Universität Zürich[UZH]

CAS Compliance Management 2025
Managing Criminal Liability

Dr. iur. Laura Jetzer, RA

Prof. Dr. iur. Marc Thommen

Criminal Liability

1.	Round of Introductions	13.30-13.45
2.	Money Laundering	13.45-14.15
3.	Corporate Criminal Liability	14.15-14.45
4.	Break	14.45-15.00
5.	Case Study – Introduction	15.00-15.15
6.	Case Study – Groups	15.15-16.15
7.	Case Study – Discussion	16.15-17.00

Criminal Liability

1. Round of Introductions
2. Money Laundering
3. Corporate Criminal Liability
4. Case Study

Criminal Liability

What criminal liability issues do you encounter in current position?

Criminal Liability

1. Round of Introductions
2. Money Laundering
3. Corporate Criminal Liability
4. Case Study

Money Laundering

Art 305bis

History

Art 305bis – Money laundering

1. Any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or aggravated tax misdemeanour shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

1bis. An aggravated tax misdemeanour is any of the offences set out in Article 186 of the Federal Act of 14 December 1990 on Direct Federal Taxation and Article 59 paragraph 1 clause one of the Federal Act of 14 December 1990 on the Harmonisation of Direct Federal Taxation at Cantonal and Communal Levels, if the tax evaded in any tax period exceeds 300 000 francs.

2. In serious cases, the penalty is a custodial sentence not exceeding five years or a monetary penalty.
A serious case is constituted, in particular, where the offender:

a. acts as a member of a criminal or terrorist organisation;
b. acts as a member of a group that has been formed for the purpose of the continued conduct of money laundering activities; or
c. achieves a large turnover or substantial profit through commercial money laundering.

3. The offender is also liable to the foregoing penalties where the main offence was committed abroad, provided such an offence is also liable to prosecution at the place of commission.

Money Laundering

«Money laundering is ‘the process by which one conceals the existence, illegal source, or illegal application of income and then disguises that income to make it appear legitimate.’»

Ronald Reagan Taylor/AP

Ngai, **Am. Crim. L. Rev.** Vol: 49 Iss.: p. 1011-1036

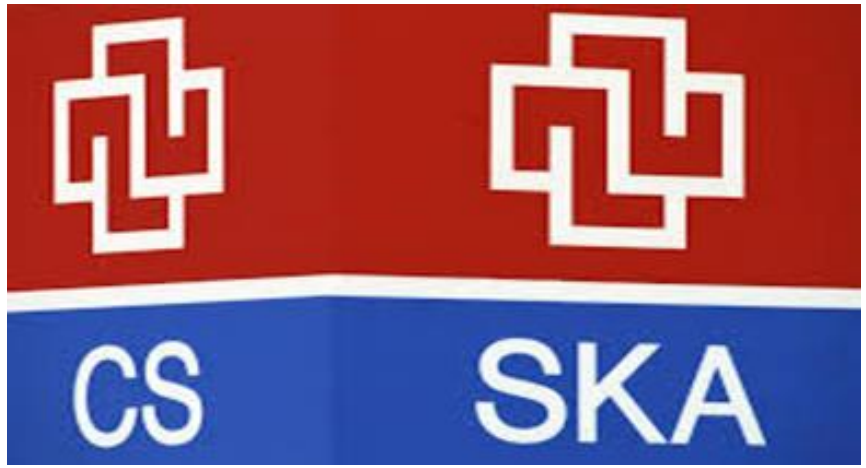
Money Laundering

- 1980s: Morphine base from Turkey is processed into heroin in Sicily
- Shipment/sale of heroin in the USA
- Money collected in Mafia-controlled pizzerias in Queens, New York

«Pizza Connection»

Money Laundering

EUR 40 million in cash (‘Narcodollari’) transferred to Swiss bank accounts



«Pizza Connection»

Money Laundering

- 1980s: Lebanese-Turkish drug-dealing organisation transfers 1.4 billion francs to Switzerland
- Credit Suisse, UBS provide services
- Recipient of drug money: Shakarchi Trading AG, board of directors Hans W. Kopp.

«Lebanon Connection»

Money Laundering

«Overall, with this legislation Switzerland wanted to get rid of the fatal reputation of its financial institutions of helping the world's gangsters secure their loot.»

BSK StGB^{4}-Pieth, VorArt. 305bis N 51

Money Laundering

Art 305bis

Phenomenology

Money Laundering

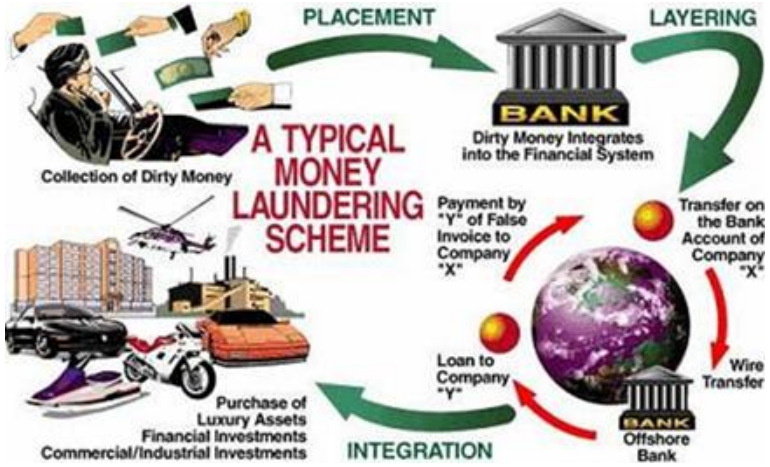
«Crime must not pay.»

Money Laundering

Placement: Introducing illicit money into the financial system (e.g., depositing cash into banks or using it to buy assets).

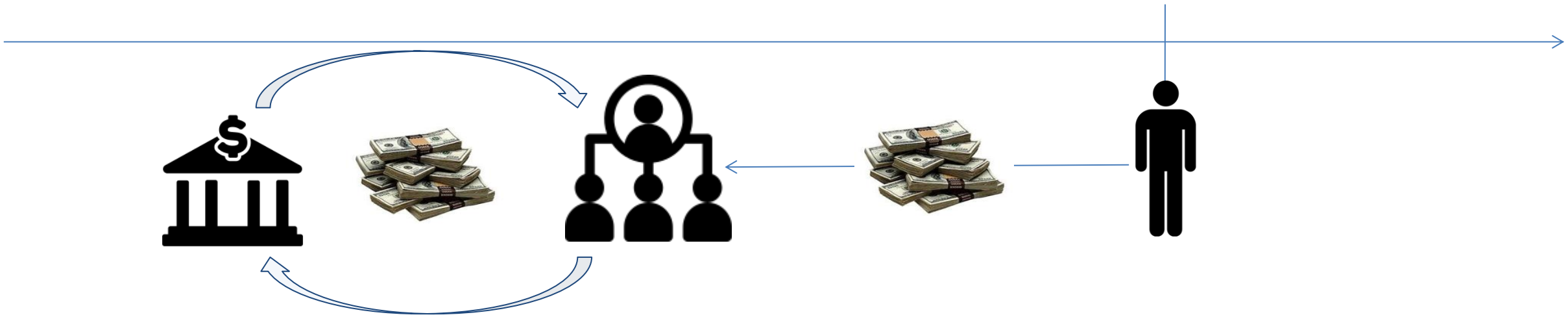
Layering: Hiding the money's origin through complex transactions, like transfers between accounts or investments.

