rather than exploited by their migration”* (Skeldon, 2005, p.60). The UN Human Development Report 2009, referring to the work of 77 qualitative studies in Ecuador, Thailand and Mexico, similarly finds that *“movement can allow rural women to gain autonomy. Empowerment tends to occur when migration draws women from rural to urban areas, separating them from other family members and friends and leading them to take paid work outside home”* (UNDP, 2009, p.60). Empowerment equally may occur for young male migrants, as they are empowered to challenge parochial structures in the family.

However, positive outcomes of migration in this area are should not be taken for granted as they crucially depend on the rights and opportunities migrants are offered at their country or place of destination. Increasing rights and the situation of migrants in their country of destination through development cooperation for example is thus crucial to enhance the benefits movement can bring to development.

6. Protecting Migrants’ rights

The rights situation of migrants in the countries of destination can positively or negatively affect development prospects of the migrants themselves, the host and the sending community. Migrants who find themselves in less secure and restricted situations and are disempowered may be able to remit less, develop less skills and beneficial experience, and thus have less potential to contribute to development. There are two interrelated dimensions to the protection and granting of migrants rights with regards to development.

The first relates to basic human rights and the respectful treatment of all migrants. This concerns all types of migrants ranging from asylum seekers to irregular as well as legal labour migrants and corresponds to a human development conception of development. Regarding treatment of migrant workers abroad, some sending countries have sought protection for their workers in the country of destination. Nepal for example made efforts to incorporate migrants’ rights in its foreign employment laws. Yet, a major challenge is that a country cannot exercise extraterritorial jurisdiction to protect its migrant workers and enforcement of right protection remains in the realm of the receiving country. Violations of basic human rights of migrants are against existing national law and legislation at the European level. The reoccurring violations of those rights are thus also a question of rule of law and administrative accountability.

The protection of migrants in receiving countries further seems to be a capacity issue as well as one of political will. The high relative pressure on some western receiving countries has lead to deteriorating situations for asylum seekers. The European Council on Refugees and Exiles (ECRE), UNHCR, and Amnesty International have repeatedly called for the suspension of transfers to Greece under the EU Dublin II regulation³⁴ because of its failure to comply with EU Law regarding the treatment of those

33 The term empowerment has a variety of different meanings depending on sociocultural, historical and political contexts. Most definitions have in common that empowerment relates to gaining power and control over decisions and resources determining the quality of one’s life in one way or another. The empowerment of women has been described by the UNICEF Women’s equality and empowerment framework as “women’s access, awareness of causes of inequality, capacity to direct one’s own interests, and taking control and action to overcome obstacles to reducing structural inequality”. Empowerment has intrinsic but also often instrumental value.

34 Besides the Member States of the European Union, Iceland, Norway and Switzerland are participating in the Dublin System, which regulates the EU asylum procedures. Under the Dublin system asylum seekers can be

migrants (see ECRE, 2008; UNHCR, 2009b; Amnesty International, 2010). Violations of migrants' human rights are unacceptable under EU law and the European Court of Human Rights has condemned Greece and Belgium for violating Article 3 of the European Convention of Human Rights. For Greece this was due to *"the appalling situation in which asylum seekers are left"* (Pascouau, 2012). In Belgium's case it was due to sending asylum seekers back to Greece. Yet, it is also the existing EU policy mechanisms in place to prevent abuses that are not functioning properly. Despite being aware of these Human Rights breaches, the European Commission showed a lack of action in order to prevent the breach of these EU rules since no infringement procedures to hold these states to account have yet been launched (ibid.) This situation leads to de-facto tolerating the inhumane treatment of asylum seekers or irregular migrants, sending asylum applicants to a country where their human rights are not safeguarded and thereby breaching agreed law as well as inaction to prevent such breaches or hold states accountable. Establish a fair responsibility sharing mechanism to reduce the pressure on over-burdened countries and create fair conditions may help to end deteriorating situations for asylum seekers, but is difficult to take further in Europe due to the political sensitivities of migration policy at the national level.

Inhumane treatment is not limited to asylum seekers. Irregular migrants as well as migrant workers under temporary migration schemes can also find themselves in exploitative situations in which their human rights are abused. Regarding the protection of the irregular migrants, good practice policies evolve around reducing irregular migration, which has been discussed above. The Global Forum on Migration and Development further recommends countries to *"strengthen the use of consular networks of countries of origin to provide effective support to irregular migrants and the protection of their rights' as well as "to establish national councils, committees or working groups for the support, protection and human development of irregular migrants and their families"* (GFMD, 2011).

Policies aiming at the active protection of rights of legal migrants employed in temporary migrant schemes lead us to a second dimension. This dimension relates to the socio-economic rights beyond basic human rights that are granted to legal migrants, such as accepted asylum seekers and migrant workers. An expanded set of rights can improve the impact of their migration on development, not only for themselves but also in the way they can positively contribute to their origin country through remittances and other channels. These rights may include the right to work, to right change employers, the right to be reunited with their families, the right to access of social security protection etc. In practice, such rights are often restricted, sometimes in with the intention to ensure the temporal nature of migration. Yet, granting more rights can protect a migrant worker from exploitation. Ruhs (forthcoming) argues that if labour migrants have the right to solely work for one employer specified on their work permit, they *"find it difficult or impossible to escape unsatisfactory working conditions (unless they are willing and financially able to return home)"* (Ruhs, forthcoming). This may be exacerbated by illegal practices of 'tied accommodation', i.e. accommodation that is provided by the employer conditional upon the migrant working for that employer. Some portability of work permits coupled to specific job category or sectors and after a period of time would thus be beneficial from the perspective of the migrants' development (ibid.).

Several actors and organizations in the field of migration and development increasingly promote the idea that for a realization of the full benefits migration can bring, the rights of migrants must be respected across the whole migration circle. The UN, the ILO and several NGOs have thus specifically called for a right-based approach towards migrants, ensuring that migrants enjoy a minimum standard of civil, political, economic, social and cultural rights. Ensuring the rights of migrants has to address

transferred back to the country of 'first entry' for the process of the application. Art. 3.2. of the Dublin II regulation does not allow to send asylum applicants back to a country where their human rights are not guaranteed.

several policy dimensions, such as for example fighting xenophobia and discrimination in countries of transit or destination. (see Paoletti, 2007; ILO 2010). Policies addressing the latter aspects as well as policies focusing on integration and social cohesion are important to ensure adequate treatment of migrants. A balance needs to be found between receiving countries' interests to restrict certain rights of immigrants and granting rights in order to improve or maximize the developmental impact of migration. Yet the sensitive nature of migration and integration patterns in many countries makes that political debates often focus on highlighting negative aspects, thus fuelling social tensions and anti-immigrant sentiments. They therefore rarely result in sustainable and effective policies to address these issues.

7. Engaging Diasporas

One particular aspect of the policies regarding migration and development targets the engagement of migrants with their country of origin, be it through circular movement discussed above or through the engagement of diaspora networks, i.e. self-organized groups of expatriates holding talent, knowledge and skills, for the development of the sending country. Diaspora networks link better-performing segments of home country institutions with forward-looking segments of the diaspora. The latter have the potential to generate a virtuous cycle that develops both home country institutions and diaspora networks. The question is how to leverage expatriate talent for the benefit of expatriates' countries of origin.

In fact more and more attention is directed at creating diaspora networks and involving diasporas in the development of countries of origin. However, many projects are still in the implementation phases and assessment is scarce. For this reason it is difficult to find best practices and recommendations of policies that lead to success. A lack of data regarding diasporas in countries of origin seems also an impediment to successful policy making (see Plaza and Ratha, 2011, p. 28). Those policies currently in place targeting diaspora involvement should be evaluated to assess their impacts (ibid. p.40). A very recent strand of literature looks at the involvement of the Diaspora from a political economy point of view. Group remittances by Diaspora organizations, for example, can attend to the interests of local elites and reinforce the established power-bases of elite individuals, as has been observed with some London-based Nigerian diaspora.³⁵ Such contributions may entrench 'traditional authority', power imbalances and socio-economic inequalities in the country of origin (Lampert, 2012). To the extent that the engagement of such diaspora groups is promoted by policies of host countries, it potentially risks generating negative effects for development.

Countries of origin have an important role in engaging diasporas for development purposes. One crucial factor here is the institutional setting in the sending countries. On the one hand, a good business climate with adequate property rights and security is a necessary condition for diaspora members to invest in home countries as it is for other foreign investors (ibid.). On the other hand, however *"large and entrepreneurial networks of diaspora professionals are, home country institutions that are interested in and capable of implementing joint projects with expatriates are critical"* (Kuznetsov, 2006, p. viii).

35 It has to be noted that organized diaspora groups are often composited by higher-skilled migrants. In the case of Nigerian diaspora organizations based in London, it is mostly men that actively participate.

Besides facilitating the exchange of ideas through for example creating knowledge platforms and conferences or workshops that connect the diaspora with the home country, policy proposals aim at allowing dual citizenship in both country of origin and the receiving country, as well as providing voting rights from the side of the country of origin to enhance linkages. However, Kuznetsov (2006) points out that creating diaspora networks requires time, patience and institutional capabilities. Such networks, though generating opportunities, others have to act on those opportunities and finance further projects. He thus concludes that diaspora networks cannot be a panacea for development.

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Annex II. Key policy incoherencies: Migration policy

Table 5: Overview table – Migration policy

Overview table – Migration policy

Aspects of incoherence and the extent to which they are reflected in international policy discussions

I. Facilitation of Legal Migration and Recruitment		
Incoherence issues	Policy discussions in the European Union	Selected multilateral discussions
<p>1. Current immigration policies of developed countries primarily aim to attract high-skilled workers. In the context of ageing societies in a number of developed and emerging countries the competition for high skilled labour may increase in the future.</p> <p>Yet, brain drain, i.e. the depletion of highly skilled and educated individuals, may be serious concern for some developing countries. This can be especially the case in in Africa with regards to health sector occupations.</p>	<p>* In May 2009, the European Union adopted the Directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, also known as the Blue Card directive, which aims at attracting high-skilled workers.</p> <p>* The EU acknowledges that brain drain may be a serious problem for some developing countries. An ethical recruitment clause has been inserted in the directive (recital 22), which calls upon Member States not to pursue active recruitment in sectors where this may lead to a skill shortage in a developing country.</p> <p>* The Directive also tries to incite so-called “brain gain” through incentives for circular and temporary migration.</p> <p>* The EU supports the WHO Code of Practice on the international recruitment of health personnel.</p> <p>* The EU PCD work plan (2010-2013) lays out further policy areas to mitigate negative effects of brain drain.</p>	<p>* A policy brief published by the OECD (2009) points out that policies, encouraging highly skilled individuals that have been educated at the expense of developing sending countries, such as health professionals for example, and where evidence exists that this might lead to skill shortages are incoherent with development objectives. Yet, the OECD also highlighted that developing countries could even benefit from high-skilled migration if partnerships between sending and receiving countries encourage a repatriation of skills and knowledge (brain circulation)’. </p> <p>* The World Health Organisation (WHO) has developed a Global Code of Practice on the International Recruitment of Health Personnel, a policy framework for the ethical recruitment of health workers, which governments and organisations can adopt.</p>
<p>2. The skills and knowledge of migrants in developed countries are often not</p>	<p>* The issue of Brain waste does not appear in the Stockholm Programme and measures against ‘brain waste’ have not yet been developed.</p>	

