

“A nut too hard to crack”: Swiss banking secrecy and the international campaign for the automatic exchange of information in tax matters

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Abstract: Swiss banking secrecy withstood international criticism for several decades. Yet after 2008 the Swiss Government made a series of major concessions that have dramatically restricted the scope of banking secrecy despite the Swiss Finance Minister’s proclamation in early 2008 that Swiss banking secrecy would be “a nut too hard to crack”. This article submits that two causal mechanisms led to the restriction of Swiss banking secrecy. First, the centrality of the U.S. financial market allows the USA to impose certain rules on foreign banks that make them subject to the U.S. legal system even if these regulations are at odds with other countries’ regulations. Having violated these rules, some major Swiss banks repeatedly faced the threat of an indictment that could have led to bankruptcy, thus leaving the Swiss Government little choice but to make concessions on banking secrecy. Second, countries and organisations critical of banking secrecy took advantage of the investigations by U.S. authorities against Swiss banks to launch a new campaign for more information exchange in tax matters. Developing new global standards that increasingly rule out any form of banking secrecy the OECD started new rounds of blacklisting of countries that do not satisfy these standards. Thereby, the OECD benefitted from the fact that the conflict with the USA had tarnished Switzerland’s reputation as an offshore financial centre, which made it difficult for Switzerland to win the rhetorical contest against the supporters of increased information exchange.

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Introduction

Sources of financial intransparency such as banking secrecy have long been identified as a central problem in global economic governance. Due to banking secrecy, governments may have insufficient or incomplete knowledge of taxable assets that are held abroad. As a result, owners of such assets may attempt to evade taxation by not disclosing the ownership of assets or their real size. Banking secrecy exists in many countries and comes in many forms. However, for good reasons, banking secrecy is often associated with Switzerland where it has a long history (Palan et al. 2010: 107-12) and whose banks manage approximately one fourth of total global offshore wealth (BCG 2013: 12). Of course, offshore financial centres may attract clients for many reasons such as the quality or cost of services.¹ However, in presence of financial intransparency and hence insufficient government control offshore financial centres provide opportunities to hide assets.

Swiss banking secrecy is based on two pillars: First, banking secrecy concerns regulations that “strengthen the normal contractual obligation of confidentiality between a bank and its customer by providing criminal penalties to prohibit banks from revealing the existence of an account or disclosing account information without the owner’s consent” (Palan et al. 2010: 249). For instance, the 1934 Banking Act criminalized the breach of banking secrecy by introducing fines of up to 50’000 CHF or up to six months of prison (today 250’000 CHF and three years of prison). Second, banking secrecy concerns the rules that regulate who can legally access account information without violating banking secrecy. Importantly, under certain conditions, Swiss authorities can access all data and possibly even share the information with other states in accordance with international agreements (e.g. in case of money laundering). However, Switzerland is comparatively reluctant to provide international administrative assistance. Most importantly, Switzerland has been a major opponent of a system of automatic exchange of information (AEOI) in tax matters.

For many decades Switzerland has faced international pressure for its banking secrecy laws. However, Switzerland refused to make any significant concessions, pointing to its right as sovereign state to determine its own tax laws. Recent examples of successful resistance in the face of international pressure include the introduction of the EU Tax Savings Directive and

¹ Despite banking secrecy being challenged, Swiss banks were able to attract 2.2 trillion USD of offshore wealth in 2012, about as much as the Channel Islands, Dublin, Hong Kong and Singapore combined (BCG 2013: 11).

the OECD campaign against harmful tax competition. Facing renewed international criticism after a banking scandal in early 2008, the Swiss Finance Minister noted in March 2008 that Swiss banking secrecy would be once again “a nut too hard to crack” (Spiegel Online 2008a). As it turned out, he was wrong. In June 2013, after having made several important concessions in the preceding years, the Swiss Government informed that it would be willing to accept an AEOI regime if it were introduced as a global standard (Neue Zürcher Zeitung 2013).

How can we explain this sudden turn of events given the many decades of successful resistance in the face of more powerful opponents? In this paper I submit that two causal mechanisms led to the reform of Swiss banking secrecy. First, the centrality of the U.S. financial market forces globally active banks to participate in the U.S.-controlled, dollar-based financial system. This ‘structural power’ allows the USA to impose certain rules on banks that make them to a certain extent subject to the U.S. legal system even if these regulations are at odds with another countries’ regulations. Having violated U.S. rules but not Swiss ones, some Swiss banks found themselves caught between Swiss banking secrecy laws that impose confidentiality requirements and U.S. authorities’ demands for the disclosure of confidential client files. This conflict put Switzerland in a tough spot. An indictment by U.S. criminal authorities might have endangered the banks’ survival, which, given the banks’ size, Switzerland might not have been able to afford. Hence, Switzerland agreed to lift banking secrecy to resolve the bilateral conflict with the USA.

Second, international organisations and countries critical of banking secrecy took advantage of these investigations and the new political climate after the 2007/8 global financial crisis to launch a new campaign for more exchange of information in tax matters. These actors began to develop what they consider to be new global standards that leave no room for banking secrecy and subsequently blacklisted all countries that do not satisfy these standards. Through blacklisting, actors can tarnish a country’s reputation and force them to act. However, blacklisting does not work without a convincing argument why some rules form a global standard and why some states fail to satisfy this standard and therefore deserve to be blacklisted.

It is with regard to the legitimacy of these standards that the investigations against Swiss banks but also the global financial crisis are important. U.S. structural power forced some

Swiss banks to disclose information about their activities that showed to the world that they, or at least some of their client managers, circumvented regulations in problematic ways, thereby tarnishing the reputation of banking secrecy and by extension Switzerland. In addition, the global financial crisis led to the creation of a new international forum, the G20 summits, to improve cooperation on matters pertaining to the international financial system. The G20's opposition to banking secrecy gave further legitimacy to the OECD's campaign for an AEOI regime. Combined with the reputational damage suffered by Switzerland, the OECD could now make an unprecedented step in its fight against financial intransparency: blacklist some of its own members to force them to comply with a new and evolving global standard that increasingly rules out any form of banking secrecy.

This article makes three contributions to the literature on global economic governance and financial intransparency. First, it shows how structural power enables certain countries, in particular the USA, to get targeted countries to cooperate and adapt their regulations (Drezner 2007). Hence, while collective action problems in the field of finance and taxation may be abundant (Helleiner 1994; Rixen 2013), the conflict between Switzerland and the USA demonstrates that great power politics still matters. Second, the article documents the relevance of public blacklisting by international organisations as a means of bringing compliance in otherwise defiant states (Sharman 2009). In particular, it demonstrates that blacklisting can be a successful strategy even in the case of relatively influential and rich Western democracies such as Switzerland. However, the legitimacy of organisations producing the blacklists and the reputation of states that *are to be* blacklisted are crucial variables affecting the success of blacklisting strategies. Put differently, blacklisting is a particularly successful strategy if the countries to be blacklisted have already suffered reputational damage that makes it difficult for them to question the blacklists' legitimacy. Finally, the article analyses recent reforms of banking secrecy in Switzerland, which are of high practical and symbolic importance. Not only do Swiss banks manage approximately one fourth of total global offshore wealth, Switzerland is also considered the "old grand-daddy of tax havens" (Finkelstein 1999: 6).

