

Money laundering

Fraudulent obtaining of COVID credit

Par Teymour Brander le 8 November 2022

Can obtaining a COVID credit fraudulently lead to criminal consequences, and if so, what are they ? In ruling 6B_295/2022, the Swiss Federal Supreme Court upheld the conviction of a greedy entrepreneur for money laundering. The ruling also provides an opportunity to discuss other criminal offences that may be relevant.

A quick (re)contextualization before turning to the case at hand : in March 2020, the COVID-19 pandemic strikes with full force. To help companies affected by this crisis, on March 25, 2020, the Federal Council adopted the Ordinance on Joint and Several Surety Bonds in Connection with COVID-19 ("OCaS-COVID-19" ; see [cdbf.ch/1119](https://www.cdbf.ch/1119)). This ordinance allows rapid, unbureaucratic access to loans ("COVID loans") on the basis of standardized formal declarations by the applicant. The cash obtained must then be used exclusively to continue the business activity.

In April 2020, an entrepreneur purporting to be active in the car rental business sent a form to a bank requesting a COVID credit. The form mentions sales of CHF 950,000. On the same day, the bank paid him CHF 95,000, i.e. 10 % of sales, in accordance with OCaS-COVID-19.

The bank realized the deception in the weeks that followed. The entrepreneur is indeed trying to start an independent car rental business. However, he has never kept any accounts whatsoever, and the sales figures he claims to have provided are a complete fabrication. In addition, almost all of the loan obtained has been used illegitimately for private purposes. Specifically, the entrepreneur withdrew around CHF 65,000 in cash to pay off various private debts.

The Lausanne Police Court found the entrepreneur guilty of forgery (art. 251 CP), fraud (art. 146 CP) and money laundering (art. 305bis CP). The judgment having been upheld on appeal, the contractor appealed to the Federal Supreme Court, contesting his conviction for money laundering. In his view, he had not committed an act of obstruction. However, he no longer objects to his conviction on charges of forgery and fraud.

The Federal Supreme Court rejected the appellant's arguments in their entirety. Withdrawing assets in cash is a common act of money laundering aimed at breaking the paper trail. In this case, the withdrawals made by the entrepreneur were such as to prevent the confiscation of the amount in question. On a subjective level, he knew that he was not entitled to the COVID credit obtained, and at the very least accepted the fact that the cash withdrawals were likely to hinder

the criminal authorities in their efforts.

Accordingly, the Federal Court confirms the conviction for money laundering.

This ruling is a reminder that fraudulently obtaining a COVID credit can have serious criminal consequences. As these were no longer contested in casu, the Federal Court did not rule on the convictions for forgery of documents and fraud. With regard to these two offences, the Vaud Cantonal Court had accepted in its ruling that the appropriate form requesting a COVID credit constituted a document of title with increased probative value, and had held that the contractor had cleverly deceived the bank by using this forgery. In our opinion, the cantonal court's legal demonstration is not open to criticism. In a similar vein, a recent Geneva ruling upheld a conviction for forgery of documents and fraud following the fraudulent obtaining of a COVID loan.

Our entrepreneur's case is by no means an isolated one. According to statistics published on the FDF website, SECO still reports more than 1,800 cases of unfinished abuse that have been reported to the criminal authorities. It's a safe bet, therefore, that this won't be the last case of fraudulent obtaining of a COVID credit.

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