<p>recognized and under-utilized, a phenomenon that has been titled 'Brain Waste'. This is mostly caused by the fact that degrees or diplomas of migrants from developing countries are not automatically formally accepted or accredited in the country of destination.</p> <p>Brain waste diminishes the positive contributions through for example financial transfers those migrants could make for development.</p>	<p>* The GAMM and the EU Commission Staff working paper accompanying the revised Global Approach on Migration and Mobility mentions that the EU will analyze policies to address 'brain waste' and scale up efforts in the future.</p>	
<p>3. The migration of lower-skilled workers has been argued to have a greater beneficial impact on poverty and inequality than those of higher skilled, as ensuing remittances are directed at poorer households in the sending country and as wages for lower skilled workers in the sending country are raised.</p> <p>Yet, developed countries often put high constraints on the admission of lower skilled workers. Policies are being put in place to reduce the number of external migrants. This leads to a reduction of remittances and beneficial developmental impact. Restrictive immigration policies simultaneously translate to high levels of irregular immigration, which is more costly than effective (OECD, 2011).</p>	<p>* There is no harmonized EU policy on the access of low-skilled migrants. The EU Commission has proposed a directive on seasonal employment, which is currently the most important initiative with regards to low-skilled migrants at the EU level. It aims to improve and harmonize access procedures once Member States have decided to let low-skilled workers enter. It seeks to protect migrants' rights and ensure equal treatment across the EU. Yet, the EU Council and the EU Parliament have not adopted the directive.</p> <p>* Some EU Member States use policies such as quotas and labour shortage lists to regulate low-skilled labour mobility. Temporary migration programmes (TMPs) are usually the only legal means for low-skilled workers to come to Europe. Many TMPs have been closed down in recent years, and lessons learned or best practices on TMPs are seldom applied.</p>	<p>* The UNDP has advocated for an increase in labour mobility also for low-skilled workers as well as a better implementation of migrants' rights in the 2009 Human Development Report.</p> <p>* The OECD (2008) points out that against the background of ageing societies in OECD countries there may be labour shortages of low-skilled labour and proposes policies to better manage low-skilled migration.</p>
<p>4. Circular migration and possibilities for circulation of lower as well as higher-skilled migrant workers can maximize beneficial developmental impacts (e.g. through 'brain circulation'), if supported by an adequate policy mix. Schemes enabling</p>	<p>* The EU acknowledges circular migration as beneficial for development but also points to potential downsides such as repeated separation of families, dependence of foreign labour markets and the lack of long-term integration in the destination country (EC, 2011). The EU adopted a definition of circular migration as 'repeated cycles of back and forth mobility over a period of time for the purpose of economic activity or study, which takes place within a legal</p>	<p>* The OECD views innovative circularity schemes with multi-use, multi-entry visas and work permits possibilities as promising avenue to help manage migration flows more effectively, i.e. to facilitate brain circulation and combat irregular migration</p>

<p>circularity (through for example multi-entry visa) seem to work better than strict immigration schemes limited to one period and with no further possibilities of mobility.</p> <p>Yet, although some developed countries put temporary schemes in place, they mostly include only certain skill-categories and have been counterproductive in terms of circularity due to the fact that the migrant loses its status once leaving the country instead of possibilities for multiple entries. There are few or none possibilities for migrants to establish their 'locus' of circularity in the host-country itself. Existing legislative frameworks, employment conditions, social welfare provisions or tax regulations both in the sending and receiving countries at times further impede circularity.</p>	<p>framework allowing facilitated re-entry between two or more countries" (ibid.).</p> <ul style="list-style-type: none"> * The EU Council has called interested Member States to explore promoting circular migration as a development instrument through "permitting longer periods of absence without loss of residency status, granting work permits for longer periods for labour migrants and increased measures to facilitate reintegration" (EU Council, 2012) * The EU aims at encouraging greater portability of social security rights as a key incentive for circular migration (GAMM) * The EU Commission has proposed further future measures to explore in its staff working paper accompanying the GAMM (EC, 2011). * The Blue Card Directive for high-skilled migrants calls for circular migration and for 'brain circulation' but does not provide specific measures or mechanisms to this effect. It includes equal treatment provisions for third country nationals. 	<p>(OECD, 2007).</p> <ul style="list-style-type: none"> * The GFMD (2012) discusses circular migration and the links to inclusive development as well as innovative policies in the area of beyond-border skills and jobs for human development. The GFMD Chair notes in its work programme for 2013-2014 to reduce the obstacles to circular migration and to promote its development potential.
<p>5. In developed countries of the EU or the OECD, labour migrants often perform important functions and fill skill gaps and labour shortages. In the OECD as well as in emerging countries that will have ageing populations (such as China), immigration of all skill-levels can be a part of a policy package to address this challenge.</p> <p>Yet, the increasing restrictions of legal migration routes (especially after the economic crisis) and restrictions on integration measures for migrants may have negative long-term effects for the development of destination countries themselves.</p>	<ul style="list-style-type: none"> * The EU acknowledges the challenges of its ageing society and notes that it is facing pressing labour market needs in the GAMM adopted by the EU Council. The GAMM urges Member States to consider a more demand-driven legal immigration policy in dialogue with the private sector (GAMM). The so called Blue Card Directive provides the policy for entry and residence of highly qualified workers to the EU. * The Directive on seasonal employment, currently under discussion in the European Council and the EU Parliament, as well as the proposal for the Directive for intra-corporate transfer of non-EU skilled workers could be further legal demand-driven recruitment avenues for labour migrants. 	<ul style="list-style-type: none"> * In the light of the economic crisis and the restrictions of labour migration and cutting of integration measures, the OECD has issued recommendations which include a) maintaining or even strengthening integration programmes, b) reinforcing the fight against racism and xenophobia, c) reaching out to new labour market entrants including recent immigrants. Moreover, management of labour migration should not deny structural needs. * In the global discussions on the post-2015 development framework, labour migration has emerged as a topic put forward as an enabler for development when better linked to population dynamics in the Global Consultation on Population

		<p>Dynamics.</p> <p>* The GFMD Chair notes in its work programme for 2013-2014 to work towards strengthening the conditions for better matching between supply and demand in the global labour market.</p>
II. Curbing Irregular Migration		
<p>6. The strong focus on security and border enforcement and the externalization of border control in order to curb irregular migration may hinder the facilitation of South-South regional labour migration. Bilateral readmission agreements may impede the developmental beneficial free circulation of individuals as part of regional integration initiatives. It is likely that states involved in cooperation methods on migration and border management and readmission have to balance competing requirements of their commitments with regards to European counterparts and those of their regional integration schemes. Bilateral readmission agreements with transit countries may undermine the respect for the rights of migrants if there are no sufficient means for reintegration.</p>	<p>* The EU aims at achieving a humane and effective return policy – in line with the Charter of Fundamental Rights. Preference is given to voluntary return. The EU Return Directive lays down common standards and procedures for the return of irregular migrants that each Member State should adopt.</p> <p>* The EU negotiates readmission agreements with third countries and aims at establishing effective cooperation to ensure that the return policy is efficient.</p> <p>* The EU Return Directive includes the principle of non-refoulement. Returns must be in compliance with fundamental rights, particularly the EU Charter of Fundamental Rights.</p> <p>* The Evaluation of the EU's Readmission Agreements concludes amongst others that it should be possible to suspend agreements with countries having weak human rights and international protection records. This could be achieved through inserting suspension clauses in future agreements. Further recommendations are requiring parties with which EU RAs are signed to confirm that third country nationals readmitted are treated in compliance with key international human right and requiring the parties to the agreement to ratify international human rights conventions, if not yet the case. The EU is also called to monitor the human rights situations of persons readmitted under the EURAs through pilot projects.</p>	<p>* The OECD (2000) highlights increased cooperation and information sharing in order to combat illegal entry, residence and employment of foreigners – one of the key priority areas of OECD countries' immigration policies.</p> <p>* Discussions at the GFMD highlight that temporary and circular labour migration schemes, which engage a wide array of stakeholders including government, private sector and international agencies, are more likely to reduce irregular migration than stricter border controls. Readmission agreements should thus include a broader set of measures to safeguard rights and provide for legal migration opportunities and training.</p>
<p>7. Strict Border Management and Visa policy has been one way developing countries have used to curb irregular migration.</p>	<p>* No formal on-going discussions on the EU policy-level.</p> <p>* Strict Visa policies in some EU Member States have been criticized for hurting business within the country (see for example debate in the UK).</p>	<p>* No clear policy position on this at OECD / global level.</p>

<p>With regards to visa policy, there can be potential incoherence if admission requirements become too restrictive, so that even for business travellers, students or health “tourism” visa are difficult and costly to obtain. This neither benefits the sending nor the destination country.</p>		
<p>III. Remittances and non-economic transfers</p>		
<p>8. The system to send and receive remittances is characterized by high costs of cash transactions, inefficient processes and fragmentation of delivery chains. Banks as well as non-bank financial institutions offering remittances services encounter high regulatory barriers in many countries, which leads to high transfer fees of up to 20% the amount sent. A very large amount of remittances is sent through non-formal channels, which, though incurring less formal costs, bears a greater risk.</p> <p>Developed countries have committed to reduce the costs for sending remittances but adopted targets have not yet been met. High remittance sending costs still reduce the developmental and poverty reduction effect remittances could have.</p>	<ul style="list-style-type: none"> * The EU has made various efforts at the EU level to facilitate and reduce the costs of remittances since 2005. Despite progress, much remains to be done in the area at the level of cooperation with developing countries as well as at the EU level (EC, 2011). * Through the Global Approach on Migration and Mobility, the EU is committed in the areas of a) favouring cheaper, faster and more secure remittances flows (b) Improving data on remittances and (c) enhancing the development impact of remittances from the EU. It is currently explored to set up an annual remittance forum. * The main initiative on a European level concerns the implementation of the Payment Services Directive (PSD) aiming to make remittance flows faster, cheaper and more secure. Some member states have chosen to apply the Directive, which currently only applies to intra-EU transfers also to outside operators. Yet, the PSD has not yet been formally extended to non-EU countries. * The EU Commission notes future areas to further enhance the development impact of remittances in its staff document on migration and development (EC, 2011). * The EU is currently reviewing its anti-money laundering and counter-financing of terrorism guidelines (AML/CFT). It is essential that changes to the AML/CFT are not burdening remittance service providers and lead to an increase of remittances sending costs. 	<ul style="list-style-type: none"> * Following recommendations of several G8 Declarations, a Global Remittances Working Group has been set up in 2009. * The World Bank leads the Global Remittances Working Group to coordinate work on remittances at the international level. * The 2009 G8 Aquila Summit declaration acknowledges the development impact of remittance flows and commits G8 countries to facilitate ‘more efficient transfer and improved use of remittances’ as well as better ‘cooperation between national and international organisations in order to implement the recommendations of the 2007 Berlin G8 Conference and of the GRWG. The G8 aims to make financial services more accessible to migrants and recipients. The set goal is to reduce the global average costs of remittance transfers to 5% until 2014 (5x5 objective). * The 2010 G20 Seoul Declaration sets out a Multi-Year Action Plan on Development, which notes as an action point to improve the international flow of remittances by furthering the General Principles for International Remittance Services, aiming to reduce the global average cost of transferring remittances.

	<p>* The Stockholm Programme includes a commitment to assess the feasibility of a EU portal to promote cheaper, faster and secure remittances and improve transparency. The evaluation on EU remittances for developing countries looked into this and suggests that the EU develops an EU-wide consumer portal covering 150 corridors and including a variety of information for immigrants but makes it contingent on the availability of adequate funds to support such a portal.</p>	<p>Little progress on this was noted in the 2011 Cannes Summit.</p> <p>* The 2011 G20 Cannes Declaration confirms the 5x5 objective.</p> <p>* The OECD (2007) calls its Member States to take steps to lower costs of financial transfers and cooperate with financial institutions in order to expand financial services to poor areas.</p> <p>* In the context of the discussion on the post-2015 global development framework, the World Bank (2013) discusses how better policies on remittances could be reflected in a new framework.</p>
IV. Protecting Migrants Rights		
<p>9. The rights situation of migrants in the countries of transit and destination can positively or negatively affect development prospects of the migrants themselves, the host and the sending community. Migrants who find themselves in less secure and restricted situations and are disempowered may be able to remit less, develop less skills and beneficial experience, and thus have less potential to contribute to development.</p> <p>Certain practices of developed countries can lead to deterioration of the human rights situation of migrants and asylum seekers. These include, failing to comply with minimum human rights standards, sending asylum seekers and irregular migrants to countries where their human rights cannot be guaranteed, or failing to</p>	<p>* The EU acknowledges that migrants' contributions to development depend on certain capabilities and rights (EC, 2011)</p> <p>* The EU Global Approach on Migration and Mobility (GAMM) puts migrants' rights at the center of the approach. It calls to ensure decent living conditions for migrants in reception centres and to avoid arbitrary or indefinite detention.</p> <p>* Dialogue and cooperation of the EU with partners strives to protect human rights of all migrants throughout their migration process.</p> <p>* The Directive on Employer Sanctions calls for a need for more dissuasive sanctions in serious cases, including exploitative working conditions and employment of trafficked human beings or employment of a minor. It calls Member States to provide for criminal penalties in their national legislation.</p> <p>* Specifically with regards to conditions of asylum seekers the EU Commission has called for the need to share responsibility and to ensure harmonization by amending the three EU asylum directives: dealing with reception conditions, asylum procedures and standards for qualification as refugees or persons needing international protection.</p>	<p>* The UN International Convention on Migrant Workers (1990) establishes the rights of migrant workers and their families. The Convention is reaffirming the core human rights treaties, recognises rights that are specific to the context of migrant workers.</p> <p>* The ILO has called for a rights-based Approach to Migration. ILO Conventions 143 and 97 specifically deal with the human and socio-economic rights of migrants.</p> <p>* The Global Forum on Migration and Development.</p>

