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"Putting the Crooks out of Business!" The Financial War on Organised Crime and Terror

Is increased international co-operation compatible with the protection of privacy? A Swiss perspective

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"Putting the Crooks out of Business!"

The Financial War on Organised Crime and Terror

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A Swiss perspective

Mr. Chairman

Honourable guests

Ladies and Gentlemen

1. Introduction

It is a great honour for me to address such a distinguished audience in this beautiful college, which has a long history. "Putting the Crooks out of Business!" - and of course in jail - that is a **title** I like. The British really have a way with **catchwords!** After the eminent speeches of the previous speakers, I will not restate, with less eloquence, the importance and the need to fight economic crime more efficiently. I assume we are already all convinced of it, otherwise we would not be here!

As I come from Switzerland, a significant financial centre in Europe and a world leader in the field of private banking - with a long tradition of stability, security, competence and discretion - you might expect me to address the issue of conflicting interests between the needs of international co-operation and respect for the private sphere. I am pleased to seize this opportunity to take up this issue, from a Swiss perspective and to try to **dismiss** some possible misunderstandings.

I would like to stress from the outset that in Switzerland banking secrecy is not and has never been absolute. Switzerland co-operates effectively with other countries in fighting crime and in providing judicial assistance - which involves the lifting of banking secrecy - in all forms of crime.

To respect the time schedule I shall limit myself to few considerations on the fight against the financing of terrorism, money laundering, corruption and tax crimes.

2. The fight against the financing of terrorism

Ever since the disastrous **terrorist attacks** of 11 September, financial centres throughout the world have found themselves playing a crucial role in the struggle against terrorism.

At this time, **no major financial centre can exclude the possibility that terrorists or other criminals are using its services for illegal purposes.** It is therefore essential that financial intermediaries in both the banking and non-banking sectors thoroughly verify their client relationships in order to better identify suspicious circumstances and elements. They also have to co-operate fully with the relevant authorities in order to locate and freeze assets linked to terrorist activities. In this connection, strict observation of the "know-your-customer" principles is of the utmost importance.

Switzerland, of course, does not tolerate the abuse of its financial system by terrorists for the commission of criminal acts; we introduced the necessary measures many years ago to prevent it from being used to finance terrorist activities. **Switzerland co-operates fully in the investigation of international criminal activities.** Our banks are obliged by law to provide information of every kind relating to criminal investigations if requested to do so by the judicial authorities. To put it simply: **Switzerland's banking secrecy does not protect terrorists, nor does it protect criminal organisations or criminal activities of any kind whatsoever.**

Switzerland also immediately and fully applied the **sanctions** imposed by the United Nations against the Taliban regime in 1999 and 2000, in that we blocked a certain number of Afghan bank accounts. Furthermore, we immediately ordered the **freezing of accounts** belonging to persons appearing on lists published since by the Sanctions Committee of the United Nations Security Council. To date 72 accounts with total assets of 34 million Swiss francs are blocked on the basis of UN resolutions. We have also blocked other accounts within the scope of our own investigations and our co-operation with the United States.

On several occasions American authorities have praised the Swiss efforts in tracing and blocking terrorist related accounts. Last June John Ashcroft, (Attorney General) and Jimmy Gurule (Under-Secretary of the Treasury for enforcement) publicly confirmed this and added that our banking secrecy rules had not been an obstacle. In addition, an “operative working arrangement” was signed with the US last week to further enhance co-operation between our enforcement and investigation authorities.

At this juncture, and as far as we are able to reliably determine, **we have no grounds for concluding that any individuals or organisations located in Switzerland were**

involved in the preparation of logistical aspects of the acts of terrorism committed on 11 September in the USA.

Furthermore, Switzerland is in favour of concerted multilateral efforts aimed at preventing the unlawful use of the world's financial centres by criminal organisations. We are offering our fullest co-operation at international level. We welcomed the adoption of UN Security Council **Resolution 1373** on the fight against terrorism and took steps to secure its swift implementation. Already in June 2001, we signed the United Nations Convention for the Suppression of Terrorist Financing, which is now in the ratification process. In parallel, at the end of July the Government proposed to Parliament a revision of the Swiss Penal Code, which would thus contain two new provisions covering terrorism as well as the financing of terrorism. As a result, the coherence of the overall measures and existing provisions to combat terrorism and the financing of terrorism will be strengthened.

