



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Eidgenössisches Justiz- und Polizeidepartement EJPD
Bundesamt für Polizei fedpol

Money Laundering Reporting Office Switzerland (MROS)

Public-Private Partnership (PPP): Strengthening the AML/CFT Frame- work through Information Sharing

March 2023

Executive Summary

On 17 November 2021, the Federal Council tasked the Federal Department of Justice and Police (FDJP), specifically Fedpol/MROS, to work with the Federal Department of Finance (FDF) and the Federal Department of Foreign Affairs (FDFA) to explore the feasibility of a 'public-private partnership (PPP¹)' in Switzerland for the purpose of sharing information to strengthen the anti-money laundering and countering the financing of terrorism (AML/CFT) framework. In the first half of 2022, Fedpol/MROS met with the authorities and a panel of experts from the financial sector to discuss whether such a PPP would be advantageous and under what conditions. The authorities and experts came to the conclusion that such a PPP could indeed bolster efforts to fight crime, namely through the dissuasive impact that it would have. This assessment is also backed by experiences that other countries have had. The Swiss financial sector has expressed overwhelming support for the creation of a PPP, with stakeholders stating their wish to play an active role in the development process. The present report provides a brief overview of the key takeaways from discussions between the authorities and the panel of experts as well as the outcome of consultations with financial system stakeholders. This report will serve as the basis for the Federal Council's final decision on whether to establish a PPP in Switzerland.

¹ It is worth noting that the PPP being referred to here is not the same as a public-private partnership as commonly understood within the Federal Administration (see 'Instructions on the handling of public-private partnership projects within the Federal Administration'; former Art. 52a of the Financial Budget Ordinance, FBO, SR 611.01). Instead, the PPP is simply a different form of cooperation that would be more accurately described as a public-private 'financial information sharing partnership' (FISP). That said, the PPP term is widely used in this context in international financial circles as a synonym for FISP.

Table of Contents

1	Background information	
1.1	Overview of public-private partnerships (PPPs)	4
1.2	Situation in Switzerland.....	6
1.3	International frame of reference – FATF and Egmont Group Recommendations.....	7
2	Federal Council exploratory mandate	
3	Implementation of exploratory mandate	
3.1	General comments.....	8
3.2	Discussions among the authorities.....	8
3.2.1	Results	9
3.3	Discussions with the panel of experts.....	10
3.3.1	Results.....	11
3.4	Legal assessment regarding the sharing of aggregated data	11
4	Consultation with financial system stakeholders and their feedback	
5	General impressions and assessment	
6	Conclusion	

1 Background information

1.1 Overview of public-private partnerships (PPPs)²

Based on international standards and Swiss legislation, financial intermediaries (hereinafter: FIs) play a pivotal role within the AML/CFT framework. FIs are the ones that are most familiar with their clients and money flows. For this reason, FI assessments regarding the origin and use of assets are the foundation upon which the entire AML/CFT framework is based. When assessing business connections and transactions, FIs need access to datasets that are as comprehensive as possible. Ideally, their understanding should not be limited to the information provided to them by their clients. For their part, the authorities – in Switzerland this is first and foremost the Money Laundering Reporting Office (MROS) – require information that is as informative as possible, not only relating to specific cases but also providing the bigger picture where possible, thus enabling them to conduct strategic analysis.

‘Strategic analysis’ entails compiling information that is either already available or obtainable, including data sourced from other competent authorities, for the purpose of detecting money laundering and terrorist financing methods and trends. This information is used in particular to assess AML/CFT threats and risks. The term ‘strategic analysis’ is defined in the relevant international AML/CFT standards.³ The importance of strategic analysis was already stressed in the Federal Council Dispatch of 1996 on the Anti-Money Laundering Act – in line with these international

standards. MROS was then given the mandate of conducting such analysis and providing FIs and the authorities with reliable threat assessments.⁴

In recent years, rampant globalisation, the spread of digitalisation and the emergence of new technologies and business models have made business connections more intricate and accelerated the speed of transactions. In this context, both FIs and the competent authorities have had to contend with a strong surge in data volumes. This globally observed trend makes analysis of individual cases more challenging and brings strategic analysis to centre stage. Closer cooperation between the authorities the private sector can enhance the quantity and quality of data available to both sides, thus greatly improving their analytical capabilities and consolidating the AML/CFT framework over time.