<p>cooperate in order to achieve a fair system of responsibility sharing in the context of the EU Dublin II system and a lack of efforts to strengthen the human rights situations of irregular migrants.</p>		
<p>10. The level of socio-economic rights given to legal migrants determines the capacity to positively contribute to development outcomes in the countries of origin, through remittances or skill/knowledge transfer etc.</p> <p>Developed receiving countries often restrict the rights to work, the right for family reunification, the right to access social security protection, the portability of work permits and others.</p> <p>A balance has to be found between receiving countries' interests to restrict certain rights of immigrants and the rights that are able to improve or maximize the developmental impact on the migrant as well as on its country of origin.</p>	<p>* In light of the Europe 2020 Strategy it seems that this is of increased interest to the Commission. In the field of policies safeguarding migrants' rights and integration policies. The EU Staff working paper 'EU initiatives supporting the integration of third-country nationals' states that to achieve the Europe 2020 objectives, migrants integration, fair treatment of third-country nationals and the granting of rights, opportunities and obligations comparable to those of EU citizens is necessary.</p> <p>* The EU has recently adopted the Single Permit Directive, which gives visa holders covered by the directive a common set of rights comparable to those of EU workers. These rights include decent basic working conditions, recognition of qualifications, the right to join trade unions, tax benefits, portability of pension, social security and public housing etc. EU countries are able to apply specific restriction to these rights and the Directive does not cover long-term residents, refugees, posted workers, seasonal workers, intra-corporate transferees and au pairs.</p> <p>* The EU Seasonal Employment directive, proposing common conditions and rights for low-skilled seasonal migrants has not yet been agreed upon.</p> <p>* None of the EU Member States has ratified the UN Convention on the Protection of the Rights of Migrant Workers and Their Families. Only few have ratified the ILO Convention on Migration for Employment (C97) as well as the supplementary Convention on Migrant Workers (C143).</p>	<p>* The Global Forum on Migration and Development Chair notes in its work programme for 2013-2014 that 'well-integrated migrants and diaspora groups have higher employment rates and participate more actively in the host society, making them better able to contribute to development in their countries of origin'. Part of the GFMD work will thus be to take action to increase the mutually reinforcing relationship between integration and development.</p>
<p>V. Engaging with Diaspora</p>		
<p>11. The engagement of the Diaspora can have a positive impact on the development of the country of origin. Developed countries with a migrant population at times promote diaspora organizations and aim to create networks to link better-performing segments in the country of origin with diaspora groups.</p>	<p>* Most of the efforts aimed at involving diaspora organizations in the field of development are still in its infancy. The European Commission finances studies to elaborate on possible engagements of diaspora groups and identify possibilities of involvement as well as supports of the set up of databases on national or regional levels where diaspora members interested in promoting development of their home country can register (GAMM).</p> <p>* Other initiatives aim at establishing cooperation frameworks facilitating the</p>	<p>* The OECD together with the French Ministry of Foreign Affairs has produced a Policy Guidance on how to engage with Diaspora to maximize Development (OECD, 2012).</p> <p>* The GFMD (2012) discusses how to enhance the contribution of diasporas as agents for socio-economic change.</p>

<p>Research on the positive and potentially problematic effects of such engagement is scarce. Some examples have shown that, Diaspora groups may attend to the interests of local elites and can reinforce established power-bases of elite individuals. This can lead to entrenched 'traditional authority' and reinforce power imbalances To the extent that the engagement of such diaspora groups is promoted by policies of host countries; it potentially risks generating negative effects for development. Developed countries prior to supporting diaspora groups may thus want to assess such potential political economy effects.</p>	<p>engagement of Diasporas as well as building capacity and transfer skills from the Diaspora to the African Continent (EC, 2011).</p>	
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Key resources:

- Global Forum on Migration and Development (<http://www.gfmd.org/en/>)
- European Commission Directorate-General for Home Affairs (http://ec.europa.eu/dgs/home-affairs/index_en.htm)
- European Commission Directorate-General for Employment, Social Affairs and Inclusion (<http://ec.europa.eu/social/home.jsp>)
- OECD Working Party on Migration (<http://www.oecd.org/migration/>)
- International Labour Organisation MIGRANT branch (<http://www.ilo.org/migrant/lang--en/index.htm>)
- UN DESA Population Division (<http://www.un.org/esa/population/migration/>)
- Word Bank Global Knowledge Partnership on Migration and Development (KNOMAD, <http://www.knomad.org/>)

Annex III. Key policy incoherencies: Tax policy

This section presents the results of a literature review of key studies and policy documents on tax and financial transparency policy, with a specific focus on identifying what options for development-friendly policies are available. Following a general introductory analysis providing the core problem statement, the sections will look in more detail at four specific policy areas within the field of tax and financial transparency policies: tax evasion and avoidance; trade and transfer mispricing; bribery, corruption and stolen assets; and money laundering.

1. The effects of illicit financial outflows on developing countries

While there are growing concerns about the declining absolute size and relative influence of Official Development Assistance (ODA) on development, these concerns are accompanied with a wide recognition of domestic tax revenues as the most sustainable source of resources for states to redistribute income, provide infrastructure and ensure basic services to their citizens. Taxation can strengthen democracies and governments' accountability to their citizens. Furthermore, effective taxation holds the potential of capitalizing on inflows of foreign direct investment (FDI) which developing countries manage to attract.

Conversely, loss of tax revenues and capital substantially reduce the scale and scope of government expenditure, and holds a strong multiplier effect on domestic economic activities in developing countries – draining domestic bank accounts, curtailing investments, increasing poverty and inequality and thus contributing to political instability.³⁶

Developing countries face considerable challenges to their capacity to collect taxes. For instance, Sub-Saharan African countries still mobilise less than 20% of their GDP through tax revenues (UNDP, 2010). Whereas some domestic issues (e.g. limited administrative capacity of local tax authorities, large informal sector) can be tackled with the support of ODA, there are considerable international obstacles to tax collection for developing countries as well. Significant gaps within national tax legislation and mismatches between tax legislations internationally paves the way for large outflows of capital which are not part of commercial transactions (i.e. illicit financial flows) from countries where it is already relatively scarce. This includes not only taxation of wealth, but also the reacquisition of illegally acquired funds (through bribery or corruption). Illicit flows from developing countries are estimated to total on average US\$ 549 billion per year for the decade ending in 2010 (Kar and Freitas, 2012), far exceeding the US\$ 92 billion of net ODA disbursed per year for the same period.

What compounds these issues are the various mechanisms and vehicles for secrecy employed in these flows and transactions. These range from banking secrecy, where banks are not allowed or required to disclose information about their customers unless specific conditions apply, to trusts and foundations to offshore companies and other corporate vehicles masking the ownership behind transactions. Principally, these are matters of jurisdiction – national legislation determines whether the actors involved (banks, companies, individuals) are required disclose information and whether the jurisdiction shares it with anyone seeking this information.

³⁶ See <http://allafrica.com/stories/201211201729.html>

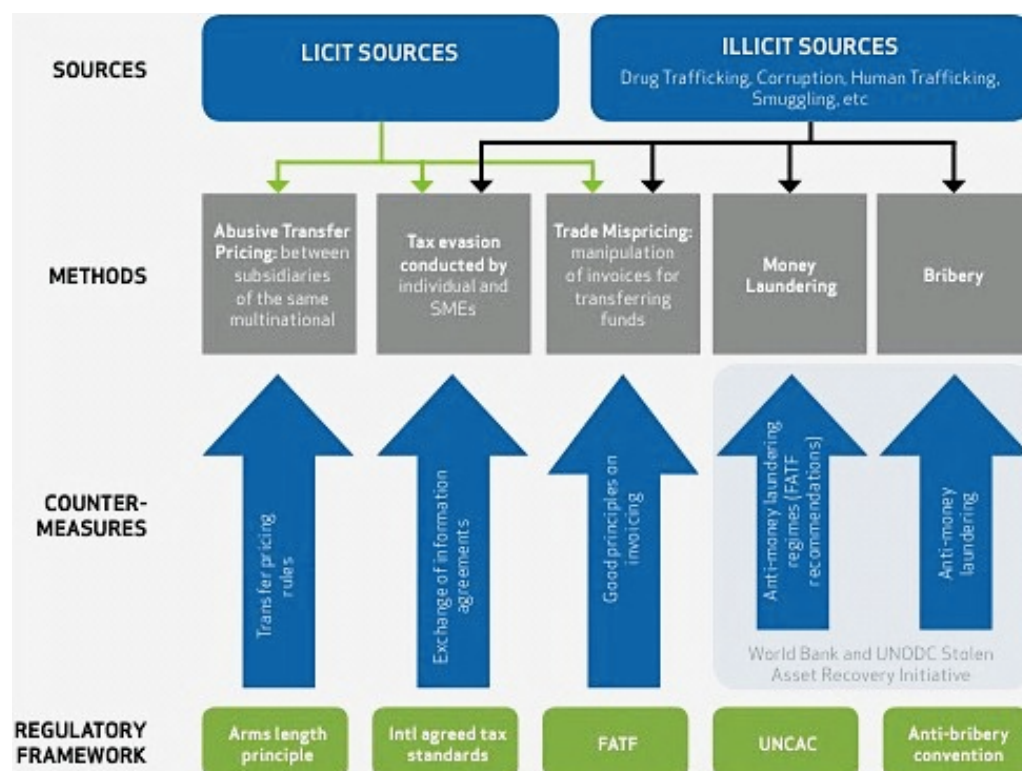
Certain upper-middle income and high-income countries, including many in Europe, are moreover actively seeking to attract foreign capital and investment, and will engage in tax competition in order to do so. Developing countries already have lower tax revenues (though not necessarily rates), and do not have the capacity to effectively deter capital outflows – they are therefore generally not in a favourable position to engage in such competition.

As noted by Everest-Phillips (2012), “The three main drivers of illicit capital flows—tax evasion, corruption, and criminality—are, at once, both causes and effects of the fragility of state institutions and, so, challenge perceived legitimacy.” In response, recent years have seen debate on ways to control and reduce illicit financial flows gain more momentum. Such initiatives target transparency requirements and legislature in specific areas, notably:

1. Tax evasion and avoidance;
2. Trade and transfer mispricing;
3. Bribery, corruption and stolen assets, and;
4. Money laundering.

These areas are not discrete – they are used for the purpose of this study to delineate broad conceptual issues and the corresponding international discourse and initiatives in the field of tax and financial transparency policy for developing countries. The various methods or modalities for facilitating illicit financial flows, along with their sources and principal counter-measures, can be mapped according to Figure 5 below.

Figure 5: Mapping issues in tax and financial transparency policy for developing countries.



Source: Fontana, A and Hansen-Shino (2012): *Implementing the illicit financial flows agenda: Perspectives from developing countries* (OECD and U4)

There are considerable outstanding incoherencies between states' legislature to protect against these practices, each of which will be addressed in turn in the analysis below. To place these discussions and the proposed solutions to the issues in context, it should be noted that the objective of promoting Policy Coherence for Development (PCD) is to curtail illicit financial flows (principally capital outflows

from developing countries) and improve the effective use of an increased domestic resource base in developing countries. In order to achieve this objective both developed and developing countries must make reforms for any impact to be shown while the analysis shows that this is only realistically possible if developed countries act as first movers or main drivers of the issues identified in the overview table.

2. Analysis of specific policy areas and interventions

2.1. Tax evasion and avoidance

The G-8 world leaders, meeting in July 2009, recognized “the particularly damaging effects of tax evasion for developing countries.” In public policies and international dialogue on taxation a distinction is made between tax evasion and tax avoidance. Tax evasion denotes the illegal non-payment or underpayment of taxes by individuals, companies or other enterprises within a particular state, dependent upon the tax code of that jurisdiction. Tax avoidance, on the other hand, is not in itself illegal – it relates to the practice of seeking to minimize tax payments by complying with the tax code while exploiting loopholes its loopholes or loopholes between two tax codes. The common methods for tax avoidance are to manipulate the stated level of profit liable for tax in one jurisdiction by shifting part of the profits to another jurisdiction, deferring taxation or applying deductions and allowances.

