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Anti-Money Laundering

Lack of due diligence in financial transactions

Par Katia Villard le 5 June 2026

Convictions for failure to exercise due diligence in financial transactions under Art. 305ter of the Swiss Criminal Code are rare ; Federal Supreme Court rulings on the matter are even rarer. The landmark decision of April 13, 2026, addresses two points : 1) the scope of administrative and private anti-money laundering standards in determining the level of due diligence required by the circumstances when identifying the beneficial owner ; 2) the question of whether the incorrect identification of the beneficial owner is an essential element that must be established by the criminal authorities (6B_942/2024, 6B_943/2024, 6B_944/2024, 6B_948/2024, intended for publication).

Two business relationships were opened with a bank in May and July 2014 in the name of two *offshore* companies, involving the holding of several transit accounts. According to Form A, Hubert was the beneficial owner of the assets. A cellist by profession, he was a close friend of the Russian president and the godfather of his daughter. Hubert was classified in risk category No. 2 (special clients).

In July 2014, he was registered in the *Worldcheck* database as a PEP and listed as such on the bank's PEP list in September 2014. In October 2014, Daniel, a member of the bank's *Compliance Risk Committee*, requested that Hubert's risk level be raised from category 2 to category 3 (high-risk clients). This process was not accompanied by any additional verification to ensure the plausibility of the funds' origin. In November 2015, the three members of the *Compliance Risk Committee*—who were also authorized to decide on establishing business relationships with Category 2 and 3 clients—decided to continue the business relationship. In April 2016, following a negative press article related to the Panama Papers, Daniel reported the case to MROS pursuant to Art. 305ter para. 2 of the Swiss Criminal Code. The business relationship was terminated by the bank in September 2016.

The question of whether Hubert was actually the beneficial owner of the funds or whether they in fact belonged to the Russian president remained unresolved. Following a report by FINMA, the Zurich Public Prosecutor's Office opened criminal proceedings. The Zurich courts convicted the relationship manager as well as the three members of the *Compliance Risk Committee* for failure to exercise due diligence in financial transactions. The Federal Supreme Court upheld the convictions.

In its decision, the Federal Supreme Court clarified the scope of administrative and private anti-money laundering rules for determining "the diligence required by the circumstances" in

identifying the beneficial owner, within the meaning of Art. 305ter of the Swiss Criminal Code. The AMLA and its implementing ordinances specify the measures to be taken by financial intermediaries to identify the beneficial owner. The same applies, for banks, to the Banking Due Diligence Agreement (BDDA), to which the OBA-FINMA expressly refers. These texts therefore do not constitute, as a previous ruling suggested, a mere interpretive tool for the judge but are binding on the latter. In its reasoning, the Federal Supreme Court also refers to "parallel professional rules," by which one must presumably understand the regulations of the SROs recognized by FINMA which, like the CDB, must be binding on the judge when determining the "due diligence required by the circumstances."

After emphasizing that the duty to verify the beneficial owner, explicitly mentioned in Art. 4 AMLA since 2023, had already been implicitly derived from the anti-money laundering framework prior to that, the Federal Supreme Court therefore examines the defendants' conduct in light of Arts. 4 and 5 AMLA as well as CDB 08 (in force at the time). It criticized the relationship manager for failing to clarify, at the outset of the business relationship, the origin of the funds, the nature and size of which did not fit Hubert's profile. As for the members of the *Compliance Risk Committee*, in the fall of 2015 they endorsed the *compliance* department's report, which contained red flags, and, instead of requesting further verification, voted in favor of continuing the business relationship. The Federal Supreme Court thus found a failure to exercise the diligence required by the circumstances.

It is worth noting at this stage, in connection with the allegations described above, that while the criminal charge under Art. 305ter of the Swiss Criminal Code lies in the failure to identify the beneficial owner, the failure to clarify the origin of the assets constitutes a breach of the diligence required by the circumstances when the nature and size of the funds cast doubt on the status of the beneficial owner.

The Federal Court then examines—and this is the main lesson of this ruling—the condition of failure to verify the beneficial owner. It rightly concludes that Art. 305ter of the Swiss Criminal Code must also apply when doubts remain regarding the beneficial owner. Requiring that the criminal investigation clarify the issue and that the benefit of the doubt in this regard be given to the accused would amount to delegating to the state a duty that belongs to the financial intermediary. The Federal Supreme Court further clarifies, in line with one of its earlier rulings, that if, on the other hand, it is established that the beneficial owner is the same as the one listed on the forms despite insufficient verification measures, Art. 305ter of the Swiss Criminal Code does not apply.

The Federal Supreme Court's reasoning must be fully endorsed ; otherwise, the requirement for due diligence would have no practical significance. Indeed, given that Art. 305ter of the Swiss Criminal Code is an intentional offense, it is difficult to see how one could hold that the perpetrator incorrectly identified the beneficial owner through possible intent, yet still acted with the diligence required by the circumstances. It is therefore precisely in these situations, where the identity of the beneficial owner remains uncertain, that this requirement—assessed in light of the preventive measures against money laundering—takes on its full meaning.

Finally, it should be noted that the Federal Supreme Court finds the defendants' intent to be direct intent.

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