Over the past ten years, many countries and international organisations have developed public-private partnerships for the purpose of sharing financial information (referred to either as PPP or also as ‘financial information sharing partnerships’). Most of these projects were based on the realisation described earlier, namely that the effectiveness of AML/CFT efforts improves when FIs and the authorities share information on AML/CFT threats, risks, methods and trends in a targeted fashion. At present, twenty of the thirty key financial hubs have at least one such PPP, whereby the design and objectives vary widely from one country and legal tradition to another. There is no uniform standard for cooperation and

² It is worth noting that the PPP being referred to here is not the same as a public-private partnership as commonly understood within the Federal Administration (see ‘Instructions on the handling of public-private partnership projects within the Federal Administration’; former Art. 52a of the Financial Budget Ordinance, FBO, SR 611.01). Instead, the PPP is simply a different form of cooperation that would be more accurately described as a public-private ‘financial information sharing partnership’ (FISP). That said, the PPP term is widely used in this context in international financial circles as a synonym for FISP.

³ Explanatory note FATF R 29. *The FATF Recommendations, February 2012, updated October 2021*, FATF,

Paris, p. 109. See also Egmont Group of Financial Intelligence Units, *Operational Guidance for FIU Activities and Exchange of Information*, para 43.

⁴ Federal Council Dispatch of 17 June 1996 on the Federal Act on Combating Money Laundering and the Financing of Terrorism (Anti-Money Laundering Act, AMLA), Federal Gazette *BBl* 1996 III, p. 1131. The Federal Council gave a more precise definition of the term ‘strategic analysis’ in 2013. See Federal Council Dispatch of 13 December 2013 on Implementation of the 2012 Revised Recommendations of the Financial Action Task Force (FATF), Federal Gazette *BBl* 2014, p. 696.

