



Combating the funding of terrorism: effects of the terrorist attacks of 11 September 2001 on the activities of the Swiss Federal Banking Commission

Berne, 14 March 2002

The Swiss Federal Banking Commission (SFBC) has been called upon to play a major role in implementing measures to track down the perpetrators and sponsors of the attacks carried out on 11 September 2001 against the United States and in the battle against the funding of terrorism in general. In addition to performing an important coordination function between the Swiss and US authorities and the institutions under its supervision, the SFBC supplied Swiss banks and securities dealers with lists of names of persons or organizations suspected of links with terrorist activities and ordered that the latter's assets be frozen in accordance with the provisions of the law on money laundering. The SFBC also conducted an in-depth investigation of SWX Swiss Exchange and Eurex Zurich to determine whether, in the context of the transactions scrutinized, Switzerland's stock exchanges had been used by persons with advance knowledge of the attacks. In response to requests made by foreign prudential supervisory authorities for mutual assistance concerning transactions effected through Swiss institutions on foreign markets, the SFBC was able to give assurances, following its investigations, that none of the operations examined was suspicious. Furthermore the SFBC has played an active part in discussions held within international organizations on these different issues. It has thus been able to demonstrate that the Swiss financial system has at its disposal all the instruments required to combat the funding of terrorism.

In the days following the terrorist attacks carried out on 11 September 2001 against the United States, police and prosecuting authorities throughout the world began to conduct intensive investigations to track down the perpetrators and sponsors and to put measures in place with a view to preventing similar attacks in future. One of the avenues of investigation consisted in searching for traces left behind by the terrorists in the global financial system. As the body responsible for supervising Switzerland's banks and securities exchanges, the Swiss Federal Banking Commission (SFBC) was called upon to play an important role in the measures taken in Switzerland, most notably in facilitating contacts between the Swiss and foreign authorities concerned and the institutions under the SFBC's supervision.

The SFBC's involvement

On 25 September 2001 the SFBC set up an internal coordination group whose task was to ensure that questions relating to the search for terrorists' assets in the Swiss financial system were dealt with as effectively as possible. This coordination group was assigned



responsibility for carrying out all necessary inquiries regarding prudential supervision and for supporting the other authorities concerned, such as the Office of the Attorney General of Switzerland, the Swiss Money Laundering Reporting Office, the Swiss State Secretariat for Economic Affairs, etc. It was also given the task of ensuring the exchange of information with the banks, the press and within the SFBC itself, as well as facilitating the closest possible international cooperation with foreign authorities. The work carried out by the coordination group was defined as having absolute priority for the SFBC employees serving on it.

Major collaboration and coordination efforts were necessary not only within the federal administration itself, but also in dealings with foreign authorities or their representatives. At the Swiss level, the SFBC worked in close collaboration with the Office of the Attorney General, the Federal Police, the Federal Department of Justice, the Federal Department of Foreign Affairs, the Money Laundering Reporting Office and the Money Laundering Control Authority, this collaboration taking place via an interdepartmental working group. In addition, numerous contacts took place with the US supervisory authorities, with the US embassy in Switzerland and through international organizations such as the International Organization of Securities Commissions (IOSCO) and the Bank for International Settlements (BIS).

Distribution of lists of names of persons or organizations suspected of links with terrorist activities

During the investigations into the funding networks used by terrorists, it rapidly became evident that the widely accepted criteria applied in the fight against money laundering were insufficient and unsuited to the search for suspicious transactions. The relatively small amounts needed to finance an act of terrorism, which easily go unnoticed in the normal activities of international financial centres, meant that other investigation methods needed to be found. The investigation was conducted by publishing a list of names of suspected persons whose banking relationships, once identified, might enable the authorities to trace the funding trail back to its origin. A number of US authorities and agencies as well as the United Nations therefore published lists of names of persons or organizations suspected of being linked with terrorist activities and whose assets were to be frozen worldwide. The lists referred to here are the so-called 'Bush lists' based on the executive order issued by US President George W. Bush on 24 September 2001, the lists relating to Afghanistan drawn up by the Sanctions Committee of the United Nations and a consolidated list of names forwarded by the Federal Reserve Bank of New York to the Bank for International Settlements (BIS). These lists were put into circulation in Switzerland, either directly by the SFBC or through the offices of the Swiss State Secretariat for Economic Affairs (Seco). In all the cases in question, the lists were forwarded electronically by the SFBC directly to the compliance officers of the various banks and securities dealers based in Switzerland.



