

ONLINE APPENDIX: Additional Evidence for Codes (Structured by Episodes)

EPISODE 1a

Intensity of Indirect Compellence Attempts (Low)

Magnitude of Indirect Threats (High)

Threat to indict UBS:

[During a meeting between the DOJ and Swiss authorities at Zurich Airport on 15 July 2008]

“ . . . there is sufficient evidence to indict the bank. In this context, the DOJ representatives made it clear that it was not their intention to induce a collapse of the UBS. Yet, they requested broad and unlimited cooperation.” (GPK, 3270–3271)

15 Sept. 2008: DOJ e-mail: “The DOJ was convinced that an indictment of the UBS in the USA would lead to the bank being convicted.” (GPK, 3289–3290)

10 Oct. 2008: Kevin Downing: “The DOJ will soon have to decide whether to indict the UBS. . . . It will not be the aim of the DOJ to settle this legal conflict in an American court, even though they were confident that the DOJ would receive approval if this were to happen.” (GPK, 3296)

Substantiation of Indirect Intimidations (Low)

Intimidating messages:

17 Sept. 2008: U.S. Senate Permanent Subcommittee of Investigations (PSI) announces and publishes report: “tax haven banks and U.S. tax compliance.” (120 pages + 1000 page appendix)

17 July 2008/25 July 2008: U.S. Senate PSI hearings are featured globally in the media. Besides U.S. senators, senior members of the DOJ (Kevin O'Connor), IRS (Douglas Shulman), and UBS (Mark Branson, Martin Liechti) are present. The tricks of UBS in supporting tax evasion of U.S. citizens are detailed, and UBS bankers are pressured.

Senator Levine: “The documents and testimony that we are releasing today disclose a culture of secrecy and deception that we are determined to end, despite it being so strongly entrenched.” (PSI hearing 2008: 6, 17 July 2008)

O'Connor (DOJ): “While taxpayers who engage in tax evasion are subject to civil and criminal liability for their conduct, we are equally concerned about the role played by tax professionals and promoters in designing and implementing these schemes. . . . Holding these professionals accountable for their misconduct is necessary . . . we are pursuing criminal sanctions against such individuals and entities where and when appropriate.” (PSI hearing 2008: 14–15, 17 July 2008)

“Critical to every investigation of offshore activity is the ability to obtain evidence from a foreign country. . . . Unfortunately, we do not have co-operative agreements with every country. Moreover, not all co-operative agreements cover both civil and criminal matters. On occasion, MLATs exclude outright tax crimes altogether, while other MLATs and tax treaties are limited to particular instances in which we can allege specific kinds of fraud. In such circumstances, however, we will not be deterred. We will pursue other formal and informal methods of obtaining the foreign evidence we seek.” (PSI hearing 2008: 15, 17 July 2008)

Senator Coleman: “Make no mistake: Today’s hearing demonstrates forcefully that we will not relent in our pursuit of those who continue to mock our justice, our courts, and our tax system. . . .” (PSI hearing 2008: 51, 25 July 2008)

Senator Coleman: “I want to close, however, by speaking directly to those who should be worried: . . . Come forward and stop hiding. In one document, a foreign banker advised his American client to stop engaging in certain transactions so that the American authorities would not catch him. He said boldly, ‘Let sleeping dogs lie.’ Well, the dogs are no longer sleeping.” (PSI hearing 2008: 10, 17 July 2008)

Indictments of selected bankers and banks: N/A

Intensity of Compliance Petitions (Low)

Status of Petitioners (Low)

Rank of bank representative / Size of petitioning bank:

“Swiss government is approached by members of UBS’ legal department [rather than by top managers].” (Urs Zulauf, vice director, Swiss Financial Market Supervisory Authority, interview) (GPK)

Vividness of Petitions (Low)

Frequency / emotionality of approaches of policy makers:

“Then [in April 2008] UBS came to us. They emphasized that they would have a minor, a tiny problem, but that everything would be perfectly under control. Some US attorney would be investigating, but they would have the best lawyers to help them.” (Urs Zulauf, interview)