Integration: Making the money appear legitimate by reintroducing it into the economy (e.g., via legal businesses or assets).



ResearchGate

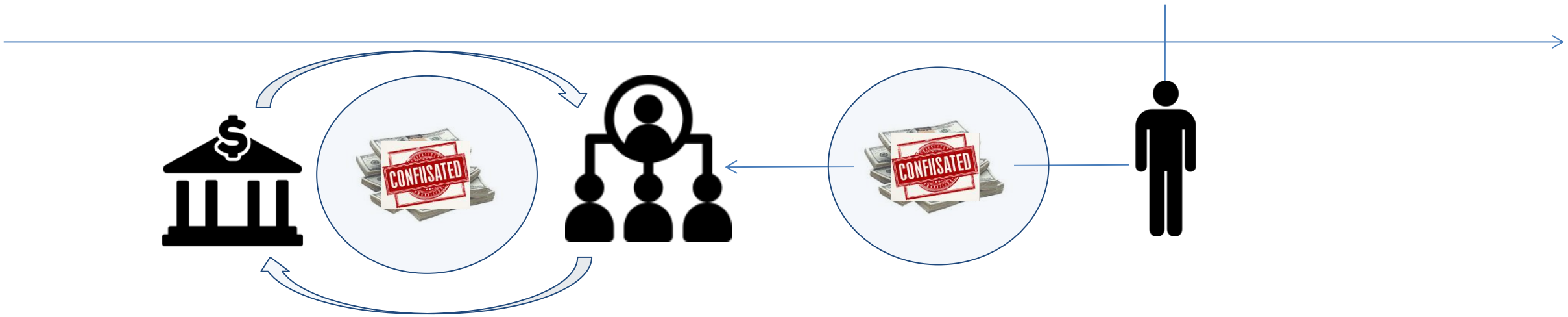
Money Laundering



Art. 70 SCC – Forfeiture of assets

[1] The court shall, irrespective of the criminal liability of any person, order the forfeiture of objects that have been used or were intended to be used for the commission of an offence or that have been produced as a result of the commission of an offence in the event that such objects constitute a future danger to public safety, morals or public order.

Money Laundering



Art 305bis – Money laundering

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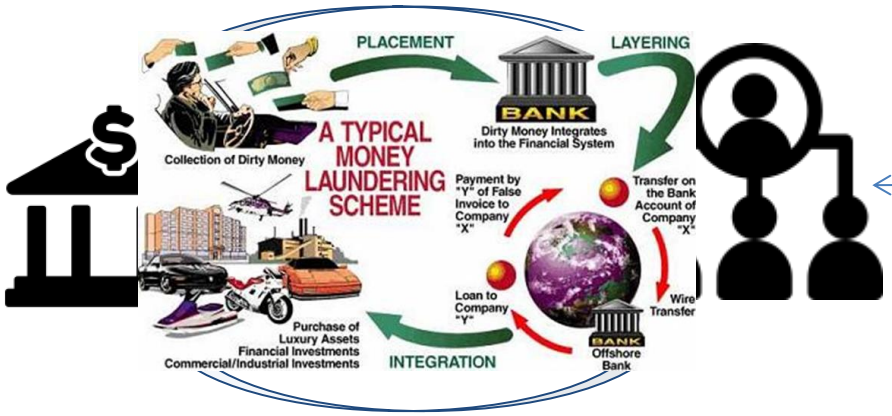
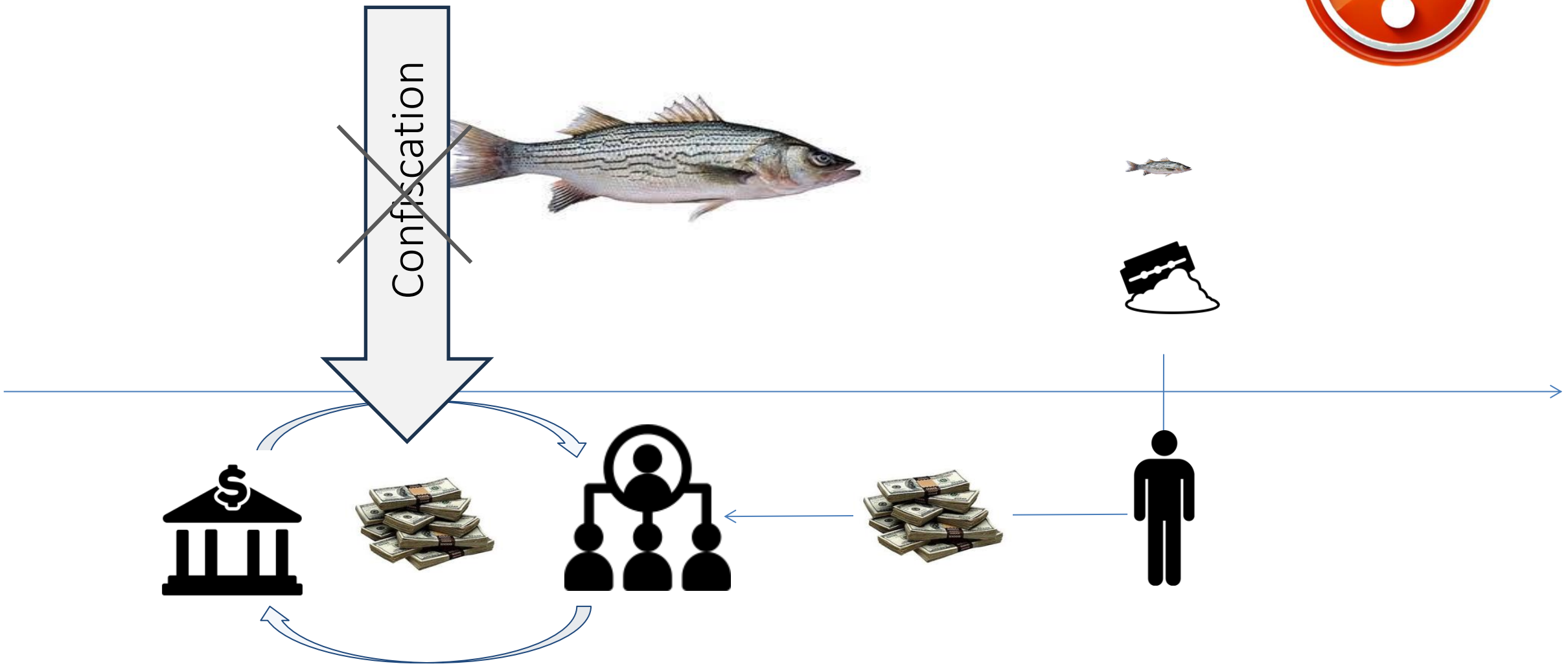
Money Laundering

