

Anti-money-laundering in commodity trading: reporting duties and corporate criminal liability

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Commodity trading touches states in which payments to officials are part of the business model of local intermediaries. Swiss law reaches that constellation through two levers: the money-laundering provisions and the criminal liability of the undertaking. The proceedings of recent years show how both work in practice, and what they cost.

1 The money-laundering provisions

Article 305bis of the Criminal Code penalises an act likely to frustrate the identification of the origin, the tracing or the forfeiture of assets known to originate from a felony. Three elements deserve attention. The predicate must be a felony or, since 2016, a qualified tax offence (Article 305bis para. 1bis); other misdemeanours are excluded. The act need only be *likely* to frustrate; no actual frustration is required. And the offence can be committed by anyone, not only by a financial intermediary.

Article 305ter covers a lack of diligence in identifying the beneficial owner in financial transactions, and grants the financial intermediary a right to report suspicions.

The Anti-Money Laundering Act builds the preventive layer: identification of the contracting party, establishment of the beneficial owner, enhanced clarification where risks are elevated, ongoing monitoring, and reporting to the Money Laundering Reporting Office. In 2025 the office received 21,087 suspicious activity reports, 39.3 per cent more than the year before; 91.3 per cent came from banks, and 1,375 cases were forwarded to the criminal authorities.

2 Why the trading sector is exposed

Four features of the business create the exposure.

- **Counterparties are states or state entities.** National oil companies, ministries and state mining corporations are the sellers. Their officials are by definition politically exposed persons.
- **Intermediaries are customary.** Local agents are engaged to obtain allocations, licences and access. Their remuneration is frequently a percentage, and the service they render is frequently undocumented.
- **Payment flows are large and fast.** A single cargo moves tens of millions, and the payment chain crosses several jurisdictions.
- **Information is asymmetric.** The trader knows less about the recipient of an intermediary's payments than the intermediary does, and the incentive to inquire is weak.

3 Corporate criminal liability

Article 102 of the Criminal Code, in force since 2003, provides two routes.

Under paragraph 1 the undertaking is punished subsidiarily where an offence was committed within it and cannot be attributed to any particular natural person because of defective organisation. The rationale is that an organisation should not escape liability by being opaque about its own decision-making.

Under paragraph 2 the undertaking is liable cumulatively and irrespective of the liability of natural persons where, for listed offences — among them criminal organisation, terrorist financing, money laundering and bribery — it can be reproached for not having taken all reasonable and necessary organisational measures to prevent the offence.

The practical core is the phrase *reasonable and necessary organisational measures*. It makes the compliance organisation the subject of the criminal proceedings. What is examined, in roughly this order: the risk analysis and whether it identified the risk that materialised; the selection, remuneration and monitoring of intermediaries; payment approval processes and whether they were followed; documentation; training; internal reporting lines and whether reports were acted on; and the undertaking's response to earlier incidents.

The standard is relative. What is reasonable for a house with 3,000 employees in thirty countries differs from what is reasonable for a firm of forty people trading one commodity.

4 The sanctions and what actually bites

The fine under Article 102 reaches five million francs. In the cases that matter, the fine is the smaller part. Confiscation of the advantage obtained, or a compensatory claim where the advantage is no longer available, carries the economic weight.

Case	Date	Amount
Gunvor — Republic of Congo, Côte d'Ivoire	14 October 2019	94 million francs
Gunvor — Ecuador	2024	86.7 million francs
Glencore — compensatory claim	5 August 2024	150 million dollars
Trafigura — compensatory claim	31 January 2025	145 million dollars

Proceedings are conducted by the Office of the Attorney General of Switzerland and, where they reach trial, before the Federal Criminal Court in Bellinzona.

5 Three conclusions for the undertaking

Responsibility cannot be outsourced. Engaging a local agent transfers the work and not the liability. Selection, remuneration and performance must be capable of proof: who was chosen, why, against what alternatives, on what terms, for what service, and what was delivered.

A paper organisation makes matters worse. A compliance framework that exists in a manual and is bypassed in daily business documents the undertaking's knowledge of the risk while providing none of the protection. In a proceeding it is evidence against, not for.

Cooperation affects the outcome materially. Because the compensatory claim is measured by the advantage obtained, and because quantifying that advantage depends on internal records, the undertaking's posture — early internal investigation, orderly disclosure, remediation — shapes the figure as well as the tone of the proceedings.

6 The bank's own position

A bank financing a trader inherits part of the problem. The client's shortcomings become the bank's credit risk when a proceeding freezes the client's assets, its reputational risk when the case is reported, and in some circumstances its own liability where the bank's diligence is found wanting.

That is why the reporting figures matter to the sector: the overwhelming majority of suspicious activity reports come from banks, and a trading client whose payment pattern triggers one has a problem with its lender before it has one with the prosecutor.

7 A review list for a trading house

1. Does the risk analysis name the countries, commodities and counterparty types that actually generate the revenue?
2. Is there a register of intermediaries with contract, scope of services, remuneration basis and evidence of performance?
3. Who approves payments to intermediaries, and is the approval documented with a reason?
4. Are politically exposed persons identified on the counterparty side, including among the beneficial owners of counterparties?
5. Does the sanctions screening cover the Swiss list, and control relationships as well as listed persons?
6. Is there a record of internal reports and of what was done about each?
7. After a previous incident, what changed — and can the change be evidenced?

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