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Incredible drama in the Federal Palace over a bank deal with the USA

The USA is exerting tremendous pressure on Switzerland to prevent financial institutions here from helping US citizens to conceal their assets and thus evade taxation in future.

By Barbara Engel

A state of emergency prevailed in the Federal Palace in Berne during the summer session. The reason for this was the federal law, known as the "Lex USA", on measures to facilitate the resolution of the tax dispute between Swiss banks and the United States. The Federal Council was calling on Parliament to approve this law without informing it of the content. According to the Federal Council, the law would create a legal basis for the transfer of data by Swiss banks to the US authorities, enabling them to identify perpetrators of tax evasion and tax fraud. If this failed to materialise, the USA was threatening to take immediate legal action in the United States against Swiss banks for allegedly assisting tax fraud. It was also the USA that was demanding that the details of the law be disclosed only to the Federal Council and not to Parliament.

A parliament, as the legislative body, approving a law when it has not seen its content seems extremely dubious in a democracy. However, the "Lex USA" on the resolution of the tax dispute represented a delicate trade-off. What poses the greatest threat to the Swiss financial centre and the

economy – the transfer of data or the legal proceedings announced against the financial institutions? Put another way, is legal action by the USA against a Swiss bank tantamount to a death sentence? Probably not in the view of representatives of cantonal banks. However, the NZZ quoted analysis conducted by a US attorney's office on just under a dozen cases of legal proceedings by the USA against financial institutions over the past 30 years, which revealed that, with one exception, all the institutions prosecuted had either been taken over or had completely stopped trading – if not always immediately, then after several years.

Back to the Federal Council

How can we save the Swiss financial centre? This was actually the question facing the parliamentarians. Followed every step of the way by the media, Federal Councillors, bank representatives, officials and experts, they attempted to learn something of the content of the "Lex USA" and organised a 40-hour marathon of meetings in various committees with Finance Minister Eveline Widmer-Schlumpf. Little progress was made. While the parliamentarians were able

to gain some insight into the content, it was ultimately not enough. The Council of States did in fact vote in favour of the law but a large majority in the National Council – united in an unlikely coalition made up of the Swiss People's Party, the Social Democrats and the Free Democrat-Liberals – refused to support the bill and approve a deal that the "Süddeutsche Zeitung" called "a sale of indulgences to buy the banks' freedom". The hot potato was therefore passed back to the Federal Council.

On 3 July 2013, the Federal Council finally decided to attempt a new approach. In specific terms, it wants to grant any bank that asks for it the authorisation to transfer the data requested to the US authorities. This includes information on client structures, bank employees (see also box bottom right), third parties involved, such as trustees and lawyers, and on asset transfers to other countries by tax evaders who make their funds vanish. At the time of going to press, it was unclear whether the USA would be satisfied with this solution.

The US authorities undoubtedly already possess very extensive information on the procedures of the financial institutions, as the amnesty schemes offered by the IRS, the US tax authority, since 2009 have resulted in tens of thousands of US citizens declaring their assets abroad. So far, over 5 billion dollars in taxes has been paid retrospectively.

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THE FUTURE OF BANKING CONFIDENTIALITY

Switzerland must relinquish banking confidentiality in order to safeguard the success of its financial centre. This is the conclusion reached by a working group led by Bernese professor of economics Aymo Brunetti in an analysis carried out on behalf of the Federal Council. The Federal Council had previously backed a withholding tax as the way to protect banking confidentiality. This means that Swiss banks transfer taxes on foreign assets but the names of their clients remain confidential. However, Brunetti's group of experts concluded that there is a clear international trend towards the automatic exchange of information. It is therefore advising the Federal Council to switch its focus to an international standard. Switzerland should become actively involved in developing this automatic exchange of information as soon as possible within the framework of the OECD, the group says. This would represent a radical change of direction in Federal Council policy.

WHAT IS HAPPENING WITH DATA PROTECTION?

A major issue in the tax dispute concerns what data banks will be allowed to provide to the US authorities in future. Bank employees, trustees and lawyers, in particular, are unsure as employee data has already been handed over in the "UBS case". The Federal Data Protection and Information Commissioner, Hanspeter Thür, has declared that he will block any illegal transfer of data through the Federal Administrative Court. He has also sent the banks an information sheet on the data protection provisions. He is calling for transparency in relation to data transfers. The bank must inform the persons concerned in advance as to which documents are to be transferred and provide them with sufficient time to make the necessary arrangements. If a person opposes the transfer, the bank must justify it in accordance with the Data Protection Act. If information is sent against a person's will, he or she can take legal action under civil law.

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