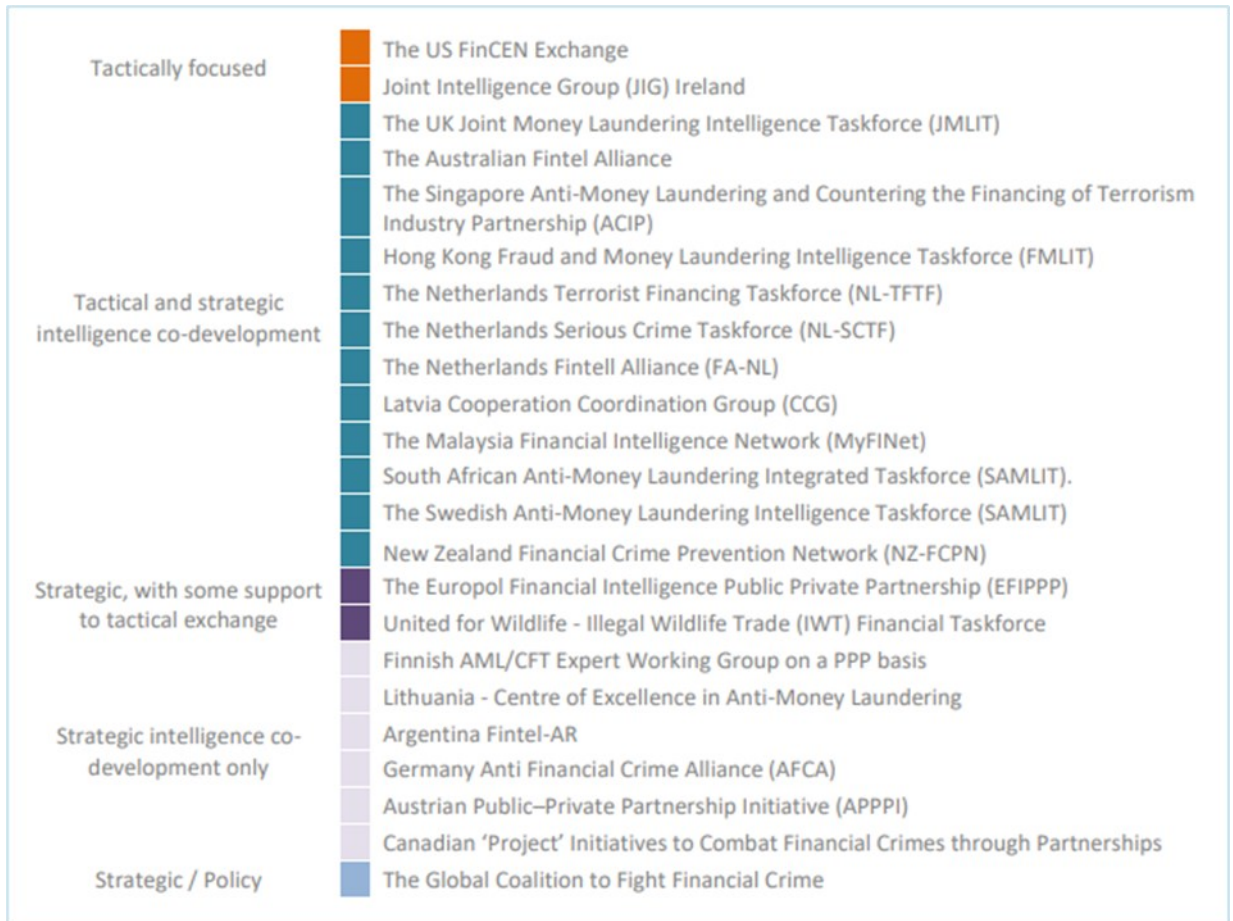


Figure 1. Overview of different PPP focus – Source: Royal United Services Institute (RUSI), see Footnote 6

information sharing. Nevertheless, it is possible to classify PPPs using the following categories:

- **‘Strategically’ oriented PPP:** these partnerships are limited to the sharing of information enabling the strategic analysis of AML/CFT risks, trends and methods. In such cases, the authorities and private sector partners share aggregated data, typically statistical data, indicators or typologies. This data do not contain any information regarding specific suspects, clients or accounts. Instead, they enable participating partners to improve their analysis on the basis of ‘general information’. Such analysis would be

impossible for them to carry out using isolated databases. Under certain circumstances, information shared within such a PPP could be divulged publicly in a targeted fashion – provided that legal requirements are met and the PPP participants consider such action appropriate.

- **‘Tactically’ oriented PPP:** these partnerships enable the sharing of ‘operational’ and ‘tactical’ information. This means that participants share information regarding ongoing investigative proceedings and specific data on natural persons and legal entities (namely specific financial information).⁵

⁵ Founded in 2014, the UK’s Joint Money Laundering Intelligence Taskforce (JMLIT) is often cited as a typical example of a tactically oriented PPP. There are over a

dozen such partnerships, mostly in common-law jurisdictions (e.g. the United Kingdom, the USA, Australia, New Zealand, Singapore or Hong Kong). However, there are also countries in continental Europe that

In addition, there are hybrid forms and PPPs that devote their attention primarily to a given area of concern (e.g. human trafficking). There are even different models among the countries that have opted for a PPP. In some cases, it is the financial oversight and law enforcement authorities that have permanent representatives in a PPP. In other cases, their involvement is limited to specific issues. And there are also cases where they are not involved in the least.

There is one thing that all PPPs have in common, practically without exception. They are coordinated or managed to a greater or lesser extent by the national financial intelligence unit (FIU). This is due to the fact that FIUs serve as an intermediary between FIs and (law enforcement) authorities and because the sharing of specific information is already established as a result.⁶

The heterogeneity of PPP types combined with the fact that some PPPs have only recently been created makes a definitive general assessment of their efficiency difficult. This applies in particular to strategically oriented PPPs, which are mainly intended to have a dissuasive impact and thus are difficult to assess in quantitative terms. For older PPPs and PPPs with above-average resources, there is demonstrable evidence and testimony indicating a high level of efficiency. As a case in point, by 2022 – eight years after its inception – the British JMLIT gave rise to around 950 criminal proceedings, 280 arrests and the confiscation of GBP 86 million. In Australia between July 2018 and June 2019, information sharing between the authorities and the private sector through the local PPP prevented over 2,500 cases of credit card

fraud.⁷ In recent years, similar results around the world have led to increasing consensus regarding the effectiveness of similarly designed PPP initiatives. It is likely that this model will be increasingly viewed as the ‘state of the art’ and perceived as a key indicator of the efficiency and effectiveness of a country’s AML/CFT framework. The most recent international discussions are even moving in the direction of considering a PPP as the basis for a – desired – strengthening of information sharing between private stakeholders at both national and international level.⁸

1.2 Situation in Switzerland

At national level, Switzerland currently lacks such a public-private sector partnership devoted to AML/CFT.⁹ However, the Federal Department of Justice and Police (FDJP) has adopted a crime-fighting strategy centred on closer cooperation between the public and private sector.¹⁰ Moreover, the Money Laundering Reporting Office Switzerland (MROS) adopted its own strategy paper in 2020 calling for the creation of a PPP.¹¹ Finally, in its evaluation of MROS activities, carried out on 20 December 2021, the Swiss Federal Audit Office (SFAO) issued a recommendation that MROS push for the creation of a PPP and to work more closely with FIs. The resulting PPP should not be limited to banks but rather involve the full spectrum of financial intermediaries. The latter should be encouraged to improve the overall quality and timeliness of the SARs submitted. The SFAO further underscored its stance that a preventive PPP can improve the overall impact of the Swiss AML

have set up tactically oriented partnerships. These are namely the Netherlands, Sweden and Latvia (see Fig. 1 for more details).