Methodologically, this article uses explaining-outcome process-tracing (Beach and Pedersen 2013) to analyse recent restrictions of Swiss banking secrecy. The goal is to establish a minimally sufficient explanation for why a certain outcome was produced. This method is typically used to explain puzzling historical outcomes such as the sudden restriction of Swiss

baking secrecy after many decades of successful resistance. The empirical information has been collected from several sources, in particular official documents, public statements by involved actors, expert interviews and newspaper articles.

This paper is structured as follows. The next section reviews the literature on the politics of financial intransparency and discusses the two causal mechanisms that led to the restriction of Swiss banking secrecy. Subsequently, I use process tracing to analyse the bilateral conflict between Switzerland and the USA before I turn to developments on the global level, in particular with regard to the OECD. A final section summarizes the argument and briefly discusses what these developments mean for financial intransparency and global economic governance.

The challenge of financial intransparency

Financial intransparency denotes situations in which offshore financial centres do not ensure that the consequences of the structures they facilitate are reported where these consequences arise (Murphy and Sagar 2009: 8). A prominent source of financial intransparency is banking secrecy, which concerns regulations that restrict the access of public authorities to bank client files. As a consequence, clients of banks in such secrecy jurisdictions can trust their banks to keep their files outside public scrutiny, which opens up possibilities for illegal activities such as tax evasion (Palan 2002).

Since the early 1980s, multilateral efforts to curb tax evasion have accelerated (Eden and Kudrle 2005), resulting most prominently in the EU Tax Savings Directive (Holzinger 2005) and the OECD's 'Harmful Tax Competition' campaign (Webb 2004). Switzerland, however, has withstood these attempts to restrict its banking secrecy, only making marginal concessions and if possible restricted to bilateral agreements (Steinlin and Trampusch 2012). Hence, in 2005, after the end of the OECD's campaign against 'Harmful Tax Competition' and after the implementation of the EU Tax Savings Directive the president of the Swiss Banking Association proclaimed that "banking secrecy was secured for at least another 15 years" (Mazbouri et al. 2012: 506).

However, things turned out differently. From 2008 onwards Switzerland once again faced massive international pressure to restrict its banking secrecy. In June 2013, the Swiss

Government eventually signalled its willingness to accept an automatic exchange of information (AEOI) regime if it were made a global standard.

How can we explain this sudden turn of events after decades of opposition? I submit that differences in power resources have played a crucial role in forcing Switzerland to loosen its banking secrecy.² In most research, the exercise of power is typically associated with the direct interaction of specific actors. A country may force another one to change its policies by imposing economic sanctions or by using military means. However, the USA did not simply coerce the compliance of Switzerland. Although the means would have certainly been available, such actions would have been considered inappropriate and were therefore normatively ruled out (Sharman 2006: 49-64). Rather, structural power that works through social relations of constitution has played the key role.

Structural power concerns the production and reproduction of internally related positions of super- and subordination that actors occupy (Barnett and Duvall 2005: 55). Hence, structural power deals with the determination of social capacities and interests. Following Guzzini (2010: 8), social structures create co-constitutive relations between actors that are systematically biased in favour of some actors. Just as there can be no capital without labour and no master without slave, so can there be no centre without periphery. But in these co-constitutive relationships, power is not equally distributed. Rather, the master rules over the slave, while the centre dominates the periphery.

It is its central position in the dollar-based financial system (linked to the dollar clearing, the size of the U.S. financial market and the importance of U.S. financial services providers) that gives the USA structural power over more peripheral actors such as Switzerland (Helleiner 1994). This central position allows the USA to impose substantial conditions on foreign banks in return for allowing them to participate in the dollar-based financial system. An important example of such conditions is the Qualified Intermediary Programme (QIP) that forces foreign banks to serve as cross-border tax intermediaries (Grinberg 2012). Of course, other countries could enact similar programmes but these programmes would be likely to drive away business. As a result, most liberal economies shy away from such interventions but not

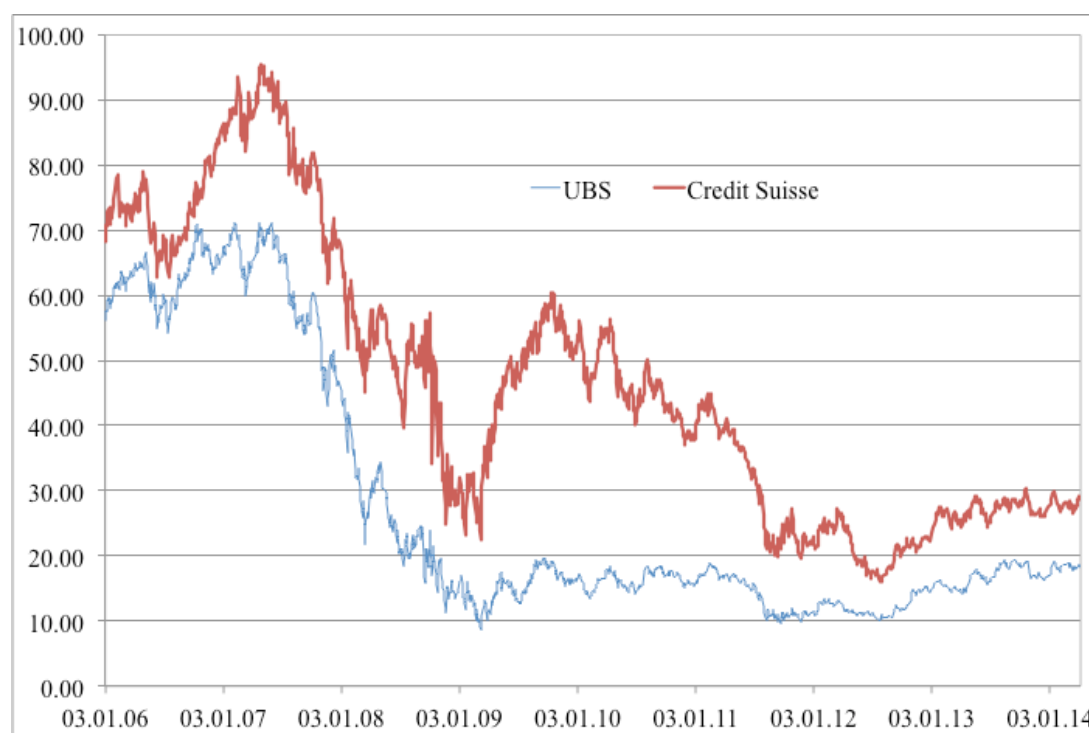
² Following Barnett and Duvall (2005: 42), I understand power as “the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate”.

the USA. Its centrality leaves globally active banks no choice but to satisfy all conditions for market access. Hence, its central position in the global financial system allows the USA to impose substantial conditions on globally active banks, thereby making them subject to the U.S. legal system even if U.S. regulations are at odds with other countries' regulations.

The regulation of international finance often leads to complex problems of extraterritorial jurisdiction. If U.S. courts demand from banks confidential client files but Swiss laws bar banks from sharing them, the banks are trapped between two legal systems. While in the U.S. legal system, courts and prosecutors are obliged to weigh U.S. national interest against another country's sovereignty to define its own laws, the possibility of a criminal indictment creates a considerable amount of uncertainty (Bondi 2010). Even more importantly, an indictment by U.S. authorities might also have substantial economic consequences because, for instance, the so-called ISDA master agreement that regulates over-the-counter trading between banks allows (or even encourages) banks to sever financial ties with indicted banks (Emmenegger 2014b). Put differently, an indictment is likely to sound the death knell for the concerned bank because no bank can afford being excluded from the dollar-based financial system that the USA controls.