Perceived Compellingness of Indirect Threat (Low)

Perceived Severity of Indirect Threat (High)

Swiss dependence on survival of threatened banks*:

“The danger of an indictment remains, and that would have disastrous consequences for our economy.” (Urs Zulauf, SRF documentary, 17 Oct. 2008)

“When informing the Federal Council, FINMA also recognized that if such a bank goes bust, it does not just affect the bank and its shareholders, but also the economy of the entire Switzerland.” (Rolf Wyss, Deputy Director of the Swiss Federal Office of Justice, SRF documentary, 17 Oct. 2008)

Swiss dependence on maintenance of banking secrecy*: N/A

Perceived Credibility of Indirect Threat (Low)

Perceived authorization of U.S. authorities:

“The federal prosecutors were the main drivers of the whole thing—with a lot of political backing from the senators and secretaries. They always had political support from the U.S. leadership . . . while in our Federal Council there were the most absurd theories that they could intervene politically: We would be very supportive in Iran, and we could take four additional Guantanamo prisoners. All of that was bullshit.” (Urs Zulauf, interview)

“Our politicians have always had problems to acknowledge the existence of legal extraterritoriality.” (Urs Zulauf, interview)

Federal Councilor Merz: “The demands of the DOJ are far-reaching. We need to check whether they affect the banking secrecy institution. I am convinced, however, that we will find a solution with the US authorities within the boundaries of our legal procedures. . . . I declare myself to be the keeper of the holy grail of Swiss law and I will defend banking secrecy by all possible means.” (TA, 13 Sept. 2008)

14 Oct. 2008: Strategy of Federal Councilor Merz: “depending on the further development, a political intervention will be necessary on the highest level in order to work towards a swift solution.” (GPK, 3298)

Perceived determination of U.S. authorities:

17 Oct. 2008: “They should be a little more patient.” (SRF documentary)

EPISODE 1b

Intensity of Indirect Compellence Attempts (High)

Magnitude of Indirect Threats (High)

Threat to indict UBS:

“On 8 Dec. 2008 representatives confirmed that the DOJ would initiate an indictment if the client data were not transferred.” (GPK, 3313)

“The [explicit] threat of indictment then came in November–December.” (Urs Zulauf, interview)

“On 8 December 2008 DOJ head investigator Downing informed the Swiss authorities that the global bank would be indicted in the USA as a criminal organization if it did not transfer the names and account data of US tax cheaters within the following few weeks.” (Hässig, 2010: 149)

“Federal prosecutors have given UBS ‘several weeks’ to hand over scores of United States client names or face possible indictment over its offshore banking services, a person briefed on the matter said Monday.” (NYT, 27 Jan. 2008)

Substantiation of Indirect Intimidations (High)

Intimidating messages: N/A

Indictments of selected bankers and banks:

12 Nov. 2008: “Raoul Weil, CEO of private wealth management at UBS is indicted at the District Court in Florida without prior notice to him or UBS.” (GPK, 3305)

“In a move that could spell bigger trouble for UBS, the indictment (of Weil) also referred to unindicted co-conspirators who ‘occupied positions of the highest level of management within the Swiss bank.’” (NYT, 13 Nov. 2008)

“The mentioning of Kurer and that they would be the next to be charged. It’s all mentioned in the indictment document of Weil—the ‘unnamed conspirators’—from the description it is very clear who is meant.” (Urs Zulauf, interview)

Intensity of Compliance Petitions (High)

Status of Petitioners (High)

Rank of bank representative / Size of petitioning bank:

9 Dec. 2008: “UBS's general council informed FINMA that without a swift data transfer, one could count on an indictment of UBS before Christmas.” (GPK: 3314)

10 Dec. 2008: Letter by the governing board of UBS to FINMA: “According to a meeting of UBS lawyers and the DOJ, an indictment of the bank as well as of further members of UBS top management, could be filed before Christmas.” (GPK: 3315)

