Swiss Views on Financial Privacy

Franz Blankart, Jean A. Bonna, and Michel Y. Dérobert

Respect for privacy is a traditional cornerstone of the Swiss legal system. Privacy is considered to be an expression of freedom of the individual. The culture of discretion reveals itself in a number of areas. For example, Switzerland has a law on data protection and imposes an obligation of confidentiality on professions such as doctors, lawyers, and priests, to name just a few. Her banking law has also codified, since 1935, the Swiss banking secrecy that safeguards the financial privacy of Swiss banks' clients.

This article offers insight into the Swiss views on financial privacy, addressing the following subjects:

- How the relationship between a state and her citizens is reflected in her views on financial privacy;
- The origins of the rules of Swiss banking secrecy;
- Financial confidentiality in the Swiss legal system today—the limitations on financial privacy necessary to fight crime, its implications for taxation, as well as its relation to the supervision of banks and financial markets; and
- Future challenges to financial privacy in Switzerland.

HOW THE RELATIONSHIP BETWEEN A STATE AND HER CITIZENS IS REFLECTED IN HER VIEWS ON FINANCIAL PRIVACY

Is Privacy a Person-to-Person or a Person-to-State Issue?

In a recent report, the Organisation for Economic Co-Operation and Development (OECD) Committee on Fiscal Affairs gives the following definition of bank secrecy:

> "Bank secrecy" is widely recognized as playing a legitimate role in protecting the confidentiality of the financial affairs of individuals and legal entities. It derives from the concept that the relationship between a banker and his customer obliges the bank to treat all customers' affairs as confidential.…Access to such information by ordinary third parties would jeopardize the right to privacy and potentially endanger the commercial and financial well-being of the account-holder.[1]

One may deduce from this text that its authors—tax officials from OECD countries—consider privacy a person-to-person issue, not a person-to-state issue. Financial confidentiality is there to protect individuals and their affairs from each others' indiscretion. The state is another matter altogether, as shown by the rest of the report.

This report shows that the OECD's tax officials adopt views usually advocated by states with a history of strong central power, which do not value highly the respect of their citizens. The structure of power is top-down. Financial confidentiality represents a risk to the state. Citizens cannot be trusted.

But in an essentially federal system such as that of Switzerland, power finds its roots in the citizen. It is he who lends power to the government. The structure of power is bottom-up. The citizen has to watch over the government, which consequently can not be the surveyor of the citizen.

A Fundamental Human Right

Despite these historical and constitutional differences in the relationship between state and citizen across different countries, the respect for privacy is nowadays considered a fundamental human right throughout Europe. The right to privacy is expressed in a number of constitutional, public, and private laws.

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states clearly the inviolability of the right of personality and hence of personal data. This is also true for the EU directive on the protection of personal data of October 25, 1998. It is up to the subject of the data to give consent to processing a disclosure of his data, even if the free flow of information is the cornerstone of a market economy.

Data protection is the key: The term denotes protection against inquisitive curiosity of the government and protection against the competitive curiosity of third persons. In present times, as technological progress makes it possible to follow a private person's information trail step by step, data protection is all the more necessary. Governments have to earn public trust by confidence-building measures, not by deployment of more police, surveillance, and domestic force.

The Importance of Cultural Values

The right to privacy is nevertheless not absolute, insofar as the justified interest of the state outweighs the interest of the individual. This is generally the case for government engaged in the fight against crime. But countries differ in their conceptions of what is a crime. For most serious crimes, the vast majority of countries share the same values. But in a number of areas, one country might consider a certain criminal law to be in the overwhelming interest of the public, while another country would regard the same law as an unacceptable infringement on individual freedom. Such differences abound: They include laws related to gun control, speed limits on motorways, freedom of information and free speech, and financial privacy. This list of examples is by no means exhaustive.

