

# Conference call on the French litigation case

22 February 2019

Speeches by **Sergio P. Ermotti**, Group Chief Executive Officer; **Markus Diethelm**, Group General Counsel; **Denis Chemla**, Allen & Overy, external counsel

Including Q&A session with analysts

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Links to UBS media releases on this matter:

- **UBS will appeal French court's judgment in cross-border matter (20 February 2018):**  
[www.ubs.com/global/en/ubs-news/r-news-display-ndp/en-20190220-france.html](http://www.ubs.com/global/en/ubs-news/r-news-display-ndp/en-20190220-france.html)
- **UBS sees significant flaws in decision of French judges (21 February 2018):**  
[www.ubs.com/global/en/ubs-news/r-news-display-ndp/en-20190221-france-verdict.html](http://www.ubs.com/global/en/ubs-news/r-news-display-ndp/en-20190221-france-verdict.html)

Martin Osinga (Investor Relations)

Good morning everyone, and thank you for joining us today. We will start with a few remarks by our Group CEO, Sergio Ermotti. You'll then hear Markus Diethelm, our Group General Counsel, who is in Paris with our external counsel Denis Chemla. After that we'll have a Q&A.

I should now draw your attention to our cautionary statement regarding forward-looking statements in the media release we published on the matter in question yesterday.

With that, I'll hand over to Sergio.

## Sergio P. Ermotti

Thank you very much Martin, and good morning everyone.

We set up this call to help you understand our view on the legal aspects of this matter, and this is the focus of the call. But before that, I want to make some brief comments in respect of the matters.

In respect of resolving all these litigation matters, as we've said many times in the past, our aim is always to act in the best interest of shareholders, taking into consideration both financial and reputational aspects.

As you know, over the last few years we resolved many legacy matters..

We've not shied away from settling matters, when reasonable. But we can't do that at any financial price, particularly when this is not supported by facts. Specifically in this case, we consistently contested any criminal wrongdoing and we continue to do so. On the actions in question, we have followed and respected all proper regulations – Swiss, French and European. And we strongly disagree with the verdict.

We prepared ourselves very seriously with both internal and external legal counsel at the most senior levels. The notion that has been circulating that we would gamble on this matter is totally inappropriate, and not a notion that we would even have entertained. We do not gamble with our shareholders' capital. Likewise, any speculation about for which amount a settlement was possible is inappropriate and not correct.

One of the advantages of having a strong capital and liquidity position is that we can withstand and afford taking such a stance on resolving matters. Of course we are very disappointed by the verdict, and you will hear from Markus, how we prepare to further defend ourselves.

Now, in respect of the financial impact of the verdict, it is still too early to give any guidance about potential changes in the legal provisions.

The assessment is not a decision we can complete within a couple of days. We will have to go through a number of steps that include a more in-depth legal analysis of the verdict in order to assess any potential accounting implications. All this will then have to go through the governance process of the bank. We expect to complete this by the publication of our 2018 annual report.

I understand some of you also have questions on capital returns. First of all, there is no intention to deviate from our proposed 2018 dividend of 70 Rappen per share.

In respect of the outlook for our capital returns beyond the financial year 2018, we remain committed to our policy. We're still targeting a mid-to-high single-digit percentage growth in our dividend per share each year. And we are still aiming to return excess capital mainly through buy-backs.

Of course, as we always said, we need to consider our business outlook, including the impact of any idiosyncratic events like this one. In this respect, in the event of a very adverse scenario, our priority would always be to protect the previous year's dividend.

You can expect an update on our plans latest by April, when we publish our first quarter results.

With that, I'd like to hand it over to Markus in Paris.

## Markus Diethelm

Thank you Sergio, and good morning everyone. As you well know, on Wednesday, the first instance court in Paris has delivered an adverse judgement in the case against UBS AG and UBS France, and several employees.

Throughout the process, we have consistently contested, as Sergio said, any criminal wrongdoing in this case, and we continue to do so. On the actions in question, we have followed and respected all the proper regulation – Swiss, French and European, and we strongly disagree with the verdict. We have launched an appeal on the way out of court on Wednesday.

Today, there are several important points of the case that I would like you to focus on.

First, the prosecution has failed to produce any convincing evidence against UBS during the trial.