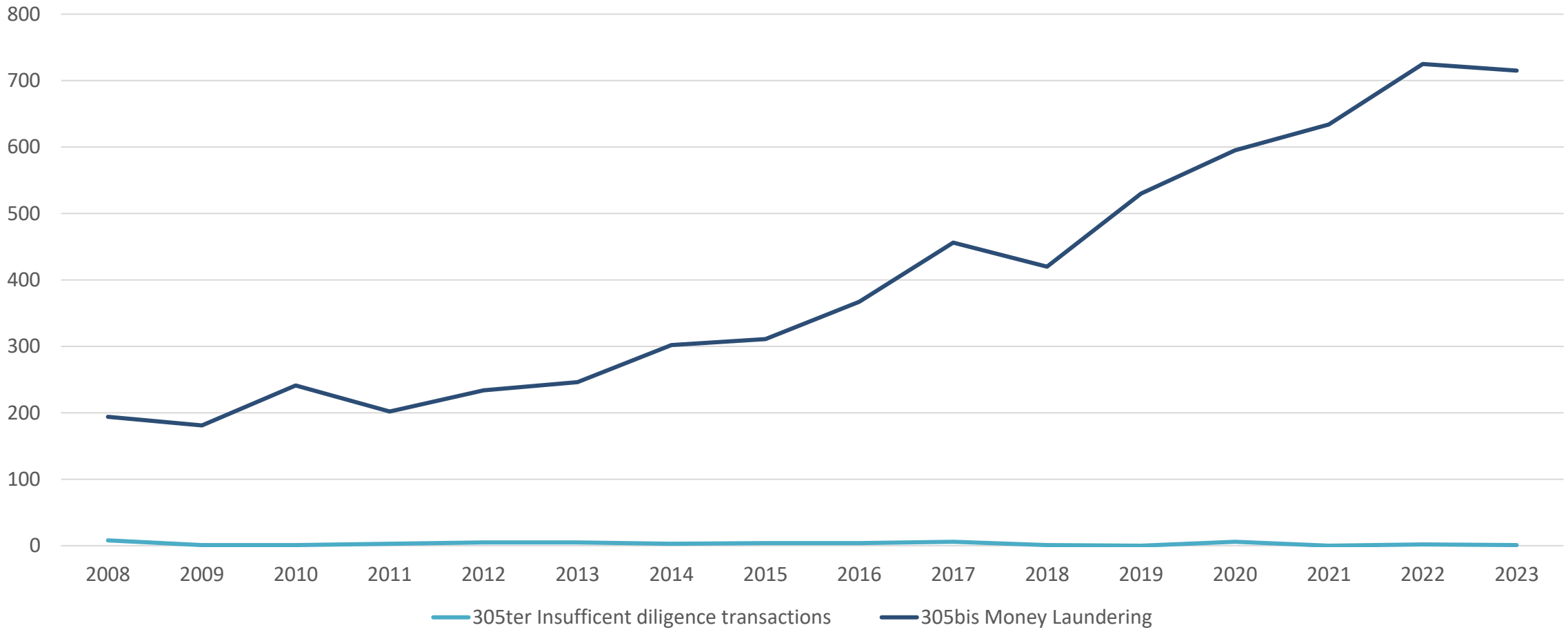


Money Laundering



Crimes & Misdemeanours 2008-2023

(Adults)



Federal office of statistics

Money Laundering

Art 305bis

Legislation

Money Laundering

1st title: Life and limb

2nd title: Property

3rd title: Honour, privacy and confidentiality

4th title: Freedom

5th title: Sexual integrity

12th title: Public peace

17th title: Admin. of justice (money laundering)

Art 305bis – Money Laundering

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Basic offence of money laundering

Definition of tax offence.

Serious money laundering

Predicate offence committed abroad

Art 305bis – Money Laundering

Any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or aggravated tax misdemean-nour shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

Art 305bis – Money Laundering

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Objective elements (actus reus)
- Perpetrator
- Victim
- Object
- Behaviour
- (Result)

Subjective elements (mens rea)
- Intention
- Dolus eventualis

Art 305bis – Money Laundering

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Objective elements

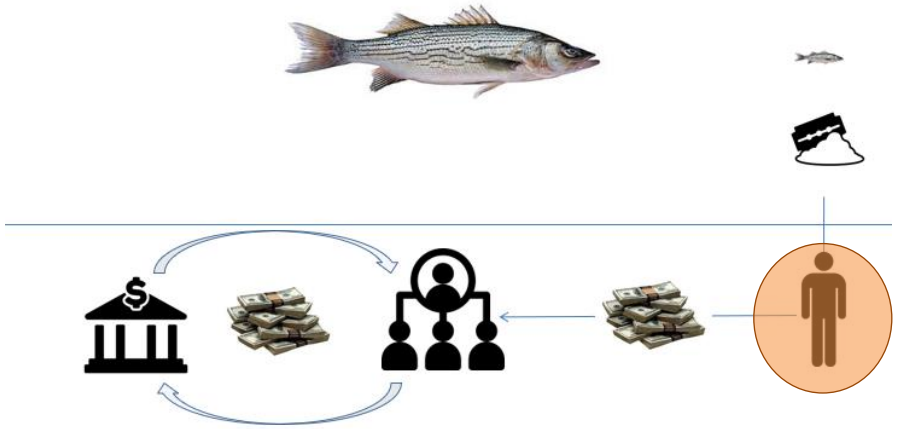
- Perpetrator
- Victim
- Object
- Behaviour
- (Result)

Subjective elements

- Intention
- Dolus eventualis

Perpetrator

- Drug dealer
- Robber
- Thief
- Fraudster
- ‘Consigliere’
- Financial Intermediary
- Corporation



Perpetrator

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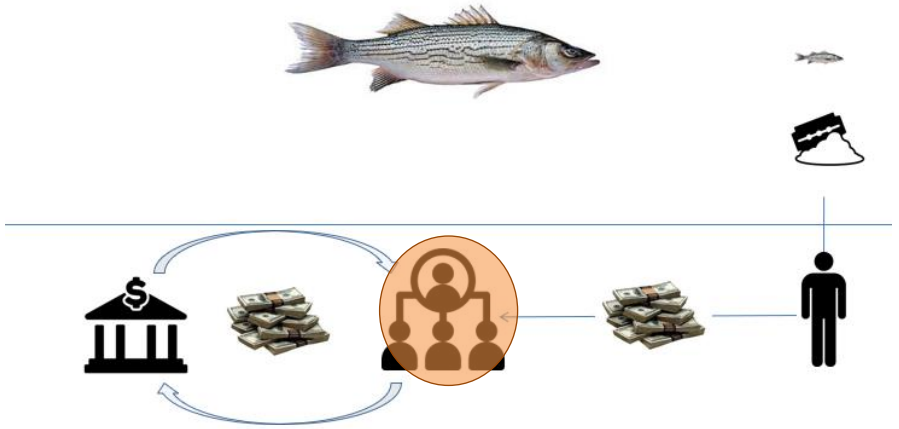

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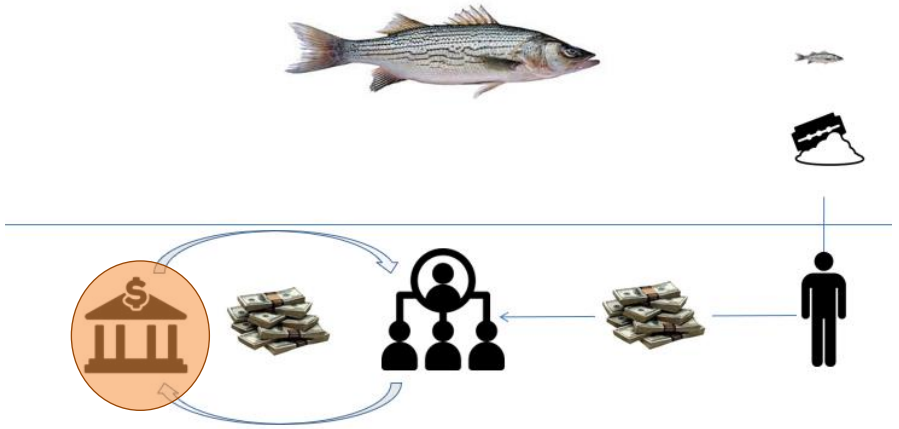