Three types of lists were sent by the SFBC to the institutions under its supervision:

- Lists containing names of persons or organizations suspected of having links with the attacks carried out on 11 September 2001 and with the Al Qaeda network. On this subject the SFBC asked banks and securities dealers to check for banking relationships with such persons or entities or for assets of which the latter might be the beneficial owners. If any such relationship was revealed, the Swiss Money Laundering Reporting Office had to be notified without delay in accordance with the provisions of the law on money laundering. Likewise, the clients in question should not be informed and the assets frozen for a maximum period of 5 bank working days. In this period the Office of the Attorney General of Switzerland, as the competent law enforcement authority, would decide if the assets were to remain frozen.
- Lists containing names of other organizations classified as terrorists. The SFBC asked banks and securities dealers to check whether they had any banking relationships with such organizations and, if so, to subject them to increased scrutiny. The matter need only be notified to the Swiss Money Laundering Reporting Office if an overall assessment of the business relationship in question gave good cause for suspicion that the assets involved belonged to a criminal organization, were the proceeds of criminal activities or were connected with an infringement of money laundering legislation. In such cases the clients in question should not be informed of any such notification and the assets frozen for a maximum period of 5 bank working days, during which period the Office of the Attorney General would decide if the assets were to remain frozen.
- The lists published as appendices to the Ordinance instituting measures against the Taliban (RS 946.203). The SFBC drew the attention of the institutions under its supervision to the measures taken by Seco¹ in the context of the adoption by the United Nations of sanctions against the Taliban. The assets of persons or organizations whose names were listed in the appendices to the Ordinance instituting measures against the Taliban must be blocked for an indefinite period and notified to Seco. This notification to Seco must take place independently of any advance notice given to the Money Laundering Reporting Office.

In many cases only rudimentary information was given on the lists forwarded to financial intermediaries, and the SFBC sought a means of offering banks and securities dealers assistance with their investigations. Thus, at the SFBC's instigation, at the beginning of October 2001 the Office of the Attorney General of Switzerland set up a central service within the Federal Police which financial intermediaries could contact informally, in cases of doubt, for additional information. This centralized service was able to establish contact with all foreign law enforcement agencies responsible for tracking down terrorists. With the aid of this informal channel, the mechanism for investigating business relationships suspected of links with terrorism was rendered much more efficient.

¹ <http://www.seco-admin.ch>



According to the authorities responsible for freezing accounts, 40 banking relationships with assets worth approximately CHF 24 million were frozen on 25 January 2002 citing the duty of notification prescribed by the Swiss law on money laundering and 75 bank accounts containing assets worth CHF 42 million were blocked on the same date citing the Ordinance initiating measures against the Taliban. There was considerable duplication between the banking relationships frozen citing the duty of notification prescribed by Swiss law on money laundering and the accounts blocked citing the Ordinance initiating measures against the Taliban.

The hunt for terrorists via suspicious transactions effected shortly before the attacks

In the context of investigations into the funding networks used by terrorists, measures were taken to ascertain whether terrorists or their associates had carried out any insider dealing in connection with the attacks of 11 September 2001. On 18 and 21 September 2001, the SFBC instructed SWX Swiss Exchange and Eurex Zurich respectively to conduct inquiries designed to check whether there were any suspicious transactions linked with the attacks of 11 September 2001. In so doing, the SFBC redefined the priorities of the investigations already under way at the two exchanges. The latter were instructed to swiftly furnish the SFBC with detailed information on particularly sensitive securities transactions, notably transactions involving airline companies and insurance firms effected by market participants of SWX (warrants), Eurex (standardized derivatives) and virt-x (SMI blue chips). In addition, the exchanges were instructed to draw up analyses of any suspicious transactions carried out by exchange members. They were told to take into consideration any unusual factors in the broadest sense of the phrase.