Loopholes allowing for the application of such methods are less likely to be closed easily or quickly in developing countries given the lower capacity of local tax authorities and administrations. This also means that activities bordering on the illegal are less likely to be challenged, and may even be encouraged. This provides clear indication that the extent and form of tax evasion derive also from the political will necessary to tax effectively, and thereby the willingness of taxpayers to pay taxes. Tax evasion thus negatively affects state’s legitimacy: *“taxpayers evade and illicitly move capital abroad not simply because the potential benefit outweighs the perceived risk, but because they believe the state lacks the legitimacy of capable, accountable, and responsive governance.”* (Everest-Phillips, 2012)

Disruption of development processes caused by tax evasion has raised calls that ODA should be more concentrated towards the development of capacities for strong tax authorities in developing countries. Not only should the authorities have the administrative capacity to generate and manage tax revenues domestically, this should be done transparently in order for there to be accountability of public finances. The 2010 EC Communication on Good Governance in Tax Matters clearly reflects this, and commits to providing more comprehensive support to tax administrations and reform as well as public financial management through its existing instruments, to support regional and multilateral initiatives, improve donor coordination and support further regional integration (e.g. customs unions with harmonized VAT rates and investment codes). For instance, the Southern-African Customs Union (SACU) is seen as having strong potential for increasing resource mobilisation by its members³⁷.

A critical challenge that tax authorities in both developed and developing countries are faced with is the lack of transparency on financial flows both internally and across borders. In order to tackle individual and corporate tax evasion, a concerted effort has been made in recent years to increase transparency of both governments and multinationals, as well as to increase the exchange of information between tax authorities internationally. Several organizations, notably the UN and the OECD, strive to promote the implementation of internationally agreed standards to promote the availability of and access to this information for tax authorities, and to develop appropriate mechanisms to provide for effective exchange of information.

37 See <http://www.ecdpm-talkingpoints.org/taxation-to-achieve-the-mdgs-reaction-to-oecd/>

The conventional way of exchanging tax information is to establish, sign and implement a tax information exchange agreements (TIEAs) between two countries, allow for the exchange of information between the respective tax authorities relating to specific criminal or civil tax investigations. TIEAs are often accompanied by double-tax conventions (DTCs), designed to compensate for double taxation of the same income or assets by an enterprise or individual who has accrued income in another country. To do so, the taxpayer must identified to be a non-resident – the agreement therefore allows for the exchange of information between tax authorities in order to monitor for indications of tax evasion.

The most established standard for transparency and exchange of information are developed by the OECD and endorsed by the G20, and contained in Article 26 of the OECD Model Tax Convention³⁸ and the 2002 Model Agreement on Exchange of Information on Tax Matters³⁹. The essential elements of these standards are noted in Box 2.⁴⁰

Box 2: 10 essential elements of transparency and exchange of information for tax purposes.

A - AVAILABILITY OF INFORMATION

5. Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.
6. Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.
7. Banking information should be available for all account-holders.

B - ACCESS TO INFORMATION

1. Competent authorities should have the power to obtain and provide information that is the subject of a request under an EOI agreement from any person within their territorial jurisdiction who is in possession or control of such information.
2. The rights and safeguards that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

C - EXCHANGING INFORMATION

1. EOI mechanisms should provide for effective exchange of information.
2. The jurisdictions' network of information exchange mechanisms should cover all relevant partners.
3. The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.
4. The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.
5. The jurisdiction should provide information under its network of agreements in a timely manner.

Source: Information Brief on the Global Forum on Transparency and Exchange of Information for Tax Purposes, October 2012

38 See <http://www.oecd.org/tax/taxtreaties/oecdmodeltaxconventiononincomeandoncapital-anoverviewofavailableproducts.htm>

39 See <http://www.oecd.org/ctp/harmfultaxpractices/2082215.pdf>

40 For an overview of TIEAs agreed, see <http://www.oecd.org/ctp/exchangeofinformation/taxinformationexchangeagreementstieas.htm>

While these agreements are entirely voluntary, the weight behind these standards lies in the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes' two-phased peer review process⁴¹. The Global Forum (of which the EU and Switzerland are also members) will in the first phase assess whether all essential elements for transparency and the exchange of information are in place in the Global Forum's 176 members' legal and regulatory frameworks, and whether they need improvement. This phase was completed in 2012, after which phase 2 assessments of the effectiveness of exchange of information is now being executed.⁴² Switzerland is both a member of the Steering Group and the Peer Review Group of the Global Forum.

A report of the peer reviews so far, prepared for the G20 in June 2012⁴³, shows that all members of the Global Forum have demonstrated commitment to and compliance with the process, though the majority of peer reviews showed that improvements were needed in their legal and regulatory frameworks. The report also notes that the impetus behind the initiative has lead many Global Forum members to bring significant changes to these frameworks, Switzerland included. (OECD, 2012a and 2012b)

Subsequent to the G20's endorsement, the OECD published a list (including a 'black list') denoting jurisdictions according to the degree to which they had committed to and implemented internationally agreed standards for tax information exchange. Many Global Forum members have adopted TIEAs and DTCs since the publication of the 'black list'.⁴⁴ Despite these efforts, illicit capital flows have not reduced markedly since 2009.⁴⁵ Concurrently, criticisms have emerged on the OECD's preferred tools – following the publication of the 'black list', jurisdictions could be reclassified to the 'white list' by signing 12 TIEAs to divulge information about foreign assets held in their jurisdiction to the partner in the agreement.

To request information through a TIEA, one first has to have strong indications that tax evasion by certain companies or individuals is taking place. The OECD TIEA standard furthermore includes a clause noting that an information request may be refused if the request made is incomplete, discriminatory, reveals confidential commercial information or requests information more than 6 years old; or if the requesting country could not give same information under its own laws. A request for information made to a jurisdiction with considerable allowances for ownership secrecy would per definition be incomplete, nor would most developing countries be able to meet the latter condition. This raises doubts as to whether developing countries can realistically make effective use of TIEAs, or whether their signing constitutes mainly a political gesture. In effect, developing countries need only confirm the existence, management and banking details of a particular entity or transaction to be able to follow-up any tax evasion claim⁴⁶.

41 See <http://www.oecd.org/tax/transparency/>

42 The African Peer Review Mechanism provides a possible alternative to this process, geared more towards the development and assessment of continental capabilities: <http://aprm-au.org/>

43 See http://www.oecd.org/ctp/exchangeofinformation/G20_Progress_Report_June_2012.pdf

44 Owing to the objection of a few OECD member countries, the historical lists are no longer accessible on the OECD website. However, there are officially no more countries on the OECD's 'black list' since 2009. Nonetheless, the lists are updated annually – the latest can be found at: <http://www.oecd.org/tax/harmfultaxpractices/43606256.pdf>

45 The slight decrease in illicit flows is accredited to a shrinking of trade volumes and corresponding fall in trade mispricing - see Kar, D. and K. Curcio. 2011.

46 See <http://www.taxresearch.org.uk/Documents/InfoEx0609.pdf>

Thus, the TIEAs can be considered a half-measure, as they effectively only allow tax authorities to confirm specified pieces of information with the partner in the agreement rather than acquire all necessary information to conduct full risk-based due diligence assessments of individuals and companies.⁴⁷ This has led to some OECD countries (the Netherlands and Cyprus, for instance) being accused of proliferating such agreements to facilitate rather than curb financial flows to (formerly) blacklisted jurisdictions.⁴⁸

Developing countries furthermore have relatively fewer TIEAs and DTCs in place, and incomplete evidence suggests that few developing countries have actually used exchange of information agreements. This indicates that developing countries may not have the institutions and systems in place to give substance to and therefore gain benefit from these treaties. Changes to tax legislation must be accompanied by capacity development and technical assistance programmes to support the development of effective tax administrations.⁴⁹

The need for capacity development and technical assistance was clearly highlighted by the G20 in 2009 and 2010, in response to which the Global Forum launched a technical assistance coordination mechanism, as well as a Multilateral Negotiations Initiative⁵⁰. The former assists not only in the implementation of the standards noted above, but has also assisted developing countries in multilateral negotiations with offshore centers. The latter initiative offers a new way to coordinate treaty negotiations by negotiating exchange of information agreements with a single multilateral negotiating team with different jurisdictions before the separate jurisdictions sign the respective agreements. Such initiatives combine burden-sharing and –reduction with capacity-building for developing countries; lessons need to be drawn from these experiences.

Furthermore, there has of recent been renewed interest in establishing systems of automatic exchange of information to the benefit of developing countries. These would allow developing countries to receive information on non-compliance or tax evasion even in cases where no previous indication of such activity exists. However, they would still need to have the capacity to apply technical standards and safeguards to transmit and receive the information, which is still an issue for many developing countries. The OECD Model Convention can contain an optional article on the assistance with collection of taxes, allowing either party to help levy taxes for the other party. Developing countries could actively tackle tax evasion in this way, although only few developing countries have thus far signed agreements including this article.

Both automatic exchange of information and tax collection assistance are included in the OECD/EU's revision of the Multilateral Convention on the Mutual Administrative Assistance in Tax Matters⁵¹, which was recently opened for signing to all countries. Developing countries could benefit from becoming signatories to this broad-based convention.

A further criticism towards the existing arrangements is that exchange of information agreements such as the TIEAs cannot eliminate harmful structures and practices (such as tax havens and money

47 *ibid*

48 See http://www.nisnews.nl/public/271011_1.htm.

49 Nonetheless, it is commonly accepted that political will plays a large part in the adoption and effective implementation of such international standards. See Everest-Phillips, 2012.

50 This initiative pilots a new approach to negotiating TIEAs. A single, multilateral negotiating team representing the interests of the OECD Member countries works to reach agreement on the terms of a TIEA with a non-OECD jurisdiction or group of jurisdictions. Once agreed, each of the OECD Member countries signs a separate bilateral agreement with the non-OECD jurisdiction. See: <http://www.oecd.org/tax/transparency/oecdmultilateralnegotiationsinitiativemakesrapidprogress.htm>.

51 See http://www.oecd.org/ctp/exchange-of-tax-information/Amended_Convention_June2011_EN.pdf, <http://www.oecd.org/tax/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>

laundering), only rectify some of the damage they do. It appears that ‘naming and shaming’ of countries is not an appropriate response to effect significant changes in national legislation. Indeed, the driver behind harmful structures and practices is the attraction of international capital, and the multinational enterprises (MNEs) that generate and invest it. (Murphy, 2009a)

Whereas the number of EOI agreements signed has steadily risen, estimates of illicit financial flows have not fallen to follow suit. The overall flow of assets into high-secrecy jurisdictions or tax havens has only slowly diminished in recent years, in part due to the fact that private wealth owned by clients from Latin America or Asia Pacific, who are less affected by the calls for tax transparency emanating from the United States and Western Europe, has increased in recent years. Hong Kong and Singapore are fast competing with Switzerland as destinations-of-choice for offshore wealth. Meanwhile “regulatory tightening will mean that the amount of assets flowing to all offshore centres from investors in markets where tax regimes are becoming ever stricter will decline – owing to supplementary tax payments, penalties, repatriation, increased consumption, and the elimination of small accounts.” (Becerra et al, 2012) Nonetheless, a study by Johannesen and Zucman (2012) finds that the presence of exchange of information agreements such as TIEAs does have an effect on deposits in high-secrecy jurisdictions. The authors estimate that the signing of bilateral EOI treaties cause an outflow of funds from the signing jurisdiction to another jurisdiction with fewer or weaker treaties. TIEAs by themselves hence appear to bring few benefits for developing countries.

Some would argue that not only individuals and enterprises illegally evading taxes should be held to account, but also the financial institutions facilitating such activities - in other words to make tax crimes a predicate offense. This is one of several recent recommendations issued by the Financial Action Task Force (FATF), a multilateral policy-making body for setting and promoting standards for measures for combatting money laundering and terrorist financing (AML/CTF) and safeguarding financial integrity.⁵² These recommendations and their implementation will be looked at in Section 3.4.