These differences follow historic and cultural traditions. It seems that a majority of Americans will not give up the right to carry guns, although this seems strange to many Europeans. Germans want at all costs to be allowed to drive their cars at speeds that most of their neighbors consider extremely hazardous. Under the First Amendment of the US Constitution, information that would violate anti-racism law in Switzerland can be freely displayed on US-based Internet sites. Nordic countries in Europe have stripped their citizens of any financial privacy vis-à-vis the tax authorities, but that would never be accepted in Switzerland or Austria.

The State Versus the Individual

The question as to what extent financial privacy should be limited for public purposes depends on the respective roles of the state and the citizen. In Switzerland, the answer is based on the philosophies of Rousseau, de Tocqueville, and Jefferson, which attribute the source of public power to the people and not to government. The state is there to serve her citizens; the citizens are not the state's servants. If the citizens start giving more and more tasks to their "servant"—the state—they will progressively lose their freedom and privacy. As the government is in a dominant position, its use of power could easily shift to the abuse of power.

While safeguarding social justice and public policy (*ordre public*), the state's role is to create an optimal framework within which the citizen may be economically active, fully assuming his own legal and moral responsibilities. Respect for privacy is, in any case, a basic principle, for respect for privacy mirrors the respect for freedom. Consequently, in the banking world, the rules of financial confidentiality do not protect the bank; they protect the customer.

In Europe, no public administration or private person has the right to circulate or publish any data on a private person or a company, with the exception of the press. The press may publish such information if there exists a clear need for the public to be informed on the subject. For example, articles on the private behavior of a public figure (say a politician) would be permitted.

THE ORIGINS OF THE RULES OF SWISS BANKING SECRECY

An Ancient Tradition

What is widely known as "Swiss banking secrecy," which provides protection for the privacy of both Swiss and non-Swiss bank customers with regard to their financial matters, is nothing else than the duty of discretion that banks, their officers and employees, their external auditors, as well as the Swiss federal officials who are involved with banking supervision, must observe. This principle is very old; it can be traced back to the civil codes that existed in the principalities that form today's Germany, as well as in the cities of Northern Italy.

The Genesis of the Swiss Banking Law[2]

In Switzerland, banking secrecy is formally defined in Article 47 of the Federal Banking Law, which came into force on March 1, 1935.[3] This text codified long-standing practice. Until that date, there was no federal regulation of banks in Switzerland and therefore no codified rules on banking confidentiality. But for centuries a distinctive relationship of confidence had developed between the banks and their clients on the basis of unwritten law, comparable to the client-attorney privilege.

After World War II, Swiss banking secrecy was interpreted as having been designed to protect persecuted citizens from neighboring countries, including German Jews trying to hide their assets from the Nazi regime and French high-net-worth individuals trying to escape the threats represented by the socialist *Front populaire* government. However, the protection that these foreign clients were given in Switzerland was the result, and not the purpose, of the introduction of Swiss banking-secrecy codes.

The origin of Swiss banking law dates from the beginning of the century, long before the Nazi Party seized power in Germany. The genesis of Swiss banking secrecy cannot be linked primarily to political events that occurred outside Switzerland. Various cantons (like Basle) already had regulation of this kind in place.

Until the 1930s, Switzerland, like most countries, did not have a modern banking law. Such a law was introduced during this period because of the massive difficulties that the banking system encountered as a result of economic crisis. Switzerland's banks were badly hit by the German banking crisis of 1931. Almost a billion Swiss francs were frozen in Germany because of its bad currency situation. The total assets of the (then eight) Swiss big banks shrunk by more than half. Five of these banks had to be salvaged from bankruptcy. During the 1930s, a total of 60 banks had to be either taken over or liquidated.

This dramatic situation helped Parliament overcome its longstanding reluctance to pass a Federal Banking Law, although such a law had been under discussion for some 20 years. The first draft had been presented to the federal government as early as

1916. Interestingly, this draft did not contain any provisions for client confidentiality. At the time, the protection offered by banking secrecy was considered obvious.

