



Association de
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Brunetti Group of Experts II: the implementation of a competitive strategy or another "Swiss finish"?

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Some observers seem to think that Switzerland has no strategy for its financial sector. This is a false impression: in fact it has several!

- In 2009, in response to a proposal from Council of States representative Konrad Graber, the Federal Council published an important report entitled *"Strategic directions for Switzerland's financial market policy"*,
- Three years later, in December 2012, an updated version was issued under the title *"Report on Switzerland's financial market policy"*,
- In 2012 and 2013, several other documents further addressed the issue of a tax-compliant financial centre;
- Finally, last June, a group of experts led by Prof. Aymo Brunetti issued a report evaluating various strategic options for cross-border wealth management.

In other words, there is no dearth of strategic studies, all of them paved with good intentions. The bad news, however, is that some of the problems identified four years ago remain untouched.

In 2009, the Federal Council identified four main strategic directions:

- Enhancing the international competitiveness of the financial sector
- Ensuring and improving access to markets
- Enhancing resistance to crises
- Ensuring the integrity of the financial centre

Since then, the federal authorities have focused most of the considerable energy devoted to the financial issue on the third and fourth directions: resistance to crises and the integrity of the financial centre. These objectives are important, of course, but, as a result, governmental action has tended to ignore the two other strategic directions (i.e. enhancing international competitiveness and access to foreign markets).

We are pleased that the Federal Council has named a new group of experts, led again by Prof. Aymo Brunetti, to study these two questions. Another positive point is that this group includes

several very senior representatives of the financial centre. I just have one simple question: why wait four years before finally deciding to tackle these crucial questions? We now need to move forward quickly, as there is not a lot of time left.

Nicolas Pictet has already described the problems that Swiss banks face in relation to market access; I will return to this issue later from a different angle. But first I would like to address a few domestic aspects, namely the fiscal and regulatory framework governing the Swiss financial centre.

The tax issue is a sensitive one. Taxes are essential for the state to function. That said, taxation of the financial centre is not without shortcomings. For many years, our industry has complained of the negative effect of stamp duty on its competitiveness. Moreover, given the current threats to fiscal banking secrecy, the rigidity of the withholding tax, which was designed as a form of guarantee tax, now appears increasingly anachronistic and damaging. These are the questions that the Brunetti group of experts must address openly and without any preconceptions.

An intelligent and proactive reorganisation of the taxation of the financial centre is urgently needed. Until now, Switzerland has always placed its own needs above any other consideration. Moreover, it has traditionally relied on static simulation models to evaluate the impact of possible reforms. This methodology implies that any fall in tax revenue has to be compensated for, franc for franc. But it fails to account for the fact that lower taxes can sometimes result in higher revenues, as the Canton of Neuchâtel has showed recently with regard to corporate taxes. These static analyses, combined with the debt brake mechanism – which is beneficial in other respects – run the risk of leading to a kind of fossilisation of the tax system. This is why Switzerland needs to reconsider how it evaluates the potential effects of fiscal reforms. Using dynamic simulation models would allow it to more accurately reflect economic realities.

On the regulatory level, we observe that current financial market legislation is still very much a work in progress. Major changes to the legal framework are being introduced even as our banks struggle to adapt to rapidly changing external conditions, which have been revolutionised by events such as the end of tax-related banking secrecy, group requests, and the implementation of a highly problematic programme with the United States, not to mention all the changes that lie ahead, including the resumption of negotiations with the European Union (EU) on the taxation of savings, and the definition of an international standard for automatic exchange of information.

These changes present a major challenge for all financial market participants. They place an especially heavy burden on small and medium-sized banks. We have entered a period during which changes to the framework conditions will represent one of the main structural factors for the sector. The question is no longer who can offer the best service to clients or who can best meet their needs. It is also who will have the necessary resources to hire enough lawyers and compliance officers to meet legal and regulatory requirements. This situation is unsatisfactory.

This is why we are pleased that the Federal Council has postponed the task of defining specific tax diligence rules in the context of what is generally known as the *"Weissgeldstrategie"*. Before suggesting improvements to the competitiveness of the financial centre, as the Brunetti group

of experts has been mandated to do, the first priority should be to avoid harming the industry by imposing onerous and impractical national standards!