3. Trade and transfer mispricing

Trade flows are susceptible to being manipulated across borders in order to shift capital from one jurisdiction to another. Evidence suggests that trade mispricing accounts for over 80% of all cumulative illicit flows from developing countries for the period 2001-2010, making it the most common form of tax evasion (Kar and Curcio, 2012), accounting for a loss of over 4% of the developing worlds’ yearly total tax revenue (Hollingshead, 2010a). Furthermore, for some economies, intra-firm trade can constitute up to half of all import/export transactions (Lanz and Miroudot, 2011).

Trade mispricing most commonly occurs when large companies such as multinational enterprises manipulate trade internally in order to shift profits (known as transfer (mis)pricing). MNEs can for instance do this by noting a false value to the goods or services being traded (false invoicing), effectively moving money out of developing countries unrecorded. While the main reason for transfer mispricing is disguise the level of output or profits in order to evade domestic taxes, false invoicing can in addition be used to circumvent trade restrictions⁵³, acquire (undisclosed) foreign exchange. (Dabla-Norris et al, 2008)

This issue has recently garnered a lot of attention, as it also affects the legitimacy of international trade data. Trade mispricing is, however, notoriously difficult to identify and measure. This is not only due to the fact that such illicit flows are wilfully disguised as official transfers, but also given the different

⁵² See <http://www.fatf-gafi.org/pages/aboutus/>

⁵³ Furthermore, import restrictions incentivise the under-invoicing of imports while export subsidies incentivise the over-invoicing of exports.

statistical methodologies for valuing trade data between countries (e.g. valuing shipping costs, transit and time lags). Whereas several methodologies for identifying and measuring trade mispricing have been advanced, their accuracy and reliability is questionable, and the methodologies used by the various international organisations (OECD, UN, World Bank and IMF) different in key areas (Nitsch, 2011).

It is estimated that 60 to 70 percent of all transactions occur between companies in different countries belonging to the same group (generally multinational enterprises or MNEs)⁵⁴. Griffith-Jones et al (2004) note that as *“intra-group transactions are not subject to the same market forces as transactions between unrelated parties operating on the free market, there is a huge potential for profit shifting via under or over pricing of intra-group transactions.”* By extension, a recent OECD report further notes that: *“there is increased segregation between the location where actual business activities and investment take place and the location where profits are reported for tax purposes.”* (OECD, 2013)⁵⁵

In recognition of this issue, all 34 OECD member states and a number of non-OECD member countries have developed and adopted legislation (i.e. provisions for transfer pricing in the tax code) which clearly delineates legal (planning of) tax avoidance from illegal transfer pricing (and other forms of tax evasion) and provide for measures to enforce this distinction⁵⁶. This may seem to be a straightforward classification exercise by tax authorities at first sight, however: *“Since there is no absolute rule for determining the right transfer price for any kind of international transaction with associated enterprises, whether it involves tangibles, intangibles, services, financing or cost allocation/sharing arrangements, there is huge potential for disagreement as to whether the correct amount of taxable income has been reported in a particular jurisdiction.”* (PwC, 2012)⁵⁷

3.1. The arm's length principle and alternatives

Transfer pricing legislation currently adopted by almost all OECD member countries are commonly based on the 'arm's length' principle⁵⁸, meaning that the transfer price between two companies belonging to the same MNE should be the same as that between two unrelated parties. This principle has met with a great deal of criticism— MNE's actively derive great benefit precisely from functioning as if they are one entity, and engage in non- arm's length transactions as these otherwise do not efficiently occur. At the same time, as certain company assets are hard to price at arm's length (e.g. knowledge, brand, experience) MNEs can easily adapt to the principle and enter into legally-recognised internal contracts that shift interests to tax havens (Durst, 2010).

The principle therefore offers great scope for both misunderstanding and for deliberate mispricing. While both the OECD and the UN Tax Committee endorse it, no formal review process is in place to assess the implementation of the arm's length principle. Although developing countries have in recent years become more active in dealing with transfer pricing risk (KPMG 2011, PWC 2012), still few developing countries have complete and effective transfer pricing regimes in place.⁵⁹ Those that do lack accompanying guidelines for companies and, critically, the technical and legal expertise to assess transfer pricing risks, audit companies and make adjustments to their taxable profits. A report by PwC

54 See http://www.taxjustice.net/cms/front_content.php?idcat=139

55 The exact measure of this divide is hard to estimate, as mobile assets are not accurately reflected in global accounting data.

56 See <http://www.oecd.org/ctp/transferpricing/transferpricingcountryprofiles.htm>

57 It should at this point also be noted that the estimates for global illicit financial flows noted in Section 2 do not capture the losses resulting from transfer mispricing.

58 This principle is noted in the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, and in both OECD and UN model tax conventions between developed and developing countries.

59 See <http://blogs.euobserver.com/shaxson/2012/12/11/a-21st-century-blueprint-for-taxing-multinational-companies/>

that was commissioned by the EC on transfer pricing and developing countries⁶⁰ notes a range of practical problems faced by developing countries with respect to transfer pricing, including lack of tax administration capacity and difficulties finding appropriate data (PwC, 2011).

An extensive report of the OECD, UN, IMF and World Bank (2011) notes the same issues, and furthermore notes the need to develop an internationally consistent approach to transfer pricing in order to avoid double taxation (whereby unilaterally applied transfer pricing legislation means a single transfer is taxed in two countries) and create a predictable business climate. The report further states that less than 0.1% of global ODA goes to direct support for revenue and customs sectors. Legislative adjustments are, however, not straightforward solutions to transfer mispricing. For one, the process for planning, sufficiently documenting and developing transfer pricing policies and legislation is arduous. In addition, pricing policies and legislation will need to be updated regularly to ensure that the policy continues to cover all inter-company transactions (PwC, 2012). Lastly, it remains difficult to distinguish whether the motivation for trade mispricing falls under tax evasion or avoidance – the only clear example of wilfully illicit flows are export under-invoicing and import over-invoicing. Alternatives to the ‘arm’s length principle’ are therefore worth exploring, even though the principle is defensible given that departure from an accepted basis brings risks and uncertainty, particularly the risk for double taxation.

A widely supported response to transfer mispricing is the concept of country-by-country reporting (or CBCR), which requires companies to present financial information annually on every country that they operate in, rather than a single set of consolidated global accounts.⁶¹ While potentially garnering huge boons, most CBCR requirement focus only on key sectors (most commonly extractive industries). Indeed, a recent agreement reached on a 2011 European Commission (EC) proposal to amend the EU’s Transparency and Accounting Directives⁶² introduces CBCR for both small and large, listed and non-listed companies active in the oil, gas, mining or logging sectors.⁶³ Critically, the reporting of taxes on profits, royalties, license fees and bonuses, linked to specific projects and with a €100,000 materiality threshold, paid by multinational enterprises (MNEs) to ‘host’ governments will show a company’s financial impact in host countries.

While the extractive industry is certainly key when tackling illicit financial flows (extractive industries are dominated by MNEs, and illicit flows grow fastest in countries with large extractive industries), the proposal as discussed does effectively narrow the application of EU legislation on CBCR to those countries with an extractive industry presence. Furthermore, CBCR information is infrequently audited (as it is more difficult to do so) and difficult to compare across countries. Information on payments is rarely contextualized (with production volumes, benefits, special tax arrangements of contracts) – CBCR information can therefore allow tax authorities to assume but not prove instances of tax evasion⁶⁴ (Murphy, 2009b). Critically, it is the banking sector which is central to the facilitation of many illicit financial flows; future efforts to improve tax transparency and accountability of MNEs in any sector cannot afford to do so on a sector-by-sector basis, as this ignores the interconnectedness of sectors in the contemporary business environment. The text of the agreement does, however, require the EC to look into extending the requirements to other sectors.⁶⁵

60 See http://ec.europa.eu/europeaid/what/economic-support/documents/transfer-pricing-study_en.pdf

61 See

http://www.taxjustice.net/cms/front_content.php?client=1&lang=1&parent=91&subid=91&idcat=144&idart=256

62 See http://europa.eu/rapid/press-release_IP-11-1238_en.htm?locale=en

63 The proposed legislation is not supported by all Member States, particularly those that explicitly seek to avoid increasing the cost of doing business (such as the UK and the Netherlands). See also Murphy, 2009 and Volume 2 of this study that looks into commodities trade.

64 For an overview of existing CBCR proposals, see p.20 of Eurodad, 2011.

65 See <http://www.iasplus.com/en/news/2013/04/eu-4-7-directive>

The EC has also provided support to international partners and initiatives, such as the Extractive Industries Transparency Initiative (EITI)⁶⁶, which requires companies in the extractives industry and host governments to publish what they pay and receive respectively. A number of multinational enterprises and developed countries (including the US, Switzerland and 11 EU Member States) also support the initiative. It serves as a useful, if voluntary, complement to the new CBCR requirement.⁶⁷

Furthermore, as an often-noted alternative to the arm's length principle, 'unitary taxation' proposes to tax MNEs according to the economic substance of what they do and where. MNEs would be required to submit a single set of worldwide consolidated accounts to each country where it has a business presence (e.g. and office, transactions, accounts or other operations). The global profit of the MNE is apportioned to the various countries based on the MNEs assets, labour and sales in each jurisdiction. This would not only allow the various tax authorities to see their share of taxable profits, but reduce the need for active coordination between them. Following this model, the EC put forward a proposal in 2011 for a common consolidated corporate tax base (CCCTB)⁶⁸, effectively applying a unitary taxation methodology to companies operating in the EU (though small- and medium-sized enterprises can opt out). Given the regional dynamics evolving in many parts of the developing world, such initiatives could be drawn on. However the required unanimity among EU Member States to introduce such EU legislation results in low prospects of the EU's proposal to be taken, despite backing from the EP⁶⁹.

The proposal also contains several key weaknesses which severely limit its potential for addressing tax evasion. First, companies are not required to disclose full ownership information. Second, tax crimes facilitated by middlemen in tax havens (such as bankers, accountants, lawyers etc.) are not made predicate offences. Lastly, the consolidated accounts only need to cover the members of the corporate group resident in the participating EU Member States. MNEs can exclude entities based in third countries, particularly tax havens, which will have to be dealt with through other anti-avoidance measures contained in the proposal. (Picciotto, 2012)

3.2. Base erosion and profit shifting

As taxes are levied primarily at domestic level, and these tax systems to some degree interact or overlap, the risk of both double taxation and double non-taxation of individuals and especially businesses is inherent. National tax systems are largely designed in isolation, and the international tax system continues to be structured primarily around nation-bound or bilateral treaties and conventions – this however no longer accurately reflects the global business environment, characterised by a higher degree of economic integration. Whereas double taxation been slowly resolved in the past decades (including through double-taxation treaties such as DTCs), double non-taxation is the object of corporate tax planning strategies.

In part, this stems from the application of the arm's length principle, which does not prevent hard-to-value intangible assets (and the risk and ownership associated with it) from being shifted from substantive operations to low-tax jurisdictions, effectively facilitating BEPS.⁷⁰ To assess whether BEPS

66 See <http://eiti.org/>

67 Other relevant voluntary schemes include the Natural Resources Charter (NRC) and the OECD/IGCRL/UN Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

68 See http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf.

69 http://www.tax-news.com/news/EU_Parliament_Back_Mandatory_CCCTB_55127.html and <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0137&language=EN&ring=B7-2012-0203>

70 As noted in OECD, 2013 (p.42): "Transfer pricing under the arm's length standard generally respects the risk allocations adopted by related parties. Such risk allocation and the income allocation consequences asserted to follow from them can become a source of controversy. The evaluation of risk often involves discussions

is in fact taking place, tax administrations are left with the burden of proof while most of the individual intra-group transfers are legal. They nonetheless have the effect of eroding the corporate tax base of several countries simultaneously, contrary to domestic tax policy. They seek to increase the gap between the statutory and effective corporate income tax rate⁷¹.

In a recent report (OECD 2013), the OECD has identified several key pressure areas for this issue, as noted in Box 3.

Box 3: Key pressure areas in addressing base erosion and profit shifting

The OECD report “Addressing Base Erosion and Profit Shifting” notes the need for increased transparency on the effective tax rates of MNEs. In addition, several ‘key pressure areas’ are noted, which the OECD aim to address through its action plan:

- International mismatches in entity and instrument characterisation, including hybrid mismatch arrangements and arbitrage;
- Application of treaty concepts to profits derived from the delivery of digital goods and services;
- The tax treatment of related party debt-financing, captive insurance and other inter-group financial transactions;
- Transfer pricing, in particular in relation to the shifting of risks and intangibles, the artificial splitting of ownership of assets between legal entities within a group, and transactions between such entities that would rarely take place between independents;
- The effectiveness of anti-avoidance measures, in particular GAARs, CFC regimes and thin capitalisation rules; and
- The availability of preferential regimes for certain activities.

