

Swiss Supreme Court holds that Ukraine sanctions trigger statutory deferral of claim, barring enforcement of arbitral award

by *Practical Law Arbitration*, with *Schellenberg Wittmer Ltd*

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In *Decision 4A_305/2025*, the Swiss Supreme Court dismissed an award creditor's appeal against the cantonal court's refusal to enforce an LCIA award, upholding the dismissal of the enforcement action on different grounds. The creditor's Russian shareholder was subject to Swiss financial sanctions under the Ordinance on Measures Connected with the Situation in Ukraine (Ordinance). The Swiss Supreme Court ruled that the prohibition under article 15(2) of the Ordinance to directly or indirectly make funds available to sanctioned entities, or entities controlled by them, created a statutory deferral of the claim, barring enforcement while the sanctions remain in force.

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An Angolan diamond miner sought to enforce an LCIA award in Switzerland. The cantonal court declined enforcement, finding the claim extinguished by objective impossibility because the award creditor's Russian shareholder was subject to sanctions under the Ordinance on Measures Connected with the Situation in Ukraine (Ordinance) and exercised control over the creditor.

The Swiss Supreme Court dismissed the creditor's appeal and upheld the refusal to enforce, albeit on different grounds. Article 15(2) of the Ordinance prohibits making funds available to sanctioned entities or entities controlled by them. The court held that because enforcement would compel the debtor to perform the very act prohibited by article 15(2), the prohibition necessarily renders the underlying claim unenforceable. Allowing enforcement would create a contradictory situation where the debtor is prohibited from paying by sanctions law but simultaneously compelled to do so by enforcement mechanisms.

This conclusion is not altered by articles 15(2ter) and 15(2quater) of the Ordinance, which allow the crediting of award-based payments to frozen accounts, if the credited amounts are also frozen. The court ruled this carve-out is not available to facilitate a payment, prohibited by article 15(2), from being made through state enforcement measures.

The court expressly left open whether the claim had been extinguished by objective impossibility under article 119 of the Swiss Code of Obligations, as held by the cantonal court. Instead, it ruled that the payment prohibition created a statutory deferral of the claim for the duration of the sanctions. The court considered this struck a fair balance between the parties' interests: preserving the creditor's claim and interrupting the limitation period, while preventing the claim from falling due and precluding accrual of interest.

The court ruled that article 15(2) constitutes an overriding mandatory provision under article 18 of the Private International Law Act, that is applicable irrespective of the law governing the underlying claim or arbitral award. Given the mandatory public-interest character of the sanctions, enforcement courts must examine compliance with the Ordinance of their own motion.

This decision provides clarification on the effect of Swiss sanctions on award enforcement involving a sanctioned party. Article 15(2) suspends enforcement while sanctions remain in force. As the payment prohibition constitutes overriding mandatory law, it cannot be circumvented by choosing a foreign law, and an otherwise valid award may remain unenforceable in Switzerland. Creditors may apply to SECO under the Ordinance for exceptional authorisation to release frozen assets to honour the arbitral award.

Case: *Decision 4A_305/2025 (Swiss Supreme Court) (13 March 2026)* (German language).

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