Tax Information Issues

This fact is documented by the discussion that took place during World War I, when the first "War Tax" was introduced. In December, 1915, the Socialist Party had proposed that banks should provide the state with all information to allow the proper assessment of taxpayers. This proposal was expressly rejected in Parliament by the conservative majority as a breach of the not-yet-codified rules of banking secrecy.

In 1917, the Socialist Party launched a constitutional initiative in order to introduce a new federal tax.[4] This led the conservative parties to accept a second "War Tax" instead. On this occasion, too, the question was raised as to whether the confidentiality of taxpayers' information from the tax authorities should be protected or dropped. Parliament voted against the lifting of banking secrecy.

The question whether banks should be subjected to state supervision, or even nationalized (as demanded in the Socialist Party's program of 1920), remained a current issue during the 1920s. The abolition of the still-unwritten banking-secrecy rules was requested by a coalition formed by representatives from the left and from the farmers—both groups being traditionally critical of "Big Money"—but to no avail.

A further constitutional initiative was launched by the Socialist Party during the 1920s. It aimed at introducing a "Wealth Tax" designed to write off the debt incurred by the federal state during World War I. By then, the farmers were again on the conservative side and the initiative was rejected by a seven-to-one margin. The idea that the fiscal authorities should be given access to clients' bank information was then dropped for a long time. Thus, the discussion surrounding banking confidentiality has always been a state-to-person, and not only a person-to-person, issue; and the debate was a domestic, rather than an international, one.

International Considerations

However, the international situation that prevailed at the time cannot be overlooked. Between the two world wars, the political climate in Europe was extremely tense, to say the least. The Russian revolution and the rise of communism in that country; hyperinflation in Germany; the rise of national-socialism and fascism in a number of European countries; and the world-wide economic crisis are but a few of the developments of these hectic days.

These events also had consequences in Switzerland: Social unrest led to a tragic confrontation between the army and left-wing demonstrators in Geneva in 1932; the activities of national-socialist movements had to be prohibited by the federal government in various Swiss cities, including Zurich, Lugano, and Davos; foreign powers' intelligence activities in Switzerland led the government to pass, on June 21, 1935, an urgent decree for the protection of the security of the Confederation.

Spying on Swiss banks by foreign governments was a very real issue during that time. Such surveillance was carried on because of political uncertainty and the fragile currency situation in a number of countries. High war taxes were also leading to capital flight. The situation in Germany was particularly difficult, because of the reparations due after World War I. France, for instance, was interested in obtaining German assets held privately in third countries. From 1931 onwards, there were rumors that German financial authorities had access to illegal information about investments in Switzerland. In 1932, the Swiss press reported openly on Germany's spying on Swiss banks. The Swiss federal prosecutor made no secret of his irritation about these developments.

The national-socialist government in Germany next threatened with imprisonment those who would not declare their foreign assets. Although it was not known at the time to what extremes this regime would go against its own citizens, renewed cases of spying worried the Swiss authorities. So it was only logical that the new Federal Banking Law, introduced mainly to protect depositors and savers, would contain a provision on banking secrecy making it an offence to divulge any matter relating to the affairs of a bank's client.

This formal codification of a long-standing banking tradition was introduced following a proposal put forward by the Office of the Federal Prosecutor "in view of the spying on banks from abroad." By then, no political party seems to have objected.

FINANCIAL CONFIDENTIALITY IN THE SWISS LEGAL SYSTEM TODAY

Since the official beginning of Swiss banking-secrecy policy, the world has changed dramatically. The internationalization of markets, free flow of capital, technological progress, as well as other positive developments have played major roles in making the world a better place.

However, the old problems have not disappeared from the face of the earth: In many places, people may still feel threatened by their government, although these governments would invariably dispute such an allegation. To be sure, there are few regimes left in the Western world that seem even remotely likely to treat their citizens as brutally as the Nazi regime did in Germany before and during World War II. But who could blame the representatives of certain ethnic minorities in a number of countries (which shall remain unnamed) if they set aside some of their savings, just in case something happens, as some European families did during the period discussed above?