The problem that a criminal indictment by U.S. authorities endangers a bank's existence is widely acknowledged. As *The Economist* (2013b) notes: "Bank executives contend that they have little choice but to accept punitive settlements because the alternative, facing a criminal indictment and going to court, could destroy their businesses, even if they are subsequently found not guilty." The economic risks of an indictment are particularly relevant in the conflict over Swiss banking secrecy because both major Swiss banks had been strongly affected by the recent global financial crisis. As Figure 1 shows, the share prices of the two major Swiss banks collapsed from more than 70 CHF in summer 2007 to around 20 CHF in summer 2008 in the case of the UBS and 30 CHF in spring 2009 in the case of Credit Suisse. Hence, these banks may not have survived an indictment.

Figure 1: Share prices in CHF (SWX Europe) of UBS and Credit Suisse (2006 to March 2014)



Source: http://www.ubs.com/global/en/about_ubs/investor_relations/share_information/charts.html
(accessed on April 8, 2014)

In sum, structural power ultimately allowed the USA to use a simple mechanism to force the Swiss Government to make concessions. They could simply ‘threat’ to pursue an indictment, knowing that an indictment would endanger the economic survival of even a major bank, which is a risk the Swiss Government would be unlikely to take. Importantly, these instruments to increase pressure on foreign banks were not available before 2000. Only with the creation of the QIP did the USA have the instruments to threaten the Swiss Government into submission.

The dispute between Switzerland and the USA concerned a bilateral conflict.³ How did it suddenly turn into a multilateral project to increase transparency and exchange of information in tax matters? To answer this question, we need to consider the second mechanism that led to the reform of Swiss banking secrecy.

³ See Abdelal (2007) on the USA’s preference for bilateral over multilateral agreements.

The bilateral conflict between Switzerland and the USA opened a window of opportunity for other long-standing critics of Swiss banking secrecy. In particular, the OECD took advantage of the conflict to restart its campaign for information exchange in tax matters. Actors like the OECD that present themselves to be impartial rational-legal bureaucracies (Sharman 2006; Mahon and McBride 2009) cannot wield structural power to enforce change. However, such actors have other forms of power at their disposal.

Actors like the OECD can exercise power by defining global standards and blacklisting countries that do not live up to this standard (and are therefore ‘uncooperative’). Through the creation of blacklists, the OECD can tarnish a country’s reputation, which is “the shared totality of thoughts and associations that actors hold for one another” (Sharman 2006: 6). In the case of offshore financial centres, reputation is crucial. According to Sharman (2006: 102), “a reputation as a safe and well-regulated destination for investors’ funds is the single most important factor in attracting outside investment”. The blacklisting as uncooperative financial centres damages this reputation and forces them to act. Consequently, in the case of the OECD campaign against harmful tax competition, the blacklisting of countries as tax havens led most of them to immediately adapt their regulations to be removed from the list.

Blacklisting is particularly effective if large parts of society are not engaged in the provision of financial services but are nevertheless concerned about their country’s reputation (Sharman 2009).⁴ This is particularly true for a country like Switzerland that is strongly reliant on export, has an important tourism sector and hosts several important international organisations.

However, blacklisting does not work without convincing arguments why some states fail to satisfy certain global standards and therefore ‘deserve’ to be blacklisted. It is here where developments in the USA and on the international level became intertwined in a way that made it difficult for Switzerland to save its banking secrecy. Structural power allowed the USA to impose regulations (in 2001) that forced foreign banks to abandon banking secrecy in their dealings with U.S. clients or stop doing business with U.S. securities even if these banks

⁴ In Switzerland, the banking sector accounts for ‘only’ 6 per cent of value added of the Swiss economy. Hence, the banking sector is for instance only marginally more important than the insurance sector (5 per cent). URL: http://www.swissbanking.org/en/facts_figures.htm (accessed on April 18, 2014).

were in fact located in foreign countries. Some Swiss banks, or at least some of their client managers, did not want to abandon this business with U.S. clients, so they circumvented regulations in problematic ways. When they were caught in the act, the following investigations exposed sufficiently detailed information about these banks' business models to severely tarnish the reputation of these banks, banking secrecy and the country that made this business model possible. This reputational damage allowed other countries to push the OECD to make an unprecedented step in its fight against financial intransparency: blacklist some of its own members to force them to comply with a new and evolving global standard that increasingly rules out any form of banking secrecy.

In fact, the first time the OECD blacklisted tax havens, Switzerland (or any other OECD member) was not among them (OECD 1998). Nevertheless, this first blacklisting campaign structured subsequent events in important ways. Most importantly, the campaign provided the OECD with two crucial insights. First, the campaign demonstrated that blacklisting is a viable strategy to coerce countries to adapt regulations, at least if used against smaller countries that have no say in the creation of the blacklist (Webb 2004; Sharman 2009). Second, the campaign also demonstrated the fundamental problem of any blacklisting strategy: the selection of criteria that determine which country is to be blacklisted (Emmenegger 2014a).

Acknowledging the difficulty of establishing a clear definition of tax havens, the OECD noted that "attempts to provide a single definition of a 'tax haven' are bound to be unsuccessful" (1989: 20-21) and suggested that "the fact that a country offers itself as a place, or is perceived to be a place, to be used by nonresidents to escape tax in their country of residence may be sufficient to classify that jurisdiction as a tax haven" (OECD 1998: 21). But who decides how a country is perceived? Organisations like the OECD that decide by consensus procedures (Sharman 2006: 10) among its members are thus unlikely to blacklist its own members if definitions are so vague.⁵

⁵ Switzerland would not be the only member state the OECD would have to blacklist. According to the 2013 edition of the Financial Secrecy Index, five among the ten countries receiving the highest scores with regard to financial secrecy are OECD member states (Tax Justice Network 2013). In fact, there is mounting evidence that OECD member states are major sources of global financial intransparency and not only the small island states often identified as tax havens (Sharman 2011; Findley et al. 2012).

Indeed, the definition of tax havens used by the OECD in its first campaign was clearly biased against small island states and non-member states as it emphasized, among others, low nominal taxes and absence of economic activity. Blacklisted tax havens responded with accusations of hypocrisy (for leaving OECD members off the blacklist) and inconsistency (Sharman 2006).⁶ As a consequence, the OECD abandoned its focus on low nominal taxes and absence of economic activity and instead focused on two elements of its original tax haven definition that had been less challenged: lack of transparency and absence of effective exchange of relevant information. Thereby, the OECD campaign turned the international spotlight to offshore financial centres among OECD members such as Switzerland.⁷

‘Flexible’ and unclear definitions, however, have also advantages. Once the opportunity arrived, the OECD adapted its definition of tax havens and blacklisted countries that just a few months earlier were not considered tax havens. Two events were crucial in creating this ‘window of opportunity’. First, the dispute between the USA and Switzerland gave the OECD and countries critical of banking secrecy the opportunity to point to activities by Swiss banks in supporting U.S. clients evading taxation. Second, the global financial crisis led to the creation of a new international forum, the G20 summits, to improve cooperation on matters pertaining to the international financial system. The G20’s opposition to banking secrecy gave legitimacy to the OECD’s campaign for an AEOI regime. Combined with the reputational damage suffered by Switzerland, the OECD could now legitimately blacklist some of its own members (but no G20 country) to force them to comply with a new and evolving global standard that increasingly rules out any form of banking secrecy.

In sum, the OECD, supported by countries critical of Swiss banking secrecy, used blacklisting as a mechanism to force the Swiss Government to a conditional agreement to an AEOI regime. However, the blacklisting of Switzerland became only possible after the conflict between Switzerland and the USA had already tarnished the Swiss reputation, thereby robbing the Swiss Government of the opportunity to challenge the new global standard by questioning its legitimacy.

