



**PANA**

Committee of Inquiry into Money laundering, tax avoidance and tax evasion

## Delegation to Bern (Switzerland)

**14-15 September 2017**



### MISSION REPORT





## 1. PROGRAMME

### Thursday 14 September

16h30

**Arrival in Bern**

17h00 - 17h45

**Meeting with**

- Rudolf Elmer, Swiss whistleblower

17h45 - 18h30

**Informal gathering hosted by Michael Matthiessen, EU Ambassador in Switzerland**

### Friday 15 September

09h30 - 12h00

**Meeting with**

**Legal Affairs Committee (CAJ) of National Council**

- Christa MARKWALDER, Groupe libéral-radical

**State Secretariat for International Financial Matters (SFI)**

- Alexander KARRER, Deputy State Secretary
- Simone WORINGER, research assistant, Financial Crime Department
- Representative from Department for Multilateral Taxation and Business Taxation
- Representative from Department for the Exchange of Information and Taxation of Individuals

**Federal Police Authority (fedpol)**

- René BÜHLER, Deputy Director
- Stiliano ORDOLLI, Head of communication Anti Money Laundering

**Federal Authority for surveillance of financial markets (FINMA)**

- Rupert SCHÄFER, Head of Strategic Services Division



- Marc MAUERHOFER, Head of Anti Money Laundering Section

**Federal Department of Foreign Affairs (DFAE)**

- Josef Philipp RENGGLI, Deputy Director, Directorate of European Affairs

**13h30 - 14h15**      **Meeting with Lara Warner, Chief Compliance and Regulatory Affairs Officer and Member of the Executive Board of Credit Suisse Group AG and Credit Suisse AG**

**14h15 - 15h00**      **Meeting with Jonathan Shih, Managing Director UBS, Global Head of Compliance and Operational Risks Control Financial Crime**

**15h00 - 16h00**      **Meeting with**

- **Andreas Frank**, former banker and money laundering expert
- **Olivier Longchamp**, responsible for taxation and international financial relations, Swiss NGO Public Eye and **Andreas Missbach**, board member

**16h00 - 16h30**      **Meeting with Didier de Montmollin, expert in Tax and Financial Law from the Swiss Bar Association**

**16h30**                      End of programme



## 2. LIST OF PARTICIPANTS

### MEMBERS

Ana Gomes, Chair	S-D
Ludek Niedermayer	PPE
Georgios Kyrtos	PPE
Emilian Pavel	S-D
Jeppe Kofod, co-rapporteur	S-D
Matt Carthy	GUE
Sven Giegold	Verts/ALE
Barbara Kappel	ENF

### POLITICAL ADVISERS

Markus Nyman	PPE
Mathilde Sabouret	S-D
Emma Clancy	GUE
Frantisek Nejedly	Verts/ALE
Ernst Manuel-Fasser	ENF

### SECRETARIAT

Anita Bultena	Head of Secretariat
Elisabeth Kavalierakis	Administrator



### 3. KEY MESSAGES

- Switzerland abolished the banking secrecy, however kept it for intra Swiss transfers
- Tax Evasion is not a criminal offence in Switzerland
- Issue of notional interest deduction and cantons compete with each other to bring down their corporate taxes
- Not enough customer due diligence enforced in Switzerland intermediaries
- AML legislation not applied sufficiently by banks and not applicable to intermediaries who create offshore structures but who are not involved in management and financial transactions
- Very low number of STRs reported from non-banks
- Lack of control on freeports
- Swiss authorities are not proactive with regard to wrongdoings found after Panama Papers revelations (no information about how many legal inquiries were started/people convicted, etc.)
- Automatic exchange of information with EU Member States will start effectively on 1.1.2018 which should increase transparency
- Greater cooperation between banks and governments would enhance the current international framework for identifying financial crime and in particular would increase transparency for multi-jurisdictional and multibank exposure
- Legal provisions should be implemented to allow financial institutions to share information with each other regarding financial crime risk
- Federal Council decided to widen the AML Dispositive to lawyers, fiduciaries, tax advisors and notaries involved even in some specific non-financial activities
- Number of banks in Switzerland has decreased from 300 in 2010 to 250 in 2017 but assets under management has increased
- Financial Market Supervising Authority (FINMA) and Money Laundering Reporting Office (MROS) have limited powers although they intensify supervision, enforcement actions and cooperation with counterparts abroad and say it is important to strengthen the inter-agency cooperation.
- In 2016, 2909 cases of STR suspicion were communicated leading to 1726 communications actually transferred to MP and 766 judicial decisions taken.
- FINMA did not give detailed information about the result of its enquiries on suspicious activities - no public reporting
- Too low penalties for money laundering, companies consider it part of their business costs