Meanwhile, other problems have surfaced. One is the proliferation of criminal behavior, led by two main developments. First, economic progress and globalization made old criminal activities more profitable than before; second, changes in attitude have meant that certain behaviors merely frowned upon in the past (such as trading on insider information, manipulating stock prices, not to mention handing out bribes in order to secure contracts in certain countries) have become criminal offenses. The rules on banking confidentiality have had to cope with these developments.

Banking Secrecy Rules Do Not Protect Criminals

A closely-knit network of legislation keeps the Swiss financial center clean. Switzerland maintains a closely-knit network of laws and regulations designed to prevent money of criminal origin finding its way into the country. When criminal activity is involved, these same laws enable criminal investigations to be carried out, and they impose a comprehensive duty on bankers to disclose information as well as provide for international mutual assistance in criminal matters. This is the case, for example, where money laundering or participation in the actions of a criminal organization are suspected.

The condition, however, for granting judicial assistance enabling other countries to access a client's financial information is that the crimes the client is alleged to have committed must be recognized as such both in Switzerland and in the country requesting assistance. This is known as the principle of double incrimination. Any other system would result in the Swiss courts trying to enforce foreign laws on Swiss territory, which would be contrary to this country's culture and tradition.

Swiss banks must know their customers. Swiss bankers are no more interested than their colleagues in other countries in attracting money which has been generated by criminal activities. But, like all other major international financial centers, Switzerland is likely to be considered as an attractive place to invest not only legal funds but also illegal ones. For this reason, the Swiss banking community has developed stringent standards of customer identification to prevent any abuse of the confidentiality rules designed and enforced to protect the privacy of law-abiding clients.

These "Know Your Customer" rules require every bank employee to identify customers and, where appropriate, establish the beneficial owners of the funds in question before opening any account relationship. By signing an "Agreement on due diligence" more than 20 years ago, the Swiss banks pioneered a system which has since provided a model for other financial centers. After a number of revisions and improvements, the Swiss "Know Your Customer" rules are considered the most severe in the world.

Numbered accounts are not anonymous. Despite the picture presented in detective stories, spy films, and sometimes in the media, anonymous bank accounts do not exist in Switzerland. The names of the holders of numbered accounts are always known, albeit only to a small circle of people within the bank. In terms of banking confidentiality, no legal distinction is made between numbered and other accounts.

International judicial cooperation is working. As mentioned above, Switzerland offers international judicial cooperation with other countries in criminal matters. This is particularly true of money laundering and other financial activities of criminal organizations. Recent history has proved that Switzerland cooperates more efficiently than other major financial centers. In conjunction with the Swiss "Know Your Customer" policy, this body of laws is very effective. In one well-known money-laundering case that caused a scandal in the United States, it was from Switzerland rather than New York or London—two banking centers also involved in the story—that the beneficial owner of the accounts was traced to offshore centers.

However, there are limits to what Switzerland is ready to do in the field of international judicial cooperation. The protection of individuals must be ensured, be they Swiss or foreign citizens. This is why Switzerland insists on the principle of double incrimination, which states that cooperation will only be granted if a crime is considered as such in Switzerland as well as in the country requesting cooperation. Other limitations also exist: The courts must respect the principle of proportionality. That is, they must strike a balance between the gravity of the offence and the weight of proof on the one hand, and the protection of privacy on the other. Finally, restrictions exist regarding the use that can be made of the information provided.

Banking Secrecy and Taxation

How the Swiss system works. As regards taxation, Swiss citizens have two inseparable rights:

- They vote on their level of taxation.
- They report their income and wealth, without the tax authorities enjoying extensive powers to spy on them through the banking system.

These rights are consistent with the relationship between the citizen and the state in a federal system, the latter being at the service of the former, not the other way around.