⁶ In particular, the OECD failed to credibly convey why it strictly favours competition in general but not in areas in which OECD member states seem to be at a disadvantage.

⁷ The first OECD campaign subsequently came to naught after U.S. support for the campaign dwindled and offshore financial centres among the OECD members refused to make any concessions.

U.S. structural power and the *threat* to indict banks

This section examines how the USA used the *threat* to indict banks to force Switzerland to soften its banking secrecy. Swiss banking secrecy has always been a thorn in the U.S. authorities' side. At multiple times they have demanded the relaxation of banking secrecy. Typically, U.S. pressure reached its high points during debates about the role of Swiss banks in World War 2 or organised crime (Vogler 2005). Then, and at a few other times, Switzerland agreed to soften its banking secrecy. However, these concessions were always rather marginal. They never challenged the core of banking secrecy (Steinlin and Trampusch 2012).

This situation has changed dramatically in recent years (see Table A1 in the Appendix for a chronological overview of major events). Swiss authorities have sent 4'700 client files of U.S. citizens suspected of tax fraud to U.S. authorities in 2009, they have agreed to provide international administrative assistance also in case of tax evasion, they now allow group requests that do not presuppose that the suspected individual can be identified by name and account and they have ratified the Foreign Account Tax Compliance Act (FATCA) in September 2013, which forces Swiss banks to directly send all requested information on U.S. clients (if these clients agree) to the U.S. Internal Revenue Service (IRS). If clients do not agree to have their data sent directly, the IRS can request them by means of administrative assistance. Either way, the IRS is getting access to the requested information. Finally, Swiss banks have agreed to participate in a punitive programme that forces them to submit further information on client relations and pay substantial penalties.

Why this dramatic change in just a few years after a decades-long struggle that led to little change? I argue that the USA used the *threat* to indict and thereby to possibly bankrupt banks to force Switzerland to loosen its banking secrecy. This threat was made credible for three reasons.

First, U.S. structural power forced Swiss banks in 2001 to sign up to the QIP that imposes significant obligations on non-U.S. banks. The USA has a dominant position in finance that allows it to impose regulations on financial intermediaries that other states cannot without losing market share (Strange 1986). This structural power allowed the USA to create the QIP, which has two main goals: (1) to identify U.S. persons that hold beneficial interests in securities and (2) to ensure the appropriate withholding of U.S. tax from payments of U.S.-

source income to non-U.S. persons (Hanrehan and Shapiro 1998: 48). These new rules thus impose considerable information reporting requirements or, alternatively, a large withholding tax on all U.S.-source income. However, non-U.S. banks could eliminate some of these requirements by applying for the status of a qualified intermediary. As a qualified intermediary, banks would ultimately take care of the information collection by determining “which of its customers are US persons subject to information sharing, and which are non-US persons entitled to reduced rates of withholding tax under a treaty or statute” (Hanrehan and Shapiro 1998: 48), thereby reducing paperwork and keeping client names confidential.

For Swiss banks the QIP created a difficult choice: They would have to either lift the veil of secrecy in case of U.S. clients, pay a substantial withholding tax or stop trading U.S. securities on behalf of any of their clients. In return, as qualified intermediaries, they could continue to trade U.S. securities on behalf of non-U.S. clients without disclosing their identity (and in case of a double treaty agreement without imposing a withholding tax). However, there was a loophole. Consistent with U.S. law, the QIP defined the beneficial owner of an account to include corporations (Morse 2012: 533). The Swiss bank UBS used this loophole to continue to service U.S. clients that were interested in trading U.S. securities but refused to have their identities communicated to the IRS. As Levin and Coleman (2008) document, UBS assisted its U.S. clients in structuring their accounts to avoid QIP reporting requirements by channelling the capital flows through offshore corporations, trusts and foundations.

Second, the “whistle-blowing” by an UBS employee in 2007 gave U.S. authorities detailed knowledge of the strategies UBS used to assist U.S. clients in avoiding QIP reporting requirements (Hässig 2010). Structures based on secrecy are vulnerable to whistle-blowers. Data on intransparent bank activities were available before but banks could always argue that the data were incomplete and faulty, deny any misconduct but still refuse cooperation in investigations and ultimately highlight that the data’s availability was the result of theft. The situation, however, was different in this case. Not only was the whistle-blower himself involved in these activities (and subsequently sentenced to 40 months in prison for his role in assisting tax evasion but also awarded 104 million USD by the IRS), the exposed activities were also violating the rules of the QIP. Put differently, while in the past banks could always argue that they were not responsible for tax compliance of their clients, their new status as qualified intermediary forced them to accept this responsibility.

The whistle-blower's testimony gave U.S. authorities enough material to arrest the head of UBS wealth management in the USA in April 2008. U.S. authorities subsequently also filed charges against the head of UBS global wealth management who was declared a fugitive in January 2009 after he had failed to respond to the indictment. In July 2008 the CFO of UBS global wealth management participated in a Senate hearing and admitted wrongdoing on the part of the UBS. He also informed that UBS had begun to shut down its offshore business in the USA. In an interview after the Senate hearing, he described his role as going to his knees on behalf of the UBS in front of the Senate, although he insisted that the problem was first and foremost a compliance failure and that the main fault lied with some client managers and not the bank (Weltwoche 2008).

Third, the power advantage of the USA over Switzerland was strengthened by the UBS' economic struggles (see Figure 1), which forced the bank to request state help in October 2008. Given the bank's size and its important role also in the domestic economy, the Swiss Government had little choice but come to the aid of UBS (FINMA 2009). To improve the UBS' liquidity, UBS was allowed to offload its illiquid assets to a special purpose vehicle that received a credit of 25.8 billion USD from the Swiss National Bank, while the bank received 6 billion USD of equity capital from the Swiss Government to help finance its activities (Passardi and Jans 2011: 35). Hence, by the end of 2008 government intervention was keeping the biggest Swiss bank afloat, while the Swiss state now owned a considerable number of UBS shares. As a result, the Swiss Government had a very strong interest in finding a solution to end UBS' conflict with U.S. authorities.

As a result of the investigations against UBS, there was the constant threat of an indictment that would have threatened UBS' existence. An indictment is a written accusation that the indicted company has committed an act that is punishable by law. Crucially, an indictment indicates that a competent body has come to the conclusion that there is sufficient probability that the accused company has committed the crime. After an indictment has been served, the public prosecutor can continue to collect evidence against the accused company before the case is subject to trial in court. Hence, an indictment indicates only that the public authorities are investigating against a company. Nevertheless, an indictment typically sounds the death knell for the accused company (The Economist 2013b; Emmenegger 2014b). Of course, it is impossible to know whether an indictment in the case of UBS would have indeed endangered the bank's existence because UBS accepted a punitive settlement to avoid an indictment. In

any case, the one (small) Swiss bank that was eventually indicted in February 2012 (Wegelin) immediately withdrew from business (and so did two more Swiss banks whose senior managers were indicted by U.S. authorities).

U.S. authorities had made it clear that they wanted access to the client files of U.S. citizens. In July 2008 a district court allowed the IRS to serve a “John Doe” summons on UBS, requesting 19’000 client files (Bondi 2010: 8) but due to banking secrecy the Swiss Government did not allow UBS to comply with this request.⁸ In parallel, the IRS requested administrative assistance to get access to data on U.S. clients of UBS but by February 2009 Switzerland had agreed to administrative assistance, due to the time-consuming procedure, in only 26 cases (Schaub 2011: 214-215).

