

The line to today's practice

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For the practitioner advising a trading company in Lugano, federal policy since 2013 has three practical consequences. First, the company will be counted. It will be surveyed by the Federal Statistical Office, whose data feed the national and cantonal figures on which policy decisions are based. Second, the company's reputation and access to finance depend on its compliance with standards that go beyond the law: sanctions screening stricter than the statutory minimum, human rights due diligence along the supply chain and transparency towards banks about ownership and transactions. Third, the legal framework may change. The political debate about a commodity market supervisor or a specific law for the sector has not ended, and Swiss rules on sanctions, transparency and due diligence follow European developments with a delay of months or years.

A trader that buys and sells goods for its own account is not, as such, a financial intermediary under the Anti-Money Laundering Act, because the Anti-Money Laundering Ordinance treats trading in commodities as financial intermediation only when it is carried out on behalf of third parties, either on an exchange or, for commodities standardized enough to be liquidated at any time, off exchange. It becomes subject to the Act as a dealer if it accepts more than CHF 100,000 in cash in a commercial transaction, or as a financial intermediary if it engages in financial intermediation for third parties, for example by trading commodity derivatives for clients.¹ The banks that finance it are subject to the Act and apply its due diligence obligations to the trader as client. Chapter G.III treats the Act and its revision.

For the practitioner. When a client proposes to establish or acquire a commodity trading company in Lugano, the following points should be reviewed at the outset: - Substance: where the traders, risk managers and directors who take decisions are located, and whether the Lugano company has the staff and premises to support the profits it will report (Chapter F.II).

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- Tax: the cantonal and communal profit tax rate after the 2020 reform, the Pillar Two minimum tax for large groups and the controlled foreign company and transfer pricing rules of the parent's home country, in particular Italy (Chapter F.II). - Banking: whether at least two banks with commodity finance expertise are willing to open accounts and provide transactional facilities, and on what conditions. - Sanctions and export controls: screening of owners, counterparties, origins, vessels and routes under Swiss, EU, UK and US rules (Chapter G.II). - Statistics and reporting: obligations towards the Federal Statistical Office, the SNB's balance of payments survey where the thresholds are reached, and, for energy traders, market reporting. - Due diligence and transparency: whether the conflict minerals and child labour rules of the Code of Obligations apply and what supply chain policies customers and banks require. - Industry network: membership in the Lugano Commodity Trading Association, which provides access to banks, service providers, training and the authorities.

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. 2 paras 1 and 3 and Art. 8a para. 1 (dealers accepting more than CHF 100,000 in cash), <https://www.droit-bilingue.ch/en-de/9/95/955.0-2-5.html> and <https://www.droit-bilingue.ch/en-de/9/95/955.0-8a-14.html>; Ordinance of 11 November 2015 on Combating Money Laundering and Terrorist Financing (AMLO), SR 955.01, Art. 5 para. 1 ("der börsliche Handel mit Rohwaren auf fremde Rechnung" and off-exchange trading for third parties in sufficiently standardized commodities), <https://www.droit-bilingue.ch/de-it/9/95/955.01-5-8.html>. See Chapter G.III. ↩

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