However, to protect the community's fiscal interests, the state has the following mechanisms:

- a 35 percent withholding tax, collected from domestic issuers and debtors on every dividend or interest payment;
- a harsh enforcement system at the administrative level (with fines and a reversal of the burden of proof that criminal law would not allow); and
- criminal proceedings in the case of fiscal fraud.

In short, the Swiss system aims at guaranteeing the privacy of the taxpayer vis-à-vis the state while ensuring safeguards to protect the tax department's interests.

This system works. At any rate, the level of tax avoidance is no higher in Switzerland than in other countries. Although this area eludes, by definition, official statistics and is therefore difficult to assess, two indices point in the right direction. First, the relative weight of direct taxation is higher in Switzerland compared to most other countries, which tends to prove that the collection of direct taxes does not pose a particular problem in this country.[5] Second, it is generally acknowledged that Switzerland is one of the countries where the underground economy is the least widespread.[6]

This tends to show that the Swiss taxation system, whilst it limits the right of the state to access the taxpayers' bank information, takes into account, in a fairly balanced way, the obviously divergent interests of both the individual and the community and is, above all, well-accepted by taxpayers.

Tax competition is good, not bad, for the taxpayer. A number of international organizations (including the OECD and the European Union) have embarked on a crusade against "harmful tax competition." According to their views, this form of competition is ruinous. Tax competition tends to reduce the tax burden on highly-mobile production factors such as capital, whilst it increases the tax burden on less-mobile factors such as labor. The fact that tax authorities have limited access to bank information is described as a problem in this respect.

It should be noted, at the outset, that competition is always considered harmful by those who are exposed to it. Whilst the fiscal authorities complain about reduced tax revenues, the statistics—also published by the OECD—speak another language. In fact, they show that the tax proceeds in OECD countries have steadily grown over the years.

Despite globalization, liberalization of capital movements, and the use of technology by financial operators (which are the three main developments described as providing taxpayers with new opportunities to escape taxes, legally or not), the rate of taxes levied by OECD countries in proportion to their GDP has increased from 32.8 percent in 1980 to 35.6 percent in 1990 and 37.2 percent in 1997. Of course, when OECD's tax experts write about "vanishing taxpayers," these figures are not mentioned. The reality shows that the allegedly-harmful tax competition has not deprived governments of their financial resources.

Interestingly, the pressure felt by high-tax countries does not seem important enough to induce such countries to reduce the tax burden put on their citizens. Sweden, for instance, managed to push her revenues from 51.9 percent to 53 percent of GDP from 1997 to 1998.[7] In Sweden, like most OECD countries, income and wealth taxes represent the main part of state revenues.

A country's ability to withstand tax competition has little to do with the powers given to its tax authorities to access bank information, but a lot to do with the right incentives given to taxpayers. In a recent economic survey on Switzerland, the OECD acknowledges this fact (at least indirectly) when it writes:

> The Swiss tax system appears to be fairly robust in the face of increasing globalization and financial mobility. In contrast to many European countries, Switzerland has not been constrained to shift the weight of taxation from capital towards labour and consumption, which are relatively immobile bases. One factor contributing to this outcome is that tax incentives for saving through pension funds and life insurance companies are very attractive, dimming households' interest in shifting financial assets abroad to evade taxation. Low marginal income tax rates in certain cantons go in the same direction.[8]

In short, each country is responsible for ensuring that she has a fair tax system and that her citizens are subject to a reasonable level of taxation. What can be considered as reasonable depends very much on cultural habits and political priorities, which can only be set at a national level. Governments have to be aware of the fact that an increased tax burden weakens their competitive position in relation to other countries, and this ultimately leads to ever-higher levels of taxation. If taxpayers shun taxes, the reason must primarily be sought in their own country. One can only guess how taxes would soar if competition in the area of taxation was more limited than it already is.

Putting the blame on the insufficient access to bank information in other countries is too simple an answer for a complex problem.