- Self-regulation is not enough (e.g. notaries, lawyers, accountants, consultants)
- Legislation is needed to protect whistle-blowers and investigative journalists
- The Swiss authorities declared that they perform in line with OECD-standards and, as far as possible, with EU standards
- A lot of Swiss MP's have jobs in addition to their parliamentary work



**Meeting with Rudolf Elmer, whistle-blower - key messages:**

- Most offshore structures are not illegal but some of them have transactions or assets undermining legislation and some are created to evade tax and conceal origin of assets.
- Number of banks in Switzerland has decreased from 300 in 2010 to 250 in 2017 but assets under management has increased
- No effective legislation on whistleblowers. Whistleblowers can be prosecuted.
- “Elmer case” currently reviewed by the Federal Court of Switzerland. It became a “banking secrecy case” because it is linked with the future of Swiss banking secrecy
- Federal Court has to decide if Swiss banking secrecy can be applied globally if a bank’s headquarters is domiciled in Switzerland
- In case of a weaker secrecy level more regulations will have to be applied
- Abolishment of bearer shares was not discussed
- The Automatic Exchange of Information with third countries does not work properly
- FATF report of 2016 showed that penalties regarding money laundering are low.
- MEP’s inquired about the effectiveness of self-regulation, safe boxes where there is no control, free ports, follow up on reporting of STRs

**Meeting with Swiss Authorities and Swiss MP - key messages:**

- Use of offshore companies not illegal as such
- Federal Council committed to combat money laundering and tax fraud by taking substantive measures to prevent abuses of financial market for illicit purposes
- Panama Papers : cases of illegal activity currently under investigation
- Important to strengthen the interagency cooperation
- Switzerland is adapting their legal framework to the relevant FATF standards
- FINMA and MROS: intensify supervision, enforcement actions and cooperation with counterparts abroad
- FATF mutual evaluation report (December 2016): a large part of the legal recommendations assessed as compliant or largely compliant
- Exchange of information on demand: Switzerland has several double taxation agreements integrating art 26 of the OECD Model Convention
- Automatic exchange of information with EU Member states will start effectively on 1.1.2018
- implementation of BEPS standards for exchange of country by country reports
- Compulsory registration of all companies kept in a public register
- Register of shareholders for all companies with nominal shares or bearer shares
- Obligation of registration of beneficial owners when acquisition of 25% or more of the shares
- AML legislation based on financial intermediation meaning that only persons involved in financial transactions are subject to AML Act. This includes lawyers, notaries and other legal professionals involved



- Financial intermediaries involved are supervised by a Self-Regulatory Organisation (itself supervised by FINMA)
- Professional trustee or organ of domiciliary company also subject to AML act
- Federal Council mandated the Department of Finance to prepare a draft law implementing actions mentioned in the FATF evaluation report and more especially measures regarding due diligence in accordance with the AML Act for specific non-financial activities in relation with the creation of legal persons
- Federal police conducting inquiries against large scale financial criminality
- In order to make financial intermediaries more responsible, when there is a suspicion of fraud or money laundering they should communicate to MROS in order for this communication to arrive in court
- In 2016, 2909 cases of suspicious transactions were communicated leading to 1726 communications actually transferred to MP and 766 judicial decisions taken.
- FINMA is an independent public law supervising authority, supervising banks, insurance companies and self-regulatory activities and others
- Money laundering is a criminal offence
- AML requires financial intermediaries to comply with due diligence and reporting obligations
- FINMA issued an ordinance detailing the due diligence requirements of the financial institutions supervised by FINMA
- Panama Papers-FINMA onsite-inspections assessed around 20 banks. In 6 banks additional measures were imposed and enforcement proceedings launched in one case
- FINMA has also issued industry bans against 6 bank managers following serious breaches of due diligence requirements
- Discussion with MEP's focused on the banking secrecy law and tax reforms and patent boxes. Different amount of taxes are paid according to the canton in which companies are registered. Tax authorities also clarified that patent boxes are drafted in line with OECD standards. The authorities also clarified that banking secrecy is never against an authority. MEP's inquired about the "Elmer" case and the protection of whistleblowers. MEP's asked Swiss authorities to strengthen the protection of whistle-blowers, and they inquired about risks that Switzerland would be on tax havens list, as well as on the low figure of STRs from non-banks/self-regulation. MEP's also inquired for a list of legislative proposals through which Switzerland aims to implement the recommendations given by the FATF report on Switzerland.
- With regard to Panama Papers, MEP's also requested more facts and figures. They also asked about tax rulings, how many people have been charged/convicted regarding tax fraud. Swiss authorities explained that banking secrecy for foreigners is abolished, that tax rulings are part of the system. The spontaneous exchange of information on rulings will be effective from 1st January 2018.
- The automatic exchange of information will start on 1.1.2018 with EU Member States and in 2019 with other countries. Swiss Authorities were asked if Switzerland will also apply the standard of sharing the tax rulings.