⁶ Future of Financial Intelligence Sharing (FFIS), Five years of growth in public-private financial information-sharing partnerships to tackle crime, Royal United Services Institute, August 2020.

⁷ Future of Financial Intelligence Sharing (FFIS), Five years of growth in public-private financial information-sharing partnerships to tackle crime, Royal United Services Institute, August 2020, p. 8.

⁸ See FATF, Stocktake on Data Pooling, Collaborative Analytics and Data Protection, FATF, Paris, 2021; Future of Financial Intelligence Sharing (FFIS), *Lessons in private-private financial information sharing to detect*

and disrupt crime, Royal United Services Institute, July 2022.

⁹ Interdepartmental coordinating group on combating money laundering and the financing of terrorism (CGMF) has already institutionalised information sharing with the private sector – specifically through its ‘Private Sector Contact Group’. However, information sharing does not relate to specific issues and the partnership composition is not as extensive as it would be with a PPP.

¹⁰ FDJP, Anti-Crime Strategy for 2020-2023, dated 22 June 2020.

¹¹ See 2020 Annual Report of the Money Laundering Reporting Office (MROS), Chap. 2.2.

framework.¹² It also specifically mentioned that MROS has a legal obligation to raise FI awareness of issues surrounding money laundering, its predicate offences, organised crime and terrorist financing, and thus equip FIs to play an active role in prevention. The SFAO further stressed the importance of MROS building strategic analysis capabilities.¹³ The establishment of partnerships and the resulting increase in information sharing are two key elements for this.

In September 2019, MROS joined the Europol Financial Intelligence Public Private Partnership (EFIPPP)¹⁴, which is part of Europol's new European Financial and Economic Crime Centre (EFECC). The EFIPPP brings representatives of FIUs, police and customs authorities together with private sector stakeholders, in particular internationally relevant banks, including a few Swiss FIs.¹⁵ Several European and international institutions, including the FATF and universities hold observer status in this public-private partnership. In the spring of 2022, the following EFIPPP working groups were active:

- Threats & Typologies Working Group
- Terrorist Financing & Proliferation Financing Work Stream
- Crypto Assets Work Stream
- Business Email Compromise Work Stream
- Mule Accounts Work Stream
- Investment Fraud Work Stream
- Virtual IBANS Work Stream
- Innovation Working Group
- Legal Gateway Working Group

The EFIPPP gives participants the opportunity to discuss developments relating to national public-private partnerships (or the creation of such partnerships) in the context of efforts to counter money laundering and terrorist financing. Since 2020, MROS has attended the meetings of several

of these working groups. The various discussions enabled MROS to assess whether the trends described by other participants could possibly constitute a threat for Switzerland. For its part, MROS was able to share the knowledge that it has gained in relation to these developments.

1.3 International frame of reference – FATF and Egmont Group Recommendations

The FATF Recommendations do not explicitly call for the creation of one or more PPPs at national level. Several of the Recommendations draw attention to the need for effective information sharing. Moreover, several FATF publications stress the importance of establishing partnerships at various levels, primarily within the financial sector, but also between the public and private sector. They draw attention to the fact that effective information sharing is one of the key pillars in efforts to counter money laundering, terrorist financing and the financing of proliferation. Money laundering does not stop at national borders. The FATF also states that barriers to information sharing can adversely affect the AML/CFT framework and inadvertently facilitate the activities of criminal networks. The FATF goes on to explain that information sharing is the key to greater transparency and helps to protect the integrity of the financial system, as the flow of information, analyses and data between FIs and the competent authorities helps to discourage and crack down on money laundering and terrorist financing. This would include, for example, typologies and trends, behavioural analysis and geographical analysis. Both the public and private sectors could be the providers and recipients of these information flows.¹⁶

¹² See SFAO report entitled, 'Bericht der EFK zur Prüfung der Aufgabenerfüllung der Meldestelle für Geldwäsche' (EFK-20146) dated 20 December 2021, p. 32 f.

¹³ The SFAO bases its assertions on the list of tasks described in the Ordinance of 25 August 2004 on the Money Laundering Reporting Office Switzerland (MROSO). See Art. 1 para. 1 let. c MROSO: 'It [MROS] shall raise the awareness of financial intermediaries with regard to the problems associated with money

laundering, its predicate offences, organised crime and terrorist financing'.

¹⁴ Europol Financial Intelligence Public Private Partnership - EFIPPP | Europol (europa.eu).

¹⁵ By 2021, the Europol Financial Intelligence Public Private Partnership (EFIPPP) was comprised of 79 institutions from 18 different countries (both EU and non-EU).