Banking Secrecy and the Supervision of Banks and Financial Markets

Sound banking supervision. The duty of discretion applies in effect to the business relations between banks and their customers. This duty does not hamper an effective system of banking supervision, such as that carried out in Switzerland by the Federal Banking Commission. Swiss legislation concerning bank supervision has three distinct characteristics:

- The Federal Banking Commission, in its capacity as a supervisory body, has the power to call on banks to hand over all information and documents it needs to carry out its function. The Commission's employees can work with this information but vis-à-vis outsiders they are obliged to observe secrecy requirements just as bankers are.
- The Commission is also empowered to pass on to foreign authorities supervising banks and financial markets confidential information or documents not available to the general public according to internationally-recognized standards. However, information concerning individual bank customers may be released only under certain administrative procedures under which the customer has the opportunity to defend his rights.
- The Swiss Federal Banking Law gives foreign supervisory bodies the power to carry out on-the-spot checks in Switzerland. These checks can be carried out on risk, systemic, organizational, and behavioral items, but not on individual bank depositors.

Insider trading and stock-price manipulations are banned. It is by now widely agreed that stock markets must be fair. Switzerland has outlawed insider trading (since 1988) and stock-price manipulation (since 1997). The discussion about the legitimacy of anti-insider-trading laws has been settled in most countries, although some economists argue that insider traders in fact improve the information of market participants via the price mechanism. International standards have been set; insider-trading laws are similar across developed countries. So customers of Swiss banks will not be allowed to take advantage of banking confidentiality in order to trade on inside information. But the administrative procedures in place in Switzerland will allow banks' clients to defend their rights to confidentiality to a greater extent than in many other countries.

FUTURE CHALLENGES TO FINANCIAL PRIVACY IN SWITZERLAND

Domestic Political Support for Financial Privacy

The vast majority of the Swiss people support laws protecting financial privacy, although left-wing parties—in the minority—are traditionally critical of banking secrecy. In 1984, the Socialist Party put forward a constitutional initiative proposing that banking-secrecy requirements be lifted, but it was rejected by 73 percent of voters and by all the cantons. All opinion polls carried out since then on this subject show that the proportion of the population in favor of maintaining this legislation is very stable.

In Switzerland, the protection of financial privacy in person-to-person relations does not seem to pose any serious problems. The Federal Law on Data Protection prohibits companies from misusing their clients' personal data and obliges them to give access, on request, to this data. The generally-prevailing culture in the country makes any abusive use of this information unlikely. Privacy violations are more likely to arise in personal relationships or in relation to medical issues rather than with financial information. Today in Switzerland, the level of public confidence with regard to the security of financial data held by banks and companies is generally high. The impression that personal privacy is at risk is not widespread, but the development of information technology could change this situation, as it has in other countries.

With respect to the relationship between the state and individuals, the main area of concern is taxation. As discussed above, Switzerland has set up a system of tax collection that takes a balanced approach toward the collective interests of the state (which must collect taxes) and the individual interests of her citizens (who do not want to allow the state to invade their financial privacy). This system enjoys wide political support.

International Issues

There is a consensus in Switzerland that banking-secrecy rules must give way in the fight against criminal behavior. Problems created by violations of economic regulations and international organized crime, as well as the need to improve the system of international judicial cooperation, have led Parliament to modify a number of laws in recent years. These laws are being enforced with success, as witnessed by a number of cases that have caught the attention of the media.

These cases are sometimes described as "scandals" by the press. This shows, however, a certain degree of misunderstanding of the real situation. Humans are not faultless; expecting a large international financial center to have only clients that are perfectly honest is mere wishful thinking. The importance is to catch those clients who are dishonest and ensure that they do not go unpunished. Although it is always a disappointment to learn that criminals exist, the fact that the system allows for their prosecution should not be looked at as a defeat, but as a victory.

International taxation will remain a problem because national tax systems will continue to differ from one country to another. In this field, the protection that Swiss banks provide their clients gives rise to a certain amount of criticism, especially from countries that care less than Switzerland about their citizens' privacy. These critics think the tax authorities should have full access to banking information, even beyond national borders. This, however, raises very complex problems concerning the harmonization of tax laws, a difficult issue.