In this context I would like to mention the initiative known as the “Interlaken Process” launched by Switzerland in 1998, aimed at enhancing the effectiveness of sanctions imposed by the United Nations, which contributed to the development of the concept of targeted financial sanctions[1]. In fact, the UN sanctions against the Taliban regime are targeted financial sanctions, and after 11 September the intensification of efforts aimed at combating terrorism clearly underscored the suitability and relevance of these proposals.

3. Fight against Money Laundering

Right from the start, Switzerland has played a **major role** in the struggle against the laundering of money of criminal origin, firstly with the introduction of the Obligation of Due Diligence governing Acceptance of Money in 1977 obliging the banks to implement full “Know-your-customer” rule, and subsequently within the Financial Action Task Force on money laundering (FATF), of which our country was a founding member. Switzerland outlawed the laundering of money of unlawful origin in Article 305

[1] Switzerland initiated the "Interlaken process" with seminars organised in Interlaken (1998, 1999) and New York (2001) in collaboration with the UN Secretariat, bringing together experts of several countries. It contributed to the development of the concept of targeted sanctions, particularly of a financial nature, aimed at certain people in power in the country concerned. Targeted sanctions are meant to lessen the undesirable impacts of global sanctions on the civilian population of the country in question as well as on neighbouring countries and at the same time to enhance their effectiveness. This work continues, with complementary initiatives by Germany and Sweden, and the publication as a co-operative venture between Switzerland and the Watson Institute for International Studies (Brown University, USA), last October, of a manual outlining the concept and detailing how targeted financial sanctions could be implemented. Switzerland contributed a number of specific proposals aimed at reinforcing international co-operation, improving the application of sanctions and ensuring better control of their implementation.

bis of the Swiss Penal Code in 1990, and passed a separate law on money laundering that came into effect in April 1998. The latter introduced an obligation that is applicable throughout the banking sector and extends to **all financial intermediaries,** to report any suspicions of unlawful transactions. These provisions are supplemented by the directives of the Federal Banking Commission. An evaluation of Switzerland carried out by the FATF in 1998 confirmed that our country's legislation aimed at combating the laundering of money of criminal origin fully complies with international agreed standards.

The implementation of this ambitious legislation was by no means a simple task, and certain practical difficulties were encountered particularly in the non-banking sector, most of which have since been overcome. By extending its money laundering legislation to all financial intermediaries, Switzerland was indeed breaking new ground, and even today its legal provisions still go further than those of most other countries.

And last October, Switzerland participated in an evaluation of its financial sector by the International Monetary Fund (**Financial Sector Assessment Program,** FSAP). We are the first country to have extended the scope of application of this assessment to include legislation against money laundering. This clearly underscores our active commitment to the fight against unlawful use of the global financial system. On the basis of this FSAP, the Board of Directors of the IMF "commended the (Swiss) authorities for their efforts to combat money laundering and their initiatives to track down terrorist financing"[2].

But Switzerland is not content to simply comply with international standards. We have also launched our own **initiatives** to strengthen them.

Within the scope of the current revision of the FATF recommendations, Switzerland has submitted various **specific proposals** of its own and is supporting others, aimed at improving the practical application of the "know your customer" rule. In particular, we feel that the procedures for identifying bank clients should be extended to include the **financial beneficiaries**, the persons who effectively control the assets, as well as clients who are the bank's contact person. Furthermore, it is essential that these regulations apply to both the **banking** and **non-banking** sectors - all the more so under the present circumstances in which international terrorist and criminal organisations have sophisticated financial networks at their disposal that include fiduciary companies, front firms, trusts and charity foundations.

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[2] International Monetary Fund: Public Information Notice (PIN) No 02/57, 3 June 2002: IMF Concludes 2002 Article IV Consultation with Switzerland, page 3.