Perpetrator

- Drug dealer
- Robber
- Thief
- Fraudster
- ‘Consigliere’
- Financial Intermediary
- Corporation (Art. 102 SCC)

Wikipedia

Bundesstrafgericht SK.2020.21 – 15.12.2021

Art 305bis – Money Laundering

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Objective elements

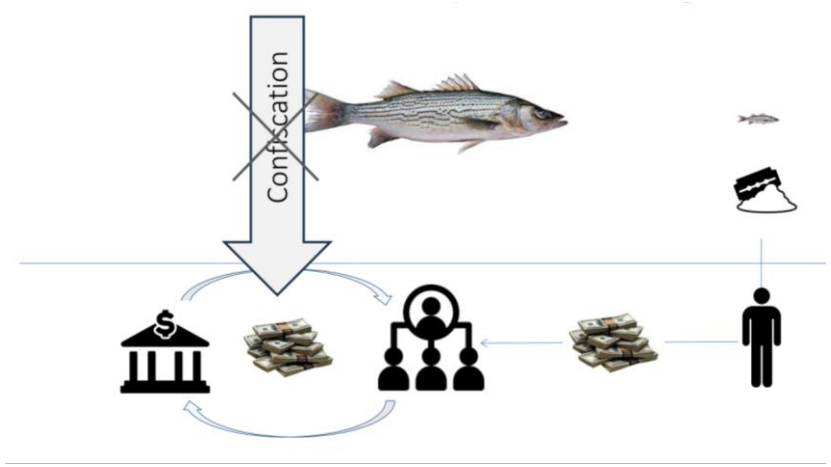
- Perpetrator
- Victim
- Object
- Behaviour
- (Result)

Subjective elements

- Intention
- Dolus eventualis

Victim

«‘Money laundering is... characterised as an **offence against the administration of justice**... The criminal offence hinders the criminal authorities' access to the loot from a crime... It is a typical follow-on offence. Due to its position in the law, the offence protects... the administration of criminal justice in the **enforcement of the state's claim to confiscation**.» – BGE 129 IV 322



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Objective elements
- Perpetrator
- Victim
- Object (corpus delicti)
- Behaviour
- (Result)

Subjective elements
- Intention
- Dolus eventualis

Art 305bis – Money Laundering

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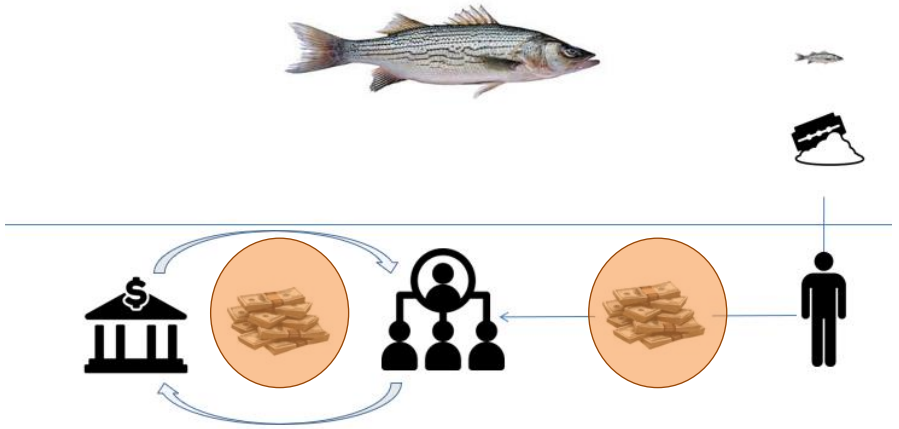
Objective elements
- Perpetrator
- Victim
- Object
  - Assets
  - Predicate Offence
  - Connection
- Behaviour
- (Result)

Subjective elements

Object (Assets)

- Cash
- Deposits
- Claims
- Foreign/crypto currencies
- Securities
- Precious metals, stones
- Real estate
- Play money
- Surrogates



Federal Council (1989, 1082)

Object (Assets)

- Cash
- Deposits
- Claims
- Foreign/crypto currencies
- Securities
- Precious metals, stones
- Real estate
- Play money
- Surrogates

Second Life – Linden Dollar

«Video game currencies enabling ‘proliferation of money laundering’»
amlintelligence.com

Object (Assets)

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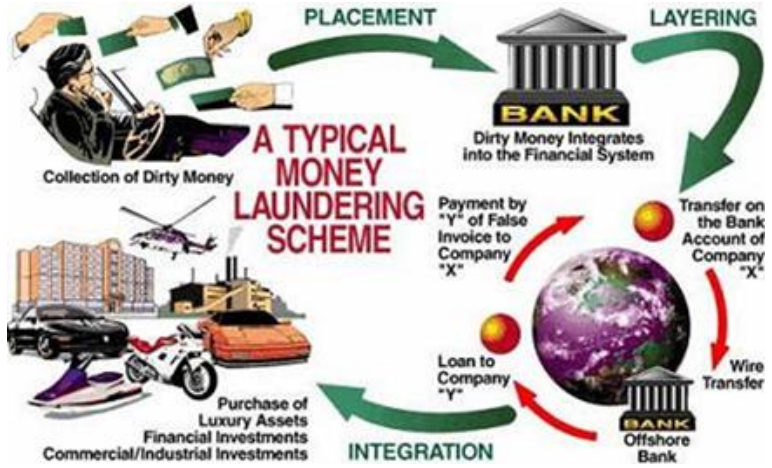

Art 305bis – Money Laundering

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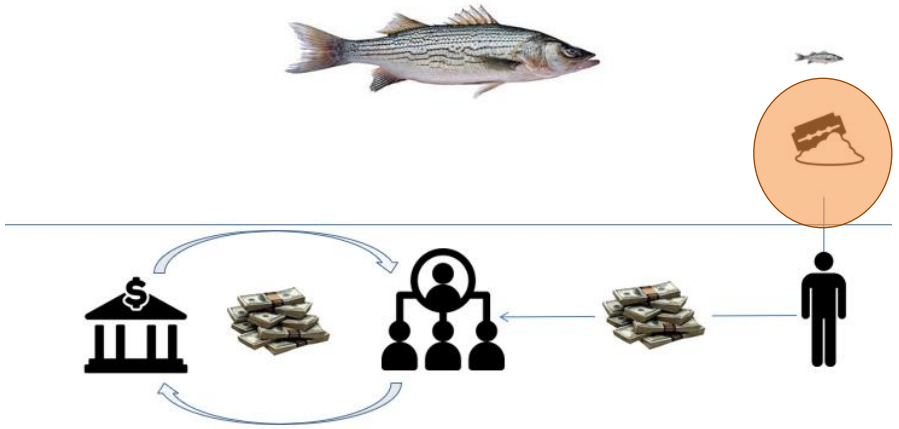
Objective elements
- Perpetrator
- Victim
- Object
  - Assets
  - Predicate Offence
  - Connection
- Behaviour
- (Result)

Subjective elements

Object (Predicate Offence)

- Felony (Art. 10 II SCC)
- Qualified tax misdemeanour (Art. 305bis I^{bis} SCC): > 300.000 CHF
- Predicat offence abroad (Art. 305bis III SCC)



[GAFI/FATF], in force 1 January 2016 (AS 2015 1389; BBl 2014 605).

