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Money laundering risk analysis pursuant to Article 25 para. 2 AMLO-FINMA

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Contents

Introduction

Pursuant to Article 25 para. 2 AMLO-FINMA, banks are obliged to prepare a money laundering risk analysis (hereinafter “risk analysis”), taking into account the business activities and the nature of the established business relationships. Based on this analysis, the banks must also determine the relevance for their own business activities for each of the criteria according to Article 13 para. 2 AMLO-FINMA (cf. Art. 13 para. 2bis AMLO-FINMA) and, according to Article 6 para. 1 let. a AMLO-FINMA, they must also periodically explicitly prepare a corresponding risk analysis at a consolidated level.[1]

For banks, the obligation to capture, limit and monitor their risks (including money laundering risks) is also based on the organisational requirements pursuant to Article 3 para. 2 let. a BA in conjunction with Article 12 para. 2 BO and Article 8 AMLA. In addition, the risk management requirements are set out in FINMA Circular 2017/1 “Corporate governance – banks” (hereinafter “FINMA Circ. 17/1”).

FINMA reviewed risk analyses of over 30 banks in spring 2023. In doing so, it was found that a large number of the risk analyses examined did not meet the basic requirements for such an analysis. In particular, an adequate definition of the money laundering risk tolerance (hereinafter “risk tolerance”), which forms the limiting framework of a robust risk analysis through set limits, was lacking in some cases. Furthermore, a lack of various structural elements that are prerequisites for a risk analysis could be observed. In the annex we provide a simplified example of an inadequate and an adequate risk analysis from our practical observations.

Through this Guidance, FINMA is creating transparency with regard to its observations and experiences with risk analysis in its supervisory practice. These observations and experiences can also be applied analogously to FinIA institutions.[2]

1 Money laundering risk tolerance

Pursuant to Article 3 para. 2 let. a BA in conjunction with Article 12 para. 2 BO and Article 8 AMLA, a bank must capture, limit and monitor, among other things, its money laundering risks (including combating terrorist financing). In accordance with margin no. 10 FINMA Circ. 17/1, the bank must define the basic features of risk management and, pursuant to Article 19 AMLO-FINMA, the responsibility and procedure for approving transactions involving risks in internal regulations or guidelines. In particular, a limitation of these risks requires an adequate definition of a risk tolerance by the institution.[3]

[1] Explanatory report on the partial revision of the AMLO-FINMA of 4 September 2017, p. 11

[2] Cf. Art. 9 para. 2 FinIA, Art. 12 para. 4, Art. 26 para. 1, Art. 41 para. 2, Art. 57 para. 2 and Art. 68 para. 2 FinIO.

[3] Cf. margin no. 53 FINMA Circular 2017/1 “Corporate governance – banks”

Observations and experiences regarding section 1:

a) Typically, the deliberate exclusion of certain countries, client segments, services and/or products (e.g. politically exposed persons from certain countries) is a necessary part of an adequately defined risk tolerance. However, such exclusions are often missing from the examined risk tolerances.

b) In most cases, there is also no suitable process to allow exceptions to the defined risk tolerance in individual cases (exception to policy process). Such exceptions are to be granted by the executive board after appropriate risk mitigation measures have been defined. They are to be monitored by the board of directors.

c) Another finding was that no key risk indicators were defined that could be used to monitor compliance with the risk tolerance and also enable the executive board and the board of directors to supervise it on a regular basis. The definition of the key risk indicators can be based on the risk limits defined in the risk analysis (see also section 2.3 b).

2 Money laundering risk analysis

According to Article 8 AMLA, banks must take the measures that are required to prevent money laundering and terrorist financing in their field of business. One of these organisational measures is the preparation of a risk analysis in accordance with Article 25 para. 2 AMLO-FINMA. For the risk analysis, Article 13 para. 2bis AMLO-FINMA must also be taken into account.