In late 2008 the U.S. Department of Justice (DoJ) offered UBS a deferred prosecution agreement (DPA). In return, UBS would have to admit to helping U.S. clients avoid paying taxes, pay a fine of 780 million USD and disclose the names of approximately 250 account holders to the IRS (Bondi 2010: 9; Schaub 2011: 212-213). The Swiss Government signalled agreement but it still had the problem of how to send client files without violating banking secrecy. Hence, the process dragged on. In February 2009 the DoJ lost patience and openly threatened to indict the bank. In a letter to UBS from February 17, 2009, the DoJ wrote: “If UBS fails to enter into this deferred prosecution agreement with the Department of Justice by February 18, 2009, the trial team will immediately seek authorization to obtain a criminal indictment against the bank” (cited in GPK 2010: 3361).

It is unclear whether the DoJ would have risked the collapse of another major global bank in the midst of the global financial crisis (Hässig 2010: 160-164; Schaub 2011: 210-211). However, the threat worked in the sense that the Swiss Financial Market Supervisory Authority (FINMA) immediately agreed to use its emergency powers to send the requested client files. On February 18, 2009, UBS could enter into a DPA with the DoJ (Bondi 2010: 9). The Swiss Government argued that it had little choice but to accept the agreement. The Finance Minister justified the decision in a press conference in February 2009 by asking

⁸ “John Doe” summons are issued to third parties to provide information on unknown taxpayers with potential tax liabilities. Lacking documentation of tax fraud by a clearly identified individual, Switzerland refuses to provide administrative assistance in case of “John Doe” summons due to banking secrecy.

rhetorically “how are we supposed to explain to tax payers the negative consequences the indictment is said to have according to the Swiss Financial Market Supervisory Authority, UBS and even the U.S. authorities” (cited in Hässig 2010: 154). The leading Swiss daily described the decision as a “capitulation” in the conflict with the USA (Neue Zürcher Zeitung 2009).⁹

The U.S. authorities, however, did not stop here. Their major interest remained in the client files. Hence, the day after entering into the DPA, the IRS made a surprising move by requesting the U.S. district court that had issued the “John Doe” summons in July 2008 to enforce the summons. What is more, the IRS now requested 52’000 client files (Bondi 2010: 2). This move was possible because the DPA only concerned the (criminal) investigations of the DoJ but not the (administrative) request by the IRS. Thus, the day after the DPA, the Damocles Sword was again hanging over UBS’ head. On February 24, 2009, UBS shares prices fell for the first time below 10 CHF (see Figure 1).

Again, it is unclear whether the district court would have enforced the summons because courts have to consider the national sovereignty of Switzerland and the fact that UBS was bound by banking secrecy laws (Bondi 2010: 13-21; Schaub 2011: 216-238). However, given the continued weakness of UBS, the Swiss Government was not willing to take any risks. On August 19, 2009, the USA and Switzerland signed an agreement in which Switzerland agreed to give the U.S. access to 4’450 client files and provide administrative assistance also in case of tax evasion. This agreement must be considered a compromise, not least because the IRS settled for 4’450 client files. What is more, the agreement allowed Swiss authorities to screen and select the client files to ensure that only files of clients who had committed tax fraud were sent to the U.S. authorities. Nevertheless, the Swiss Federal Administrative Court rejected the agreement in January 2010 for violating banking secrecy legislation, a court decision that had to be overruled by a parliamentary decision in June 2010 that turned the agreement into an interstate treaty (Sithian 2011:691-693).

⁹ In July 2011, the Swiss Federal Supreme Court decided that handing over 285 client files to the U.S. authorities was legal because the Swiss Financial Market Supervisory Authority (FINMA) had good reason to “assume without violating the law that [...] an indictment would have led to the bankruptcy of the bank which in turn would have caused serious and virtually uncontrollable economic repercussions for Switzerland” (Swiss Federal Supreme Court 2011).

After this new settlement, U.S. authorities had data on 4'700 UBS clients. In addition, as part of the settlement, U.S. authorities received information about the banks to which former UBS clients had transferred their accounts after the DoJ had started its investigations. Finally, as part of an offshore voluntary disclosure programme that lasted from March 2009 to October 2009, almost 15'000 U.S. citizens came forward to regularize their accounts. Further 18'000 U.S. citizens came forward in the second offshore voluntary disclosure programme that lasted from February 2011 to September 2011. Hence, the DoJ and the IRS had enough material to continue their investigations against other banks. By the end of 2012 it was clear that U.S. authorities were investigating against 14 other Swiss banks including Credit Suisse.

Again U.S. authorities requested client files but the Swiss Government was reluctant to share information. Once again confronted with the threat that some Swiss banks might be indicted, the Swiss Government made some concessions such as sending bank documents that neither revealed the clients' nor the employees' identities, thereby insisting that client files can only be obtained through international administrative assistance. Not satisfied with the progress, the DoJ indicted the small Swiss private bank Wegelin in February 2012, which resulted in a fire sale and the bank's collapse. After the indictment, The Economist (2012) noted that Wegelin was "a mere pawn in a much bigger game played between Switzerland and America over banking secrecy and tax fraud". In an interview, a Wegelin director pointed to American structural power and its ability to sanction and noted that "by participating in a U.S.-controlled, dollar-based financial system banks become de facto subject to the U.S. legal system" (Weltwoche 2013) even if these banks have no representation in the USA (as in the case of Wegelin).

After this renewed demonstration of power, Switzerland made a series of further concessions. In March 2012, Switzerland accepted group requests in case of administrative assistance, allowed banks to send files to U.S. authorities that do not blacken the names of employees (April 2012), agreed in principle on the implementation of FATCA (December 2012), which was subsequently ratified in September 2013, and finally reached an agreement with the USA on a programme that would allow Swiss banks to regularize accounts of U.S. clients by both providing data as well as paying fines (August 2013). Together with the implementation of FATCA, these developments imply that banking secrecy de facto ceased to exist in the relationship between U.S. clients and Swiss banks.

The OECD and the *blacklisting* of countries

In the OECD campaign against harmful tax competition Switzerland was not classified as a tax haven (OECD 1998). In contrast, the new OECD campaign, including a new list of uncooperative financial centres published in April 2009, did not spare Switzerland (OECD 2009). The OECD listed Switzerland as a jurisdiction that has committed to the internationally agreed tax standard but has not yet substantially implemented it.

Importantly, however, this new blacklist had been first disseminated as a draft before it was officially presented at the G20 meeting in London on April 2, 2009. On the draft version of March 5, 2009, Switzerland was listed as an uncooperative financial centre and thus blacklisted. Switzerland responded immediately and dropped the distinction between tax fraud and tax evasion in case of international administrative assistance (on March 13, 2009). As a consequence, on the new draft blacklist, disseminated on March 14, 2009, Switzerland was no longer classified as an uncooperative financial centre but still remained on the ‘grey list’ because it had not signed a sufficient number of double taxation agreements that contained these new regulations concerning international administrative assistance in case of tax evasion. After having signed twelve such new agreements, Switzerland was removed from the ‘grey list’ in September 2009 (Steinlin and Trampusch 2012; Emmenegger 2014a).

The 2009 blacklist was not the last one of its kind. The OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes currently (May 2014) lists Switzerland as a jurisdiction “needing improvement” in three specific areas to advance to the second round of the peer-review process (OECD 2013). Shortly after being listed, the Swiss Government has committed to implement the three necessary changes to be removed from the list.