- Authorities also explained that they have a lot of trust activities in Switzerland related to foreign companies but that they comply with AML rules. FINMA did not publish a dedicated report on activities related to the Panama Papers revelations.

**Meeting with Lara Warner, Chief Compliance and Regulatory Affairs Officer and Member of the Executive Board of Credit Suisse Group AG and Credit Suisse AG - key messages:**

- Following the Panama Papers revelations, Credit Suisse launched on its own initiative an investigation to identify all kinds of relationships with Mossack Fonseca
- Investigation showed that around 10 clients required further review
- No discernable patterns of client abuse identified during the review
- Credit Suisse worked to comply with FATCA and with the Automatic Exchange of Information
- In case of non-compliance, the client relationship was ended
- Offshore companies and trusts are legal and serve legitimate purposes including investment diversification and inheritance and estate planning
- Enhancement of new client's control
- Adopted a zero tolerance tax policy meaning new potential clients will not be accepted if they have undeclared assets
- Created a special area within compliance called Client Tax compliance with controls, monitoring and surveillance for potential tax fraud
- Seeking to identify beneficial owners, increase transparency on beneficial ownership
- Deployed 20 new surveillance capabilities into advanced technology platforms to identify hidden beneficial ownership and associated risks
- Greater cooperation between banks and governments would enhance the current international framework for identifying financial crime and in particular would increase transparency for multijurisdictional and multibank exposure
- Proactive cooperation between banks and law enforcement agencies to help identify emerging financial crime trends and risks and also regarding emerging technologies that can be used for better monitoring of suspicious activities
- Implementation of legal provisions to allow financial institutions to share information with each other regarding financial crime risk
- MEP's inquired about how many Panama Papers or Bahama leaks clients were still active within the bank. Credit Suisse answered that they have ceased their activity with Mossack Fonseca. Credit Suisse were also asked for help to identify who were the main market competitors of Mossack Fonseca. Regarding Bahama leaks, they could not provide details on numbers but clients have been reviewed. Discussion then continued on the freezing of accounts involved in illicit activities. Credit Suisse answered that they cannot give exact figures on how many accounts were frozen but it was a large number and that more sharing of financial crime statistics is needed. MEP's also inquired about the



cum-cum and cum-ex trade scandal in Germany that Credit Suisse was involved in and if it can guarantee that it stopped this business in all EU member states.

**Meeting with Jonathan Shih, Managing Director UBS, Global Head of Compliance and Operational Risks Control Financial Crime - key messages:**

- Global regulatory framework for banks evolving with the introduction of higher capital requirements and with introduction of Common Reporting Standard (CRS) for the automatic exchange of information and client due diligence rules
- UBS compliant with applicable tax rules
- UBS Compliance and Operational Risk Unit has a Financial Crime prevention team
- Apply money laundering prevention framework consistent with locally applicable regulations
- Update of internal policies, procedures and internal controls
- Crime specialist's experts regarding AML, sanctions, anti-fraud, anti-bribery and anti-corruption
- Monitoring and surveillance team to detect suspicious transactions
- Whistleblowers policy published by UBS regarding the protection of whistleblowers
- UBS invests in new technology to help in the detection of financial crime i.e. real time negative news screening, enhanced data analytics
- UBS Member of Wolfsberg Group developing guidance for the detection and prevention of financial crime risks in the financial system
- Financial institutions (private) should cooperate closely with governments (public) and law enforcement agencies in order to get a better understanding of the current and emerging risks, detect and prevent money laundering
- FATF supported public private partnerships i.e. joint money laundering intelligence taskforce in the UK. Financial sector and government analyse intelligence and share best practices
- Europol has also established a working group with the Institute of International Finance
- MEP's inquired about what happened in UBS after the Panama Papers revelations and more particularly about how many companies that UBS has opened that are still operational. UBS answered that they have reviewed all of their relationships with clients through third party structures. UBS also offers in-house trust meaning that they are trustees for a number of clients. Questions were also asked on standardisation on CDD and UBS agreed that standardisation is needed. Members also inquired about CUM ex and CUM cum scandal cheat on German authorities but UBS was not familiar with it. MEP's questioned whether tax authorities can request information from the bank directly. MEPs also inquired if UBS could help identify who were the main market competitors of Mossack Fonseca. UBS answered negatively explaining that only governmental agencies can request info from banks. UBS also explained that they have a legal obligation to check clients, that they are screening everything and that they also obtain a third party assurance of compliance