According to the explanatory report on the partial revision of the AMLO-FINMA of 11 February 2015 (hereinafter “explanatory report 2015”), the risk analysis is “[...] a risk analysis that identifies, records, analyses and measures all money laundering risks to which the financial intermediary is exposed. Based on these findings, it defines its measures for managing, controlling, reporting and monitoring these risks.”[4]

2.1 Money laundering risks to be considered

Article 25 para. 2 AMLO-FINMA requires the bank to take into account its business activities and the nature of the established business relationships for the risk analysis. In particular, the following money laundering risk categories are to be used for this purpose: the client’s place of incorporation or domicile, the client segment as well as the products and services offered. In the 2015 explanatory report, the geographical presence of the institution is mentioned as a further risk category and additional explanations are provided for the categories listed.[5] These explanations make it clear that the individual risks must be recorded, analysed and measured for each risk category. It should also be noted that the catalogue of risk categories listed

[4] Explanatory report on the partial revision of the AMLO-FINMA of 11 February 2015, p. 20 f.

[5] Explanatory report on the partial revision of the AMLO-FINMA of 11 February 2015, p. 20

in Article 25 para. 2 AMLO-FINMA is not exhaustive and ought to be supplemented on an individual basis depending on a bank's business model and range of services.

Observations and experiences regarding section 2.1:

a) It was regularly noted that the assessments regarding the inherent risk and the control risk, as well as the resulting net risk (residual risk), were not broken down individually and comprehensibly for each recorded money laundering risk of each money laundering risk category. Furthermore, not all money laundering risks relevant to the institution were always covered.

b) In order to understand the impact the risk-mitigating measures (control risk) have on the inherent risks, they must be described in sufficient detail. However, the description of the risk-mitigating measures taken by the institutions were regularly too generic to comprehend their impact on the inherent risks. To demonstrate their effectiveness, key figures, findings regarding the effectiveness of the controls carried out (controls of controls), etc. should be used for this purpose.

2.2 Implementation of the requirements according to Article 13 para. 2bis AMLO-FINMA

A bank must record individually for the criteria listed in Article 13 para. 2 AMLO-FINMA whether or not they are relevant to its business activity. It must take the relevant criteria into account when identifying its business relationships with increased risks (Art. 13 para. 2bis AMLO-FINMA). The explanatory report on the partial revision of the AMLO-FINMA of 4 September 2017 (hereinafter "explanatory report 2017") states that a criterion is to be considered relevant if it "*concerns a significant number of business relationships of the financial intermediary*."[6]

Observations and experiences regarding section 2.2:

Frequently, the assessment of the relevance of each criterion mentioned in Article 13 para. 2 AMLO-FINMA was not presented in the risk analysis in such a way that it was evident and comprehensible to third parties. In particular, there was a lack of defined key figures to check the relevance of the criteria (see also section 2.3 a).

2.3 Monitoring compliance with the business strategy and risk policy

The 2015 explanatory report states that the risk analysis must be recorded in writing, periodically reviewed, adjusted if necessary and approved by the board of directors or top management.[7] This ensures that the findings of the risk analysis also flow into the risk policy and business strategy (e.g.

[6] Explanatory report on the partial revision of the AMLO-FINMA of 4 September 2017, p. 28

[7] Explanatory report on the partial revision of the AMLO-FINMA of 11 February 2015, p. 21

definition of the strategic target markets and client segments) of an institution.[8]

In concrete terms, this means that a bank also takes the money laundering risk into account when determining its business strategy. There is thus a close interdependency with a bank's business strategy and risk policy. To this end, a bank regularly reviews the extent to which the composition of its existing client base and range of services is consistent with its business strategy and risk policy.

In the event of significant changes in the range of services or the composition of the client base, the relevant risk criteria for the risk analysis must be adjusted accordingly and the risk analysis must be updated.

Observations and experiences regarding section 2.3:

a) It was regularly noted that no key figures were defined to determine how large the respective risk exposure is in the bank's client population and range of services and to what extent compliance with the business strategy and risk policy is ensured.

b) Often there is no definition of risk limits for monitoring risk tolerance so that appropriate measures can be taken if the thresholds are not met.

c) Net risk (residual risk) was often not compared with the risk tolerance. Such a comparison is necessary in order to take measures in case of non-compliance with the risk tolerance.