Why did the OECD suddenly turn on some of its own members? What made the OECD drop its emphasis on consensus among its members? Not surprisingly, the Swiss Government reacted irritated. In a public statement, the Finance Minister questioned the criteria for being included on the list and noted that “the fact that Switzerland as a founding member of the OECD was never included in the discussions on drawing up lists is particularly strange” (The

Daily Telegraph 2009). While the criteria for inclusion are indeed unclear¹⁰, it is even more striking that the OECD completely changed its approach to policy-making. Instead of trying to create consensus among its members and then act from there, the OECD adopted a more confrontational approach.

In the following I submit that it was Switzerland's tarnished reputation following two banking scandals that ultimately allowed the OECD to adopt a more confrontational stance. In parallel to the conflict between the USA and UBS, Europe had its own high profile scandal. On February 2008 German authorities searched the house of the chairman of Deutsche Post, the former state-owned German postal services. The chairman subsequently resigned from office and was later given a suspended sentence of two years imprisonment and fined one million EUR for tax evasion (Spiegel Online 2009a). German authorities detected the tax evasion case when looking through data they had obtained from a former employee of the private bank LGT. Although LGT is a Liechtenstein-based bank, attention quickly turned to Switzerland because of the two countries' strongly interconnected financial services industries (Palan et al. 2010: 115-122). It was in this context that the Swiss Finance Minister remarked that Swiss banking secrecy would be "a nut too hard to crack" (Spiegel Online 2008a).

When in July 2008 the U.S. Senate Permanent Committee on Investigations published its report on tax havens (Levin and Coleman 2008), it emphasized the cases of LGT and UBS. In these hearings, as mentioned above, the CFO of UBS global wealth management admitted wrongdoing on the part of the UBS and announced that UBS would shut down its offshore business with U.S. clients. Nevertheless, U.S. investigations continued, ultimately resulting in a DPA in February 2009 in return for which UBS had to admit helping U.S. clients avoid paying taxes, pay a fine and disclose the names of some clients to the U.S. authorities.

International pressure on Swiss banking secrecy increased in the fall of 2008. On October 21, 2008 the finance ministers of 17 (out of then 30) OECD member-states and without Swiss participation gathered for an unofficial meeting at OECD headquarters in Paris to discuss joint strategies against tax havens. Following the meeting, the French and German finance ministers demanded a new blacklist of jurisdictions that facilitate tax evasion such as

¹⁰ For instance, it is difficult to explain how the country ranked no. 1 in the 2009 edition of the Tax Justice Network's financial secrecy index, the USA, somehow remained off the 2009 list of uncooperative financial centres (Emmenegger 2014a).

Switzerland. The OECD general secretary Gurria concurred by noting that the “fight against tax havens and for financial transparency has absolute priority” (Spiegel Online 2008b). A new OECD blacklist was announced for 2009. At the G20 meeting in Washington on November 14-15, 2008, the fight against tax evasion was also a major topic. Although created in response to the global financial crisis, the G20 called in its Washington Declaration (2008) for more information sharing and called countries with banking secrecy to commit to international standards with regard to information exchange.

Two things are particularly striking about these developments: First, while it seems clear that financial intransparency has been a major contributing factor to the global financial crisis (Engelen et al. 2011), it is less obvious what role Swiss-style banking secrecy has played. Swiss banking secrecy is typically accused of facilitating tax evasion of individuals (hence the label private banking). However, Swiss banking secrecy is less central to tax minimisation strategies implemented through residential mortgage-backed securitisation (Wainwright 2011) or the excessive use of intransparent derivative contracts that obfuscate the real extent of financial risks taken (Engelen et al. 2011). Rather, it seems as if long-term opponents of Swiss banking secrecy such as France and Germany but also the OECD took advantage of the opportunity provided by the global financial crisis to increase pressure on secrecy jurisdictions and in parallel to deal with another problem: the sovereign debt crisis that followed the global financial crisis (Eccleston and Woodward 2014).

Second, the OECD openly joined some of its members to take action against the interests of some other OECD members. On the resulting blacklist published in April 2009, Austria, Belgium, Luxembourg and Switzerland were listed as “other financial centres” that “have committed to the internationally agreed tax standard, but have not yet substantially implemented” it (OECD 2009). The OECD thus joined the G20 in the fight for information exchange, thereby emancipating itself from the consensus principle among its members that governed its decision-making but also limited its capacity to act (Marcussen 2004). Hence, the OECD has turned itself from self-proclaimed “an impartial, expert, rational-legal bureaucracy” (Sharman 2006: 10) into a much more political actor.¹¹

¹¹ Note that the G20 provides funding for the OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes, while the OECD submits its Progress Reports to the G20 Leaders (OECD 2013) although a majority of OECD members are not members of G20, while almost half of the G20 countries are not OECD members.

This new proactive stance of the OECD was not the only change that redefined what is possible, probable and natural (Hayward 2000: 35). In 2009 it became increasingly clear that French and German authorities were buying stolen data carriers that contained client files of Swiss banks. Already the data that led to the investigations against the ex-CEO of Deutsche Post in early 2008 had been stolen (Spiegel Online 2009a). In summer 2009 reports about stolen data carriers mushroomed in European newspapers. In December 2009 the French Government informed that it obtained a stolen data carrier (however without paying for it), while in early 2010, the authorities of the German state North Rhine-Westphalia informed that they were actively buying stolen data carriers (Spiegel Online 2010). The Swiss Government expressed its irritation, wondering whether it is acceptable that democratic countries buy stolen data but to no avail. The announcements concerning stolen data carriers being bought were effective in the sense that they induced numerous French and German citizens to come forward to regularize their accounts. In April 2013, a German weekly reported that during the preceding three years more than 47'000 German citizens had turned themselves in (Die Zeit 2013).

The Swiss Government reacted to this new situation by proposing bilateral agreements on anonymous cross-border withholding taxes in December 2009. The proposal was relatively straightforward: By imposing a withholding tax, foreign clients of Swiss banks could regularize their assets while staying anonymous, foreign governments would receive the taxes they are entitled to, while Switzerland could avoid an AEOI regime that would put an end to banking secrecy (Grinberg 2012). Switzerland subsequently started bilateral negotiations and agreed on withholding tax regimes with Austria, Germany and Great Britain (however, the opposition controlled second chamber of the German parliament ultimately rejected the bilateral agreement in November 2012). In contrast, France rejected any such deal, while negotiations with Italy were slowed down by Italian domestic politics.

In any case, the Swiss withholding tax proposal was doomed to fail. By the time the Swiss withholding tax regime was launched (December 2009), the USA was about to pass FATCA (March 2010), which was a *direct reaction* to some of the loopholes in the QI agreement that the UBS and LGT scandals had exposed (Harvey 2010). In addition, the European Union had already begun pushing for a revision of European Union Tax Savings Directive with the goal of implementing AEOI among EU members and important third countries such as

Switzerland (November 2009). What is more, in January 2010 Belgium, one of the three EU members that had not accepted information exchange yet, switched to AEOI, thereby creating pressure on the remaining two EU members that insisted on a withholding tax: Austria and Luxembourg. The latter promptly signalled that they would be willing to accept discussions about AEOI if Switzerland were to join (Tages-Anzeiger 2010). As a result, interest in bilateral agreements with Switzerland was rapidly declining.