**Meeting with Andreas Frank, former banker and money laundering expert - key messages:**

- Offshore structures can be used to hide the beneficial owners: old “offshore” vs “onshore” distinction is eroding
- Illicit funds can only be hidden with the expert help of offshore service providers
- Switzerland is the world’s leading international management centre with more than USD 2 trillion under Swiss management
- Self-regulatory organisations (SRO’s) are constituted within federations and act as competent AML authorities for trustees, asset managers and others
- FINMA has no power to effectively control SRO’s or the banks
- In Swiss courts, criminal investigations for money laundering and tax evasion are rare. Suspicion about beneficial ownership can only be expressed if it is 100% proved. The duty of Swiss asset managers and trustees is to conceal their clients beneficial ownership
- Protection of whistleblowers is needed
- Supervision still does not function in Switzerland, checks and balances are missing. Both the Swiss judiciary and the Swiss political system are still supporting the financial secrecy industry, harmful offshore structures and their enablers.

**Meeting with Olivier Longchamp, responsible for taxation and international financial relations, Swiss NGO Public Eye and Andreas Missbach, board member - key messages:**

- 1/6 of all offshore companies revealed by the Panama scandal (around 34000) were incorporated by Swiss financial intermediaries
- Money hidden in offshore companies could be the product of illicit criminal offenses under Swiss law
- If lawyers, fiduciaries, tax advisors and notaries do not manage the money on the accounts of an offshore company they are not considered as financial intermediaries and therefore not subject to the AML law.
- FATF report in 2016 identified that intermediaries are not supervised efficiently
- Tax evasion is not a criminal offense in Switzerland
- Issue for countries which do not benefit from the automatic exchange of information in tax matters
- Parliament decided not to act even if some interventions were made by MPs in relation with the Panama Papers scandal
- Government took the position of recommending the rejection of an action related to the Panama Papers
- FINMA didn’t give detailed information about the result of its enquiries - no public reporting
- FINMA has not commented on whether sanctions or measures were taken against financial intermediaries involved in the Panama Papers
- Federal Council decided to widen the AML Dispositive to lawyers, fiduciaries, tax advisors and notaries



- MEP's inquired about the FATF report and more specifically on lawyers, notaries and fiduciaries being not sufficiently regulated. MEP's asked about patent boxes, corporate taxes and bearer shares. Public Eye representatives answered that patent boxes as such are not the most problematic. They consider the notional interest deduction more of a problem. Some cantons brought down their corporate taxes to 13%, Geneva and Zurich staying at 20%. Cantons with low tax rate will attract companies just for those reasons. Having bearer shares is still possible.
- Questioned by Members, Public Eye also stressed that sometimes a bank is reporting on tax issues following a media publication. Following the reporting, judicial cases are opened but according to Public Eye in more than half of the cases there is no judicial decision. On a question regarding free ports, Public Eye said that there was a federal audit administration report in 2014 on the matter but that there is still lack of transparency
- Public Eye handed to MEP's its latest report "Guvnor au Congo - oil, cash and misappropriation; the adventures of a Swiss trader in Brazaville"

**Meeting with Didier de Montmollin, expert in Tax and Financial Law from the Swiss Bar Association - key messages:**

- If a lawyer would like to become a director of Panama company he/she must apply in advance to be controlled by FINMA
- The obligation to go to a self-regulatory organisation means that there is no more professional secrecy binding the lawyer and clients are aware of this
- Most of the lawyers do not want to enter these type of entities
- Art 260,305 and 305 of the "Code Pénal" apply to lawyers regarding the money laundering issues and sanctions
- MEP's questioned about how many professionals are being investigated or convicted and the representatives of the Bar Association answered that the amount is not very high as only 2/3 of the cases are handled by the Attorney General. They also said that a lawyer is bound by professional secrecy and that a Swiss lawyer will take into account the effects.

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Draft report created by the secretariat of the PANA committee.