During September 2001 the SFBC received requests for mutual assistance from two US authorities, the US Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), concerning suspicious transactions involving American securities listed on Swiss exchanges. These requests were handled as part of the SFBC's ongoing investigations into insider dealing.

Having examined the data and analyses forwarded by the exchanges, the SFBC contacted nine banks to ascertain the identity of certain clients and beneficial owners as well as precise circumstances of those transactions deemed suspicious. One hundred securities transactions (US securities, airline or insurance company stocks) were judged to be suspicious, even though some of them involved only modest volumes of securities. These transactions were effected between the end of August 2001 and 11 September 2001. They principally entailed purchases of put options, short sales and sales of call options. From information furnished by the banks it was subsequently established that sixty of these cases could not constitute insider dealing because the clients had closed out their positions before the attacks. The clients and beneficial owners involved in the remaining forty transactions were subjected to a thorough examination. The SFBC was obliged to extend its investigations to include a further six banks and



securities dealers and one other institution which was not governed by Swiss securities exchange legislation owing to the fact that certain banks and securities dealers acted as intermediaries between the exchange member and the beneficial owner. In one of the cases a bank based in the Principality of Liechtenstein was implicated and a request for mutual assistance was made to the prudential supervisory authorities of that country. It turned out that the forty transactions examined consisted of transactions for the account of clients, portfolio management transactions and proprietary transactions by banks and securities dealers.

Having conducted a thorough examination of all information received, the SFBC concluded that there was absolutely no doubt that the transactions concerned were bona fide and entirely within the usual parameters for the clients, portfolio managers and banks concerned. Furthermore, no link of any kind could be established between the persons involved in these transactions and those appearing on the lists distributed in connection with the terrorist attacks. Within the framework of the investigations carried out, therefore, the SFBC can confirm that, during the period in question, no suspicious transactions in connection with the terrorist attacks were effected on Swiss securities exchanges.

Mutual assistance

Like the SFBC, the prudential supervisory authorities of other countries conducted investigations of their own securities exchanges to determine whether transactions had been carried out by terrorists or their associates shortly before the attacks. In this context the Banking Commission received nine requests for mutual assistance in respect of transactions suspected of being linked with the events of 11 September 2001 which were executed by Swiss banks or securities dealers on foreign exchanges. These requests came from the US Securities and Exchange Commission (SEC), the Commission des Opérations de Bourse (COB), Germany's Bundesaufsichtsamt für den Wertpapierhandel (BAWe) and the Hellenic Capital Market Commission (HCMC). The requests concerned a total of seventeen transactions or groups of transactions in stocks of companies active in the airline industry, insurance firms and a large retailing chain as well as equity and market index derivatives. In one case the request was merely to forward a questionnaire to a securities dealer.

The information received made it possible to ascertain that three suspicious transactions together with a large number of equity derivatives transactions had been effected for the account of a foreign subsidiary of a Swiss bank. The SFBC invited the requesting authority to address its inquiries to the prudential supervisory authority of the country in which the subsidiary was headquartered.

With regard to the fourteen remaining transactions, the SFBC verified that none of the clients and beneficial owners, of whose identities the SFBC had been informed, appeared on any of the lists sent to Swiss financial intermediaries. In eleven cases the decision to buy or sell had been taken, without any intervention by the client or the



beneficial owner, by an in-house or external discretionary portfolio manager. In the other cases, either the sale of securities was closely linked with the repurchase of the same securities at the same price by another company belonging to the same beneficial owner, or else the investment strategy was entirely consistent with that used by the client in question since the beginning of 2001. Finally, a number of the transactions were effected at a loss, given the fall in prices following the terrorist attacks.

Thus, based on the information made available to it, the SFBC was able to confirm that none of the transactions effected by banks and securities dealers based in Switzerland which formed the subject of the requests for mutual assistance was found to be linked in any way with the events of 11 September 2001.