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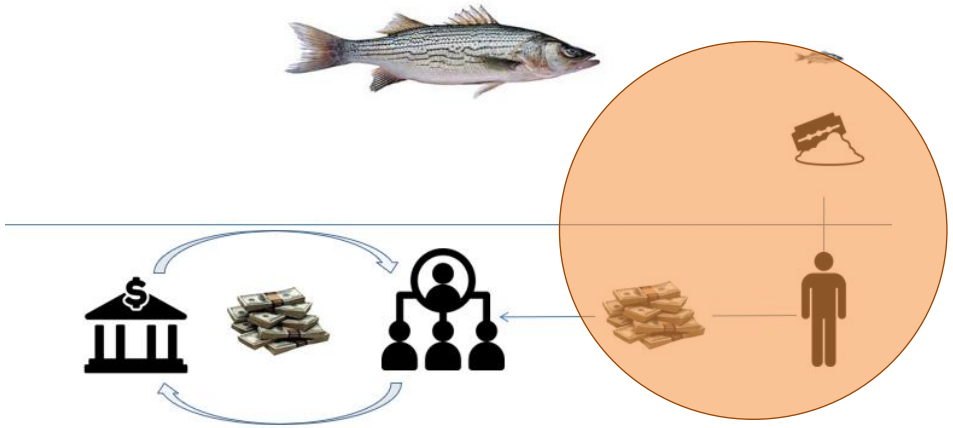
Objective elements
- Perpetrator
- Victim
- Object
  - Assets
  - Predicate Offence
  - Connection
- Behaviour
- (Result)

Subjective elements

Object (Connection)

«Proof that a crime has been committed is sufficient. **Exact knowledge of the crime and the perpetrator is not required**... The... 'intentionally loose' connection ... is sufficiently established if it is proven that the crimes were committed within the framework of the criminal organisation and that the assets originate from it. » – BGE 138 IV 1



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Objective elements
- Perpetrator
- Victim
- Object
- Behaviour
- (Result)

Subjective elements
- Intention
- Dolus eventualis

Behaviour (Act)

- Concealment of the beneficial owne (BO)
- Cut paper trail
- Cash payment
- Foreign transfer – BGE 144 IV 172
- Establishment of offshore accounts
- Conversion to crypto currencies (?)
- Drug money flower pots – BGE 119 IV 59

Behaviour (Omission)

«A financial intermediary may be guilty of money laundering by omission.» BGE 136 IV 188, crit. Thommen (2021)

baz

Behaviour (Omission)

Financial intermediaries as guarantors (?)

- Art. 6 AMLA – Duties of diligence
- Art. 9 AMLA – Duty to report

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Objective elements
- Perpetrator
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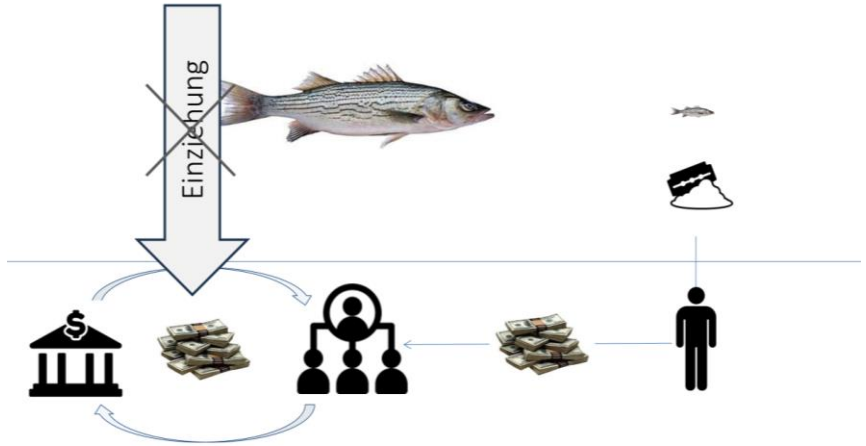
- Object
- Behaviour
- (Result)

Subjective elements
- Intention
- Dolus eventualis

(Result)

«Money laundering is committed by anyone who undertakes an act that is likely to... Frustrate the confiscation of assets... It is an offence of abstract endangerment; **proof... of successful frustration is not required**.»
– BGE 129 IV 322



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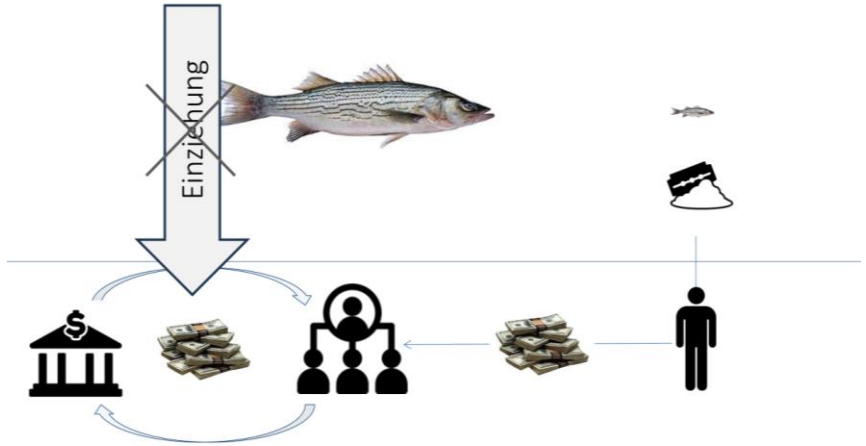
- Object
- Behaviour
- (Result)

Subjective elements
- Intention
- Dolus eventualis

Subjective Elements

Intention (Art. 12 II 1st s. SCC)

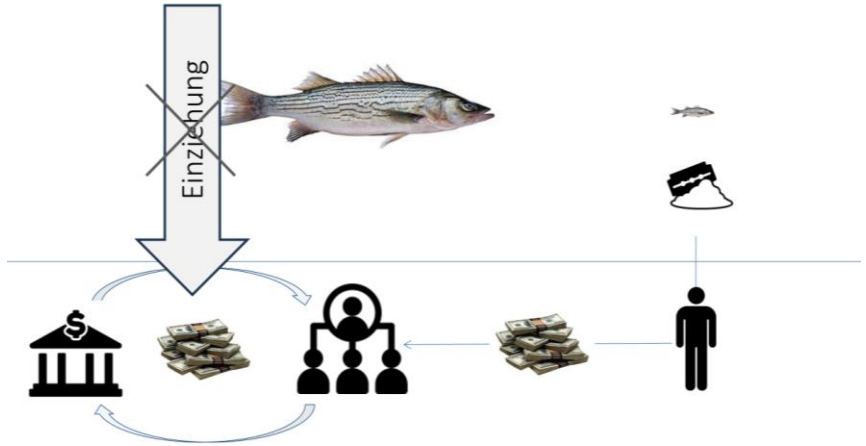
Perpetrator **knows** of the criminal origin of assets and **wants** to make confiscation more difficult



Subjective Elements

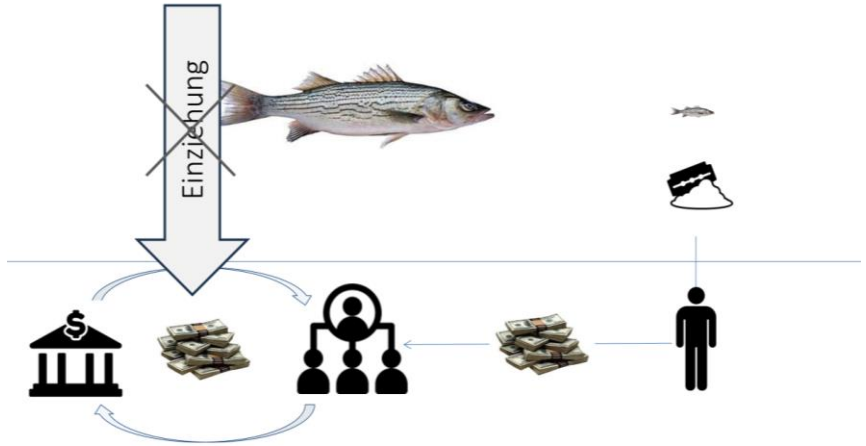
Dolus eventualis (Art. 12 II 2nd s. SCC)

Perpetrator **assumes/deems possible** that assets are of criminal origin and **accepts** to make confiscation more difficult.



