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Criminal succession

The UBS-Credit Suisse merger and corporate criminal liability

Par Antoine Dobrzynski le 27 May 2026

Beyond the ongoing standoff between UBS and the Federal Council, particularly regarding the tightening of capital requirements, UBS's takeover of Credit Suisse has also had implications under criminal law. In an order dated 8 April 2026 (SK.2025.57), the Criminal Division of the Federal Criminal Court examined the consequences, in terms of corporate criminal liability, of a merger by absorption (Art. 3 para. 1 let. a FusG) on the acquiring company. It ordered the proceedings against UBS to be discontinued, finding that there was a definitive impediment to proceeding due to the disappearance of Credit Suisse as a subject of criminal law.

This issue arises in the context of a case stemming from loans granted between 2013 and 2014 to Mozambican state-owned enterprises by entities linked to Credit Suisse. UBS is accused of failing to prevent acts of money laundering due to organisational shortcomings, thereby incurring criminal liability under Article 102 of the Swiss Criminal Code (in conjunction with Article 305bis of the Swiss Criminal Code). Following the merger in 2023/2024, the Office of the Attorney General of Switzerland brought charges against UBS, regarded as the acquiring company, which subsequently applied for the criminal proceedings against it to be discontinued, citing a definitive impediment to proceeding.

In the order that is the subject of this commentary, the single judge presiding over the case ruled in favour of UBS. It is held that, with the removal of Credit Suisse from the commercial register, as well as the loss of its legal personality and its banking licence, the latter has ceased to exist. This dissolution constitutes an impediment to proceeding within the meaning of Art. 329(4) of the Swiss Criminal Procedure Code, and thus leads to the dismissal of the proceedings. Consequently, criminal liability has not been transferred to UBS.

To justify this outcome, the Criminal Division, aligning itself with a section of legal doctrine, interprets the concept of an 'undertaking' within the meaning of Article 102(4) of the Swiss Criminal Code (CP) from a legal perspective. It emphasises that this provision is based on a *numerus clausus* of the entities covered, referring to the various legal forms under which a commercial activity may be carried out.

Consequently, an economic or functional conception of the undertaking cannot be accepted. The continuity of the activity, even if total, is therefore not sufficient to establish criminal liability on the part of the acquiring company. Such reasoning finds no support in the statutory text, the preparatory works or the structure of the law and would, moreover, conflict with the principle of

legality, in particular the requirement of precision in criminal law (*Bestimmtheitsgebot*).

The Criminal Court thus distances itself from the previous case law of the Appeals Chamber of the Federal Criminal Court (CN.2024.18 of 19 August 2024 ; see Katia Villard, cdbf.ch/1371/), which had favoured an economic and functional approach to the concept of an undertaking. It notes that this conception, due to its overly vague nature, does not satisfy the requirements of the principle of legality and cannot therefore serve as a basis for criminal liability.

Following this line of reasoning, the Criminal Division further points out that, unlike civil law based on universal succession, criminal law is founded on the principle of the personal nature of penalties. A criminal sanction constitutes an individual censure and cannot merely be an extension of the continuation of economic activities. Consequently, criminal liability cannot be transferred through the mechanisms of succession under civil law.

In this case, according to the Criminal Division of the Federal Criminal Court, UBS had no influence over the organisation of Credit Suisse at the time of the alleged offences and could not control its anti-money laundering measures. To attribute these breaches to it would amount to disregarding the principle of culpability, guaranteed both by the Federal Constitution and by the European Convention on Human Rights (ECHR).

This decision thus enshrines a strict conception of the legal personality of penalties, linked to the legal personality of the criminal entity, and draws a clear line against any transposition into criminal law of succession mechanisms derived from civil law. Such an approach appears to be worthy of praise. The legislature has in fact deliberately refrained from providing for a mechanism for the transfer of criminal proceedings in the event of the dissolution of a legal person. Following this logic, and by analogy with the rules applicable to natural persons, the dissolution of a legal person through a merger must result in the extinction of criminal proceedings, just as the death of a defendant would.

This solution appears all the more convincing in the present case as the merger between UBS and Credit Suisse took place at the instigation of the federal authorities in order to avert a systemic crisis, and not with the aim of evading criminal prosecution.

This approach also appears to be part of a broader trend in case law regarding the impact of corporate restructuring on a company's criminal liability, as evidenced by the recent judgment of the Criminal Appeals Chamber of the Geneva Court of Justice (ACPR/331/2026), pending, perhaps, a future ruling by the Federal Supreme Court that would definitively settle this issue.

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