In this context, adopting and implementing strict rules to ensure the identification of the beneficial owners of funds managed by trusts are of particular importance. In a study published last October by the European Commission, Professor Eddy Wymeersch, chairman of the Belgian banking commission, writes:[3]

"The difficulty in detecting the existence of a trust and the identity of its parties, together with the absence of supervision of the trustees and the possibility that the settlor or another trust might be the beneficiary, can be misused by criminals. In fact, launderers can invest the proceeds from a crime in a trust, formally separating themselves from the ownership of the money and assets, and exploiting the confidentiality surrounding the trust to decrease the risk of being identified. Where a criminal is both the settlor and the beneficiary, he will formally separate himself from the ownership of the dirty proceeds attributing them to a trustee, but actually obtain the benefits from investment thereof."

Thus, we were interested to note the joint statement of principles for fighting the financing of crime and terrorism issued on 15 July 2002 by six major UK banks. In this declaration these banks commit themselves to sustaining high standards of identification and "Know your customer" information across their entire customer base[4]. The Financial Services Authority (FSA) has welcomed this initiative, which is "designed to deal with the portfolio of existing customers, who have either never been subject to anti-money laundering checks because they became customers before the legal requirements were introduced in 1994 or who became customers when the checks were not as effective as they are today". The FSA also said it was considering "introducing a rule to ensure this issue is gripped by all firms and that high standards are in place across the whole financial services sector."[5]

We very much welcome these developments, which also demonstrate the importance of the task still to be done. In order to be able to fight money laundering and the financing of terrorism efficiently, it is crucial to adopt and implement binding rules which apply to all financial intermediaries – not only banks – and ensure the identification of the beneficial owner of funds - a standard that has already been in force in Switzerland for a number of years.

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3 Transparency and money laundering; study of the regulation and its implementation, in the EU Member States, that obstruct anti-money laundering international co-operation. European Commission 2001, (JHAB/2000/B2), page 106

4 Press release issued by Abbey National, Barclays, HBOS, HSBC, Lloyds TSB and the Royal Bank of Scotland Group, 15 July 2002

5 FSA Press release 075/2002, 15 July 2002

4. The fight against corruption

Another aspect of financial crime that has gained in importance in the international arena over the past few years is corruption. Switzerland has taken a leading role, with some other countries, in the fight against corruption. In the negotiation of the 1999 **OECD** Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the workgroup was chaired by Professor Mark Pieth (University of Basle), while the negotiation group was headed by a Swiss diplomat, Ambassador Marino Baldi. Switzerland has already ratified this convention and accordingly amended its Penal Code, thereby outlawing bribery of foreign public officials in international business transactions. On 26 February 2001, Switzerland also signed the **Council of Europe** Criminal Law Convention on Corruption, which includes clauses governing the responsibility of legal entities. Finally, Switzerland is pursuing its commitment within the framework of a future **United Nations** convention to combat corruption, work on which was initiated in Vienna at the beginning of this year.

Beyond the adoption of international agreements and appropriate legislation, it is of course also essential that the **political will** exist to implement them thoroughly - and this is certainly the case in Switzerland. To cite an example of Switzerland's readiness to co-operate, we could take the Mobutu affair in which Switzerland is, to our knowledge, the only country out of eighteen that were contacted by the government of the Republic of Congo to have frozen all the identified assets of its former head of state, even though it is well known that he held considerable amounts in other countries, too. A similar situation arose in the case of the former President of Nigeria, Sani Abacha, which involves a large number of countries as well as many banks from different countries. Here, Switzerland was one of the first countries to freeze the assets of the former head of state and his entourage, whereas other countries in which such assets were deposited appear to have required much more time and political pressure to take action.[6]

Switzerland is also playing a leading role in the issue of **repatriation of blocked assets**, which is a complex one. In the Abacha case some 70 million US $ have already been given back, through the Bank of International Settlements, into reducing Nigeria's multilateral debt. Last August 77.5 million US $ linked with the Montesinos