Second, given the size of the fine and the very high-profile nature of the case, the judgement is very thin.

Third, although we believe no fine is warranted, because we believe that no criminal wrong-doing occurred, the court has made errors in setting the amounts that grabbed the media headlines.

On the first point, we continue to believe the prosecution's accusations were not backed by any concrete or credible evidence. Facts and statements in our favour were entirely ignored by the court; for example, from UBS clients interviewed during the investigations that have all said that they've never met with a UBS client advisor in France. Further, we were also denied access to the tax authority's regularisation files on the grounds of equal access to information – an obviously incorrect ruling, as the French state oversees both prosecution and the tax authorities, and they enjoyed full access to the documents in question. The court ruling itself is, as I said before, thin. On the entire 38 pages referring to the merits of the case, there is no in-depth response to UBS's argumentation and evidence, just a mere repetition of prosecution's documents and claims. I invite everyone to read the judgement that is available. The verdict relies on an article of the French tax code for instance, that was not even in effect during the period covered by the charges and which refers to very different kinds of taxes than those covered by the charges.

On the last point. We strongly contest any liability in this case, but even in calculating the fine, the court has made serious mistakes. Although it correctly argues the fine should be based on the proceeds of tax evasion, i.e. the non-paid tax, it then goes on to set it based on the amount of total assets, of 3.7 billion that have been declared. In the document itself, they refer to the unpaid tax of an amount of 620 million, which includes taxes that are not even in question here. So there is not a shred of substantiation justifying the civil damages of 800 million, as well as the support of the 3.7 billion that the court followed the prosecution on..

To summarize, we think the proceedings to date failed to address our argumentation and evidence proving our innocence in this matter. We expect the appeals process will correct these mistakes. And why do we expect that these mistakes are being corrected? The court of appeals operates under the strict control of the Supreme Court or the French Cour de Cassation. A failure to respond to our argument would be a reason for denial or acquittal. I quickly pass over to Denis Chemla of Allen & Overy, who is our lead external counsel, to give any additional comments before we'll open for questions.

## **Denis Chemla**

Thank you, Markus. Just I can only confirm what Markus told you, just to briefly summarize the position. This was a case, which was based on the testimonies of four to five former employees. Those testimonies were not backed by any other evidence, no concrete evidence, no hard evidence, no documents, just the statements made by these people. These people were not even called at trial as witnesses by the prosecution. There were no witnesses for the prosecution at trial, and the court basically took the view it took, by simply relying on the written arguments made by the prosecutors prior to the trial and prior to the defence by UBS, and made no reference at all to our arguments. This is a very unusual situation, this is a very unusual judgment in that respect. We have filed an appeal to the court of appeals and we expect to get a different treatment before the court of appeals. The court of appeals is a very – it's a different court, it is made up of senior judges much more experienced than the judges there were before. It is also a completely different environment. The first instance court where we were before was a court where the prosecutors, the investigating judges and the trial judges, the trial judges were all colleagues, they all belong to the same court. Prosecutors in France are attached to a court. The court of appeals is a different court, with different prosecutors and different judges, so completely removed from the first instance court, and that gives them greater independence and greater ability to review the findings of the first instance court. Before the court of appeals, we have the right to get a second trial, both on facts and law, a new trial afresh. Timing is approximately – between now and the judgement in the court of appeals – about two years and we get a chance to lay out our defence again, find additional evidence if we wish, taking account of the first instance decision in order to rectify some of the findings. As Markus said, the court of appeals, contrary to the first instance court is under a legal obligation to precisely respond to our arguments, because if it fails to do so, the Supreme Court above may overturn the decision for failure to address or respond to arguments raised by the defence. So we're very – I'm confident that the appeals process will be a better process, and that we can get to a substantially different result before the court of appeals.

## **Markus Diethelm**

We'll open for questions...

## **Martin Osinga**

We can now open to questions.

## Q&A

### **Stefan Stalmann, Autonomous**

Good Morning gentlemen. Thanks for arranging the call. I have two questions, please. Rather legal questions – the first one is about statutes of limitations for cases maybe in other countries. I don't know if you could generally comment on that but I would be quite curious how you think about potential similar cases in other countries, in particular in Europe, and whether you see the chance that at some point the statute of limitations might protect you from these kind of potential claims.