¹⁶ See FATF Guidance – Private Sector Information Sharing, November 2017, p. 2 f. Consolidated FATF Standards on Information Sharing, November 2017.

The Egmont Group¹⁷ also stresses the importance of partnerships between the public and private sector, drawing attention to the resulting improved access to information. In particular, it highlights the added value that such information sharing would have for strategic analysis. Strategic analysis aims to decipher the underlying patterns and trends that enable an FIU to draw conclusions for the strategic prevention of money laundering and the financing of terrorism, and to provide input for policy formulation and for setting operational priorities.¹⁸

- During the second phase, discussions would take place on specific action steps to be taken and defining the legal structure of the PPP.

The authorities were consulted first. Afterwards the results were discussed by a panel of experts comprised of representatives from the financial sector.

2 Federal Council exploratory mandate

As of 2002, Switzerland is one of the few countries with a major financial system that has not yet implemented a PPP. In 2020, the Swiss federal government initiated a series of discussions on whether Switzerland should create such an information-sharing partnership to improve the effectiveness of the AML/CFT framework and, if so, in what form and under what conditions.

On 17 November 2021, the Federal Council adopted a decree whereby Fedpol would be given a mandate to work with the FDF the FDFA to explore the feasibility of a PPP in Switzerland and to report back to the Federal Council by December 2022 at the latest.

3 Implementation of exploratory mandate

3.1 General comments

Fedpol/MROS decided to adopt an iterative approach to their exploratory mandate:

- During the first phase, the aim is to ascertain the benefits of a PPP and find out the types of information that the various stakeholders wish to share within such a partnership. A round of consultation with potential partners was therefore needed to gather input from the authorities and the financial sector. An interface between these two sides would form the basis for a possible PPP.

¹⁷ MROS has been a member of the international FIU network Egmont Group since 1998.

¹⁸ See Egmont Group of Financial Intelligence Units - Operational Guidance for FIU Activities and Exchange of Information.

Between December 2021 and March 2022, MROS, the State Secretariat for International Finance (SIF), the FDFA/DIL¹⁹ and the Swiss Financial Market Supervisory Authority (FINMA) discussed the necessity of a PPP and examined potential ways in which such a PPP could be implemented. From the authorities' perspective, a PPP offers undeniable benefits. More extensive information sharing between the authorities and the private sector can lead to greater access to information for both sides and improve the long-term effectiveness of the AML/CFT framework. The statements made in Section 1 can provide more details on this.

In terms of the structure of a PPP, it is important to bear in mind that the current legal framework only permits limited information sharing. For one thing, the authorities are subject to clearly defined boundaries established in legislative provisions on national administrative assistance²⁰, official secrecy²¹ and data protection.²² The limiting factors for the financial sector include bank client confidentiality and commercial secrecy²³ as well as data protection.²⁴ For all intents and purposes, the current legislative framework practically precludes the sharing of operational information, at least for all parties that are exposed to significant legal liability risks.²⁵ The introduction of 'tactical' information sharing would therefore constitute a major departure from the current system and would require considerable and wide-reaching legislative amendments. In the meantime, the sharing of strategic information is already possible today and can be implemented

promptly without the need for legislative amendments. If the authorities wish to share information with certain FIs, they must also provide the same level of support to all other FIs in keeping with the constitutional provision of ensuring equal treatment. The Confederation and the cantons must treat all stakeholders equally, also in the interests of preserving the 'principle of economic freedom'.²⁶ This principle requires all competitors to enjoy a level playing field. In other words, the authorities must refrain from taking any action that might distort direct competition between market participants.²⁷

There are no legal requirements on the form of cooperation. Since cooperation would not be legally institutionalised, the form in which it takes place can be freely chosen. The various options include a working group, events or even regular publication of the latest knowledge. It is nevertheless important that all market participants enjoy the same privileges and are all provided with access to this information.

The form and structure of cooperation needs to be decided and designed with the involvement of the private sector. Because the information to be shared would not include personal data or other confidential and/or non-publicly accessible data, there would be no need for any confidentiality agreements or similar arrangements.

3.1.1 Results

- The authorities involved in the consultation felt that there was a specific need to share information on the trends, risks and methods of

¹⁹ FDFA's Directorate of International Law.

²⁰ For example, Art. 29, 29a and in connection with 30 of the Federal Act of 10 October 1997 on Combating Money Laundering and the Financing of Terrorism (Anti-Money Laundering Act, AMLA) [SR 955.0].

²¹ Art. 320 para. 1 of the Swiss Criminal Code (SCC) [SR 311.0].

