

Responsibility remains with the institution

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The use of artificial intelligence does not shift legal responsibility. Under the Anti- Money Laundering Act the financial intermediary must clarify the economic background and purpose of unusual transactions (Art. 6 AMLA), document its clarifications (Art. 7 AMLA) and report to the Money Laundering Reporting Office (MROS) when it has a well-founded suspicion (Art. 9 AMLA).¹ A model can identify unusual transactions and prioritize alerts. The assessment of whether a suspicion is wellfounded, and the decision to report or to terminate a relationship, are judgments that the law attributes to the institution and its responsible persons. Criminal liability for failure to report under Art. 37 AMLA and for money laundering under Art. 305bis of the Swiss Criminal Code attaches to persons and, under Art. 102 SCC, to the enterprise, regardless of whether a software tool failed to flag the transaction.² The same applies in the investment business. The duty to assess suitability and appropriateness under Art. 10 to 14 of the Financial Services Act lies with the financial service provider, which must be able to explain why a recommendation suits the client.³

In practice the most frequent problems arise at the boundary between the tool and the human reviewer. A compliance officer who closes alerts because the model has given them a low score, without independent review, has delegated a legal judgment to a system whose operation he may not understand. A relationship manager who sends a client an investment proposal drafted by a language model, without checking the figures, is responsible for any errors. FINMA's emphasis on documentation, explainability and independent review is aimed precisely at this boundary. The institutions that have dealt with these issues most successfully in Lugano are those that treated artificial intelligence as an extension of existing compliance and risk processes and kept human decision-makers accountable for every material step.

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For the practitioner. Before introducing an artificial intelligence application in a Lugano bank, asset manager or fiduciary: - Record the application in an inventory and classify it by materiality, using a broad definition of artificial intelligence. - Identify the provider, the location of data processing and the contractual basis (outsourcing, data processing agreement). - Check data quality and the protection of client data and banking secrecy. - Define tests, performance indicators and monitoring, including the detection of data drift. - Document purpose, data, model, limitations and fallback solutions. - Ensure that compliance decisions (reporting to MROS, termination of relationships) and investment recommendations are taken by competent persons. - For clients in Italy, check whether the application falls under the EU Artificial Intelligence Act or Italian law.

1 Notes

1. Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997 (Anti-Money Laundering Act, AMLA), SR 955.0, Art. 6 (special duties of due diligence), 7 (duty to keep records) and 9 (duty to report), English text (status 1 January 2023) at https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/1998/892_892_892/20230101/en/html/fedlex-data-admin-ch-eli-cc-1998-892_892_892-20230101-en-html-1.html. ↩
2. AMLA, Art. 37 (fine of up to CHF 500,000 for wilful and CHF 150,000 for negligent breach of the duty to report), <https://www.droit-bilingue.ch/de-fr/9/95/955.0-37-56.html>; Swiss Criminal Code of 21 December 1937 (SCC), SR 311.0, Art. 102 (liability of the undertaking, with para. 2 covering offences under Art. 305bis among others), <https://www.droit-bilingue.ch/de-fr/3/31/311.0-102-133.html>. See Chapters D.IV and G.III. ↩
3. Federal Act on Financial Services of 15 June 2018 (FinSA), SR 950.1, Art. 10 (duty to assess), 11 (appropriateness), 12 (suitability), 13 (exemption) and 14 (inability to assess or lack of appropriateness or suitability), headings at <https://www.droit-bilingue.ch/de-fr/9/95/950.1-index.html>. ↩

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