And the second question is you have settled with various authorities similar cases in the past; for instance, with Germany a couple of years back. Do you think that these kind of settlements provide you with enough shield to settle these cases for good, or is it possible that new facts come to light, new angles could be prosecuted and that you may face additional claims in countries where you have already settled?

### **Markus Diethelm**

Thank-you. So let me take that question in reverse. As far as the settlements are concerned, in Germany. In Germany there is a rule that if you settle with one of the states it applies to all the states in Germany and it covers all the behaviour that we settled for, which has been described in a very broad fashion. You can imagine that we do not expect subsequently to the closure of that settlement that any wrongdoing has occurred in the general environments that the bank has consistently fostered and implemented, both on the compliance and on the control side, in addition to the situation for clients. Let's not forget that the time in 2004, which is when the investigation period began here, was a very different time to recent times when it became very clear that the Automatic Information Exchange will become standard, and indeed now is fully in place. So I do not expect any of the settlements that we have concluded to be re-opened.

On your question of statutes of limitations in France, that's a three year period for fraud. And in that sense, it helps that we consistently in the interest of shareholders fight the case where we are convinced that we are not guilty. Obviously our statute of limitations in France is not an issue because we have been in this proceeding, but as far as other countries are concerned that have not opened investigations, it clearly helps. Because the world has changed, behaviour of individual tax-payers has changed, and in this French matter as you well noted, there is no mentioning of any individual prosecution. The French Tax Authorities has never gone against individuals in any significant fashion. So I believe our consistency and our dedication and perseverance in addressing this in front of legal courts is the right one.

### **Stefan Stalmann**

Thank-you very much.

### **Andrew Stimpson, Bank of America Merrill Lynch**

Thank-you everyone. So both of my questions probably directed towards Sergio here. So firstly I just want to know what, if anything, FINMA has made of this please. I appreciate you are convinced on your side of the case but clearly if you are a regulator you have to plan for the worst. And when similar kinds of things have happened before we have seen operational risk-weighted asset requirements go up. Is that something that you think could be a consequence of the decision from the French courts?

And then secondly is there any feedback so far – I know it is very early – from clients so far and is there any reason we should expect that the negative headlines could start to interfere with inflows? Thank you.

### **Sergio Ermotti**

Thank you, Andy. As I mentioned before, so first of all, you know, of course we are in constant dialogue with all regulators globally, and particularly with our main regulator FINMA. And you know, we first need to complete the

assessment of the judgment, and in that sense, as soon as we complete that process, we will need to understand the accounting implication and if there is any additional implications. So, that is the reason that I am saying that the first one can probably be addressed by the publication of the Annual Report. And latest by our Q1 results, we will also be able to give more clarity about any further regulatory consequences. But you have to assume that of course we are very on top and very in constant dialogue with our regulators.

In respect of clients, I have to say that one of the most important elements of also of our communication and our communication in respect of this verdict, was also to make it very clear to not only to you as our shareholders or our stakeholders, but also to our clients and to our employees, and to the wider public – to make them aware about the facts. And in that sense, I have to say that the reaction of clients and employees has been very good, very supportive. I see absolutely no sign of people being concerned across the board and actually I have to say that there is a high degree of support for our stance and our position so absolutely no impact on business.

### **Andrew Stimpson**

Ok thank-you.

### **Kian Abouhossein, JPMorgan**

Yes, thanks for taking my questions. The first question is regarding the process. You mentioned the legal appeals court. I wanted to see, as I understand it, are there two appeals that you can do? And in case you lose those, can you take this case to the EU court or as any other legal matters that you can take forward, following the two appeals, potentially? And if you can me a time-frame around, you mentioned the first appeal two years. What about the second, how long would that take? And also if you can take it even further out, in terms of taking legal action?

The second question is regarding – you mentioned regularisation and I would like to understand: will you get the information on regularisation filing in the appeal? Do you get any additional factual information? Or is the information that you have all you get at this point?

