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SwissHoldings
Verband der Industrie- und Dienstleistungskonzerne in der Schweiz
Fédération des groupes industriels et de services en Suisse
Federation of Industrial and Service Groups in Switzerland

FORUM SRO | OAR | OAD

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PBA/FHA/IRO

Comments on the consultation paper entitled "Review of the FATF Standards – Preparation for the 4th Round of Mutual Evaluations (second public consultation)"

Dear Sirs

Thank you for giving us the opportunity to comment on the second public consultation of the paper entitled "Review of the FATF Standards – Preparation for the 4th Round of Mutual Evaluations". It is our pleasure to comment on the above document on behalf of Switzerland's leading economic associations, and thus its business and financial centre.

The comments below have been prepared on behalf of the following umbrella organisations:

- **economiesuisse**, the main umbrella organisation representing the Swiss economy. As an association of Swiss companies, economiesuisse is supported by more than 30,000 companies of all sizes, with a total of 1.5 million employees in Switzerland. economiesuisse has established a special working group to follow financial market regulations including the fight against money laundering. This working group includes the interested business organisations and has extensively discussed all FATF proposal in order to coordinate the present comments.

- **Swiss Bankers Association (SBA)**, the leading professional association of the Swiss financial centre. Its main objectives are to preserve and promote ideal conditions at home and abroad for Switzerland's financial centre. Established as a professional association in Basel in 1912, it currently has 355 institutional members (plus 350 Raiffeisen banks) and approximately 16,800 individual members.

- **Swiss Insurance Association (SIA**), the umbrella organisation representing the private insurance industry. Its members are small and large national and international primary insurers and reinsurers – and total 74 insurance companies.

- **SwissHoldings**, a cross-sector business association that represents the interests of major industrial and services companies (excluding the financial sector) based in Switzerland and focussed on international activities. It is committed to securing favourable business conditions and a liberal economic environment at both the national and the international level. Its corporate members are among the most important direct investors abroad, and are leading international suppliers of goods and services, as well as major employers worldwide.

- **Forum SRO,** an association of Switzerland's self-regulatory organisations, and thus of the non-banking sector, with eleven regular and two associated members. It comprises more than 5,800 affiliated financial intermediaries, and its main objective is to promote the introduction and implementation of the self-regulation system in Switzerland (primarily in the area of combating money laundering and the financing of terrorism).

- **Swiss Association of Trust Companies (SATC),** an organisation whose purpose is to engage in the furtherance and development of trustee activities in Switzerland in order to ensure a high level of quality and integrity and the adherence to professional and ethical standards in the trust business in Switzerland.

As the wording of the Consultation Paper lacks concreteness it is a difficult task to comment on its contents. Having access to the concrete wording of the proposed changes in the Recommendations would therefore be preferable.

1. Preliminary remarks

In accordance with our comments on "Consultation Paper 1" from January 2011, we once more emphasize, that the revision of the review of the FATF Recommendations should be postponed until the currently applicable standards are fully implemented in the member states; hence the revision of the FATF Recommendations is premature.

Furthermore, we would like to point out that although the individual suggestions must be examined in more detail, the suggested changes result in immense additional costs for financial institutions. In some cases, the proposed requirements extend well beyond the framework of combating money laundering and the financing of terrorism, and must therefore be regarded as inappropriate. It is essential that a clear cost/benefit analysis be conducted when considering these changes.

The signing parties strongly support the fight against money laundering and the financing of terrorism and the adoption of efficient and effective measures to achieve this goal. However, we do not comprehend why the leeway permitted in the implementation of regulations should now be limited by specifying them. Rather than making these specifications, which result in limitations, the focus should be on achieving the optimum implementation of existing regulations. In our view, narrower descriptions will not strengthen the fight against money laundering and the financing of terrorism, as countries are required to incorporate the FATF recommendations in their own legislation. The path chosen should not result solely in formalities and the clarification of intergovernmental disputes, but should mainly reinforce the efforts to combat money laundering and the financing of terrorism.

2. Key points

In order to create an overview as well as for clarification purposes, we summarize our main concerns with regard to "Consultation Paper 2" as follows:

- Unclear and inconsistent alterations regarding beneficial owners (Rec. 5, 33 and 34)
- Overly strict and inconsistent rules for keeping a register of beneficial owners, bearer shares and nominee shareholders (Rec. 33)
- An effective prevention against money laundering and terrorist financing can only be implemented via the organs of a structure but not through a jurisdiction (Rec. 34)
- No expansion of international cooperation for the purpose of exchanging information between the responsible authorities (Rec. 40)

The relevant explanations can be found below under Comment 3.