[6] This inquiry conducted by the Federal Banking Commission into the Abacha affair showed that the funds deposited in Switzerland by Sani Abacha and his entourage originated from Nigeria, but also from other countries such as the USA, the UK, and Austria. Furthermore, funds were transferred from banks in Switzerland to institutions in the USA, the UK, France, Luxembourg and Liechtenstein. In addition, other very substantial funds were deposited by the Abacha family in the UK and in other countries. Meanwhile accounts have been blocked in these countries and administrative procedures set in motion. A number of foreign banks are also implicated in this affair. This clearly shows that the problem is an international one with wide ramifications.

case were repatriated to Peru, to be earmarked for specific projects. In the past, the Swiss authorities have given concrete support to states trying to recover embezzled funds, and in some cases have even paid specialised lawyers to help them.

Switzerland has also launched **initiatives** aimed at bringing about a more coherent response at international level in cases of this sort. For example it proposed specific precautionary measures to the **Basel Committee** (banking supervision) and the **FATF** concerning the opening of accounts for "politically exposed persons". We also organised two **seminars** dealing with the problem of "illicit assets of politically exposed persons" in January and November2001 in Lausanne, which were attended by representatives of the relevant authorities of the G7 countries and some other financial centres

It soon became apparent that major financial centres and banks in a large number of countries are exposed to this problem. These two seminars presented an opportunity to exchange findings with respect to the prevention of such activities, the tracing and freezing of accounts and the return of stolen assets, as well as to discuss questions relating to immunity on the part of heads of state. They also supported the ongoing **search for concerted solutions at international level,** as well as the activities within international fora such as the United Nations, the Basel Committee and the FATF.

5. The fight against tax crimes

I would now like to move on to another important and complex area, namely international co-operation with respect to taxation. Switzerland is actively contributing to efforts being undertaken at international level. To date we have concluded **67 double taxation agreements.**

We co-operate actively to fight tax fraud, providing judicial assistance and lifting banking secrecy. To prevent and combat tax evasion, the best way in our view is to operate a system that imposes moderate taxes, ensures efficient and appropriate utilisation of government resources, and uses an efficient method of tax collection that incorporates a withholding tax on capital income, together with effective co-operation in the struggle against fiscal crime, including the imposition of severe penalties. On the other hand, Switzerland does not support the creation of a wide-ranging system of state supervision of all financial transactions carried out by its citizens. We feel that our current system secures an **appropriate balance between protection of the private sphere and safeguarding the interests of the state.** Of course, we do not claim that our system is perfect and that it cannot be improved. But does a perfect system exist?

Some of our arguments have meanwhile entered the international debate. The **OECD** report on improving access to bank information for tax purposes, which was approved in March 2000 following intense negotiations, explicitly acknowledges the legitimacy of the principle of confidentiality and proposes a number of measures aimed at combating fiscal crime more effectively. Switzerland approved this report and is working hard on its implementation. We are prepared to provide administrative assistance in cases of tax fraud by means of amendments to bilateral agreements on double taxation. Several negotiations are in progress and we already signed such an agreement with Germany last December, for example. And of course, we expect OECD countries to respect the commitments taken then.

We are of course closely monitoring the progress of the project currently being carried out by the **European Union** concerning the **taxation of savings.** Until now almost every EU country has been a tax haven for its neighbours. Like their counterparts within the EU, the Swiss authorities believe that income on savings should be taxed appropriately. This is the reason why, more than 50 years ago, Switzerland introduced a **withholding tax of presently 35%,** the highest rate in the OECD countries, based on the debtor principle, which - contrary to the EU project - applies to residents and non-residents, to interest as well as to dividends, and to both natural persons and legal entities.

At the request of the EU Switzerland has started negotiation with it, as a number of countries, concerning these issues. Last week, we had a negotiation session in Brussels, where we confirmed that if the EU and all dependent and associated territories of its member states introduce an efficient method for taxing savings income, **Switzerland would be willing to co-operate** within its legal framework. We stressed also that if it is to achieve the desired result, the system of taxation that is currently being developed by the EU will have to include the major financial centres outside of Europe.