Source: OECD. 2013. Addressing Base Erosion and Profit Shifting.

The G20, meanwhile, has given increasing attention to the concept of base erosion and profit shifting (BEPS)⁷². It is stressed that, as BEPS strategies take advantage of weaknesses in the overlap between (features of) tax systems, BEPS cannot be addressed by countries in isolation. For instance, if BEPS is only addressed in developed countries, profits and expenses of MNEs could still be shifted to developing countries. The future framework for tackling BEPS should address the issue in a coherent and balanced manner, taking into account the particularities of both developed and developing countries. This would both protect MNEs from uncertainty, and allow countries worldwide to protect their tax base. For developing countries, this would make figures on private sector investment into these countries more meaningful (at present, it is striking that Barbados, Bermuda and the British Virgin Isles together received and made more FDI than Germany, as is the fact that Mauritius is the largest foreign investor in India).

Addressing aggressive tax planning and tax non-compliance should be at the core of addressing BEPS, and will be the focus of the OECD’s upcoming action plan on addressing BEPS. The OECD has worked in many areas addressing part components of the BEPS problem (tax transparency, tax treaties, transfer pricing, aggressive tax planning, tax practices, tax policy analyses and statistics, tax administration and tax and development) – the action plan will need to integrate these streams of work. The plan will be developed and presented to the Committee on Fiscal Affairs in June 2013.

regarding whether, in fact, a low-tax transferee of intangibles should be treated as having borne, on behalf of the MNE group, significant risks related to the development and use of the intangibles in commercial operations. [...] Transfer pricing rules regarding the attribution of risks and assets within a group are applied on an entity-by-entity basis, thus facilitating planning based on the isolation of risks at the level of particular members of the group.”

71 As noted, this gap is hard to measure, and especially difficult to attribute to either effective aggressive tax planning by taxpayers or government policy incentivizing business activity in their country. See OECD, 2013.

72 See <http://www.g20mexico.org/index.php/en/press-releases/537-final-communique>

Another initiative aiming to unite various strands of work, not only within the OECD but also across the agencies concerned with tax crimes, is the Oslo Dialogue⁷³. Launched in 2011 by the Norwegian government in collaboration with the OECD Task Force on Tax Crimes and Other Crimes (TFTC), the dialogue aims to develop and demonstrate methods for investigating and fighting tax crimes more effectively through multidisciplinary, whole-of-government and inter-governmental approaches. Since then, the OECD has catalogued instruments for tackling financial crime⁷⁴, developed a joint initiative to develop a pilot programme for building expertise in criminal tax investigation⁷⁵ and launched a process of identifying, examining and considering how to remove obstacles preventing effective international cooperation.

The dialogue process brings together representatives from ministries of justice and finance; tax administrations; law enforcement agencies; anti-money laundering authorities; anti-corruption authorities; and financial regulators; as well as regional organisations, think tanks, development agencies, the private sector and international organisations. Thus far, mostly OECD members are included, though all the BRICS countries are represented, as are developing countries such as Ghana, Nigeria, Uganda, Thailand, Indonesia and the Philippines.

4. Bribery, corruption and stolen assets

It is estimated that US\$ 20 to 40 billion are paid in bribes in the developing world each year, and an equal sum worth of public assets are stolen each year from developing countries (UNODC/World Bank, 2007; Stephenson et al, 2011). Whereas the insidious nature and impact of bribery and corruption on the economies of developing countries are recognised (see FATF, 2011), the perception is often that these are limited to the abuse of power in the public sector in these countries and that corruption hardly ‘travels’. However, for the full scope of the problem of bribery and corruption to become clear, they must be assessed within the context of the financial systems encouraging and facilitating illicit capital flows from developing countries.

4.1. Bribery and corruption

It should remain clear that capital losses from developing countries do not arise only due to the personal corruption of individual political leaders: bribery and corruption have both a supply (bribe-payers) and a demand side (corrupt officials), bolstered by intermediaries. Incomplete legislative frameworks and weak regulatory institutions breed low financial transparency, which in turn both attract foreign enterprise and allows them opportunities to pay bribes for commercial concessions. At the same time, illegally acquired assets by corrupt officials or politically exposed persons are more likely to be retained outside their country of origin (in part to launder the funds). Banking secrecy and low customer due diligence in tax havens facilitates illicit financial flows (see Section 3.4). Whereas these two flows feed into one-another, estimates show that the criminal and commercial tax-evading components of bribery and corruption far exceed that of the public sector (Baker, 2012).

The UN Convention against Corruption represents the highest-level commitment to principles of anti-corruption, while the OECD Anti-Bribery Convention represent the foremost legally binding instrument to criminalise the supply-side of bribing, requiring signatories to make bribery a criminal offense, prosecute individuals and companies who offer, promise or give bribes to foreign public officials and subject offenders to ‘effective and proportionate’ penalties (including fines or imprisonment). Currently, 39 countries are signatory to the OECD Convention. However, almost half of the signatories have not

73 See <http://www.oecd.org/tax/crime/47425987.pdf>

74 See <http://www.oecd.org/tax/crime/50559531.pdf>

75 The initiative is led by Italy’s Guardia di Finanza, the US Internal Revenue Service and the OECD, supported financially by Norway, and may lead to the establishment of an international academy on criminal tax investigation.

reported a single bribery case in the past 10 years, which is difficult to imagine were an effective anti-bribery and –corruption regime in place.

Such regimes do not always effectively apply anti-bribery regimes by containing (for example) overly narrow definitions and impractical imposition of burden of proof requirements. Notably, peer review reports of the application of the convention show that sanctions to bribery are often too low (below the value of the proceeds from the bribe) to be an effective deterrent (among others in Germany, Sweden and Switzerland). One sanction, which has instead been shown to work, is to debar companies from receiving public money if they are found guilty of bribing.⁷⁶ The regimes furthermore do little to promote whistleblowing, nor is awareness of these regimes high among the public and the private sector.

Nonetheless, the G20 has since 2010 actively promoted the adoption and implementation of the two conventions in the Anti-Corruption Working Group. The process described in the 2010 Anti-Corruption Action Plan⁷⁷ has galvanised support for the conventions, and is one of the G20 processes where it has worked most closely with the C20 and B20. In the recently adopted action plan for 2013-2014⁷⁸, the G20 has committed to several initiatives to complement the conventions, notably:

- The development of High Level Principles on Mutual Legal Assistance in Corruption Cases;
- Setting up information networks to ensure that those convicted of corruption are denied entry to G20 countries;
- Sharing best practices in assessing corruption risk and effective enforcement and anti-solicitation measures;
- Implementing whistleblower protection rules.

The Russian Presidency of the G20 has furthermore suggested developing a long-term anti-corruption strategy for the G20, which is however not included in the action plan as yet.

4.2. Stolen assets

Attention for the issue of corruption and the recovery of stolen assets has increased as a result of world events (e.g. regime changes in Egypt and Tunisia, continued unrest in Libya and Ivory Coast) in which international organisations and financial centres have responded by freezing assets suspected to be acquired through corruption. Recovering stolen assets can provide additional resources to developing countries (although there are few guarantees that the funds will be used for developmental purposes) and signal that corruption is being taken seriously.

Tracing, recovering and repatriating these assets to the public authorities or individuals in source countries is a complex process requiring an effective legal framework, specialized institutional and operational capacities, and continuous international cooperation. De Willebois et al (2011) demonstrate that in the majority of corruption cases:

1. One or more corporate vehicle(s) is used for purposes other than that for which is intended to disguise the trail of funds;
2. Said corporate vehicle is usually a company or corporation;
3. Gains from corruption were channelled as funds in a bank account, and;
4. In cases where the ownership information was available, the corporate vehicle in question was established or managed by a professional intermediary.

76 See <http://www.oecd.org/daf/anti-bribery/countryreportsonteimplementationoftheoecdanti-briberyconvention.htm>

77 See http://www.oecd.org/daf/anti-bribery/G20_Anti-Corruption_Action_Plan.pdf

78 See [http://www.oecd.org/daf/anti-bribery/G20_Anti-Corruption_Action_Plan_\(2013-2014\).pdf](http://www.oecd.org/daf/anti-bribery/G20_Anti-Corruption_Action_Plan_(2013-2014).pdf)

It remains a significant barrier to the effective tracing, recovering and repatriation of funds that these actions can in many circumstances not be initiated without a judicial order or criminal charge. Hence, it is both hard to verify whether assets suspected of being stolen are indeed stolen, and to trace assets which are confirmed to be stolen (which usually requires access to bank registries) at which point the country of origin is no closer to recovering the assets. In order to freeze funds based on a request of another country, which according to certain countries' legislative framework requires a criminal charge to be issued, the country of origin needs to obtain a freezing order from the relevant court in the country in which the assets are located. This entails a delay, during which time the assets could be moved. Similarly, most countries are unable to confiscate assets without a criminal conviction and, critically, many countries are unable to order compensation, restitution or damages for the country of origin (de Willebois et al, 2011).

At the highest political level, the G8 and the G20 have made considerable commitments to fight corruption and recover stolen assets – for instance, the G20's Anti-Corruption Working Group prepares annual monitoring report on the implementation of the 2010 Anti-Corruption Action Plan (G20 Anti-Corruption Working Group, 2011). Primarily, the global agenda for recovering stolen assets is shaped by the G8 Asset Recovery Action Plan, committing to the promotion of cooperation and case assistance, capacity building and technical assistance – the action plan is shaped by a number of international commitments to fight bribery and corruption⁷⁹.

The UN Convention Against Corruption (UNCAC, 2000) represents the main instrument of international law establishing the global architecture for asset recovery. Aside from broad recommendations on the prevention and criminalisation of corruption as well as international cooperation to this end, the convention includes fundamental principles and provisions for returning embezzled (public) funds to states or other owners of such funds. The convention notes the need to develop an adequate legal framework for corruption including the explicit criminalisation of corruption offenses and clear forfeiture procedures – jurisdictions will otherwise not be able to pursue asset recovery cases.⁸⁰ It is sometimes paired with the UN Convention against Transnational Organised Crime, which contains provisions for mutual legal assistance.⁸¹

While a comprehensive framework, enjoying broad international support, the UNCAC is principally geared towards the prevention, criminalisation and recovery of stolen public funds. In addition, countries (in particular developing countries) could also put in place non-conviction based forfeiture as well as arrangements for civil asset recovery. Nonetheless, while 140 out of 164 countries have ratified the Convention, many still need to implement the UNCAC's asset recovery provisions (StAR, 2010). The OECD is currently undertaking a survey of corruption-related assets frozen by OECD member countries subscribed to the Anti-Bribery Convention, finding that few countries had so far frozen assets.

The first survey on asset recovery of OECD member countries noted that political will remains essential for recovering stolen assets, through the development of comprehensive policies to tackle the issue. Not many OECD countries have adopted or implemented comprehensive policies on asset recovery. The survey report recommends that OECD member countries (OECD/StAR 2011):

1. Adopt an implement comprehensive strategic policies to combat corruption and recover assets;
2. Ensure that laws effectively target corruption and asset recovery, and provide the necessary power to rapidly trace and freeze assets;

79 Aside from the UNCAC, it also refers to the OECD Anti-Bribery Convention; the Financial Action Task Force (FATF) Recommendations; the G20 Anti-Corruption Action Plan; the Third High Level Forum on Aid Effectiveness (Accra Agenda for Action); and the UN Transnational Organized Crime Convention.

80 Despite commitments in place, only three non-G8 G20 countries have made asset recovery an explicit policy priority.

81 See <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

3. Implement institutional reforms that encourage the active pursuit of cases, build capacity and improve trust and cooperation with counterparts;
4. Ensure adequate funding for domestic law enforcement efforts and foster international cooperation in cases of kleptocracy;
5. Collective statistics to measure results.

Effectively countries are thereby recommended to set up a specialised protection and/or investigative unit(s) for corruption and international asset recovery cases (as in the Netherlands, Sweden and the UK). Such units are, however, costly to fund. Lessons can be drawn from the UK's Proceeds of Crime Unit, mandated to identify and locate stolen assets and criminal benefits, which has been funded by the Asset Recovery Incentivisation Scheme. This Scheme benefits investigation agencies, prosecutors and the Court by receiving financing from receipts from other government offices paid in satisfaction of all proceeds of crime-related orders.