8 Dec. 2008: “During a meeting of the UBS General Council and the DOJ, the DOJ emphasized, according to the General Council, that the Swiss government had underestimated the urgency of this situation. The DOJ had repeatedly threatened to indict managers of the bank and—as ultima ratio—also to indict the bank itself. It had been the clear and unambiguous position of the DOJ that the bank would be given no more time, and that a solution would have to be found rapidly.” (GPK: 3313–3314)

10 Dec. 2008: Letter by the governing board of UBS to FINMA: “In view of the importance of UBS for Switzerland, the board of directors of UBS requests FINMA to proceed rapidly.” (GPK: 3315)

Vividness of Petitions (High)

Frequency / Emotionality of approaches of policy makers:

13 Nov. 2008: “After Weil's indictment, the pressure UBS put on the Swiss government increased rapidly. The fear was that further top managers could be indicted, and that the leadership of the bank generally could be endangered.” (GPK: 3332)

14 Nov. 2008: “UBS requested backing from the Swiss authorities for the transfer of the data, otherwise the ‘grounding’ of the bank was likely.” (GPK: 3315)

- 13 Feb. 2008: "... another letter by the vice-president of the Board of Directors and the Group General Council of UBS to FINMA. They emphasized the predicament of UBS as well as the dramatic consequences an indictment of UBS would have. They requested FINMA to authorize the transfer of UBS client data to the U.S. authorities." (GPK: 3356)
- 13 Nov. 2008: "The indictment of Weil intensified the pressure on UBS, and hence also on Swiss authorities. According to repeated petitions by UBS representatives, this event showed that the legal assistance pathway had failed." (GPK: 3206)

Perceived Compellingness of Indirect Threat (High)

Perceived Severity of Indirect Threat (High)

Swiss dependence on survival of threatened banks*:

19 Dec. 2008: "In the interest of both the Swiss and the global financial system, the Swiss Federal Council requests FINMA to take all necessary measures to avoid an indictment." (GPK, 3325)

Federal Councilor Merz was convinced that the demise of UBS would have incurred long-term costs of up to 300 billion Swiss francs for the Swiss economy. (Press conference, Federal Council, 19 Feb. 2009; *NZZ*, 20 Feb. 2009)

Swiss dependence on maintenance of banking secrecy*: N/A

Perceived Credibility of Indirect Threat (High)

Perceived authorization of U.S. authorities:

Nov. 2008: "Federal Councilor Merz and Federal Councilor Widmer-Schlumpf wrote a letter to the Attorney General of the DOJ and the Secretary of Finance of the Bush administration. They emphasized that the Swiss government would be very concerned about the American investigations into UBS if U.S. authorities were trying to gain access to client data outside the ongoing legal assistance procedure and in contradiction to the Swiss legal order. . . . The U.S. secretaries were advised that the U.S. authorities should continue to seek information within the boundaries of the legal assistance procedure, and to refrain from unilateral actions against UBS. . . . The letter was never even answered." (GPK, 3305)

Nov. 2008: "The letter requested respect for the Swiss legal order. It was curt and removed from reality. And it never received a reply." (Hässig, 2010: 144)

15 Dec. 2008: "Federal Councilor Merz decided to call the Attorney General of the DOJ and the U.S. Secretary of Finance. According to Merz, the Americans reaffirmed their position that the ongoing legal assistance procedure would take too long, and that they insisted on the transfer of the client data before the end of 2008." (GPK, 3318)

Perceived determination of U.S. authorities:

"On 16 December 2008, at 7 am, the Swiss Federal Council continued the discussion. The DOJ would not be willing to wait for the outcome of the Swiss legal assistance procedure." (GPK, 3319)

"According to the court, the first results could be expected by the end of March 2009. For the USA, that was too long, and apparently the Federal Council now gave in to the pressure." (*TA*, 19 Feb. 2009)

"December 2008: Meeting of the federal secretaries: We realized that the US authorities would not give in. Hence, we needed to act." (Pascal Couchepin, Federal Councilor, FDP, SRF documentary, 2014)

"According to the Swiss Federal Council, despite all efforts, the American threatening front could not be reduced." (*TA*, 20 Feb. 2009)