### **Markus Diethelm**

Let me tee it up and then Denis Chemla will give you the detail on the procedure. As far as the regularisation file is concerned, it is of course very important, because this is a criminal matter and the burden of proof is with the prosecution and with the court that the crime exists. We have the right in our defence to say that that is not so. So for instance, as you know, we are only charged here for three types of taxes; that is income tax, wealth tax and corporate tax, but not inheritance tax. The report itself says that the vast majority of the regularised French tax payers have owed inheritance tax. So we have, we will try again, to make that point and get access to that file. The French State has not given us. And that will be one of the arguments on appeal, the question of law whether our rights to defend ourselves have not been observed. I pass it over to Denis Chemla to give you the details on timing of the appeals procedure, including the European Court of Human Rights.

### **Denis Chemla**

So there is a first appeal to the court of appeals, as you said, which takes up to two years. Further to that, there is a second appeal to the Supreme Court, which is an automatic right of appeal, but only on points of law, due process and procedure, and that takes another two years approximately. Following the last decision of the Supreme Court there is always a possibility to petition the European Commission, the European Court of Human Rights, for a violation of provisions of a convention, the European Convention of Human Rights, Right to a Fair Trial predominantly. And that takes again, you know, in my experience another two to three years.

### **Kian Abouhossein**

And may I just ask, the court, the EU court, is that something that you would consider and is that in your decision process? Or you apply, they make a decision – is this case is actually going to be listened to?

**Markus Diethelm**

I think what is important to – what we always do is to evaluate the arguments that have been decided or the decisions that have been made by the court. We could not, for instance, now ask the European Court of Human Rights on a violation of the convention before we exhaust the French process. We'll take that up as we learn more about it.

As you know, on the amount of the bail, we did go the European Court of Human Rights, because we said as you've all seen, that this has been widely publicised in the French press and we were presumed guilty before we were able to argue our innocence. But the European Court of Human Rights said that this is not the time to look at it, because the prejudice has actually not occurred yet. So one has to be very careful as to what you appeal to the European Court of Human Rights and we can only make that decision once we are there.

**Denis Chemla**

And as far as the EU courts are concerned, you can only move to EU courts if there is a point of EU law involved. And at this stage, we haven't clearly identify, we haven't identified any relevant points of EU law. This is something we will take another look at in in light of the, once we have fully analysed the First Instance decision.

**Kian Abouhossein**

Thank-you very much.

**Andrew Coombs, Citi**

Good morning and I'll just echo my thanks for hosting this call. I fully appreciate your comments that you will give an update with the Annual Report from an accounting perspective, but I did just want to touch on some of the points you made. I think under IAS 37 you have to book up a provision should the payment be considered probable and can be estimated reliably. There is obviously a hard number out there, so from an "estimated reliably" standpoint, one would assume that threshold is met. So it becomes a subjective decision, to some extent, on the "probable" element, I would assume. So I would be interested to better understand, you said that you are doing an internal assessment of that. I would be interested to better understand exactly what you need to assess. And then the role of the external auditor in the process as well please. Thank you.

**Sergio Ermotti**

Thank you. I guess your comprehensive questions had already three-quarters of the answer. So we are going through the process, we make our own assessment, we have the governance, including the audit committee and the board of Directors, overseeing what – any decision. We have the auditors. We have regulators. So it is a comprehensive process that, as I mentioned, will take some time. And I'm pretty confident that we will come to the right conclusion on what is appropriate and not, also based on the further analysis we need to do on the verdict. So latest by then, we will be able to give you a more precise answer to the question.

**Andrew Coombs**

Ok, and just a follow-up to the legal side, and I probably know the answer ahead of time on this. But does this court case make you consider and change your approach to any of the other legal matters that are outstanding where you have also decided to go through a court process?

**Sergio Ermotti**

No, I think – well, you know – we don't have so many other legal matters where we have a decided to take, accept or take a proactive legal action to fight any situation. And as I mentioned in my opening remarks, our attitude was always to basically be realistic where there was any sign of any light grey, we would need to accept a pragmatic solution, despite any legal angle we may or may not have. When things are pretty straightforward, like the case in France, the situation is completely different. So you have to really understand that the French situation is quite unique. It is quite unique and so we will continue to use very pragmatic and realistic approach and responsible

approach in respect on how we look on these matters, vis-à-vis you know governments or regulators, but also vis-à-vis our shareholders. And when we decide to take a different angle, it is because we believe as a bank that we also have a fiduciary duty in respect of making sure that both our financial interest, but also very importantly, our reputation, is not affected. And although it looks like there is a reputation – there is an element in which some principles are also very important that goes beyond some financial implications. And here it is really a matter of facts to defend also our reputation and the reputation of our people. That's our employees, our colleagues that are exposed to this kind of situation.