A number of other commitments to asset recovery exist. The African Union (AU) Convention on Preventing and Combating Corruption (2003) contains similar provisions on the seizure, confiscation and repatriation of assets, including also strong emphasis on international cooperation to facilitate these. In addition, asset recovery has been highlighted as a core development issue in aid effectiveness forums, most recently the Busan Partnership Agreement.

Appropriate policy and legislative frameworks do not preclude the need for the appropriate (technical and legal) expertise to be in place. A number of multilateral and bilateral initiatives seek to provide support to developing countries seeking the return of stolen assets. The joint World Bank-UNODC Stolen Assets Recovery (StAR) initiative provides developing country governments with advice, knowledge and technical assistance at every point of the asset recovery process. The initiative however does not investigate or prosecute cases, nor requests legal assistance. It does help developing countries to establish the appropriate institutions, use relevant legal tools and channels for recovering stolen assets, as well as developing skills and knowledge for practitioners in the asset recovery process (including also a database of asset recovery cases)⁸².

The StAR initiative supports the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA), a network connecting prosecutors and investigators of stolen asset cases of its 9 member countries with counterparts in 35 countries that are part of the EU's Camden Asset-Recovery Inter-Agency Network (CARIN). A similar network was recently established for the Arab region – the Arab Forum on Asset Recovery (AFAR). Technical and legal capacity gaps are however do not only exist in developing countries – developed countries are also not always able to provide the necessary support through the above initiatives given the specificity of the expertise required. So far, there has been little discussion on cost-sharing of mutual legal assistance (or indeed of the recovered assets)⁸³.

OECD analysis of member countries' performance on implementing the AML regime promoted by the FATF (see Section 3.4) shows that OECD countries have made some progress in international cooperation in the area of MLA, dual criminality and the confiscation and freezing of assets. However, secrecy jurisdictions lag behind other OECD members considerably. Pressingly, in conclusion, efforts towards asset recovery are still in their infancy, as the sums repatriated are miniscule compared to even the lowest estimates of stolen or illegally acquired assets – only US\$ 5 billion over the past 15 years (Stephenson, 2011).

82 The StAR initiative fulfills some of the same roles, and regularly collaborates with, Interpol's Anti-Corruption Office.

83 The OECD's Tax Inspectors Without Borders initiative was called into being to overcome this issue: <http://www.oecd.org/newsroom/taxoecdlaunchestaxinspectorswithoutborders.htm>.

5. Money laundering

Money laundering refers to the process through which illegally acquired funds are made to appear legitimately acquired. It usually comprises a series of complex transactions designed to hide the origin and nature of these funds – business entities whose ownership and management is unclear facilitate the international movement of capital through interest payments, derivatives, swap contracts, entirely fake transactions, bartering and other forms of fraudulent transfer. The United Nations Office on Drugs and Crime (UNODC) has estimated that US\$ 1.6 trillion was laundered worldwide in 2009 (UNODC, 2011).

As seeking to transfer or launder illicit financial resources requires the use of the banking or financial system, the principal tool for overcoming money laundering are so-called anti-money laundering and counter terrorist financing (AML/CTF) regimes. These consist of a national legal framework of obligations for financial institutions in order to detect and deter money laundering and terrorist financing. They are considered one of the primary tools for tackling illicit financial flows, and are also a step towards recognising that money laundering uses the same international shadow financial system as that used to finance terrorism, drug-trafficking and human trafficking.

However, it can be recognised that the efforts to stop money laundering are largely concentrated on tracing and recovering money once it has flown from one country to another, rather than preventing the flow in the first place. Legislation can require banks or other financial intermediaries to freeze accounts in the event of certain (suspected) illicit practices, but AML/CTF as yet includes few restrictions on the opening of accounts (Blickmans, 2009). Considerable legal barriers also remain, notably excessive banking secrecy, lack of asset confiscation procedures and asset freezing or restraint mechanisms, burdensome procedural and evidentiary laws, barriers to the provision of mutual legal assistance (which also affects the exchange of information).

The most comprehensive proposal for fighting money laundering are a set of 40 recommendations proposed by the Financial Action Task Force (FATF) (last revised in 2012), which constitute the international standard for AML/CFT. They encompass a broad range of issues including the regulation of services provided by financial institutions and nonfinancial businesses and professions, cross-border movements of currency, the transparency of legal entities, substantive and procedural criminal law, institutional capacity, sanctions, and domestic and international cooperation. Over 180 jurisdictions worldwide have committed to implementing the recommendations, including all OECD countries.

Similar to the OECD Global Forum's Peer Reviews, FATF members' progress towards implementing the recommendations is monitored regularly by the FATF's International Cooperation Review Group. However, a general lack of adherence to and enforcement of AML measures persists. An OECD analysis⁸⁴ of member countries' performance on implementing the AML regime promoted by the FATF shows that the weakest links in the OECD's AML systems currently are:

1. The transparency of legal persons and arrangements, particularly ownership information and requirements that can facilitate the establishment of corporate vehicles;
2. Compliance with FATF regulations and supervision;
3. Reporting on suspicious transactions and compliance;
4. Measures taken with respect to countries that do not or insufficiently comply with the FATF recommendations (high-risk jurisdictions), and;
5. Customer due diligence and record keeping by financial institutions in order to understand the source of wealth and funds.

84 See <http://www.oecd.org/site/africapartnershipforum/Tackling%20Money%20Laundering.pdf>.

Furthermore, despite the FATF commitment and international treaties such as the UNCAC, most countries are still unable to provide rapid, effective mutual legal assistance. The same weaknesses are noted in assessments of developing countries conducted by the ICRG⁸⁵, despite progress being made in adopting AML/CTF legislations, the creation of financial intelligence units, awareness raising of the issues in the banking sector and organising banking supervision.

The report concludes that “it is clear that there are significant weaknesses in OECD countries domestic AML regimes. As several recent supervisory actions illustrate, financial institutions have not felt compelled to follow AML requirements, and have accepted very high ML risks if the immediate reputational and regulatory risk was acceptable – i.e. if the chances of getting caught were low. The level of supervision and sanctions has not served to increase compliance for some of these institutions. Significant amounts of illicit funds from the developing world are still being received, transferred and managed by major western banks and financial institutions, knowingly or unknowingly, and this is a reason for grave concern.”

The phenomenon of tax havens is critical for facilitating money laundering. Three features serve to identify whether a territory may be a tax haven: 1) lack of effective exchange of information (e.g. TIAEs); 2) lack of transparency requirements for financial transactions and asset ownership, and; 3) no requirement for substantial activities. Shaxon (2012) notes that half of world trade, over half of all banking assets and approximately a third of all FDI invested by MNEs passes through offshore tax havens. Tax havens operate as secrecy jurisdictions – business entities can be set up by nominees or trustees without revealing the identity of the real owners or managers of said entity. Local or foreign tax authorities can therefore not get the necessary information to apply the tax code or carry out risk-based due diligence assessments.

This is a central issue in designing policies to overcome tax evasion and illicit financial flows – ownership is used as a proxy for control (including in international agreements such as the FATF), yet the two are not automatically linked. In many countries, legal ownership or voting rights are equated to control of both business entities and funds. A broader approach could emphasise the natural person guiding them rather than the person who can theoretically lay claim to do so (de Willebois et al, 2011). The EU's Anti-Money Laundering Directive, of which the fourth version is currently being discussed, attributes ownership to those persons owning 25 or more percent of the shares of an entity (a standard which is fast catching on).

Tax havens are frequently characterised by the lack of business registries, lenient capital re-domiciling legislation and ring-fencing of parts of the tax system. Most commonly, illicit financial flows are moved out of the country of origin through a corporate vehicle (most often a company or foundation created for the purpose of facilitating such capital movements) to a bank account in another territory. This bank account may be owned by a corporation based in a third jurisdiction, which may in turn be owned by a trust in yet another jurisdiction – this creation of multi-jurisdictional structures or ‘laddering’ reduces transparency exponentially, and therefore increase the complexity of any investigation. Transactions and proceeds are converted to and from cash to break the paper trail, and often make use of middle-men and the assistance of financial and legal professions who act as ‘gatekeepers’ to the sector (FATF, 2011).

The entities incentivised by the tax haven’s jurisdiction effectively and ‘efficiently’ drive borrowing, meaning that capital inflows are rapidly recycled as payments, gifts, loans, investments and other

85 See

<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/more/moreabouttheinternationalco-operationreviewgroupicrg.html>.

financial products with the active involvement of private bankers from international financial centres⁸⁶. Tax havens allow the owner or manager of illicit capital to avoid criminal laws, financial regulation and professional liability. Furthermore, the multi-jurisdictional nature of most operations on-going in tax havens means that it is hard to single out in which haven the criminal act of tax evasion originated.

Whereas the 2012 FATF recommendations acknowledge that ownership information and gaps in legislative frameworks on tax crimes enable the existence of tax havens, the recent proposal for a fourth EU Anti-Money Laundering Directive⁸⁷ does not require companies to disclose ownership information, nor are tax crimes made a predicate offence – the proposals are hence not fully in line with the FATF recommendations.

Notably, several prominent developed countries could also be noted as tax havens, including the United States, Luxembourg, Switzerland, Austria, Germany and the UK (Hollingshead, 2010b). This further explains the large presence of so-called ‘shadow banks’ in these countries: companies which operate banking activities (such as issuing credit to small businesses) outside the regular financial system. Shadow banks are often used by regular banks to circumvent capital and accounting rules, and can be used as a channel for laundering money. The issue has recently garnered attention as the funds channelled through shadow banks and tax havens has been linked to the financing of terrorist activities worldwide. The amount of funds channelled unregulated through tax havens and shadow banks have furthermore increased since the 2008 financial crisis, often to finance high-risk activities.

86 See <http://allafrica.com/stories/201211201189.html>.

87 See http://europa.eu/rapid/press-release_IP-13-87_en.htm?locale=en

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Annex III. Key policy incoherencies: Tax policy

Table 6: Overview table – Tax policy

Overview table – Tax policy

Aspects of incoherence and the extent to which they are reflected in international policy discussions

I. Tax evasion and avoidance		
Incoherence issues	Policy discussions in the European Union	Selected multilateral discussions
<p>1. Lack of political will in developing countries to enforce tax legislation creates a disconnect between tax policy, legislation and administration, creating or leaving open tax loopholes.</p> <p>Furthermore, the lack of capacity of tax authorities in developing countries limits potential to raise domestic tax revenues.</p>	<p>* 2010 EC Communication on Good Governance in Tax Matters calls for EU to support effective, efficient, fair and sustainable tax systems in developing countries. EU will assist developing countries in strengthening their tax administration.</p>	<p>* The OECD Informal Task Force on Tax and Development works to help developing countries build tax systems, and their capacities for effectively taxing multinational companies and exchanging information with tax authorities internationally.</p> <p>* The UN Committee of Experts on International Cooperation in Tax Matters is part of the Financing for Development Office of UNDESA and provides a dialogue framework on international tax cooperation. It provides recommendations on capacity building and technical assistance to developing countries.</p>
<p>2. Lack of transparency on financial flows across borders necessitates an extensive number of bilateral tax information exchange agreements (TIAEs) and trilateral double taxation conventions (DTCs) to facilitate the effective exchange of information.</p>	<p>* 2010 EC Communication on Good Governance in Tax Matters calls for the adoption and harmonization of binding, global standards and principles on transparency and information exchange.</p>	<p>* The G20 has for some time called for the global convergence of accounting standards and has supported the IASB-FASB convergence process. The G20 is currently supporting the efforts of the IASB and FASB to meet their target of issuing standards on key convergence projects by mid-2013,</p>