2.4 Other elements to consider

The 2015 explanatory report states that, based on the findings of the risk analysis, a bank defines its measures for managing, controlling, reporting and monitoring these risks.[9] This includes, among other things, tracking the development of risks and assessing the resource situation.

Observations and experiences regarding section. 2.4:

a) Often, the changes in risks (inherent risks, control risk and net risks) compared to the previous year were not apparent and comprehensible in the risk analysis, although these help to determine the measures needed to manage and monitor the risks.

b) It was often found that the qualitative and quantitative resources required to ensure the implementation of the bank's anti-money laundering processes were not critically examined so that they could be adjusted if necessary.

[8] Explanatory report on the partial revision of the AMLO-FINMA of 11 February 2015, p. 21

[9] Explanatory report on the partial revision of the AMLO-FINMA of 11 February 2015, p. 20 f.

3 Relationship to margin no. 78 of FINMA Circular 2017/1 “Corporate governance – banks”

According to margin no. 78 of FINMA Circ. 17/1, the compliance function of a bank conducts an annual assessment of the compliance risk of the institution’s business activities and develops a risk-oriented activity plan for approval by the executive board.

The risk analysis or parts of it can be integrated into this compliance risk analysis. However, the bank must ensure that the requirements of Article 25 para. 2 AMLO-FINMA are met.

4 Global monitoring of money laundering risks

According to the global risk management principle in Article 6 para. 1 AMLO-FINMA, a bank with international branch offices or operating a financial group with foreign group companies, shall record, limit and monitor its legal and reputational risks related to money laundering and terrorist financing on a global level.

According to Article 6 para. 1 let. a AMLO-FINMA, this must be done periodically in the form of a risk analysis at a consolidated level. The explanations in the 2017 explanatory report make it clear that this is a risk analysis in accordance with Article 25 para. 2 AMLO-FINMA, including the risks associated with the business relationships and transactions in the branch offices and group companies.[10] The elaborations made above in sections 1 and 2 are therefore also relevant to the risk analysis at a consolidated level.

[10] Explanatory report on the partial revision of the AMLO-FINMA of 4 September 2017, p. 11

Annex

In order to illustrate the findings from the examination of the risk analyses, the following is a comparison between an inadequate and an adequate model of a risk analysis. The structural elements have been greatly simplified for the sake of clarity.

Risk category	Inherent risk	Risk-mitigating measures
Client segments		*Short description*
Short description	*Risk assessment*	
Domicile		
Short description	*Risk assessment*	
Products and services		
Short description	*Risk assessment*	

See section 2.1.
See section 2.3.
See section 2.4.

Table 1: Example of inadequate risk analysis

Money laundering risk tolerance						*Assessment of risk tolerance (low / medium / (very) high)*				
Risk category (RC)	**Inherent risk**	**Development compared to previous year**	**Risk-mitigating measures**	**Control risk**	**Development compared to previous year**	**Net risk**	**Development compared to previous year**	**Key figure 1**	**Key figure 2**	**Compliance with the risk tolerance**
	assessment of the inherent risk (low / medium / (very) high)	*decreased, increased or unchanged*	*detailed description of the measures relevant for the respective risk criterion (incl. key figures as well as findings)*	*assessment of the control risk, i.e. risk mitigation measures*	*decreased, increased or unchanged*	*assessment of the net risk*	*decreased, increased or unchanged*	*(e.g. number of business relationships & their % in relation to the total portfolio)*	*(e.g. AuM & their % in relation to the total portfolio)*	*> / < / = threshold value*
RC1: Client segments										
Criterion 1 of RC1										
Etc.										
RC2: Domicile										
Criterion 1 of RC2										
Etc.										
RC3: Products and services										
Criterion 1 of RC3										
Etc.										
RC4: Geographical presence of the bank										
Criterion 1 of RC3										
Etc.										

Money laundering risk tolerance						*Assessment of risk tolerance (low / medium / (very) high)*				
Risk category (RC)	**Inherent risk**	**Development compared to previous year**	**Risk-mitigating measures**	**Control risk**	**Development compared to previous year**	**Net risk**	**Development compared to previous year**	**Key figure 1**	**Key figure 2**	**Compliance with the risk tolerance**
Total										

Table 2: Example of an adequate risk analysis