Subjective Elements

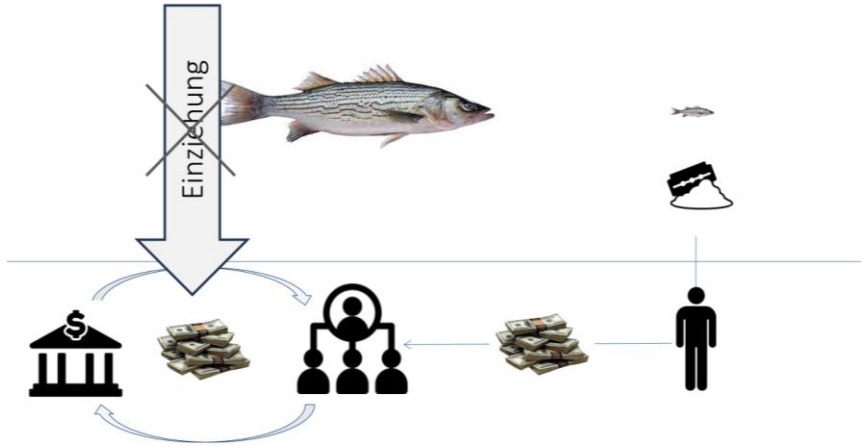
Willful Blindness is considered as intention (BGE 135 IV 12)



«He who knows that he does not know, is not in ignorance.»

Subjective Elements

«**Strict proof of the predicate offence is not required**. It is sufficient for the money launderer to be aware of the circumstances that give rise to the suspicion that the money originates from a criminal offence [...] [or] accepts it out of indifference.»
– 6B_321/2010



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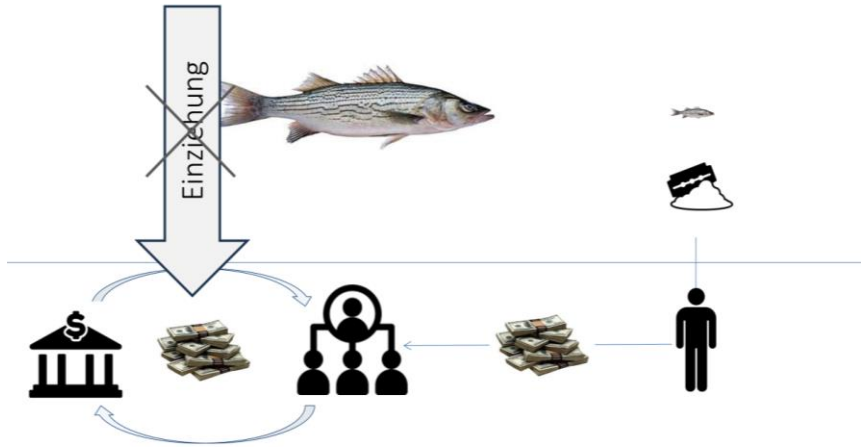
- (Result)

Subjective elements
- Intention
- Dolus eventualis

Sanction

- Basic money laundering (Art. 305bis I SCC) is a misdemeanour (Art. 10 III SCC)
- Serious money laundering (Art. 305bis II SCC) is a felony (Art. 10 II SCC)



Money Laundering

Art 305bis

Summary

Art 305bis – Money Laundering

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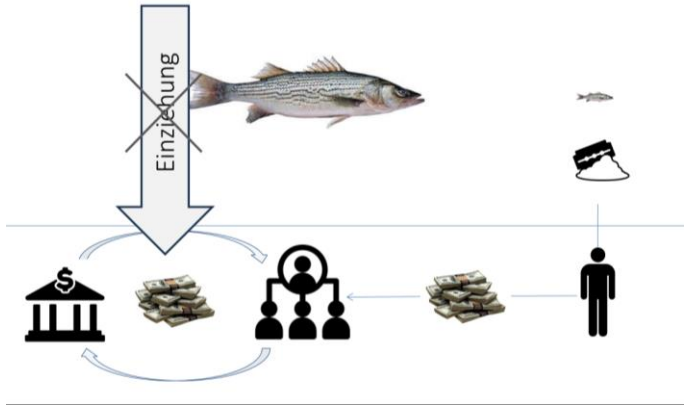

Universität Zürich[UZH]

Corporate Criminal Liability

1. Round of Introductions
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4. Case Study

Art. 102 SCC – Corporate Criminal Liability

A Swiss court has found the Zurich-based Falcon Private Bank guilty of money-laundering offences.

Verdict dated 15 December 2021 (SK.2020.21)

Swissinfo.ch, 15.12.2021

Tuesday, 4 July 2023 08:19

Surprising Turn in the Falcon Private Bank Case

Verdict dated 30 June 2023 (CA.2022.12)

BANKS

Credit Suisse faces money laundering charges in trial of Bulgarian cocaine traffickers

Verdict dated 27 June 2022 (SK.2020.62)

CNBC, 06.02.2022

Art. 102 SCC – Corporate Criminal Liability

1 If a felony or misdemeanour is committed in a company in the course of its business activities and this act cannot be attributed to any specific natural person due to the company's poor organisation, the felony or misdemeanour will be attributed to the company. In this case, the company will be fined up to CHF 5 million.

Secondary liability

2 If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

Primary liability

3 The court sets a fine in particular in accordance with the gravity of the offence, the seriousness of the lack of organisation and the damage caused as well as the economic capacity of the company.

Sentencing

4 For the purpose of this title, the following is considered company

a. any legal entity under private law;
b. any legal entity under public law with exception of local authorities;
c. associations;
d. sole proprietorships.

Definition of a company

Art. 102 SCC – Corporate Criminal Liability

1 If a felony or misdemeanour is committed in a company in the course of its business activities and this act cannot be attributed to any specific natural person due to the company's poor organisation, the felony or misdemeanour will be attributed to the company. In this case, the company will be fined up to CHF 5 million.

Secondary liability

2 If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

Primary liability

3 The court sets a fine in particular in accordance with the gravity of the offence, the seriousness of the lack of organisation and the damage caused as well as the economic capacity of the company.

Sentencing

4 For the purpose of this title, the following is considered company

a. any legal entity under private law;
b. any legal entity under public law with exception of local authorities;
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d. sole proprietorships.