<p>Developing countries furthermore have relatively fewer ITAEs and DTCs in place, and incomplete evidence suggests that few developing countries have actually used (automatic) exchange of information (EOI) agreements. This indicates that developing countries may not have the institutions and systems in place to give substance to and therefore gain benefit from these treaties.</p>	<ul style="list-style-type: none"> * 2012 EC Recommendation regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters recommends that Member States adopt a set of criteria to identify third countries not meeting minimum standards of good governance in tax matters and a 'toolbox' of measures in regard to third countries according to whether or not they comply with those standards, including the possible blacklisting of jurisdictions and the suspension of any DTCs agreed with them. * 2012 EC Recommendation on aggressive tax planning encourages Member States to include a clause in DTCs to resolve specific types of double non-taxation, as well as the use of a common anti-abuse rule. The EC will present proposals to review relevant legislation before the end of the year. * 2012 EC Action Plan to strengthen the fight against tax fraud and tax evasion notes that the EU will adopt standard forms and tax identification numbers for the exchange of information on request, spontaneous EOI, notification and feedback. The EU will furthermore promote the standard of automatic exchange of information in international fora and the EU IT tools. UK, France and Germany have publicly supported the action plan, and the EU recently launched a multi-stakeholder Platform for Tax Good Governance to monitor national government policies tackling tax evasion, identify opportunities for companies to evade taxes and identify and possibly blacklist tax havens. 	<p>at the latest.</p> <ul style="list-style-type: none"> * The UN and OECD provide model templates to facilitate the signing of TIEAs and DTCs. Both parties are updating the definitions used in their models, but are reticent to align or collaborate on a single model, instead emphasising the differences. * The 2013 UK G8 Presidency prioritises the strengthening of international tax standards to overcome tax evasion and avoidance in developed and developing countries. There is overlap between this agenda and the G20's, which raises some concern over which one will gain more traction. * The OECD is working on developing a new multilateral common standard for reporting and automatic EOI with support from the G20 (principally UK, France and Germany). The Global Forum is likely to monitor the future standard. * The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes carries out peer reviews of members' systems and provisions for EOI. The Forum currently has 120 members, most of which have undergone an initial assessment demonstrating that their legal and regulatory frameworks could be improved to ensure tax transparency and EOI, despite broad implementation of the tax standard. Improvements need to be made in the availability of accounting and ownership information, as well as EOI procedures
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Putting Policy Coherence for Development into Perspective

	<p>* The OECD and EU have opened the revised 2011 Convention on Mutual Administrative Assistance in Tax Matters to counter international tax evasion and opened signing to non-OECD and –EU countries. It provides for administrative assistance such as EOI, automatic EOI, (simultaneous) tax examinations abroad, joint audits and assistance in tax debt collection. The G20 encourages all jurisdictions to sign.</p>	and networks.
II. Trade and transfer mispricing		
Incoherence issues	Policy discussions in the European Union	Selected multilateral discussions
<p>3. Multinational enterprises manipulate trade internally in order to shift profits from one country to another (transfer mispricing). Tax administrations in developing countries lack the necessary data and capacity to monitor and confirm transfer mispricing.</p>	<p>* 2012 EC Action Plan to strengthen the fight against tax fraud and tax evasion notes that the EC will propose that it be allowed to negotiate bilateral agreements with third countries aiming at an effective and binding framework for administrative cooperation in the field of VAT. Some of the plan's recommendations are expected to be adopted before the end of June 2013.</p> <p>* The EU is finalising its agreement to adopt the amended Transparency and Accounting Directives, introducing both country-by-country reporting (CBCR) and some project-level reporting for listed and large non-listed companies in extractive industries. It requires companies to report payments of more than €100.000.</p>	<p>* The US Dodd-Frank Act has intensified discussions among the G20 countries on mandatory disclosure of key financial data by multinational enterprises.</p> <p>* Whereas all 34 OECD member states and a number of non-OECD member countries have developed and adopted transfer pricing legislation, progress on the simplification and alignment of transfer pricing rules is slow.</p> <p>* OECD has multiple forums addressing transfer pricing, including the Task Force on Tax and Development, OECD Forum on Tax Administration (whose next meeting is in May 2013 and will focus on actions to improve tax compliance) and the OECD Global Relations Programme.</p> <p>* The Extractive Industries Transparency Initiative (EITI) requires companies in the extractives industry and host governments to publish what they pay and receive respectively.</p>

<p>4. There is no internationally agreed methodology for identifying and measuring trade and transfer mispricing – the OECD, UN, World Bank and IMF methodologies differ in key areas, as do those of private sector accounting firms.</p> <p>The most prevalent method is based on the arm's length principle. Although it is endorsed by the OECD and the UN Tax Committee, no formal review process is in place to assess the implementation of the arm's length principle. Developing countries however find it difficult to administer in practice through transfer pricing regimes.</p> <p>Crucially, legal frameworks on the taxation of international asset movements are bound to national tax systems. The overlaps and incongruences between these systems allows for aggressive tax planning.</p>	<p>* The EC in 2011 put forward a proposal for a common consolidated corporate tax base (CCCTB) based on a unitary taxation methodology as opposed to the arm's length principle. The EU's proposal is unlikely to be rapidly adopted and expanded given differing Member State interests – Bulgaria, Ireland, Malta, Poland, Romania, Slovakia, Sweden, the Netherlands and the UK have expressed objectives, whereas France and Germany are strong proponents.</p>	<p>* The OECD and the UN are updating reference documents on transfer pricing legislation and regimes. Given the OECD's reticence to consider or discuss alternatives to the arm's length principle, its role as the standard-setting institution with respect to trade pricing has been called into question by non-OECD countries and developing countries.</p> <p>* The OECD is developing an action plan to respond to base erosion and profit shifting in time for the G20 Finance Ministers meeting in July 2013. The action plan seeks to integrate its various lines of international cooperation in tax matters. Three focus groups have been set up: Countering base erosion, Jurisdictions to tax, Transfer Pricing. The latter looks at issues related to the arm's length principle.</p> <p>* The Norwegian government started the Oslo Dialogue initiative in 2011 with the OECD, seeking to enhance international and interagency cooperation on all tax crimes.</p>
III. Bribery, corruption and stolen assets		
Incoherence issues	Policy discussions in the European Union	Selected multilateral discussions
<p>5. Incomplete legislative frameworks and weak regulatory institutions that facilitate illicit financial flows linked to bribery and corruption in developing countries.</p> <p>Developed countries' legal frameworks furthermore hold weaknesses that obstruct the application and use of anti-bribery regimes, such as overly narrow definitions and impractical imposition of burden of</p>	<p>* 2011 EC Communication on fighting corruption in the EU notes that the EC will promote greater use of conditionality to encourage compliance with UNCAC standards and other relevant conventions.</p> <p>* The EU takes the position that coordinated EU positions should contribute to ensuring that "third countries, including developing countries, meet appropriate standards of good governance in tax matters".</p>	<p>* The OECD Working Group on Bribery manages a peer review monitoring process currently assessing the application and enforcement of the OECD Anti-Bribery Convention at country level among its 39 signatories. This phase of peer reviews will last until end of 2014. Thus far half of the signatory countries have not reported a single case of bribery/corruption.</p>

<p>proof requirements. Notably, sanctions to bribery are often too low to be an effective deterrent.</p>		<p>* The G20 in 2010 adopted its Anti-Corruption Action Plan, and recently adopted the G20 Anti-Corruption Action Plan 2013-14, which promotes accession and implementation of the UNCAC and the OECD Anti-Bribery Convention. The Russian Presidency of the G20 has furthermore initiated the process of preparing common principles on mutual legal assistance in corruption cases and developing anti-corruption standards, as well as a long-term anti-corruption strategy for the G20. Yearly monitoring reports are produced.</p>
<p>6. The tracing, freezing, recovery and repatriation of stolen assets of developing countries is hampered by the lack of comprehensive policies on asset recovery and mutual legal assistance between countries. Developing countries furthermore lack effective tools for tracing assets and property (e.g. bank registries, access to information). Most OECD countries also do not have systems in place for collective data on international asset recovery cases.</p>	<p>* The 2012 proposed EU Directive on the freezing and confiscation of proceeds of crime in the European Union aims to make it more difficult for criminals to hide assets, and easier for the Member States' authorities to confiscate and return profits from cross-border crimes to public authorities.</p> <p>* Europol's Camden Asset-Recovery Inter-Agency Network (CARIN) acts as a centre of expertise on asset recovery, promoting technical cooperation and information exchange between prosecutors and investigators across the world. It formulates good practice and makes recommendations on legislative adjustments to the EU institutions.</p>	<p>* The UN Convention Against Corruption (UNCAC) and UN Convention against Transnational Organised Crime (UNTOC) represent the principal international commitments establishing the global architecture for asset recovery.</p> <p>* The G20 Anti-Corruption Action Plan notes commitments to facilitate asset recovery based on the UNCAC - asset recovery has become more important for certain G20 countries since the Arab Spring.</p> <p>* The OECD and the World Bank-UNODC Stolen Assets Recovery (StAR) initiative undertake joint surveys of assets currently frozen and repatriated, as well as the measures in place in OECD countries to facilitate asset recovery. The StAR initiative furthermore promotes non-conviction based forfeiture of stolen assets as well as civil asset recovery.</p>

IV. Money laundering		
Incoherence issues	Policy discussions in the European Union	Selected multilateral discussions
7. Countries worldwide generally do not explicitly criminalise money laundering , allowing various forms of tax crimes to persist. In particular, definitions and requirements of asset and business ownership are too ambiguous.	<p>* The EU's Third Anti-Money Laundering Directive attributes ownership to those persons owning 25 or more percent of the shares of an entity (company and its assets). Despite being a relatively narrow definition of ownership, OECD countries have expressed support for it.</p> <p>* The EC in 2013 proposed a revision of the Third AML Directive and a regulation on information accompanying transfers of funds. The proposals however does not require companies to disclose ownership information, nor are tax crimes made a predicate offence – the proposals are therefore not fully in line with the 2012 FATF recommendations. They are expected to be adopted by the end of 2013.</p>	<p>* The 2012 revision of the Financial Action Task Force (FATF)'s 40 recommendations requires that all members 1) consider tax crimes as predicate offenses, and 2) harmonise and codify such predicated offense internationally. Progress on the implementation and effectiveness of the new framework is currently being assessed.</p> <p>* The UN, IMF, World Bank and OECD support the FATF recommendations, as do the G8 and G20. Compliance with the FATF Recommendations among OECD members has been only partial with regards to: transparency of legal persons and arrangements; regulation and supervision; measures taken towards high-risk tax jurisdictions; customer due diligence and record keeping.</p>
8. International tax havens , as well as loopholes in OECD countries' tax laws, facilitate money laundering by 1) not providing effective exchange of information, 2) making no requirements of businesses for transparency, 3) making no requirements of businesses for substantial activities.	<p>* Few discussions at EU level up until recently due to limited legal basis and EU legal competency, and active resistance from some EU member states to harmonise tax and bank secrecy legislation. No formal definition of tax haven has even been proposed. Tax evasion and tax havens are expected to be the main agenda item for the May 2013 EU Summit.</p> <p>* The EC proposed amendments to the EU Savings Tax Directive, to be adopted before the end of the year, makes automatic exchange of information mandatory, putting pressure on tax havens. The EU has furthermore agreed that these measures should also apply to Switzerland, Liechtenstein, Monaco, Andorra and San Marino.</p>	<p>* Despite being FATF members, both developed and developing countries have so far not compelled financial institutions to follow AML requirements, including keeping customer due diligence and disclosing ownership information, nor have they put in place requirements to curb the establishment of corporate vehicles.</p> <p>* OECD discussions on 'harmful tax competition initiative' reportedly weakened by Switzerland and Luxembourg. Limited progress due to 'sovereignty' concerns, but increasing 'naming and shaming' (e.g. US tax haven blacklist).</p>

	<p>* The EP and the EC support the initiative of developing a European blacklist of tax havens along with sanctions for banks co-operating with them. The European Council has however not endorsed this.</p>	<p>* The G8 and G20 are increasingly applying political pressure to tax havens and non-cooperative jurisdictions to comply with international tax standards, though largely geared towards transparency and EOI instead of adapting their taxation regimes.</p>
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Key resources:

- G20 calendar of events (<http://www.g20.org/events/>)
- Financial Action Task Force (FATF) – International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, 2012 Recommendations (http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)
- OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (<http://www.oecd.org/tax/transparency/>)
- OECD Informal Task Force on Tax and Development (<http://www.oecd.org/dac/governance-development/theoecdinformaltaskforceontaxanddevelopment.htm>)
- European Commission Directorate-General for Taxation and Customs Union (http://ec.europa.eu/taxation_customs/taxation/gen_info/index_en.htm)
- UNDESA Committee of Experts on International Tax Matters (<http://www.un.org/esa/ffd/tax/>)
- Tax Justice Network (http://www.taxjustice.net/cms/front_content.php?idcatart=2&lang=1)
- Global Financial Integrity (<http://www.gfintegrity.org/>)
- European Network on Debt and Development (<http://eurodad.org/>)



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