EPISODE 2a

Intensity of Indirect Compellence Attempts (Low)

Magnitude of Indirect Threats (High)

Threat to indict 12 Swiss banks:

31 Aug. 2011: “An email arrives in the Swiss Department of Finance from deputy U.S.

Attorney General, James M. Cole. Together with his boss, Attorney General, Eric Holder, he intends to carry out the American threats against Swiss banks. Cole is extremely clear: If the requested data had not arrived before the indicated deadline, the banks would be indicted.” (*WW*, 28 Sept. 2012)

“U.S. officials have set an ultimatum for Switzerland to hand over details on the number of Americans suspected of using Swiss banks to cheat on their taxes. . . . Failure to do so could mean charges against one or more Swiss banks.” (*NYT*, 5 Sept. 2011)

Substantiation of Indirect Intimidations (Low)

Intimidating messages: N/A

Indictments of selected bankers and banks: N/A

Intensity of Compliance Petitions (Low)

Status of Petitioners (Low)

Rank of bank representative / Size of petitioning bank:

“CS and other affected banks lobby in Bern aiming to impel the parliamentarians to yield to the demands of the U.S. authorities.” (*TA*, 6 Sept. 2011)

“I can understand Swiss politicians who are complaining about the hardline stance of the US or who are criticizing the banks once more for their past conduct. The fact is, however, that the banking sector cannot solve the problem on its own and indicted Swiss banks would be very damaging for our economy.” (Patrick Odier, Chairman of the Swiss Banking Association, Chairman’s address: 3, 6 Sept. 2011)

Vividness of Petitions (Low)

Frequency / Emotionality of approaches of policy makers:

“The banks have lobbied in the past few days . . . arguing that we should agree without any further enquiries or delays.” (Urs Schwaller, CVP, 23 Sept. 2011)

“. . . massive lobbying by the banks which are threatened with an indictment in the USA.” (*NZZ*, 21 Sept. 2011)

“According to bank representatives, the parliament's reject of the amendment would lead to an escalation of the tax dispute. What is more, a delay would also carry a serious risk.” (*NZZ*, 21 Sept. 2011)

Perceived Compellingness of Indirect Threat (Low)

Perceived Severity of Indirect Threat (High)

Swiss dependence on survival of threatened banks*:

“After all, at least two state-owned Swiss institutes are affected—and I am absolutely not indifferent about that.” (Anita Fetz, SP, 23 Sept. 2011) (High)

“One should not take a purely legal perspective, but rather recognize the danger for the Swiss economy.” (Dick Marty, FDP, 23 Sept. 2011) (High)

Swiss dependence on maintenance of banking secrecy*:

“We need to consider whether we would not rather let a bank go bust. Switzerland has in the past made too many concessions to the Americans and sacrificed the banking secrecy too easily.” (Ueli Maurer, SVP, *TA*, 11 Sept. 2011) (High)

Perceived Credibility of Indirect Threat (Low)

Perceived authorization of U.S. authorities:

“In regard of the United States, the banks behaved in a totally irresponsible manner; They made mistakes and it is us who have to somehow fix the case.” (Didier Berberat, SP, 23 Sept. 2011) (High)

“The banks behaved extremely dishonorably in the United States.” (Anita Fetz, SP, 23 Sept. 2011) (High)

“I think Switzerland, as a small country, needs to insist that we proceed according to the existing law. We are both states under the rule of law, we jointly agree on legally binding contracts, and then we abide by them.” (Eugen David, CVP, 23 Sept. 2011) (Low)

“We have nothing to fear. Also, the Americans understand how a bi-cameral parliamentary system works with regards to an important issue.” (Peter Briner, FDP, 23 Sept. 2011) (Low)

“I still consider the USA as a state under the rule of law which does not simply adopt a ‘might is right’ approach toward its small, but dependable partner.” (Maximilian Reimann, SVP, 23 Sept. 2011) (Low)

Perceived determination of U.S. authorities:

“The banks are dealing with the U.S. That’s a time problem. This problem does not diminish over time, on the contrary.” (Anita Fetz, SP, 23 Sept. 2011) (High)

