

International Sanctions

An agent may (and must) refuse to carry out the instructions of his principal

Par Romain Dupuis le 29 June 2026

In a ruling [4A_535/2025](#) dated April 28, 2026, scheduled for publication, the Federal Court rules on the right—or rather, the obligation—of an agent to refuse to carry out a client’s instructions when there is reason to believe that the client’s assets fall under the “freezing of assets and economic resources” provision within the meaning of [Article 15 of the Ordinance Establishing Measures in Connection with the Situation in Ukraine](#) (“Ukraine Ordinance”).

On November 18, 2021, an investment company (the “Company”), wholly owned by a foundation (the “Foundation”), entered into a “brokerage and custody agreement” concerning cryptocurrencies with a Swiss company holding a securities firm license issued by FINMA (the “Securities Firm”).

Upon opening the account, the Company designates the Foundation as the beneficial owner of the deposited assets. The founder of the Foundation is D, who happens to be the nephew of an individual who has been on the U.S. *Office of Foreign Assets Control* (“OFAC”) sanctions list since 2018 and on the sanctions lists of the European Union, the United Kingdom, and Switzerland since March 2022. Due to this family relationship, D was himself added to the OFAC list on November 14, 2022 (but not to the Swiss list).

Three days later, in light of this designation, the securities firm informed the Company that it had frozen its assets due to the Foundation’s and D’s connection to an individual subject to sanctions in Switzerland.

In early 2023, the Company terminated the brokerage and custody agreement and ordered the securities firm to transfer its cryptocurrency holdings to other portfolios, which the firm refused to do. The Company then filed a lawsuit with the Zurich Commercial Court.

In a decision dated September 17, 2025, the court dismissed the claim, holding that the brokerage firm was entitled to refuse to carry out the instructions based on its obligation to freeze assets under the Ukraine Ordinance. The Company appealed to the Federal Supreme Court (“FSC”).

On the merits, the FC notes that an agent is not required to comply with instructions that are unlawful or contrary to the principal’s moral standards (see [Art. 20\(1\) CO](#)) and that instructions that violate public law provisions, particularly criminal law, are not binding.

Art. 15(1) of the Ukraine Ordinance provides for the *ex lege* freezing of assets and economic resources that are owned or controlled, directly or indirectly, by persons on the sanctions list.

From a practical standpoint, however, such a freeze takes effect only if it is implemented by the financial institution concerned, namely by refusing to carry out the client's instructions regarding the assets in question. Due to the *ex lege* freeze, the financial institution cannot wait for an administrative decision ordering such a freeze.

[Article 16\(1\) of the Ukraine Ordinance](#), for its part, imposes an obligation on persons and entities that hold or manage assets which must be presumed to be subject to the freeze provided for in Article 15(1) to report this to SECO without delay.

According to the Federal Supreme Court, this reporting obligation does not apply only in cases of *certainty* regarding the freeze. According to the text of the law, it is triggered when it “must be assumed” that the assets fall under the freeze, that is, in the presence of a *reasonable suspicion*. The Federal Supreme Court concludes that, since the reporting obligation arises when there is a well-founded suspicion, the implementation of the freeze on assets must be subject to the same requirements.

The sanctions measures enacted by the Ukraine Ordinance would, in fact, fail to achieve their objective if a financial institution, faced with a reasonable suspicion that assets are controlled by a sanctioned person, were required to file a report but could not simultaneously freeze the assets and assert the right to refuse to carry out its client's instructions.

The practical implementation of the freeze pursuant to Art. 15(1) of the Ukraine Ordinance is therefore not required only when control (direct or indirect) is established beyond doubt, but already in the presence of reasonable suspicion of such control.

In this case, the Federal Supreme Court (TF) upheld the findings of the Zurich Commercial Court that there were several concrete indications—including, in particular, an interim decision by SECO and a deposit order from the Office of the Attorney General of Switzerland—suggesting that the cryptocurrencies were controlled, at least indirectly, by a sanctioned person, namely D.'s uncle. On this basis, the securities firm could indeed conclude that the cryptocurrencies fell under the freezing obligation within the meaning of Art. 15(1) of the Ukraine Ordinance, such that it was entitled to refuse to execute the Company's instructions. The appeal is therefore dismissed.

The Federal Supreme Court's conclusions, which are in line with international trends, should, in our view, be endorsed. They confirm that the practical effectiveness of sanctions would be seriously compromised if a financial institution were required to wait for a formal administrative decision or absolute certainty before proceeding with a freeze. The Federal Supreme Court thus rejects the requirement for strict proof of control (direct or indirect) by a sanctioned person at the time of the freeze. It holds that the existence of concrete evidence is sufficient not only to trigger the obligation to report to SECO but also to establish the obligation (and the right) to freeze the client's assets, which—in our view, quite rightly—reduces the risk of contractual liability for financial institutions faced with complex ownership structures.

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