

Advisers, lawyers and professional secrecy

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The most controversial element of the recent reform package was the extension of due diligence duties to advisers. For years, the Financial Action Task Force had criticised Switzerland because lawyers, notaries, trustees and consultants who set up companies, structure trusts or organise real estate transactions were subject to the Anti-Money Laundering Act only when they themselves handled their clients' assets. Their advisory work, which often provides the architecture for the holding of assets, remained outside the regime. The Federal Council therefore proposed subjecting certain advisory activities to due diligence duties, regardless of whether the adviser handles money.¹

The activities covered by the proposal included the creation, management and administration of legal entities and trusts, the provision of a domicile or address, the acting as nominee shareholder and the advice on the purchase and sale of real estate. Advisers performing these activities were to identify their clients and the beneficial owners, clarify the background of unusual transactions, keep records and submit to the supervision of a self-regulatory organisation or another body. Lawyers and notaries were to remain bound by their professional secrecy as regards the duty to report suspicions. The content of legal advice in the strict sense, including the defence in proceedings, was to remain outside the duties.²

The legal profession opposed parts of the proposal, arguing that professional secrecy is a cornerstone of the rule of law and of the relationship of trust between lawyer and client. Its representatives warned that clients who fear that their lawyer may become an informant will no longer disclose the facts needed for sound advice. Proponents replied that the duties applied only to transactional work and that professional secrecy remained intact for advice and representation. The parliamentary debate on these points was intense, with competing proposals on the scope of the duties for lawyers in the course of the deliberations. The precise

content of the final text, its entry into force and the implementing ordinances must therefore be checked in each case. Status to be verified.³

For lawyers who work across borders, the Swiss debate echoes earlier debates in the European Union. The European directives have subjected lawyers to anti-money laundering duties for certain transactional activities since the early 2000s, with exemptions for legal advice and representation. The Court of Justice of the European Union has confirmed that this arrangement is compatible with the right to a fair trial, while the European Court of Human Rights has stressed the special protection of the confidentiality of the lawyer-client relationship. A practitioner who advises clients in Germany, the United Kingdom and Switzerland must therefore apply three related but distinct sets of rules on the same question.⁴

1 Notes

1. On the criticism by the FATF of the limited coverage of advisers (FATF Recommendation 22 on designated non-financial businesses and professions) and the proposal of the Federal Council in its dispatch of 2024 to subject certain advisory activities to due diligence duties, see the FATF mutual evaluation report on Switzerland (2016) and the dispatch of the Federal Council. To be verified. ↩
2. On the advisory activities covered by the reform proposal (creation and administration of legal entities and trusts, domicile services, nominee services, real estate transactions), the due diligence duties of advisers and the treatment of professional secrecy in relation to the duty to report, see the dispatch of the Federal Council of 2024 and the final text adopted by Parliament. Scope and status to be verified. ↩
3. On the position of the Swiss Bar Association and other professional bodies on the extension of due diligence duties to lawyers, and the parliamentary deliberations on the Federal Act on the Transparency of Legal Entities in 2024 and 2025, see the parliamentary records (Curia Vista) and the publications of the Swiss Bar Association. Status to be verified. ↩

4. On the coverage of lawyers by the EU anti-money laundering directives since Directive 2001/97/EC, the judgment of the CJEU of 26 June 2007, C-305/05 (Ordre des barreaux francophones et germanophone), and the judgment of the ECtHR of 6 December 2012, Michaud v. France (no. 12323/11), see the relevant sources. To be verified. ↩

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