“Since the U.S. Senate only this week started to deal with this issue, there is no reason for anticipatory obedience.” (Urs Schwaller, CVP, 23 Sept. 2011) (Low)

“The SVP is unwilling to give up terrain in ongoing negotiations with the U.S.” (Maximilian Reimann, SVP, blog, 21 Sept. 2011) (Low)

EPISODE 2b

Intensity of Indirect Compellence Attempts (High)

Magnitude of Indirect Threats (High)

Threat to indict 12 Swiss banks: Threat to indict banks and ultimatum from Episode 2a was still in place.

Substantiation of Indirect Intimidations (High)

Intimidating messages: N/A

Indictments of selected bankers and banks:

“Private banking group Julius Bär confirms that a current and a former client advisor has been indicted by the U.S. authorities. . . . Together with ‘known and unknown colleagues’ they are assumed to have supported more than 180 U.S. clients in hiding more than 600 million dollars . . . according to the bill of indictment of the Office of the District Attorney of New York.” (Blick, 13 Oct. 2011)

[After the indictment of bankers] “A source familiar with the investigations: ‘The DOJ has little patience and they are suspicious with regard to activities that could be regarded as delays. The DOJ is convinced that only the application of heavy pressure on Switzerland will lead to the desired results.’ One can expect that until a deal has been closed, further bankers or even a bank itself, could be indicted.” (NZZ, 4 Jan. 2012)

“Wegelin & Company, the oldest Swiss bank, confirmed on Wednesday that three of its employees had been indicted by prosecutors in New York for helping United States taxpayers hide more than \$1.2 billion from the Internal Revenue Service.” (NYT, 4 Jan. 2012)

“The main target of the DOJ would be CH, head of the Wegelin subsidiary in Zurich. In the bill of indictment, the banker is not named personally, but referred to as ‘co-conspirator’. . . . The situation is particularly dangerous because since 2007 CH has been one of the eight partners of Wegelin who have unlimited liability. If the DOJ expanded its indictment to one of the co-owners of this private bank, the whole bank would be in the line of fire. . . . The approach of the DOJ reminds us very much of the UBS case. In November 2008, the indictment focused on Raoul Weil, then head of the offshore business of UBS. Yet, then already, the indictment mentioned a ‘co-conspirator’ who may have been the then head of the supervisory board of UBS, Peter Kurer.” (TA, 9 Jan. 2012)

“In a move to increase the pressure, the U.S. formally indicted Wegelin last month.” (FT, 6 Mar. 2012)

Intensity of Compliance Petitions (High)

Status of Petitioners (High)

Rank of bank representative / Size of petitioning bank:

“Not only the representatives of the associations of the Swiss bankers and of the Swiss private banks, but also those of Credit Suisse, Basle cantonal bank, and of Julius Bär Group have asked the parliamentarians insistently to agree to the amendment.” (NZZ, 11 Jan. 2012)

Between October 2011 and February 2012, CEOs of several Swiss banks as well as top-level representatives of the Swiss banking associations publish several commentaries in the major Swiss newspapers, including *NZZ*, *Tagesanzeiger*, and others, to induce Swiss policymakers to agree to the amendment.

Vividness of Petitions (High)

Frequency / Emotionality of approaches of policy makers:

“The indictment of Wegelin sent a shockwave throughout the Swiss banking sector.” (Swissinfo, 6 Mar. 2012)

“The latest lobbying of the banks does not require many words: ‘It is about the delivery of the U.S. client data. There is no controversy. It is a question of survival.’ The U.S. authorities have evidence against 11 banks. And in this case, banking secrecy does not count

