# How New Fine Procedures Could Ease Pressure on the Financial Center

**Tuesday, 28 May 2024 13:49**

**Swiss banks have paid billions in the US tax dispute to remain free from prosecution. Now, legal experts in Switzerland are calling for similar settlement procedures to be adopted domestically to enhance the fight against corruption. This time, it is intended to protect banks from harm.**

«A robust and comprehensive framework to prevent money laundering and financial crime is vital to a stable financial centre»: This statement does not come from a prosecutor but from the local banking lobby. With these words, the Swiss Bankers Association (SBVg) recently supported the Federal Council's message on combating money laundering.

The banking association particularly welcomed the approach of aligning the Swiss mechanism “with international standards.”

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### The Path of Reparation

Currently, this alignment is limited and thus, has increasingly drawn criticism from foreign states, multinational organizations, and NGOs. These entities view Switzerland's measures against corruption and money laundering as inadequate; they note insufficient reporting obligations, too-low fines, and the absence of protection measures for whistleblowers and crown witnesses, as well as the lack of out-of-court settlements for companies.

The latter are part of what is known as reparative justice or «non-trial resolution» of criminal acts. Reparation-based exemption from prosecution has long been a key tool in the fight against corruption, as recommended by the Organization for Economic Co-operation and Development (OECD).

### Hefty Fines

Swiss banks are very familiar with American «Deferred Prosecution Agreements» (DPA): Through such agreements, local institutions were able to avoid convictions in the tax dispute with the US. As recently as last December, the Geneva private bank Pictet reached an agreement in this manner with the formidable US Department of Justice. The institution also paid a hefty fine.

A DPA, modeled after the American system, stipulates that charges against a company are deferred on the condition that it cooperates with authorities and concludes a written agreement with the prosecutor. The agreement typically includes the facts of the case, the fine or forfeiture of assets, and compensation for private plaintiffs.

The elimination of organizational deficiencies, monitored by an appointed overseer, is also mandated.

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*(Image: Lalive)*

**Remove Stigma**

From a company's perspective, the advantage of such agreements is clear: after a probationary period, the criminal proceedings are completely dropped without resulting in a criminal conviction. This avoids the stigma of prosecution and negative business impacts such as reputational damage, exclusion from bidding processes, or loss of licenses.

As it turns out, reparation-based justice is now gaining renewed attention domestically. Federal Prosecutor **Stefan Blättler** recently called for a Swiss whistleblower regulation in the fight against organized crime.

**Quick Case Resolution**

Legal experts like **Matthias Gstoehl** (*pictured above*), a partner at the law firm Lalive, are

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advocating for a renewed attempt to introduce a DPA-like procedure in the Swiss Criminal Procedure Code. Gstoehl advises companies on «white collar crime» and is involved in an International Bar Association (IBA) project that promotes the broader use of non-trial resolutions, in line with OECD recommendations.

For Gstoehl, the benefits of a DPA for Switzerland are obvious. «Companies get the opportunity to put an end to criminal behavior by paying a fine, improve their internal monitoring processes, and continue their business activities without the competitive disadvantages that a conviction brings,» he told *finews.ch*.

This approach incentivizes companies to report and quickly address corruption cases, fundamentally supporting the rule of law. Additionally, private plaintiffs and victims of criminal practices can hope for relatively quick compensation.

**First Attempt Failed in 2019**

However, a first attempt at a DPA-like instrument, known as deferred prosecution for companies (AAU), was rejected by the Federal Council in 2019. The business federation Economiesuisse also expressed criticism of incorporating AAU into the Criminal Procedure Code, Gstoehl recalls.

Since then, examples have shown what the Swiss legal system lacks. For instance, the Zug-based commodity giant Glencore managed to reach agreements with authorities in the USA, Brazil, and the UK regarding bribery allegations in Africa. In contrast, proceedings in Switzerland and the Netherlands, where out-of-court settlements are not possible, remain ongoing.

**Different Speeds at Glencore**

Protracted proceedings with looming convictions could become a disadvantage for Switzerland, warns Gstoehl. «Many countries use DPAs very successfully. The OECD has provided clear recommendations and demands that these be implemented within a rule of law framework – there is no reason why Switzerland should not adopt this instrument,» the lawyer argues. Without this instrument, companies seeking to address their past could be disadvantaged internationally.

**Skeptical Americans**

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The Federal Council's message on combating money laundering indicates that the opportunity to enhance anti-corruption measures may be favorable. Foreign pressure is likely to increase rapidly. For instance, Swiss entities in the USA have long been suspected of circumventing current sanctions against Russia.

Clear warnings have already come from the US ambassador to Switzerland. Swiss banks, which are highly exposed internationally, have understood the message and are therefore pushing to close gaps in the anti-money laundering mechanism.

**Increasing Vulnerability**

From mid-2024, vulnerability to NGO lawsuits is also expected to rise. For the first time, all Swiss companies above a certain size will have to deliver a «non-financial report» by June. This includes all aspects of good corporate governance, and companies are required to report corruption cases.

Failing to do so will be punishable: In Switzerland, incorrect information on transparency can now lead to criminal liability for board members. Experiences from abroad show that activists are already using this loophole to force companies to change business practices.

Given this context, aligning with foreign procedures to combat corruption does not seem so far-fetched.