Hence, by 2011 Switzerland was under pressure from three different corners. Next to the ongoing conflict with the USA on the role of Swiss banks in furthering tax evasion, the OECD continued to push for more and better information exchange between national tax authorities. In July 2012 the OECD model agreement was extended to allow for group requests. In OECD internal discussions, Switzerland did not veto this change. The Swiss ambassador to the OECD later explained in an interview that the Swiss Government was responding to foreign pressure and that there was no point objecting to emerging global standards without support from a global alliance. Instead, the Swiss strategy was trying to influence how the emerging global standard would be implemented (Handelszeitung 2012). The Swiss Parliament subsequently ratified the new OECD standard in September 2012.

However, the pressure on Switzerland did not decrease, as new elements were added to the global standard and Switzerland continued to be deemed a jurisdiction “needing improvement” to advance to the second round of the peer-review process in the framework of the Global Forum on Transparency and Exchange of Information for Tax Purposes (OECD 2013). Once again, the Swiss Government committed to implement the changes needed to be removed from the list of uncooperative financial centres. Finally, in June 2012, the OECD announced that it had begun working on a concrete proposal on how to implement AEOI.

Just like the USA (bilaterally) and the OECD (multilaterally), the EU continued to push for a regional system of automatic exchange of information among EU members and certain third countries. In February 2012 the USA and five large EU members agreed on an intergovernmental approach to improve tax compliance and implement FATCA (Grinberg 2012: 306-307). After Switzerland had agreed in principle with the USA on the implementation of FATCA in December 2012, EU representatives explicitly welcomed the agreement and demanded the same kind of cooperation from Switzerland (Neue Zürcher Zeitung 2012). What is more, in December 2012, Luxembourg signalled readiness to give up

its opposition to AEOI within the EU Tax Savings Directive. Given the EU's 'most favoured nation clause', Luxembourg would not have been able to find an agreement with the USA on the implementation of FATCA without offering at least the same conditions to its fellow EU members. Austria and Luxembourg officially accepted AEOI in April 2013. However, their commitment was made conditional on the integration of Switzerland into the EU's system of AEOI (Spiegel Online 2013), thereby increasing pressure on Switzerland.

The Swiss Government finally started to come around in December 2012. In a press conference the Finance Minister presented the government's financial market strategy, which consisted of the aforementioned (but largely unsuccessful) withholding tax proposal and new due diligence regulations. In addition, the Finance Minister informed the media about the creation of a new expert group that was to develop strategies to improve the competitiveness of the Swiss financial sector given the new regulatory environment. In the subsequent Q&A, the Finance Minister mentioned, for the first time, the need to start considering AEOI as a possibility. The expert group finally presented its findings in June 2013. In the report, the expert group acknowledged the reputational damage already suffered and emphasized the importance of accepting international standards (Bericht der Expertengruppe 2013). It concluded by recommending AEOI to be accepted as part of a new global standard, in particular to avoid further international criticism, a suggestion that was subsequently also endorsed by the Swiss Government (Neue Zürcher Zeitung 2013). Although this decision does not yet put a definitive end to Swiss banking secrecy, it shows that Switzerland could no longer afford the reputational damage that continued resistance to AEOI had caused.

Conclusion

After many decades of successful resistance against international pressure Switzerland was forced to significantly soften its banking secrecy laws. Switzerland did so, first, in response to U.S. threats to indict UBS, Switzerland's biggest bank. Using its structural power as the most important financial market, the USA introduced the QIP (in 2001) to impose certain reporting requirements on foreign banks that are active in the U.S. financial market, thereby essentially removing banking secrecy in the case of Swiss banks dealing with U.S. clients. However, UBS circumvented some of these reporting requirements, a fact to which U.S. authorities were alerted by a whistle-blower. The resulting legal conflict ultimately forced Switzerland to lift the veil of secrecy in case of Swiss banks' U.S. clients because UBS – who had been

severely hit by the global financial crisis – was unlikely to be able to afford the exclusion from the U.S.-controlled, dollar-based financial system.

Not letting a good crisis go to waste, other countries took advantage of the US-Swiss conflict to push both the EU and the OECD to revive their efforts to create a system of AEOI. Using its power to redefine banking secrecy as being in violation of the new global standard in tax matters, the OECD repeatedly blacklisted Switzerland, thereby forcing Switzerland to make painful concessions that significantly restrict the scope of banking secrecy. Clearly, the EU and the OECD were trying to take advantage of the fact that the UBS scandal had tarnished Switzerland's reputation as an offshore financial centre, which made it difficult for Switzerland to win in a rhetorical contest against the supporters of increased information exchange.

Hence, this article demonstrates that public blacklisting can be successful as a means of brining compliance in otherwise defiant states if these states are concerned about their reputation. However, the strategy's effectiveness depends on a series of conditions. In particular, blacklisting works only if the countries to be blacklisted have already suffered some reputational damage that, first, makes it difficult for them to resist being blacklisted and, second, legitimatizes the blacklisting as such. Put differently, blacklists created by international organisations are particularly effective if they attest what others have already been suspecting. In the case of Swiss banking secrecy, the legal troubles of UBS in the USA but also the image of Switzerland as a tax haven nurtured by numerous movies as well as the increasing fiscal pressure following the sovereign debt crisis made the blacklisting of Switzerland look legitimate and therefore for Switzerland difficult to fight.

In addition, this article shows that even in a highly globalized sector such as finance, great power politics still matters (Drezner 2007). In its bilateral conflict with the USA, Switzerland did not give up its banking secrecy voluntarily. Rather, facing the possibility of indictments against Swiss banks that would exclude them from the U.S.-controlled, dollar-based financial system and thus ultimately bankrupt them, Switzerland agreed to make bilateral concessions in order to save of its banks. Hence, while it is certainly true that in the field of finance and taxation collective action problems are abundant (Helleiner 1994), U.S. structural should not be underestimated.

What do these developments mean for financial intransparency? Recent developments seem to indicate that the days of Swiss banking secrecy are numbered. There is a widespread mood in the country that AEOI is unavoidable and will become a reality on the regional if not global level. Hence, both the banking community as well as the expert group discussing the future of financial services in Switzerland have argued in favour of a proactive approach that tries to shape the development of the new global standard, while the Swiss Government and most major parties have accepted that banking secrecy in case of foreign clients of Swiss banks will soon disappear.

For advocates of global financial transparency this is good news, not least because Swiss agreement to curtail banking secrecy is of high symbolic value given its central role in offshore wealth management and reputation as the “old grand-daddy of tax havens” (Finkelstein 1999: 6). However, it would be premature to consider these developments to herald a new age of financial transparency because there are numerous other ways of creating financial transparency such as shell companies or anonymous trusts. Whether the countries that have led the campaign against Swiss-style banking secrecy will show equal vigour in their attempts to regulate shell companies and trusts is far from certain given that a considerable share of shell companies and trusts originate from the UK and the USA (Shaxson 2011).

What is more, there are also important questions to be asked about the implementation of regulations that are supposed to create financial transparency. As a recent series of field experiments have shown, it is easier to purchase anonymous shell companies in the USA and the UK than in classic tax havens such as the Cayman Islands or often criticized offshore financial centres such as Switzerland (Sharman 2011; Findley et al. 2012). Hence, it seems as if non-compliance with transparency regulations is considerably more widespread in OECD countries than in countries that are typically considered tax havens. These findings point to the important role of the implementation of international regulations.

