

Confiscation and money laundering

Method applicable in cases where illegal and legal bank assets are mixed

Par Fabio Burgener le 5 February 2026

In a judgment intended for publication, the Federal Court ruled on the method applicable for separating bank assets derived from a criminal offence from legal bank assets deposited in the same account ([7B 65/2023 of 5 December 2025](#)).

In 2010, the Office of the Attorney General of Switzerland ('OAG') opened criminal proceedings against persons unknown on suspicion of money laundering of assets derived from crimes committed in Russia ([Art. 305^{bis} \(1\) and \(2\) of the Swiss Criminal Code](#)). In essence, the Russian Treasury was defrauded of nearly USD 230,000,000 through embezzlement. The proceeds of this offence then passed through multiple accounts opened in numerous countries, including Switzerland. In this context, following two payments, an account opened in the name of a company with a Swiss bank was credited with USD 410,000 and USD 447,354 respectively.

In 2021, the OAG closed the criminal proceedings due to insufficient evidence to justify the indictment of a specific person ([Art. 319 para. 1 let. a CCP](#)). However, a confiscation order ([Art. 70 and 71 SCC](#)) may still be issued if acts constituting money laundering (committed by an unknown perpetrator) are established ([Art. 320 para. 2 sentence 2 CCP](#)).

In this regard, the investigation established that the assets derived from fraud committed against the Russian Treasury were mixed, at various stages of the laundering process, with bank assets of lawful origin. To establish the financial flow patterns, the OAG applies the 'proportional' method, according to which assets of lawful origin are contaminated by assets derived from the offence in proportion to their respective share of the total account balance. All debits from this account are thus contaminated in this proportion.

Fictitious example of the 'proportional' method : an account is credited with lawful assets amounting to CHF 75,000 (75 %) and unlawful assets amounting to CHF 25,000 (25 %). A debit of CHF 5,000 comprises CHF 3,750 in lawful assets (75 %) and CHF 1,250 in unlawful assets (25 %).

The consequence is that each of the debits contains a share of the assets derived from the offence ; this share is then confiscable from the credited account. Furthermore, if these assets originate from a crime and depending on the form of the debits (e.g. cash withdrawals), they constitute acts of money laundering, as they are likely to hinder confiscation.

In this case, the criminal prosecution authority found that the two payments to the company's account were contaminated to the tune of 17 % (USD 410,000) and 2 % (USD 447,354) respectively, i.e. a total amount of USD 78,215. On this basis, the OAG ordered the confiscation of bank assets deposited in the company's account amounting to approximately EUR 22,700 (i.e. the account balance according to the most recent bank statement in the file at the time of the dismissal ; [Art. 70 CP](#)). To replace the assets derived from the offence that have been debited from the account and are therefore no longer available, it orders the company to pay the Swiss Confederation the sum of USD 50,738 as compensation ([Art. 71 CP](#)).

The company appeals to the Complaints Division of the Federal Criminal Court. It argues that the OAG should not have applied the 'proportional' method, but rather the 'sedimentation' method, to determine whether and, if so, how much of the bank assets derived from the fraud committed against the Russian Treasury were credited to its account and then debited. The appeals authority confirmed that the method applied by the OAG was in accordance with the law. The company then appealed against this decision to the Federal Supreme Court.

The Federal Supreme Court rejected the 'proportional' method on the grounds that its application was likely to lead to the contamination of large sections of the legal economy and therefore did not lead to a 'proportionate' result.

In line with the majority opinion, the Federal Court adopted the 'sedimentation' method. According to this approach, assets derived from an offence form a deposit 'at the bottom' of the account. As long as the transactions carried out on this account do not exhaust the assets of lawful origin, those derived from the offence remain in the account and are therefore confiscable. However, as soon as the contaminated base is depleted, illegal assets are debited from the account and the transactions in question are then likely to constitute acts of money laundering.

Fictitious example of the 'sedimentation' method : an account is credited with lawful assets amounting to CHF 75,000 (75 %) and illicit assets amounting to CHF 25,000 (25 %). As long as at least CHF 25,000 remains in the account, the entire amount of illicit assets remains deposited in the account. As soon as the base amount of CHF 25,000 is depleted, the illicit assets are debited.

The federal judges add that this rule requires a correction when the account holder intentionally disposes of the illicit portion of the assets. The entire amount debited in these circumstances is deemed to be contaminated, even if the account balance remains higher than the amount of the illicit assets deposited. The transaction is then likely to constitute an act that hinders confiscation, thus constituting the offence of money laundering.

Fictitious example of the corrective measure : the holder of the above-mentioned account wishes to dispose of the illicit assets by transferring CHF 25,000 to an account opened in the name of a domiciliary company of which he is the beneficial owner. Thus, the entire amount debited consists of illicit assets ; the account balance of CHF 75,000 consists of lawful assets.

In our view, the corrective measure corresponds to the principle and method of 'sedimentation' with the following exception : to determine whether the amount debited from an account is contaminated, the criminal authority must first establish whether the holder intended to use assets of lawful or unlawful origin ; if this intention cannot be established, it must examine

whether or not the transaction affects the contaminated base 'at the bottom' of the account (in the same vein : Garbarski/Muskens, [LegallInsight](#)).

In practice, in the absence of statements by the account holder regarding their intention, this must be established on the basis of external circumstances, including in particular :

- a comparison between the amount of bank assets derived from the offence credited to the account and the amount of the subsequent debit(s) : the more similar these amounts are, the higher the probability that the perpetrator intended to use illicit assets (e.g. a credit of CHF 100,000 from fraud on 2 February 2026, a debit of CHF 100,000 on 4 February 2026) ;
- the type of transaction : the more typical the transaction is of money laundering, the higher the probability that the perpetrator intended to use illicit assets (e.g. a credit transfer to an account in the name of another domiciliary company).

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