Definition of a company

Art. 102 para 2 SCC – Primary Liability

If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

- catalogued main offence
  - objective elements
  - subjective elements
- attribution to the company
  - company as perpetrator
  - deficient organisation
  - causal connection

Art. 102 para 2 SCC – Main Offence

If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

catalogued main offence

- objective elements
- subjective elements

attribution to the company

- company as perpetrator
- deficient organisation
- causal connection

Art. 102 para 2 SCC – Catalogue (Main Offence)

- criminal or terrorist organisation (Art. 260ter SCC)
- financing terrorism (Art. 260^{quinquies} SCC)
- money laundering (Art. 305bis SCC) or
- acts of corruption, *i.e.* bribery of Swiss public officials (Art. 322ter SCC), granting an advantage (Art. 322^{quinquies} SCC), bribery of foreign public officials (Art. 322^{septies} para 1 SCC) or bribery of private individuals (Art. 322^{octies} SCC)

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Art. 102 para 2 SCC – Main Offence

If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

catalogued main offence

- objective elements
- subjective elements

attribution to the company

- company as perpetrator
- deficient organisation
- causal connection

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Art. 102 para 2 SCC – Main Offence

If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

catalogued main offence

- objective elements
- subjective elements

attribution to the company

- company as perpetrator
- deficient organisation
- causal connection

Art. 102 para 2 SCC – Committed (Main Offence)

«The provision is therefore linked to a committed misdemeanor or felony. It must be proven that the objective and subjective elements of the offence are fulfilled. If this is not proven, the company is not liable to prosecution..»

(BGE 142 IV 333, E. 4.1)

BGE 142 IV 333

Client: wire transfer of
CHF 5 million

PostFinance

Client

Day after: cash payout of
CHF 4.6 million

Cashier

Compliance
Manager

Art. 102 para 2 SCC – Attribution

If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

catalogued main offence

objective elements

subjective elements

attribution to the company

company as perpetrator

deficient organisation

causal connection

Art. 102 para 2 SCC – Company (Attribution)

definition of company in para 4

a. any legal entity under private law
b. any legal entity under public law with exception of local authorities
c. associations or
d. sole proprietorships

Art. 102 para 2 SCC – Company (Attribution)

- main offence committed in a company according to para 4 *and*

- in the course of its business activities

Art. 102 para 2 SCC – Attribution

If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

- catalogued main offence
  - objective elements
  - subjective elements
- attribution to the company
  - company as perpetrator
  - deficient organisation
  - causal connection

Art. 102 para 4 SCC – Deficient Organisation

- suitable and proportionate risk assessment and management
- typical and specific risks associated with the company's business activity
- depending on the company's size, structure and industry

Art. 102 para 2 SCC – Attribution

If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

- catalogued main offence
  - objective elements
  - subjective elements
- attribution to the company
  - company as perpetrator
  - deficient organisation
  - causal connection

Art. 102 SCC – Consequences

1 If a felony or misdemeanour is committed in a company in the course of its business activities and this act cannot be attributed to any specific natural person due to the company's poor organisation, the felony or misdemeanour will be attributed to the company. In this case, the company will be fined up to CHF 5 million.

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Criminal Liability

1. Round of Introductions
2. Money Laundering
3. Corporate Criminal Liability
4. Case Study

Case Study (SK.2020.62)

Between 2004 and 2008, Credit Suisse accepted large cash deposits from a client network linked to Evelin Banev, aka Brendo or the Grandfather, a Bulgarian drug lord. The funds, stored in suitcases and kept under anti-money laundering thresholds, were processed by a client advisor Debbie– a former Bulgarian top athlete who died in 2022 – and transferred to offshore accounts. The money was later used to purchase international real estate.

In 2018, the Swiss Financial Market Supervisory Authority (FINMA) had conducted an enforcement proceeding against Credit Suisse. It found that the Eastern Europe Desk suffered from systemic weaknesses in its control structure and failed to meet the standards of an adequate risk management system.

On 1 July 2024, Credit Suisse merged with UBS.

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Case Study (SK.2020.62)

1. **Group (Federal Prosecutor)**
   Your task is to bring charges before the Swiss Federal Criminal Court against the banks involved on the grounds of corporate criminal liability.

2. **Group (Criminal Defence)**
   Your task is to prevent the conviction of the banks involved before the Swiss Federal Criminal Court.

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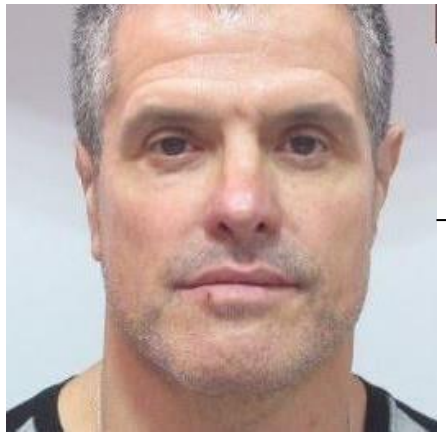
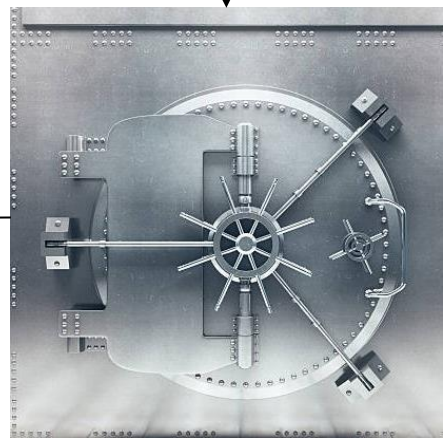
Case Study





UBS

CREDIT SUISSE

Criminal Liability

1. Brendo (Drug Offence)
2. Brendo (Money Laundering)
3. Debbie (Money Laundering)
4. Credit Suisse (Corporate Liability)
5. UBS (Corporate Liability)

Criminal Liability

1. Brendo (Drug Offence)
2. Brendo (Money Laundering)
3. Debbie (Money Laundering)
4. Credit Suisse (Corporate Liability)
5. UBS (Corporate Liability)

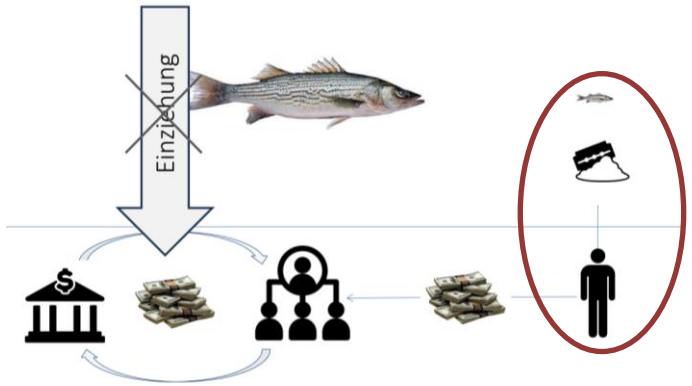
Art. 19 Nacotics Act – Drug Dealing

1 Any person who… sells… narcotic substances… shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

2 The offender shall be liable to a custodial sentence of not less than one year if he or she… acts as a member of a group that has been formed in order to trade unlawfully in narcotic substances…