3. Comments on the individual recommendations and suggested changes

3.1. Beneficial ownership

Ad Recommendation 5

Because of the inconsistent alterations regarding to the beneficial owners we do not agree with the proposed changes. Thus, we assume that the pursuit of clarity will not entail a requirement to identify the beneficial owner in the same manner as the contractual partner, as if the wording "to identify the beneficial owner" may suggest. If in effect identification of the beneficial owner is meant to be identical to the identification of the contractual partner, the wording must be changed to “to establish the beneficial owner”. In this regard, we also reject more extensive measures for verifying beneficial owners. It is vital that a clear distinction be made between beneficial owners and beneficiaries.

The suggested changes pertaining to the identification of contractual partners and the understanding of their business activities as well as determining beneficial owners have already been implemented in Switzerland. Swiss financial intermediaries have the obligation to identify the contractual partner (legal entities and asset-holding entities), verify their identity and determine the beneficial owners. In summary, the Swiss standard realised on a risk based approach already meets the FATF Recommendations on beneficial ownership. Accordingly, the FATF certified Switzerland to have a very good system in its last country examination, including the risk based approach.

Ad Recommendation 33

We welcome the fact that the FATF recognizes that there is no additional need for transparency among listed companies and thus has not planned any provisions to this effect. Listed companies are already subject to disclosure obligations under stock market law.

However, the general implementation of new regulations for legal entities will lead to unnecessary administration costs for the producing economy and should clearly be rejected.

The benefits of introducing a requirement to maintain a register of beneficial owners are far outweighed by the costs of such a measure. Moreover, the requirement that the basic information in registers be available to the public is already met in Switzerland through the Commercial Register, which is available to the public and can be viewed free-of-charge worldwide via the basic data. We would like to emphasize that all persons representing companies and foundations entered in the Commercial Register have been formally and personally identified at a counter or by notarisation – this includes the provision of an identification document.
The measures to combat abuse of bearer shares are very extensive. Suggestions a to b are generally rejected. Suggested changes a and b would lead to the elimination of bearer shares, which is rejected due to its far-reaching impact. Possible abuse could be sufficiently avoided by means of the existing system in place in Switzerland to determine the beneficial owner.

The suggested measures in connection with combating abuse with regard to nominee shareholders also go too far. Solution a requires changes to other legal areas as well as intervention in the private sphere, which is not desirable. In this area too, the existing method of determining beneficial owners is sufficient for the purposes of combating abuse.

The call for similar measures in connection with foundations, institutions and limited liability partnerships is also rejected. The existing provisions are wholly sufficient: financial intermediaries must identify and maintain written records on beneficial owners after applying the risk-based approach. More extensive measures are not required.

The FATF's aim of striking a balance between avoiding unnecessary burdening of the producing industries and collecting required information in the financial sector (RBA) can best be achieved by adopting the Swiss standards for distinguishing between operational companies that use their own resources to develop a business activity and vehicles that serve financial control, governance and optimisation purposes. No further recommendations are therefore necessary.

Finally, the FATF intends via Recommendation 33 to specify the requirements in connection with the steps that the countries must undertake in order that the required information on beneficial owners can be accessed quickly. The requirements create a conflict regarding the right to the protection of privacy. It must therefore be ensured that an automatic exchange of information is not introduced through the back door (see the comments below regarding Rec. 4 and 40). In addition, Swiss administrative, criminal and civil law already provide the responsible authority (particularly in the areas of legal and administrative assistance) with sufficient access to information on shareholders and beneficial owners.

Ad Recommendation 34

What is unsettling and must be clearly rejected are the suggestions regarding responsibility between countries with applicable jurisdiction which forms the legal basis for agreements (so-called applicable law), and countries with non-applicable jurisdiction, but where the actual administration of a mandate takes place. The result could be that a large part of regulatory responsibility regarding trusts, foundations, fiduciary companies, etc. would have to be administered in countries with applicable law, rather than in the country actually responsible for the administration of the mandate, as has been the case. The benefits of such a regulation would not outweigh the costs and increase administrative expenses. Only the Trustee or a Foundation Council, both who owe a fiduciary obligation vis-à-vis the beneficiaries, have systematic access to all relevant data, such as names, addresses and background of beneficiaries or other persons connected to a Trust or

Foundation. Consequently, an effective prevention against money laundering and terrorist financing can only be implemented via the organs of a structure but not through a jurisdiction which is merely the source of law. Equal concepts of public registers of trusts and the like do not assist to accomplish the desired objectives but rather introduce inefficient processes without any potential measurable benefits. A recommendation to register confidential private information relating to the creation and management of a trust would affect the competitiveness of various trust jurisdictions, while nobody would expect for example a public register of will executors to contain confidential and private information.