This is why we have some concerns regarding a series of proposals submitted to Parliament shortly before Christmas in the context of the implementation of the FATF recommendations. In particular, we believe that applying the new definition of qualified tax offence by foreign taxpayers, as described in the Federal Council's Message, would be going one step too far. Inasmuch as this Message seems to contradict the text of the draft law itself, we fear it would lead to inequalities of treatment between Swiss and foreign taxpayers. This situation poses a very real threat for the financial centre, and we are astonished that the Federal Council has clearly failed to grasp this. We hope that Parliament will be able to correct this.

In terms of financial market regulation, the main elements of the major legislative overhaul begun by the Swiss government are still in the drafting stage.

The first element is the draft law on financial market infrastructures, which was recently submitted for consultation. Though highly technical, this law is extremely important, in that it addresses the areas covered by the Dodd-Frank Act in the US and the EMIR regulation in the EU. It is too early for us to form an opinion on the proposed law, since banks were not invited to take part in the drafting process. I therefore have only two simple remarks: firstly, Switzerland urgently needs a regulatory framework that can be considered equivalent to those governing the main international financial centres; and secondly, our country should refrain from its usual perfectionism and avoid adding extra layers of "Swiss finish" to standards that are already accepted everywhere else.

Next spring, a second important draft law will be issued for consultation: the law on financial services (the so-called FIDLEG). We have the same concerns regarding this law. In a word: yes to equivalence, no to "Swiss Finish". On this topic, I would like to state our reservations regarding the ideas circulated last year in relation to consumer protection. If these are included in a future FIDLEG, the financial industry will be the only sector of the economy subjected to exceptional measures in the context of civil lawsuits. In addition to reversing the burden of proof, this would also force the banks to pay their clients' legal costs, even in the event that the courts dismiss a client's case. This would amount to yet another instance of "Swiss finish", which would not make our legislation more compatible with that of neighbouring countries and would possibly lead to at least two disastrous consequences: firstly, it might encourage reckless behaviour on the part of clients, but more particularly their lawyers, for whom this would represent an inexhaustible source of fees; secondly, it might severely damage the competitiveness of the sector at the international level. An approach of this kind, if implemented, would amount to a sort of "guardianship" of clients. Clients and banks would no longer be partners but adversaries. In a business relationship based on mutual trust, such a situation is simply unimaginable.

Allow me to finish this speech by returning to the most crucial issue for us: market access. If Switzerland drags its feet, assuming that its banks will be able to carry on serving their European clients as before, from Zurich, Geneva, Basel or Lugano, it is dreaming. Just maintaining the status quo will require considerable efforts. The Federal Council seems to have

become aware of the gravity of the situation. But I am not sure that this is true for the political sphere as a whole.

The problem is that this question is something of a Chinese box. Setting aside for now the issue of other countries and focussing on our main foreign market - the EU - the first unknown is the content of the future directive known as MIFID II, which is currently being finalised by means of a process known as the "Trilogue", which involves the European Parliament, member states, and the European Commission. At present the outcome is still uncertain.

The second unknown is the equivalence of our legislation, which would allow Switzerland to request recognition of its legal framework from the relevant EU bodies. This is a sensitive issue, and will undoubtedly lead to a wide divergence of views within Switzerland itself.

The third unknown is the robustness of the legal framework on which we will be able to rely. Our group of banks believes that the only option offering the necessary legal certainty is likely to be a bilateral agreement on services (or at least financial services). But negotiating such an agreement will not be easy, and a clarification of the institutional relationship between Switzerland and the EU will be a necessary precondition. This is why we welcome the Federal Council's decision, shortly before Christmas, to begin negotiations in this area.

We are fully aware that these are political issues whose scope goes well beyond the financial centre. But we cannot remain neutral on this topic, inasmuch as it directly affects the interests of our companies and their employees in Switzerland.

Therefore, we encourage the group of experts led by Prof. Brunetti to consider these issues without delay and propose measures for resolving them as soon as possible.