CENTRE DE DROIT
BANCAIRE ET FINANCIER

Money laundering

MROS negative typologies : a welcome tool or a false good idea ?

Par Natacha A. Polli le 29 September 2025

The MROS publishes ‘negative typologies’. The aim is to raise awareness among financial intermediaries (FIs) of the substance of the clarifications and to improve the quality of data to enable it to be processed efficiently, which is to be welcomed. It is not certain that this objective will be achieved, as some typologies leave practitioners perplexed. Here are a few thoughts from a practical perspective on some of the typologies published on 16 September 2025.

Typology 2 : In the absence of a link to a criminal organisation, it seems logical not to report if it is established that the assets of a client under investigation are unrelated to the alleged offences. However, the MROS Report 2002 (section 3.4), recently cited by the FDF, states *“insofar as it is not the assets but one or more persons who have committed the criminal acts, it is logical to take into account the persons and their actions. Therefore, a financial intermediary who merely considers the transactions without taking into account personal aspects and the economic background is not performing a sufficient analysis and is not fulfilling their due diligence obligations.”* If this is a change in MROS practice, this should be made explicit.

Typology 3 : The FI is asked to refrain from reporting if it cannot find *‘additional specific information’* after responding to an order from an authority. The reality is more complex. What if the proceedings are directed against an unknown person and subject to a gag order, making it impossible to question the client to assess whether they are implicated, aggrieved or simply a third party ? *What* about the money laundering indicator 4.6 in the Appendix to the OBA-FINMA, which in the eyes of some authorities requires disclosure (see Typology 2) ? If, despite analysis, the FI finds nothing, can it reasonably refrain from reporting without running the risk of violating the reporting obligation on the grounds that it ‘should have known’ when it does not have the resources of the authorities ?

Typology 7 : The creation of slush funds in the commercial sphere generally involves offences before the corrupt act is committed. The cash released for bribery is in one way or another diverted from its legal purpose (unfair management) or requires accounting acrobatics that constitute document forgery. In its 2009 Annual Report (p. 84), MROS had already corrected its position following the intervention of the OAG. Furthermore, considering the aftermath of the Petrobras affair, can an FI that identifies a situation which it cannot rule out as being linked – even tenuously – to a major international corruption case reasonably refrain from reporting it ? What do FINMA, the FDF and the OAG think ?

Type 8 : Switzerland grants mutual assistance in criminal matters, and even extradition, for stock market offences relating to securities listed abroad. In terms of money laundering, the constituent element of the predicate offence is fulfilled if the offence is committed abroad and is punishable there. The condition of double criminality is interpreted in an abstract manner. The assertion that no communication would be required for stock market offences involving securities not listed in Switzerland raises questions. This also contradicts the position of the OAG published in the MROS Annual Report 2013 (p. 58). Has the OAG's position changed ? What will the FATF experts think when they carry out their assessment in 2027 ?

On the other hand, typologies 5 and 6 usefully reiterate the obvious : there is no need to report the business relationship of a victim. In this case, a criminal complaint must be filed. For the record, *money mules* are not mere victims, but perpetrators by eventual intent (MROS Annual Report 2014, p. 15).

In concrete terms, have these typologies been recognised in some way by authorities such as FINMA, the FDF and the OAG, so that a FI can simply refer to them to justify non-disclosure ? Can MROS ask FIs not to comply with a legal obligation (Art. 9 AMLA) or exercise a right (Art. 305ter para. 2 SCC) ?

More generally, the lowering of the reporting threshold is the result of court rulings, FDF practice, MROS publications and certain authors, and even amendments to the AMLA, often in response to the work of the FATF. Examples include : reporting in the event of a breakdown in negotiations, failure to take into account possible limitations such as prescription or immunity, reporting of closed accounts, taking into account the indicators in the Appendix to the FINMA AEOIF even without being able to identify a possible prior offence, and reporting in the event of unsuccessful clarification within the required time limit. Rather than *defensive reporting* (supposedly due to a deficient internal control system or a commercial strategy and risk policy that is not aligned with FIs), the increase in reports is the result of the developments mentioned above, as well as greater awareness among FIs and better implementation of due diligence obligations, but above all the threat of sanctions in the event of a breach of the reporting obligation (including for late reporting) : FINMA enforcement, administrative criminal proceedings by the FDF, and the criminal liability of the company being called into question by the OAG. It is legitimate for a FI to protect itself from the risk of sanctions in a system where the authority requires FIs to report more and more quickly.

In order to reform the reporting system, make it more efficient or even return to the 'quality-based reporting system' mentioned by MROS, it must be completely overhauled, involving all stakeholders and setting out the framework, responsibilities and principles. FIs need legal certainty in order to carry out the task entrusted to them. This implies coordination between authorities and consistent publication of their practices (e.g. restoration of MROS publications prior to 2015 on its website with express mention when a practice is changed in a subsequent publication). Otherwise, FIs will probably continue to make reports that MROS considers irrelevant, causing such an overload that, in a most surprising reversal where '*Financial intermediaries [benefit] from the work of MROS*', there is talk of financing the MROS through a '*verursachergerechtes Gebührenmodell*' (polluter pays principle-based pricing), even though the reports are the result of an obligation imposed on FIs.