The suggested changes made under Recommendation 33, such as the registration and related disclosure of beneficial owners as well as the assets of a mandate such as a trust, must also be clearly rejected. This type of registration obligation (especially for international succession planning) would massively infringe upon the protection of privacy.

A similar guarantee of quick access to information regarding beneficial owners for asset-holding entities such as trusts, fiduciary companies and entailed estates may not, we wish to repeat, be permitted to result in an indirect exchange of information sneaking in through the back door.

3.2. Data protection and privacy

Ad Recommendation 4

There is the possibility of a conflict between the duties related to the fight against money laundering and the rights deriving from data and privacy protection. For this reason, the implementation must only be carried out within the limits of national laws so that it does not result in a circumvention of national data protection laws and legislation on protection of privacy.

Another reason for this restriction is to ensure that international financial intermediaries are not faced with unsolvable problems. The exchange of information must remain limited, in particular due to the lack of international (i.e. extending beyond the EU) standards on the protection of personal data.

Financial intermediaries cannot and should not be forced to disregard recognised regulations on the protection of personal data by submitting this data to states with insufficient levels of protection.

3.3. Group-wide compliance programmes

Ad Recommendation 15

The changes suggested by the FATF that group-wide programmes aiming to combat money laundering and to exchange information are to be introduced for financial intermediary groups are generally a good idea. This will relieve the parent company of some of the burden. However, the changes could come in conflict with national regulations because information is being exchanged.

In addition, there is the danger of placing companies at a disadvantage if they are domiciled in a country with very strict requirements and consequently necessitates all branches

to fulfil the requirements for these group-wide programmes, while companies domiciled in a country with fewer regulations are at an advantage.
Swiss law already recognizes such group-wide harmonization regarding the most important policies (see Art. 5 of the Ordinance of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and Terrorist Financing (FINMA Anti-Money Laundering Ordinance, AMLO-FINMA)).

3.4. Special Recommendation VII (wire transfers)

It seems logical that in addition to originator details, questions regarding beneficiary data should be regulated. In this regard, however, it must be ensured that only those financial intermediaries who are actually able to perform a check must do so and that all other financial intermediaries are released from a respective obligation. Taking into account the cost/benefit aspect, it must be noted that due diligence cannot be performed for every stage of transfers involving multiple stages.

In particular, if a UN sanction is affected, payments for intermediaries are rejected. These duties must be performed by the paying or receiving bank. Intermediary banks are only able to do this to a limited extent as not all information is available to them.

Swiss law already takes this aspect into account. It stipulates that an intermediary (i.e. the correspondence bank) must only perform manual risk-based spot checks with regard to completeness of data (see Art. 34 para. 2 AMLO-FINMA).

Furthermore, it has to be noted, that such increased requirements regarding wire transfers can have negative effects on trade and industry which clearly have to be avoided.

3.5. Targeted financial sanctions in the terrorist financing and proliferation financing contexts

We welcome the suggested measures in principle and they have already been implemented in Switzerland. However, we would like to stress that the proposed measures should not extend beyond those of the UN resolutions.

3.6. The Financial Intelligence Unit

The suggested measures seem reasonable and our FIU will provide a response with regards to the content.

3.7. International cooperation

Ad Recommendation 40

The proposal for an automatic exchange of information between FIUs must obviously be rejected. Any exchanges of information may only take place within the framework of national legislation (legal and administrative assistance) and the national legislator must define who can exchange which information with whom and under which conditions within the framework of the relevant administrative assistance.

If Recommendation 40 is modified as suggested despite our rejection, strong safeguards must be put in place. These safeguards must also be agreed upon at the international level in order to create a completely level playing field.

3.8. Other issues included in the revision of the FATF Standards

Due to the fact that the recommendations have not been implemented in some countries, the question of implementing the standards for individual partners is no longer of importance. The key issue is in fact the risk concerning individual countries and their implementation of the recommendations. This approach is clearly rejected as it could increase pressure on individual countries. It could result in a black list, which is not the aim here.

However, consistent implementation of the risk-based approach under supervision would be very welcome. In this regard, a standard national risk policy in dealing with national PEPs is also required. The standard should help countries to define risk policies which are based on the degree of domestic corruption and the obvious irregularities in the shadow economy as a corruption-like part of the economy. It should be pointed out that the money laundering risk related to domestic PEPs in Switzerland is low. For this reason, a pragmatic procedure tailored to each individual country is preferable to a general broadening of regulation.

Furthermore, we must also stress, as previously explained in the response to "Consultation Paper 1", that an expansion to include domestic PEPs in Switzerland is fundamentally rejected.

Thank you for your kind attention to our comments. Please do not hesitate to contact us should you have any questions.

Yours sincerely

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