²² See in particular: Art. 2 in connection with Art. 4 in connection with Art. 17 of the Data Protection Act (FADP) [SR 235.1].

²³ Art. 47 Federal Act on Banks and Savings Banks (Banking Act, BankA) [SR 952.0] but also Art. 162 SCC (in cases where this concept acquires independent meaning)

²⁴ Art. 2 in connection with Art. 4 in connection with Art. 12 ff. FADP.

²⁵ The legal risks arise from the lack of certainty on precisely what type of information can and cannot be shared. The more 'detailed and personal' the data, the higher this risk becomes.

²⁶ Art. 27 para. 1 in connection with Art 94 para. 1 of the Swiss Federal Constitution [Cst.; SR 101].

²⁷ See GIOVANNI BIAGGINI, Commentary on the Swiss Federal Constitution, Zurich 2017, the equal treatment provisions contained in Art. 27 No 4 ff. of the Swiss Federal Constitution are satisfied if all FIs are free to take part in a PPP or in the information sharing process. This matter will need to be clarified when deciding on the composition of the PPP. Depending on the type of PPP chosen, consideration needs to be given on how to ensure the participation of FIs that are not directly involved in the PPP.

money laundering and terrorist financing (sharing of strategic information).

- Such information sharing would help with prevention (the FIs would be provided with timely first-hand access to information on specific topics).
- It could help to improve data quality, the overall data situation and in turn the quality of SARs submitted by FIs and enhance the strategic analysis capabilities of both FIs and the authorities.
- A PPP should give rise to improved information sharing under the current legislative framework. FIs and the authorities would be able to discuss the form and content of data flows in a targeted fashion.
- The current legislative framework precludes more extensive sharing of operational/tactical information and/or data that is not publicly accessible. Given the required legislative amendments that would be required, such information sharing would only be possible in the medium- to long term.
- A PPP should not be set up primarily for the purpose of holding normative discussions on the existing legal system. For systemic issues, in particular relating to subsequent changes to AML/CFT legislation and policies, there are already other formats for this.²⁸ The usual mechanisms of participation in legislative projects also apply. These already enable interested parties to take part in the opinion- and decision-making process at federal level.
- The term partnership should be taken literally. Information sharing should place all partners on an equal footing and should benefit them in equal measure.

3.2 Discussions with the panel of experts

At two meetings held in May and June 2022 respectively, a panel of compliance experts²⁹ discussed the various issues surrounding the creation of a PPP. At the first meeting, the experts

discussed the benefits of a PPP and mapped out possible contexts in which information sharing could take place. In preparation for the second meeting, the experts made specific information sharing proposals for MROS to consolidate that would then be discussed at the second meeting.

All participants generally supported the idea of the public and private sector sharing information for the purpose of improving the efficiency of the AML/CFT framework. Moreover, the experts unanimously recognised the benefits highlighted in section 1 above. At the same time, it was clearly stated that the sharing of information through the proposed PPP would have to be on a voluntary basis and that participation or lack thereof should not engender new obligations or adverse consequences for the FIs nor for the involved bodies and employees. In other words: the creation of a PPP should not be 'misused' for the purpose of introducing new reporting obligations or new criminal law and oversight responsibilities. Moreover, the experts felt that the partners in the information sharing should be on an equal footing and that the 'ground rules' for this still need to be established. Specifically, the authorities should not hold informants accountable at some later stage for their willingness to share information through a PPP as this would expose FIs to further risks. One group of experts on the panel felt that only aggregated data should be shared, first of all because the current legislative framework prohibits more extensive information sharing and secondly because any other form of information sharing would undermine legal certainty. They argued that it is not the responsibility of private individuals to perform policing tasks on behalf of law enforcement and roles would certainly become blurred if information that is not publicly accessible were to be disclosed or if operational and/or tactical data were to be shared. The other group of experts on the panel, however, strongly supported the idea of sharing of operational/tactical data, arguing that 'full information sharing' could bring anti-money laundering and crime-fighting

²⁸ One example is the 'Private Sector' working group formed by the Interdepartmental coordinating group on combating money laundering and the financing of terrorism (CGMF) or the SIF's 'International standard-setting financial market regulation' working group (ISFIN).

²⁹ The composition of the panel of experts was in such a way as to ensure the adequate representation of all types of banks (universal, retail, asset management, foreign), linguistic regions and para-banking activities.

capabilities to a whole new level. Some of the experts in this group further stressed the value of a PPP in the international context. Specifically, were Switzerland to set up a PPP ahead of the FATF's upcoming country evaluation, this would be seen as another positive factor in Switzerland's efforts to improve its AML/CFT framework.