Objective elements
- Perpetrator
- Victim
- Object
- Behaviour

Subjective elements
- Intention
- Dolus eventualis



Brendo

Criminal Liability

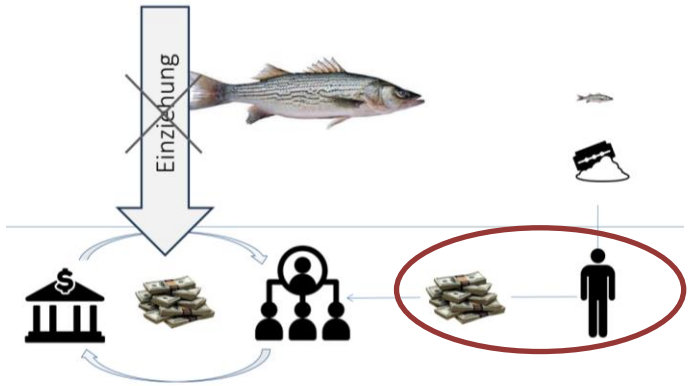
1. Brendo (Drug Offence)
2. Brendo (Money Laundering)
3. Debbie (Money Laundering)
4. Credit Suisse (Corporate Liability)
5. UBS (Corporate Liability)

Art 305bis – Money Laundering

Any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or aggravated tax misdemean-nour shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

Objective elements
- Perpetrator
- Victim
- Object
- Behaviour
- (Result)

Subjective elements
- Intention
- Dolus eventualis



Brendo

Criminal Liability

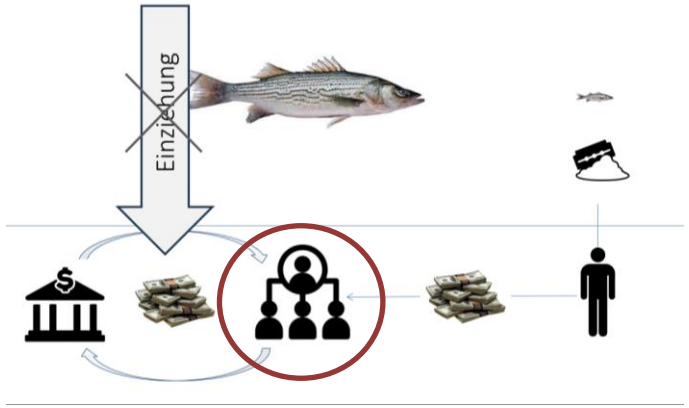
1. Brendo (Drug Offence)
2. Brendo (Money Laundering)
3. Debbie (Money Laundering)
4. Credit Suisse (Corporate Liability)
5. UBS (Corporate Liability)

Art 305bis – Money Laundering

Any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or aggravated tax misdemean-nour shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

Objective elements
- Perpetrator
- Victim
- Object
- Behaviour
- (Result)

Subjective elements
- Intention
- Dolus eventualis



Debbie

Criminal Liability

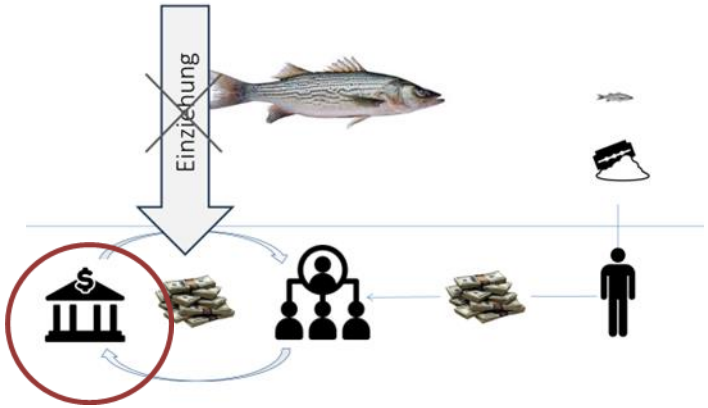
1. Brendo (Drug Offence)
2. Brendo (Money Laundering)
3. Debbie (Money Laundering)
4. Credit Suisse (Corporate Liability)
5. UBS (Corporate Liability)

Art. 102 para 2 SCC – Primary Liability

If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

catalogued main offence
- objective elements
- subjective elements

attribution to the company
- company as perpetrator
- deficient organisation
- causal connection



CS

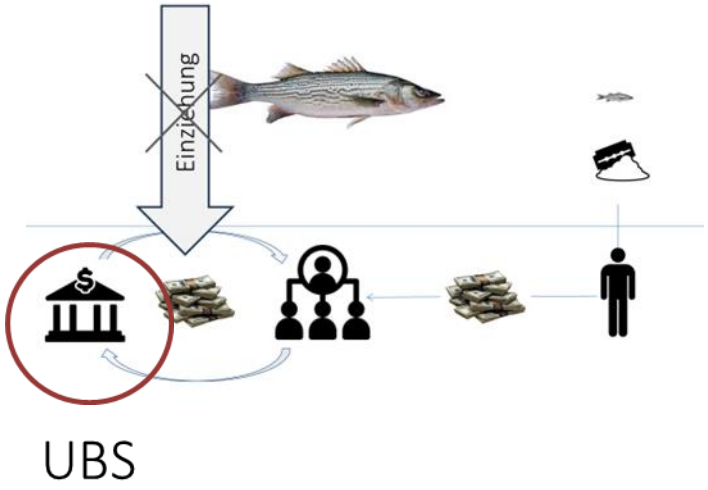
Criminal Liability

1. Brendo (Drug Offence)
2. Brendo (Money Laundering)
3. Debbie (Money Laundering)
4. Credit Suisse (Corporate Liability)
5. UBS (Corporate Liability)

Art. 102 para 2 SCC – Primary Liability

If the offence committed falls under articles 260ter, 260^{quinquies}, 305bis, 322ter, 322^{quinquies}, 322^{septies} para 1 or 322^{octies}, the company will be punished, irrespective of the criminal liability of any natural person, provided the company has failed to take all necessary and reasonable organisational measures to prevent such an offence.

- catalogued main offence
  - objective elements
  - subjective elements
- attribution to the company
  - company as perpetrator
  - deficient organisation
  - causal connection

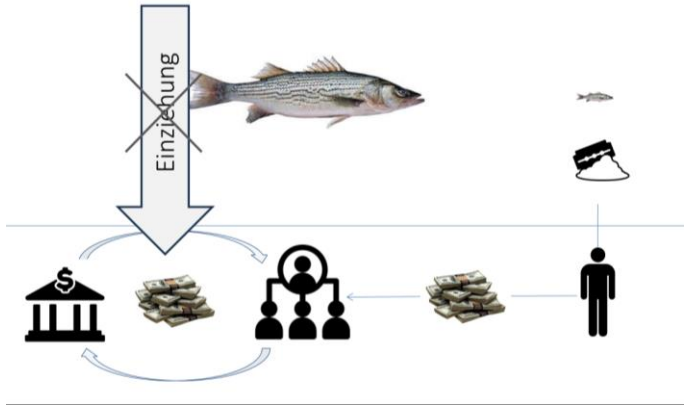


Art 305bis – Money Laundering

Any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or aggravated tax misdemean-nour shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

Objective elements
- Perpetrator
- Victim
- Object
- Behaviour
- (Result)

Subjective elements
- Intention
- Dolus eventualis



Take Out

"Our client is being unfairly accused, because Swiss law requires that a person be implicated in order to condemn a bank," attorneys at law firm MANGEAT LLC, representing the ex-employee, told Reuters. "She is innocent, outraged by the accusations. We will plead for her full and complete acquittal."

CNBC, 06.02.2022; Credit Suisse faces charges in trial of Bulgarian cocaine traffickers (cnbc.com)

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CAS Compliance Management 2025
Managing Criminal Liability

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