

Reporting to MROS: balancing speed/responsiveness and quality of the reports

Submitting rapidly a report to MROS without compromising the quality of the reports for the authorities: what are your obligations?

FINMA's new expectations regarding responsiveness and speed



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If a financial institution reports to MROS too quickly, the report may be of little value; if it does so too late, it risks breaching the duty to report (article 37 AMLA). So, what should be done? Faced with ever-shorter response times, compliance teams are confronted with a major challenge: **how to submit a report to MROS swiftly whilst ensuring its operational value to the authorities?** The question is no longer simply whether a report should be made, but how to produce a report that provides genuine added value to the criminal prosecution and financial intelligence authorities. Following a review of the basic concepts, the question this seminar poses is: 'How can we meet the requirements for speed without compromising the quality of the reports to be produced?'

The false dilemma between speed and quality

- What needs to be taken into account with regard to Section 37 of AMLA concerning breaches of the duty to report?
- What might be the consequences of breaching the duty to report?

What constitutes an MROS report with high added value? What are the regulators' expectations regarding such reports?

A few reminders

- What is meant by 'Suspicious Activity Reports' (SARs) and 'Suspicious Transaction Reports' (STRs), given that Swiss law refers only to the concept of 'reasonable suspicion'? Does Swiss law make a distinction?
- What is the difference between the obligation to report (Art. 9 AMLA) and the right to report (Art. 305ter(2))? What does current practice among financial institutions show?

The sequence of red flags or well-founded suspicions leading up to reporting

Red flags

- What is a 'red flag' / risk indicator or trigger, theory and examples
- The nature of the red flag: a transactional alert, a change in circumstances, etc. – what are the different types of alerts that an institution should ensure it has in place? Are we referring to changes relating to the client's personal or marital circumstances, their tax status or financial situation (LSFin impact), changes to the structure or CRS status of the client, or new structures that may affect spouses, creditors or the tax authorities, or changes that are relevant to the application of financial sanctions?
- The hierarchy of red flags: red flags of varying degrees of significance; examples
- Which red flags are sufficiently obvious to the regulator to immediately trigger a MROS report?
- Assessing red flags to determine whether or not there is reasonable suspicion; what questions

should be asked? What examination of red flags and what due diligence should be applied?

- Should all red flags be investigated to the same extent, or should the risk-based approach be applied, taking into account, for example, the client's risk level?

Reasonable suspicion

- Definition; examples
- The relationship between red flags and reasonable suspicion: examples of red flags that do not give rise to reasonable suspicion. How should these be handled?

Timeliness / the time lag between red flags and reasonable suspicion, and between reasonable suspicion and reporting

- The value of a report has two dimensions (strength of suspicion, speed); a balance must be struck between the two: the more one consolidates the suspicion, the more one delays the report: how should due diligence be balanced so as not to unduly delay a report and thereby cause it to lose its value for MROS and the criminal justice authorities?
- What are the time limits for the reporting obligation?
- What types of suspicion warrant an immediate report or further investigation following the report?

The work doesn't stop after the report: why?

- Further supplementary reports

Recurring misunderstandings regarding reporting deadlines

- Should the report be made as soon as the first 'red flag' appears?
- Does the provision "immediate notification to the authorities" imply that the notification must be made within 24 or 48 hours?

- Does it make sense to say, “The more clarifications there are, the better”?
- Is it good practice to say, ‘Until the file is complete, I cannot report it’, or ‘Negative press coverage is never sufficient on its own to trigger a report’?
- Is it correct to assume that ‘the time limit begins when the MLRO receives the file’ or that ‘the right to disclose (Art. 305ter(2) of the Swiss Criminal Code) allows for a longer delay’?

FINMA's new expectations regarding responsiveness and speed – various questions

- Is FINMA shifting from a focus on compliance to a focus on efficiency?
- Is there less tolerance for internal delays?
- Has ‘time’ become a quality indicator? Why?
- Are expectations rising as a result of automation?

FINMA and the FDF have penalised delays in reporting: which delay constitutes an offence? What are the typical issues encountered?

- At what point did the financial intermediary already have reasonable grounds for suspicion, and how long did they wait before reporting to MROS?
- Should one wait until reasonable grounds for suspicion already exist?
- How many days elapse between an AML alert and its initial review?
- How many cases remain open for more than 90 days?
- How long does it take to obtain an MLRO decision?
- Which delays are due to the investigation and which are simply the result of internal organization?
- Could we defend each delay before FINMA or the FDF?

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