**Andrew Coombs**

Thank-you very much.

**Andrew Lim, Societe Generale**

Hi, thank-you very much for taking my questions. So my first question regards the actions of the appeals court. Obviously, they could find you not guilty. But if they found you guilty, would they then stick with the 3.7 billion initial fine? Or is there like a range of possibilities here where they could stick with the so-called tax revenues associated with the regularised assets?

Then my second question is with regards to those tax revenues. I think you said it was 620 million relating to the 3.7 billion on regularised assets. It seems quite low, and I just wanted you to shed some colour on that figure – is that a figure that you have put forward, or something that they agree with? Is there any shift in that figure?

**Markus Diethelm**

It is on page 188 of the judgment and it is what the judge herself writes that 620,480,477 euros.

**Denis Chemla**

Yes, this is, well first question. The court of appeals can as you said find us guilty or innocent. If they find the bank guilty, then they have complete liberty to fix the fine at the level which they deem appropriate. There is absolutely no guidance or no obligation to follow of course the First Instance decision; they can do whatever they want.

The amount of unpaid taxes is derived from the information supplied by the tax authorities. It is relatively low, because you know, you have to realise that these people regularise themselves within the framework of regularisation units, where they negotiated with the tax authorities, and that is the result of the deal they got from the tax authorities.

**Andrew Lim**

Understood, thank you very much.

**Al Alevizakos, HSBC**

Hi, thank-you very much for organising this call, very helpful. So my first question is basically just trying to understand, were you generally surprised by the outcome? I'm just trying to understand how – if during the process, you kind of got the feeling that this is not going in the direction you want it to go?

And secondly, on appeals again, when is the last stage that you can actually not do anything and that you just have to pay the amount you are going to be told in France?

And my third question actually it is about, you mentioned some territorial issues, with French law being applied in Switzerland. What is the Swiss government's view on this decision as well? Do you have any feedback as of now? Thanks.

**Markus Diethelm**

Clearly we didn't expect the outcome. And none of the hearings gave us indication – again, they lasted for six weeks – that it would go in that direction. One is always smarter with the benefit of hindsight. There is commentary on you know, the environment in France etc. but from a purely legal perspective, it could not have been expected.

**Denis Chemla**

Yeah, that is correct. I mean nothing specific took place during the hearing. The prosecutors were very reserved, they weren't very aggressive. The courts questioned the various defendants in a normal fashion. There were no witnesses for the prosecution. The defence filed a very substantial defence. So you know, no, clearly this was not expected.

Your second question is when should we be expected to pay anything if we are found guilty – that would be after the final decision in the process. So if the court of appeal, if the – if the Supreme court decides that you know, it would be after the decision by the Supreme Court immediately. Or if the Supreme Court overturns the court of appeals' decision, after another court of appeals has ruled on the matter. So it's a long time from now.

**Andrew O'Flaherty, Credit Suisse**

Hi, thank-you for taking my question. Can we just confirm that as long as the process remains unresolved, that we can assume that there will be no additional costs that you would take, apart from your general legal costs, to be paid by UBS, or anything in the same way that you took the 1.1 billion, or had to reserve that in the past? Thank-you.

**Markus Diethelm**

That is correct.

**Andrew O'Flaherty**

Thanks.

**Martin Osinga**

We have now no further comments, and we can close the call.

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(xi) the effects on UBS’s cross-border banking business of tax or regulatory developments and of possible changes in UBS’s policies and practices relating to this business; (xii) UBS’s ability to retain and attract the employees necessary to generate revenues and to manage, support and control its businesses, which may be affected by competitive factors; (xiii) changes in accounting or tax standards or policies, and determinations or interpretations affecting the recognition of gain or loss, the valuation of goodwill, the recognition of deferred tax assets and other matters; (xiv) UBS’s ability to implement new technologies and business methods, including digital services and technologies and ability to successfully compete with both existing and new financial service providers, some of which may not be regulated to the same extent; (xv) limitations on the effectiveness of UBS’s internal processes for risk management, risk control, measurement and modeling, and of financial models generally; 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