

COMMUNICATION FROM SWITZERLAND

E-banking in Switzerland

The attached communication has been received from the delegation of Switzerland with the request that it be circulated to Members of the Committee on Trade in Financial Services.

Switzerland would like to share with the Committee on Trade in Financial Services its experience on supervising and regulating cross-border electronic banking activities. We hope to contribute to discussions of recent developments in the sector in respect of cross-border banking activities.

I. THE SITUATION AT THE INTERNATIONAL LEVEL: THE BASEL COMMITTEE

1. The Basel Committee on Banking Supervision, under the auspices of the Bank for International Settlements, has set up a working group to examine the issue of e-commerce (Electronic Banking Group). This working group has dealt with the management of risks associated with electronic banking (see the report entitled "Risk Management Principles for Electronic Banking"¹, published in May 2001). It has also published a consultative document on "Management and Supervision of Cross-Border E-Banking Activities".

2. The group recognises that e-banking is generally an extension of traditional banking. The group notes that in most countries, existing banking laws and regulations that are applicable to traditional banking activities also extend to e-banking activities. This is, in our view, in line with the technological neutrality assumed under the GATS.

3. The first part of the report deals with the management of cross-border banking, where the group stresses the need for banks to integrate cross-border e-banking risks into the bank's overall risk management framework.

4. The second part focuses on the supervision of cross-border banking activities. The group stresses the need for an effective supervision by the home country regulator and a high degree of cooperation between supervisory authorities. If these two factors are given, the need for prudential intervention at the local supervisory level should largely be mitigated.

¹ "Risk Management Principles for Electronic Banking", Basel Committee on banking supervision, Bank for International Settlements, May 2001, <http://www.bri.org/publ/bcbs82.htm>. See also the report of the International Organization of Securities Commissions (IOSCO): "Report on Securities Activity on the Internet II", June 2001, http://www.iosco.org/download/pdf/2001-securities_activity_internet.pdf.

II. AN OUTLINE OF THE MARKET

5. In 1999, only about a third of the Swiss population was connected to the Internet. At the end of last year, this figure had increased to over two thirds of the population. Surveys show that younger people tend to favour the Internet as their preferred channel of communication with their bank, even if personal contact remains necessary for specific needs.

6. To a certain extent, the use of the Internet has influenced the structure of the Swiss financial sector in recent years. Some key players have invested quite heavily in various Internet solutions, mainly in order to supplement existing distribution channels and marketing efforts. For banks, the Internet is also a means of reducing costs in payment transactions.

7. Even after a consolidation process last year, half a dozen institutions provide online brokerage in Switzerland. Almost all banks provide some tools (accounts viewer and electronic payments) for on-line banking through the Internet. Major players use their websites as a platform to market more sophisticated products (financial planning tools, tax calculators).

III. DEFINITIONS

8. There is a general consensus that a bank needs the prior approval from the relevant supervisory authority in order to start its operations. However, the range of activities subject to approval vary from country to country. In Switzerland, the acceptance of deposits from the public on a commercial basis is considered as the basis for banking activities. The licence granted is a “universal licence” allowing the provision of all banking activities, throughout the country.

9. In Switzerland, “electronic banking” is usually defined as the provision of banking services via electronic channels such as the Internet (Internet banking) or mobile telephones (m-banking). More traditional electronic means, such as cash machines or PC banking (direct connection to the bank via modem), are alternative forms of electronic banking. In the near future, other channels, e.g. television (TV banking), will also be used for the distribution of financial services.

10. The Swiss approach makes it convenient for foreign institutions to provide financial services to Switzerland, without any need to investigate whether or not each banking service can be provided electronically.

IV. PRINCIPLES OF SUPERVISION FOR FOREIGN BANKS SUPPLYING E-SERVICES IN SWITZERLAND

11. According to the Swiss Ordinance on Foreign Banks, a foreign bank must request approval from the supervisory authority if it employs persons in Switzerland who, on a permanent and commercial basis, in or from within Switzerland:

- (a) enter into transactions, maintain customer accounts or legally bind the bank (branch);
- (b) are active in a manner other than those mentioned under (a) above, namely if they forward clients orders to the foreign bank or if they represent the foreign bank for marketing or other purposes (representative office).

12. Hence, Swiss law and authorities take a very liberal approach. Suppliers who offer financial services in Switzerland through a commercial presence (mode 3) or out of Switzerland through a commercial presence require a licence. Foreign providers who can only be reached in Switzerland via the Internet and who do not have a physical presence in the country do not require a licence from the Swiss supervisory authority.

13. The supervisory authority also allows advertising by foreign-based banks on the Internet or in the Swiss media, even when such advertising is deliberately targeted at Swiss clients and there is access to this advertising in Switzerland.

14. In order for the Swiss customer to be properly informed, the law prohibits foreign banks from misleading people about their origin, for example, by using an address in the country. The law wants it to be clear for the Swiss customer as to whether a bank is established in Switzerland and thus duly supervised, or if it is established abroad. In the latter case, it is the responsibility of the customer to assess the strength of the institution he is willing to deal with.

V. SUPERVISION OF SWISS BANKS SUPPLYING E-SERVICES ABROAD

15. There are no specific regulations in Switzerland governing the supervision of financial services offered electronically. The regulations are therefore technologically neutral.

16. From the Swiss point of view, a bank supervised in Switzerland may supply services to clients abroad via the Internet. It does not need a specific licence nor does the intended provision of such services need to be notified to the supervisory authority. However, the supervisory authority expects that banks, securities dealers and investment fund management companies check whether the local supervisory authorities allow such activities in their country before providing services or distributing products over the Internet to clients outside Switzerland.
