CENTRE DE DROIT
BANCAIRE ET FINANCIER

Ukrainian bank assets

FIAA freeze maintained

Par Maria Ludwiczak Glassey le 20 June 2025

In three judgments 1C_435/2024, 1C_604/2024 (intended for publication) and 1C_610/2024 of 19 May 2025, the Federal Supreme Court ruled to uphold the freeze on bank assets ordered by the Federal Council in 2022 and 2023, the beneficial owners of which are persons belonging to the political entourage of former Ukrainian President Viktor Yanukovych.

The assets had initially been seized following a request for international mutual assistance in criminal matters addressed to Switzerland by Ukraine (see TPF, RR.2017.118-121, RR.2017.122, 6 February 2018). It was then established that Ukraine would not be able to submit a request for the return of the assets : the Ukrainian criminal proceedings had to be closed due to lack of evidence. The same was true of the parallel Swiss criminal proceedings on charges of money laundering. The Federal Council then ordered the assets to be frozen in accordance with Article 4 of the Federal Act on the Freezing and Return of Assets of Politically Exposed Persons Abroad (FIAA ; RS 196.1).

First, the Federal Supreme Court recalls the two forms of freezing provided for in the FIAA, namely freezing to support possible future international mutual assistance (Art. 3 FIAA) and freezing, which is relevant in this case, which may be ordered with a view to confiscation if mutual assistance fails (Art. 4 FIAA). Next, the question of the illegal origin of the assets raised by the appellants is quickly dismissed : it must remain open at this stage since it is not a condition laid down in Art. 4 FIAA. However, it will have to be analysed in the subsequent confiscation proceedings, governed by Art. 14 et seq. FIAA (c. 4). The first condition set out in Art. 4 para. 2 lit. a FIAA, namely the existence of a seizure order in the mutual assistance proceedings, is not disputed. The Federal Supreme Court then considers two other conditions that must be met for the freezing order to be maintained, namely that (1) the Ukrainian State can be classified as defaulting (Art. 4 para. 2 let. b FIAA) and (2) the safeguarding of Switzerland's interests requires the (maintenance of the) freeze (Art. 4 para. 2 let. c FIAA).

With regard to the first condition, the Federal Supreme Court points out that the state of default refers exclusively to the situation of a state in the context of specific mutual assistance proceedings and that it is not a general political or economic assessment (Federal Supreme Court, 1C_610/2024, para. 5.1). Although mutual legal assistance with Ukraine may still function in general, this is not the case for proceedings such as those at issue, which have a close connection with the territories occupied by Russian troops (company whose funds were allegedly misappropriated, bank through which the funds were transferred, relevant documents, all located in the Luhansk region). Consequently, 'the Ukrainian authorities are currently unable

to conduct confiscation proceedings in respect of the potentially misappropriated funds and to deliver an enforceable judgment in that regard. This situation is due to a failure of the judicial system linked, on the one hand, to the general problems encountered by Ukraine in the fight against corruption and, on the other hand, to the specific difficulties associated with the war situation" (TF, 1C_610/2024, c. 5.2).

With regard to the second condition, the Federal Supreme Court reiterates the necessary restraint to be exercised by courts reviewing political decisions taken by the Federal Council. According to the Federal Supreme Court, it is undoubtedly in Switzerland's interest to block funds of dubious origin so that their provenance can be examined in confiscation proceedings, the aim being to preserve bilateral relations with the states concerned, to defend Switzerland's reputation as a 'state committed to combating impunity and illicit personal enrichment and to protecting the integrity of the Swiss financial centre' (Federal Supreme Court, 1C_610/2024, c. 6).

With regard to this second condition, it should be noted that the FAC also held that "by organising the Ukraine Recovery Conference on 4 and 5 July 2022 in Lugano and the conference on peace in Ukraine on 15 and 16 June 2024, the Federal Council decided to play an important role in the reconstruction of Ukraine, also in the international context, so that the freezing of assets is, from this perspective too, in the public interest of Switzerland, which is why the condition of Art. 4 para. 2 let. c FIAA must also be considered fulfilled in the present case" (TAF, B-102/2023, B-103/2023, B-104/2023, B-105/2023, 16 September 2024, c. 7.4.4 *in fine*). This argument, linked to the prospect of Ukraine's reconstruction, will undoubtedly be relevant when determining the purposes for which any amounts confiscated should be allocated. However, at the earlier stage of the decision on whether or not to maintain the freeze, it is perplexing. It was not taken up by the Federal Supreme Court.
