CENTRE DE DROIT
BANCAIRE ET FINANCIER

Criminal proceedings

Refusal to seal AML documents

Par Katia Villard le 20 November 2025

The criminal prosecution authority may refuse to seal documents that a bank must keep available for the criminal authorities in accordance with Article 7 AMLA, even if the documents were drawn up by lawyers. This conclusion, reached by the Federal Supreme Court in a ruling dated October 2, 2025—not intended for publication but handed down by five judges—is in line with the trend in case law relating to attorney-client privilege in the context of anti-money laundering (7B_1154/2024).

In 2023, the Office of the Attorney General of Switzerland (OAG) opened criminal proceedings against persons unknown for money laundering in connection with the "Mozambique debt scandal." In this context, in 2024, it issued a production order against Bank B, where the transaction under investigation took place. The request concerns (in summary) internal documents relating to the organizational measures that the anti-money laundering system requires financial institutions to establish, as well as those relating to the disputed business relationship.

Bank A., which has since taken over Bank B. through a merger, produces the documents on a password-protected data carrier while requesting that they be sealed. The OAG refuses, a decision upheld by the Complaints Chamber of the Federal Criminal Court. The Federal Supreme Court rejects Bank A's appeal.

The Mon Repos judges point out that, while it is in principle for the Court of Compulsory Measures and not the Public Prosecutor's Office to rule on the grounds for sealing, the prosecuting authority may refuse a request that is manifestly unfounded or abusive.

They also pointed out that, since the revision of the CCP that came into force in 2024, business secrets no longer constitute grounds for sealing, regardless of the procedural status of the person entitled to the documents (defendant or third party). The bank, as a legal entity, has not demonstrated how it could claim the protection granted by Art. 264 para. 1 let. b CCP, which concerns the protection of the defendant's personal documents and correspondence. At this stage, the Federal Court leaves open the question of whether, in general, a third party who is not a defendant can invoke the grounds for sealing under Article 264(1)(a) to (c) CCP, which refer only to documents concerning the defendant.

The Federal Supreme Court then arrives at the main point of its decision, which in our opinion is hardly surprising : Art. 264 para. 1 let. d CCP, which prohibits the seizure of correspondence

between a lawyer and their client, is also not applicable.

This is because the documents requested are included in those that a financial institution must make available to the criminal authorities within the meaning of Art. 7 AMLA. Even if they were drawn up by a law firm, they do not benefit from the protection of Art. 264 para. 1 let. d CCP, which only covers the typical activities of a lawyer. The bank did not demonstrate which documents, specifically, would go beyond those required by Art. 7 AMLA and could therefore be protected by professional secrecy. In this regard, the Federal Court reiterates the bank's duty to "segregate" documents covered by Art. 7 AMLA from those that may be protected by attorney-client privilege.

It should be noted, incidentally, that in this case, the refusal to seal the documents did not, however, apparently result in the public prosecutor's office immediately gaining access to the disputed documents. The judgment shows that the criminal prosecution authority refrained from having the data medium decrypted by the police or another specialized service until its decision became final.