Participants made a wide variety of proposals.³⁰ In a nutshell, the experts felt that there were six cases in which information sharing could definitely take place:

- Sharing of aggregated information about specific trends, risks or methods that may give rise to suspicions of money laundering
- Third-party analysis (e.g. international organisations) / authorities in other countries
- General legal information
- Technical information
- MROS case studies
- Information about the chosen orientation of the PPP

3.2.1 Results

- The panel of experts showed support for the creation of a PPP. The experts recognised that a PPP could indeed considerably reinforce Switzerland's AML/CFT framework.
- The experts stressed that a PPP must remain voluntary and not create additional obligations and/or negative consequences for the FIs involved.
- The ground rules must be clearly established. The public and private sector should be considered as equals in this partnership.

3.3 Legal assessment regarding the sharing of aggregated data

Data protection legislation restricts the types of information that the authorities and FIs can share with one another. Personal data and other types of legally protected data and information can only be shared to the extent expressly permitted under applicable legislation. There are clear provisions on what information must or may be divulged and for what purpose. Apart from the very

limited exceptions, there are no legal grounds enabling personal data or particularly sensitive data or information to be shared. As things currently stand, the authorities and private sector can only share information to the extent permitted to members of the general public, i.e. only publicly accessible data can be shared. The frame of reference for the types of information that may be shared can be found in Art. 23 MROSO (in particular Art. 1 para. 1 let c. in connection with para. 2 let. d and f.). Therefore, MROS is free to share the results of its strategic analyses with FIs as long as the information cannot be traced back to personal data that could be publicly disclosed. Moreover, when sharing information, the principle of equal treatment of all market participants applies at all times. The private sector can also share information with MROS and other market participants as long as this information does not include personal data and/or information that is not publicly accessible.³¹ Each FI must make its own judgement call in this respect. Depending on the case at hand, the disclosure of certain information may be possible for one FI but not possible for another. For example, if the FI is small, sharing the information could in fact lead to identification of the client in question and result in disclosure of personal data. For this reason, data disclosures must be decided on a case-per-case basis. However, as a general rule, the more aggregated the data, the less problematic information sharing becomes. Even the sharing of technical and legal information is possible in principle if no personal data is revealed as a result.

4 Consultation with financial system stakeholders and their feedback

Following consultation with the authorities and discussions with the panel of experts, the SRO Forum, *Koordination Inlandbanken* (KIB), the Swiss Bankers Association (SBA), the Association of Foreign Banks in Switzerland (AFBS), the Association of Swiss Cantonal Banks (VSKB), the Association of Swiss Regional Banks (VSRB/ABRS) and the Association of Swiss Private Banks

³⁰ The experts discussed a total of 83 potential areas in which information sharing might take place, 70 of

which were deemed technically feasible and 19 legally feasible under current legislation.

³¹ See Section 4.2. hereto.

(VSPB/ABPS), which are representative of different parts of the Swiss financial sector, were asked in early September 2022 to take a stance on the issue of PPPs.

In addition, several FIs³² also took the initiative of submitting their own feedback separate from what is reported here. The position papers received from the various associations expressed different viewpoints:

- The Swiss Bankers Association (SBA, Swissbanking) felt that a strong Swiss financial system requires an effective AML framework and thus also a strong Money Laundering Reporting Office (MROS). The SBA therefore supports the creation of a PPP in Switzerland and would like to play an active role in designing a workable concept. Nevertheless, the SBA feels that there are still a large number of unresolved issues, some of which are crucial to the financial sector. These issues, however, can be discussed and resolved through joint efforts to ensure market acceptance of the proposed changes and bring the best possible added value to the Swiss financial system. The SBA considers that partnership-like cooperation between the financial sector and the authorities is absolutely essential for the success of a PPP and should therefore be included from the design phase onwards. Swissbanking explicitly welcomed the iterative and inclusive approach proposed by Fedpol/MROS and went on to state that MROS needs to be provided with the necessary resources to work with financial system stakeholders on the future PPP. In addition, MROS needs to explicitly request in its report to the Federal Council that it be given a specific mandate to pursue this promising undertaking.
- For its part, the Association of Swiss Cantonal Banks (VSKB) stressed that during the initial phase, the planned PPP should limit itself to only sharing information that enables strategic analysis. The issue of whether or not to share tactical information could always be considered at a later stage. The key point for the VSKB was that information sharing should not be a one-way street for the authorities but should

be designed in such a way to ensure that FIs also benefit. The specific composition of the PPP – especially the authorities to be involved – has not yet been specified and needs to be decided before any further action is taken. Moreover, the VSKB agrees with the report's conclusions and pointed out that the underlying principles of the PPP should be 'free will' and 'equal treatment'. The VSKB felt that any information provided by MROS must first be anonymised before it can be shared within a PPP. This is needed in order to protect the identity of clients who hold accounts with several FIs. And were this to occur, the FI would expose itself to possible liability claims for negligence under bank secrecy legislation as well as potential criminal liability under Art. 37 AMLA.