Regulatory measures

Although, as demonstrated by the measures taken by the SFBC, Swiss legislation already has the necessary instruments to enable the authorities to combat the funding of terrorism efficiently, this nexus of problems has been specifically integrated into the current legislative review processes.

With this in mind, the SFBC has integrated into the review now under way of SFBC Circular 98/1 (money laundering) those issues which relate specifically to efforts to combat the financing of terrorist activities. Most notably, the SFBC is considering introducing a provision requiring immediate notification if the investigations of unusual transactions yield the slightest indication that such transactions might be linked to terrorist activities.

The SFBC has likewise expressed its views in the context of the procedure for ratification of the UN Convention on the Suppression of the Financing of Terrorism. In particular the SFBC considers that the regulatory provisions currently governing banking, securities exchanges and investment funds generally correspond to the requirements set out in Art. 18 of the UN Convention.

International activities

At the international level, the SFBC is closely following the implementation of the US Patriot Act 2001 by the US authorities and is also involved in discussions being held by various international organizations, such as the Financial Action Task Force on Money Laundering (FATF), the International Organization of Securities Commissions (IOSCO) and the Basel Committee on Banking Supervision, which are looking at issues with a bearing on the fight against terrorist financing. The following developments are worth highlighting:

- At an extraordinary plenary meeting held in Washington D.C. on 29 and 30 October 2001, in which Switzerland participated, the FATF expanded its mission beyond money laundering to include the funding of terrorist activities, to which it



will devote equal energy². It adopted and published a number of special recommendations designed to combat the financing of terrorism and urged all countries to adopt and implement them. The SFBC, along with the other Swiss authorities concerned, participated in the self-assessment exercise regarding the special recommendations on terrorism. According to the SFBC, Swiss banking regulation already corresponds in essence to the new FATF recommendations.

- The SFBC participated in a meeting of the prudential supervisory authorities and central banks of the G-10 countries and of the representatives of the European Commission and the European Central Bank held on 14 December 2001 in Basel. Representatives of these authorities discussed ways and means of achieving greater efficiency in combating abuse of the banking system to finance terrorist activities. A report will be submitted to the Basel Committee on Banking Supervision recommending that measures be taken to improve international cooperation and to enhance the scope within international banking organizations for concerted monitoring of reputational risks.
- IOSCO³ also undertook to put in place a multilateral Memorandum of Understanding (MoU) paving the way for consultation, cooperation and exchange of information between the securities exchange supervisory authorities of the signatory states. The SFBC is taking an active role in these discussions, which in principle should lead to the memorandum entering the consultative phase within IOSCO by the end of May 2002.

Finally, the SFBC would like to draw attention to the efforts made by the banks that form the Wolfsberg Group, including UBS AG and Credit Suisse Group, which on 25 January 2002 adopted a number of principles relating to the battle against the funding of terrorist activities⁴, which they undertake to observe in their business activities.

Conclusion

The SFBC has been obliged to mobilize significant resources to deal with the consequences of the terrorist attacks carried out on 11 September 2001, notably through an ad hoc internal structure set up to coordinate measures and conduct inquiries. SFBC employees devoted roughly 230 working days to this structure between September 2001 and mid-February 2002. The SFBC, in conjunction with the leading players in the Swiss financial services industry, has therefore been able to demonstrate that Switzerland has at its disposal all the instruments required to combat the funding of terrorism. The SFBC is engaged at both national and international level in formulating measures to improve the mechanisms designed to prevent abuse of the international financial system to fund terrorism. The SFBC will continue to do its utmost to strengthen interna-

² http://www1.oecd.org/fatf/TerFinance_fr.htm

³ <http://www.iosco.org/press/presscomm011012-fr.html>

⁴ <http://www.wolfsberg-principles.com>



Eidgenössische Bankenkommission
Commission fédérale des banques
Commissione federale delle banche
Swiss Federal Banking Commission

tional cooperation in this area in order to make it plain that Switzerland is not a refuge for assets linked to terrorism.

Even after concluding investigations into insider trading by terrorists, combating the abuse of financial systems for funding terrorism will remain an important task of the SFBC which will continue to be given top priority both in operational and regulatory activities in national and international contexts.