In our view, based on past and present experience, a withholding tax is a tool to ensure the effective taxation of interest on savings, which is at least as efficient – if not more so – than an automatic exchange of information.

Firstly the automatic exchange of information has so far not been shown to be efficient in practice. Some specialists even say that it is hardly workable.

Secondly this system encounters serious difficulties when the beneficial owner of an account is not properly identified, and uses for example a trust based in an offshore centre.

Thirdly if a British resident has assets deposited in an EU country which are not declared to the tax authorities, and this country introduces an automatic exchange of information, it is highly probable that this customer – if he has not already used one of the loopholes left open by the directive such as investing in shares or in existing Eurobonds - will simply move his assets outside of the EU to avoid taxes, penalties and jail, unless the UK declares an amnesty that inspires sufficient confidence. The result would be a lose-lose situation: taxes are not paid and the management of assets is moved outside of the EU, with a corresponding and significant loss of jobs. This risk would be reduced with a withholding tax system.

Thus, one can ask the question whether, for the purposes of the EU Directive, an automatic exchange of information is in practice the most appropriate way to "levy the right amount of tax, at the right place, at the right time".

We are also somewhat confused with the argument put forward by British representatives' that a withholding tax would threaten the competitiveness of the City of London, whereas an automatic exchange of information would not. Is this an indication on what can be expected with regard to a comparison of the effectiveness of both systems?

This is why, **since the European Summit at Feira, we have difficulty in understanding the British government's opposition to allow EU members** to choose between a withholding tax or an automatic exchange of information in order to ensure the taxation of savings interests.

Another issue that affects our relations with the EU is the problem of **customs fraud** - in particular cigarette smuggling, which results in considerable loss of revenue for a number of countries. In the past, Switzerland, like other countries, has come under criticism in connection with illegal activities related to the organisation of smuggling operations. **Switzerland has absolutely no interest whatsoever in allowing its territory to be used for such activities,** and we have been taking measures over the past few years that have practically put an end to trafficking across our borders. We are willing to find solutions, together with the EU and its member states, in order to combat even more effectively fraud involving the movement of goods. At the same time we would not understand why the EU Commission and OLAF would ask for higher standards in third countries compared to EU member states.

6. Conclusions

The **developments in the international arena** that are aimed at promoting a broader exchange of information cannot be separated from the fact that any easing of the observance of confidentiality in Switzerland would certainly be welcomed by various **rival financial centres** that may be happy to manage certain assets currently deposited in our country. In this context, where significant financial interests are involved and arguments of an ethical nature are raised, it should be pointed out that a number of OECD countries have offshore financial centres within their zones of influence which have been gaining rapidly in importance over the past few years. Other countries benefit from legislation that in practice grants an even higher degree of confidentiality or discretion than Swiss legislation. Furthermore it should also be emphasised that Switzerland applies the "know your customer" principle very rigorously, and contrary to the claims made in countless crime novels and thrillers, there are no "anonymous accounts" in Switzerland. And, unlike Switzerland, some OECD countries do not appear to co-operate voluntarily or efficiently in the area of international judicial assistance. Of course, in Switzerland too, improvements are needed and it is essential that these principles are duly applied at international level in a **coherent and co-ordinated manner.**

Following the terrorist attack of 11 September 2001, some politicians argue that banking secrecy should be abolished, and they try to mix up terrorism, organised crime and fiscal matters. On the contrary, **we have proven that our confidentiality rules were not an obstacle to fighting terrorism and other crimes efficiently**. In this respect, **implementation of strict "know your customer" rules** ensuring the identification of the beneficial owners of all assets is **of crucial importance,** whatever legal structures are used, including trusts. The fight against financial crime and terrorism cannot be effective if one does not know who is really controlling the funds. We thus expect **that the UK** as well as other important countries represented here **will support the proposals we have made in the FATF** to that end.

In view of the challenges posed by terrorism, economic crime, globalisation and technological developments, the **reinforcement of multilateral co-operation is absolutely essential.** We all have strong common interests here. My country is **fully committed** to enhancing and developing together international co-operation to fight the financing of terrorism and economic crime more effectively.

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