Hence, the global campaign to increase financial transparency is and will continue to be an interesting case of global governance. The G20 was deliberately elevated in the wake of the global financial crisis to a “Leaders Forum” that allows for concerted action among the most powerful countries in times of crisis (Vestergaard 2011). When it proclaimed the end of banking secrecy in April 2009, it could speak with the authority of countries representing

almost 90% of the world's GDP. In a similar vein, the OECD's blacklisting was crucial to get Switzerland to reform its banking secrecy laws. Like the G20, the OECD is a club of rich and powerful countries that claims to provide a forum for deliberation (Marcussen 2004). But this is at best half of the truth. The OECD, like the G20, is first and foremost a club of countries that have certain economic and political interests. What is more, both 'clubs' are black boxes in the sense that it remains often very unclear how they arrive at certain political positions. Hence, the organizations pushing for more financial transparency suffer themselves from a considerable amount of intransparency. It will be interesting to observe whether these organizations will also be as willing to pursue the goal of financial transparency in areas that the financial sectors of its most powerful members specialize in.

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Appendix

Table A1: Chronological overview of major events (June 2007 to May 9, 2014)

Date	Conflict with USA	Conflict with OECD and European Union
Jun 07	Whistleblowing UBS	
Feb 08		LGT scandal
Mar 08		Switzerland rejects any concessions. Finance Minister calls banking secrecy “a nut too hard to crack”
Apr 08	Senior UBS manager arrested in Miami	
Jul 08	IRS requests John Doe summons (19’000 client files but Switzerland refuses to comply IRS sends request for administrative assistance Senate Hearing on LGT and UBS scandals, senior UBS manager admits compliance problems	
Oct 08	UBS receives state help US threatens to indict UBS	France and Germany demand new OECD blacklist
Nov 08	Senior UBS manager indicted	First G20 meeting: banking secrecy is criticized
Feb 09	UBS admits wrongdoing, pays fine (780 USD) and Swiss financial market supervisory authority uses its emergency power to send approx. 250 UBS client files IRS requests Joe Doe summons (52’000 additional client files)	EU welcomes US-Swiss agreement, expects same behaviour from Switzerland vis-à-vis EU
Mar 09	Swiss Government rejects IRS request US starts Offshore Voluntary Compliance Initiative (approx. 15’000 participants)	First OECD draft blacklist: Switzerland drops distinction between tax fraud and tax evasion and is moved to ‘greylist’
Apr 09		G20 meeting in London: Proclaims the end of banking secrecy EU Commission proposes automatic information exchange (AEOI) that would include Switzerland
Aug 09	UBS agreement (Switzerland sends 4450 client files via international administrative assistance)	Constant news about stolen data carriers
Sep 09		Switzerland is removed from ‘greylist’
Nov 09	UBS send data on where former U.S. clients of UBS left to after investigations against UBS started	
Dec 09		France informs that it has received a stolen data carrier Switzerland presents withholding tax proposal
Jan 10		Belgium adopts AEOI Austria and Luxembourg signal that they could accept information exchange if Switzerland also joins
Feb 10		Germany confirms that it is buying stolen data carriers
Mar 10		US parliament passes FATCA
Nov 10	IRS drops charges against UBS, but announces investigations against other Swiss banks	
Feb 11	Second Special (Offshore) Voluntary Disclosure Program (approx. 18’000	OECD demands further concessions - threatens with new list of uncooperative financial centres

	participants)	(Global Forum)
Jun 11		Switzerland does not pass the first round of the Global Forum
Jul 11		Swiss Government drafts law that allows for group requests EU Commission requests mandate to negotiate with Switzerland about AEOI
Sep 11	US requests client files from Credit Suisse (threats to sue) Swiss Government allows banks to send statistical data	Switzerland agrees on withholding tax deals with Germany, the UK and later Austria but immediate opposition in Germany
Dec 11	US requests data from Swiss banks, including data on employees (until end of December); Switzerland rejects demand	
Jan 12	Swiss Government allows sending of coded files to U.S. but no client files (names of clients and employees are blackened, decoding after reaching agreement) Third Offshore Voluntary Disclosure Program (open-ended)	
Feb 12	US authorities indict Wegelin Bank; Wegelin sells non-US business to Raiffeisen Bank, gives up banking business	USA joins France, Germany, Italy, Spain and UK to develop intergovernmental approach to FATCA/AEOI
Mar 12	Swiss Parliament accepts group requests from U.S. (new interpretation of 1996 Double Taxation Agreement)	
Apr 12	Swiss Government allows banks to send U.S. authorities data that do not blacken employees' names (but client names are still blackened)	Given continued German opposition to withholding tax agreement, Switzerland makes additional concessions
Jun 12	Joint Statement of USA and Switzerland on FATCA implementation	OECD starts working on proposal for AEOI
Jul 12		USA agrees with France, Germany, Italy, Spain and the UK on model intergovernmental agreement for FATCA OECD model agreement extended to include group requests (Switzerland does not oppose extension)
Aug 12	New U.S. request for U.S. client files of Credit Suisse	
Sep 12	IRS Whistle-blower Office awards UBS whistle-blower 104 million USD	Swiss Parliament accepts group requests in the framework of international administrative assistance
Nov 12		Germany rejects withholding tax agreement
Dec 12	USA and Switzerland agree on FATCA It is now clear that the U.S. investigates against 14 Swiss banks	EU welcomes FATCA agreement between USA and Switzerland Switzerland reiterates its preference for a withholding tax regime but the finance minister (for the first time) notes that the government is willing to talk about AEOI; Switzerland creates expert group to discuss future of Swiss financial sector Luxembourg announces negotiations with U.S. on FATCA (due to the EU's most favoured

		nation clause, Luxembourg gives up resistance to AEOI)
Jan 13	Wegelin Bank pleads guilty	For the first time, a major non-left Swiss party demands negotiations on AEOI
Mar 13	Swiss Government negotiates with U.S. authorities about possibilities to solve crisis (details about discussions are leaked: there will be no global solution; only bilateral agreements between banks and U.S. authorities)	Another major non-left Swiss party opens up to AEOI (together with the left parties opposing banking secrecy, these parties have a majority in the lower chamber of parliament and the government)
Apr 13		Austria and Luxembourg inform that they accept AEOI and demand to increase pressure on Switzerland to do so likewise G20 meeting demands AEOI IMF meeting: Swiss Government informs that it considers to accept AEOI if it becomes global standard
May 13	New U.S. data requests	EU Commission receives mandate to negotiate with Switzerland about revision of EU Tax Savings Directive
Jun 13		Expert group suggests accepting AEOI if it becomes a global standard (Swiss Government endorses report)
Aug 13	Agreement between USA and Switzerland on a programme that allows Swiss banks to regularize accounts in return for fine and data on clients	Swiss Government announces a reform that would allow Switzerland to advance to the next round in the Global Forum review process
Sep 13	Swiss Parliament ratifies FATCA	
Oct 13		Swiss Government receives mandate to talk with EU about revision of EU Tax Savings Directive (acknowledges that discussions will also be about AEOI) Switzerland signs international agreement on fighting tax evasion
Nov 13		Liechtenstein signals willingness to accept automatic exchange of information
Dec 13	More than one hundred Swiss banks opt to participate in the programme to regularize assets of their U.S. clients	
Feb 14	Credit Suisse pays fine (196 Mio USD) for having violated licence regulations in USA Senate Hearing on Credit Suisse, Credit Suisse CEO admits compliance problems	
Mar 14		Austria and Luxembourg officially accept AEOI in framework of EU Tax Savings Directive
May 14		OECD presents AEOI model agreement. Swiss Government repeats its commitment to introduce AEOI if it turns into an OECD standard

Source: Author's compilation.