At the level of general principle, taxation is a relatively simple matter about which rational minds can easily agree. However, as soon as discussions reach a greater level of detail, agreement is more difficult. Because of the very sensitive political character of taxation, each country ends up defending her own system and practices, to the detriment of the others. Sooner rather than later, negotiators stumble on questions related to national sovereignty.

No organization has had as much experience in these problems as the European Union, charged with adopting directives that will subsequently have to be transposed into the national legislations of its member countries. In 1998, the European Commission proposed a new directive aimed at solving some of these problems.[9] Nine years earlier, the EC had come up against insurmountable difficulties because of a previous project that had not succeeded in obtaining the necessary consensus. The 1998 proposal is still on the table and the subject of arduous negotiations within the EU. Switzerland, not a member of the EU, has already indicated willingness to negotiate her part in a system that ensures an agreed minimum taxation of the income on savings. But her government has also clearly indicated that it will not surrender the protection of financial privacy guaranteed by the Swiss legal system.

CONCLUSION

Every state under the rule of law protects the privacy of her citizens. In Switzerland, this right to discretion has developed over time, becoming established in the legal system and firmly anchored in the values of the country. Banking confidentiality can be compared to the duty of professional confidentiality to which doctors and lawyers are subject. Swiss legislation meets the highest international standards when it comes to fighting organized crime and money laundering: It offers criminals no protection whatsoever. This is why Switzerland can claim to be one of the “cleanest” financial centers in the world today. The country will, however, continue to protect the financial privacy of legitimate clients—be they Swiss or foreign—who are merely trying to protect their financial assets. Although Europe is, fortunately, no longer the dangerous place that it was half a century ago, there is ample evidence that the need for a safe shelter still exists for minorities in various, less fortunate, parts of the world.

Notes

[1] OECD: Improving Access to Bank Information for Tax Purposes, ref. DAFFE/CFA (2000) 4/Final.

[2] For further information, cf. Robert U. Vogler, “Wie entstand eigentlich das Schweizer Bankgeheimnis?” in *Neue Zürcher Zeitung*, March 18-19, 2000.

[3] Article 47 of the Federal Banking Law makes any breach of banking secrecy a criminal offence punishable by imprisonment for up to six months or by fines up to CHF 50,000 (approximately US $30,000), or both.

[4] Switzerland is a semi-direct democracy. Her citizens may at any time ask to

modify the federal Constitution. To succeed, 100,000 signatures must be collected within 18 months approving the proposed amendment (this is called a "people's initiative"). After examination of the amendment's text, the "Sovereign," *i.e*. the people and the cantons (Swiss equivalent of American states), vote on the initiative. If a double majority accepts the amendment, the Constitution is amended and Parliament must modify federal law to conform. The people may also be asked to vote by referendum on the laws adopted by Parliament. Within three months of the adoption of a new law, 50,000 voters can oblige the electorate to vote on any new law, confirming it or rejecting it as a whole.

[5] According to OECD statistics, direct taxation of individuals (on income, capital gains, and wealth) as a proportion of total tax revenues account for 52.8 percent in Switzerland, 47.9 percent in the US, 41.0 percent in Germany, 29.8 percent in the United Kingdom, and 24.1 percent in France (last available figures: 1997).

[6] According to a study performed by the Johannes Kepler University in Linz (Austria), Switzerland stands (after Austria, the United States, and Japan) at the very bottom of a list of 29 countries ranked by the importance of the underground economy as a percentage of official GDP. Cf. *The Economist*, August 28, 1999, p. 63.

[7] By comparison, the equivalent figure in Switzerland is 34.8 percent of GDP (but rising and many observers—including the authors of this article—consider that she would be well advised to stop that trend).

[8] OECD Economic Surveys 1998-1999: Switzerland, Paris, 1999.

[9] Cf. European Commission's May 1998 proposed directive on taxation of interest payments (COM98 295).