- anymore. The client? Who cares?" (*TA*, 20 Jan. 2012)
- "Now the warning shot of the Americans has arrived on our financial sector." (SRF "Arena," 3 Feb. 2012)
- "The Americans are trying to make a statement with such events [the indictment of Wegelin], Ivan Pictet [partner at Pictet private bank] emphasized during the annual media conference of the association of the Swiss private banks." (Interview, SRF evening news, 13 Jan. 2012)
- "Paradoxically, it is those banks who have resisted any further regulation who beg us today—who even try to force us—to act in order to iron out their mistakes." (CVP, Lucrezia Meier-Schatz: NR, 29 Feb. 2012)
- "If anyone says those who voted 'no' today would be helping the banks, I have to respond: The opposite is true! It is the banking association that more than advises us to say 'yes' today. We are more or less forced . . . to say 'yes' today." (Daniel Vischer, GDP, 29 Feb. 2012)

Perceived Compellingness of Indirect Threat (High)

Perceived Severity of Indirect Threat (High)

Swiss dependence on survival of threatened banks*:

- "If Switzerland does not change its policy, we will stumble from one crisis to the next." (Susanne Leutenegger-Oberholzer, SP, 29 Feb. 2012) (High)
- "I am not willing to risk the stability of the financial market for U.S. tax cheaters." (Philipp Müller, FDP, *TA*, 28 Jan. 2012) (High)
- "It is in the interest of the Swiss financial sector that we, as politicians, help resolve this tricky situation." (Hansjörg Hassler, CVP, 29 Feb. 2012) (High)
- "This is about no more nor less than 10 percent of our national value creation, and 200 000 people who are employed in this sector." (Lucrezia Meier-Schatz, CVP, 5 Mar. 2012) (High)
- "Once more, we have to act. Otherwise, system-relevant banks, and eventually even Swiss taxpayers, will have to pay the bill." (Lucrezia Meier-Schatz, CVP, 29 Feb. 2012) (High)

Swiss dependence on maintenance of banking secrecy*:

- "I request that the amendment be rejected. . . . It would lead to the further erosion of Swiss banking secrecy." (Caspar Baader, SVP, 29 Feb. 2012) (High)
- "The SVP has been steadfast in its approach. The amendment should be rejected in order not to threaten the banking secrecy." (*NZZ*, 6 Feb. 2012) (High)
- "Agreeing to the amendment would weaken the Swiss financial sector. If privacy is no longer protected, clients will transfer their wealth to other countries." (Caspar Baader, SVP, *TA*, 21 Dec. 2011) (High)
- "The SVP Group adopted a policy document on banking secrecy at its meeting today. . . . The SVP is committed to banking secrecy without any ifs and buts. The SVP rejects the amendment of the bilateral agreement with the U.S., as it weakens Switzerland's banking center and endangers jobs." (Maximilian Reimann, SVP, 11 Mar. 2012, blog) (High)

Perceived Credibility of Indirect Threat (High)

Perceived authorization of U.S. authorities:

- "The behavior of the members of the U.S. administration and of the U.S. prosecutors is impertinent. What kind of state under the rule of law is this, where you know as a bank: If I am indicted, I don't even manage to see a judge, because I have collapsed long before that is possible." (Luzi Stamm, SVP, 5 Mar. 2012) (Low)

Perceived determination of U.S. authorities:

- "According to the assessment of Swiss authorities, the political signal is clear: The DOJ is escalating the tax dispute by following up on its threat, and for the first time is indicting a Swiss bank." (*NZZ*, 4 Feb. 2012) (High)

“Further delays are like playing with fire.” (Mair, GLP, 29 Feb. 2012) (High)

“If we rejected the amendment . . . the risk of a second Wegelin case would be large.”

(Philipp Müller, FDP, *FW*, 10 Feb. 2012) (High)

“The threats of the U.S. authorities are real and have to be taken seriously.” (Jean-René Fournier, CVP, 13 Dec. 2011) (High)

“Switzerland is intimidated too easily. What is needed is more self-confidence.” (Hannes Germann, SVP, *TA*, 6 Feb. 2012) (Low)

* As elaborated in the theory development section when detailing the components of this variable, perceptions of high (low) Swiss dependence on the survival of threatened banks are positively (negatively) related and their perceptions of high (low) Swiss dependence on maintenance of banking secrecy are negatively (positively) related to the targeted policy makers’ perceptions of severity of an indirect threat.

REFERENCE

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