CENTRE DE DROIT
BANCAIRE ET FINANCIER

Money laundering

Mutual assistance between authorities and refusal to seal

Par Katia Villard le 26 March 2025

The Federal Supreme Court decision 7B_1158/2024 of 18 February 2025 (not intended for publication) does not introduce any major new developments but constitutes an additional landmark in the maze of sealing procedures, in particular in the case of parallel procedures and the transmission of information between authorities.

Following a report from FINMA, the FDF opened administrative criminal proceedings in March 2021 for breach of the duty of disclosure committed within a bank. In this context, the administrative authority requested various documents from the financial institution. In July 2021, the financial institution handed over a USB stick with the requested data to the FDF and simultaneously requested that it be sealed. The request to lift the seals made by the administrative authority is accepted by the Complaints Court of the FCC and the bank's appeal is rejected by the Federal Court (1B_92/2023, commented on in Villard, cdbf.ch/1292).

In parallel, the MPC has been conducting an investigation into money laundering since 2017 on the basis of more or less the same set of facts. A sealing procedure is also taking place in this context. It ends with a refusal to lift the seals, as the MPC's request to do so is deemed to be late. The second production order from the prosecuting authority relating to the same elements led to a second sealing procedure, the request to lift which was also rejected in June 2021, in the absence of new elements in relation to the first procedure.

In March 2024, the OAG requested access to the administrative criminal law proceedings file from the FDF. The administrative authority granted the request. The complaint proceedings initiated by the bank following the transmission of the documents were rejected. The financial institution then requested that the file be sealed. The OAG rejected the request, a refusal that was upheld by the Appeals Chamber of the Federal Criminal Court. The bank then turned to the Federal Court. It first requested provisional measures to prohibit the OAG from consulting the disputed file, a request which was granted.

In their decision, the judges of Mon Repos began by recalling that, in accordance with Art. 79 LTF, the decisions of the Appeals Court cannot be brought before the Federal Court, unless they relate to coercive measures. However, in the present case, the disputed transmission is a measure of mutual assistance between authorities within the meaning of Article 194 CPP. The High Court also notes incidentally that the administrative criminal law proceedings are now over and that, in the context of these proceedings, the disputed documents were also the subject of a sealing procedure, which was finally lifted. The bank was therefore able to assert its grievances

already within the framework of this procedure. Furthermore, the Federal Court ruled that the OAG's procedure cannot, in view of the circumstances, be qualified as an unfair method aimed at circumventing the decisions refusing it the lifting of the seals due to the late nature of the prosecution authority's request in this regard.

On the merits, the Federal Supreme Court points out that the reasons for sealing invoked by the bank, in particular banking and business secrecy and the right not to incriminate oneself, no longer constitute grounds for sealing since the revision of the Code of Criminal Procedure that came into force on 1 January 2024 (see in particular 7B_313/2024, discussed *in the* Villard case, cdbf.ch/1389).

The Federal Court therefore rejected the bank's appeal.