- The Association of Swiss Private Banks (VSPB/ABPS) was sceptical and expressed the view that only tactically oriented PPPs or hybrid PPPs have been able to achieve tangible results. The VSPB/ABPS felt that the approach supported in the report of sharing only strategic information was unlikely to make a difference and was thus an inefficient model. The position of the VSPB/ABPS is that any PPP that does not share tactical information is 'inefficient'. The VSPB/ABPS also highlighted the need for more information to clarify the hybrid PPP concept mentioned in the report. The various options should also be carefully assessed in advance. In addition, the issue of the composition of a PPP was raised (type of bank, services offered, linguistic regions, etc.) along with rules and procedures, equal treatment and types of information to be shared. While all of these points were touched on in the report, greater clarification and in-depth analysis is absolutely necessary before the report is submitted to the Federal Council. These points are delicate and first need to be discussed with the private sector before a PPP is formally established. Finally, the VSPB/ABPS pointed out that a PPP should not be created just for show to remain on good terms with the FATF but rather should bring real added value to the Swiss banking system. If legislative amendments

³² They were not directly asked to take a stance but submitted their feedback nonetheless.

were needed, then this should also be taken into account as part of the process.

- The Association of Swiss Regional Banks (VSRB/ABRS) welcomed the idea of creating a PPP, which would enable the authorities to share low-threshold information with each other and facilitate such information sharing between the public and the private sector. The VSRB/ABRS stressed that AML/CFT measures should be both risk-adjustable and practicable. Finally, proper representation of the financial sector could enable subsequent action steps to be implemented quickly.³³
- The SRO Forum felt that creating a high-quality PPP was important for Switzerland and that the level of openness already exists within the self-regulatory framework. The SRO Forum also pointed out that in terms of the sharing of strategic information, MROS and other authorities are already doing this for the most part and/or to a large extent and very little is needed to formalise this information sharing through a PPP. The SRO Forum concluded by saying that in terms of information sharing, the private sector should enjoy the same level of openness from the authorities as they themselves are required to provide to the authorities. Such bilateral exchanges could indeed bolster efforts to take preventive action.
- The remaining feedback from other participants indicates support for the creation of a PPP and a generally positive view of the approach chosen.

5 General impressions and assessment

Within the financial sector, no one calls into question the advantages and effectiveness of a PPP. Quite the opposite, all of the associations within the financial sector welcome the idea of creating a PPP. However, there were different opinions expressed regarding how a PPP should be formed and what types of information should be shared. Nevertheless, the banking associations felt that information sharing enabling strategic analysis could be considered as the ‘least common denominator’. Although some expressed stronger support for the sharing of tactical information, they recognised the associated difficulties that this would entail. There were also understandable objections that many aspects of implementation still remain vague. However, this is merely a reflection of the multi-stage approach chosen by the authorities. The first stage of the process was intended to determine whether or not there is adequate support for the establishment of a PPP. We now know that this is the case. The issue of implementation will be handled later and should – as the entire financial sector unanimously requires – be handled in collaboration with the private sector. This approach provides the freedom of action needed to ensure that a PPP will satisfy the needs of both the financial sector and the authorities from the moment of its inception. It also provides the flexibility needed to enable a PPP to become aligned with short- to medium-term trends and requirements at both national and international levels and to allow PPP structures to evolve over time. Although the PPP would start out with the ‘least common denominator’ option, the sharing of operational/tactical information at a later stage would not be excluded. On the contrary, by involving all of the participating stakeholders in this process, the necessary foundation for such a development has been laid.

³³ Here the well-established distribution ratio can be used, reflecting the diverse range of business models used by banking stakeholders: one representative for

each of the two largest banks, for the Raiffeisen group, for VAS, for VAV, for VSPB, for VSKB and for VSRB.

6 Conclusion

It can be said that both the authorities and financial sector agree that the creation of a PPP can greatly strengthen the anti-money laundering and countering the financing of terrorism (AML/CFT) framework.

The general consensus is that partners would share aggregated data for the purpose of enabling strategic analysis of trends and patterns. Moreover, the rules on information sharing must be clearly established. Finally, there needs to be a level playing field in the partnership between the public and private sector, where both sides have equal access to information.

Fedpol/MROS clarifications have now reached the stage where a policy decision on establishing a PPP can be made.