

Confiscation and compensation claims

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The penalties imposed on the commodity traders under Article 102 consisted mostly of compensation claims. While the fines, at two to four million francs, were modest in relation to the size of the companies, the compensation claims, at 90 million francs for Gunvor, 150 million dollars for Glencore and 145 million dollars for Trafigura, were substantial. The compensation claim replaces the confiscation of the proceeds of the offence where these are no longer available. The Criminal Code provides for the confiscation of assets that were acquired through an offence. Where they are no longer available, the state may claim an equivalent amount.¹

The proceeds of bribery in the commodity trade are the profits that the company earned on the contracts obtained through the bribes. Their calculation raises difficult questions: whether the gross revenue or the net profit is to be confiscated, how to determine the profit attributable to the bribe, and how to treat the costs of the transactions. The amounts of the compensation claims in the commodity cases indicate that the prosecutors assess the proceeds on the basis of the profits earned on the relevant trades. For the practitioner, the calculation of the proceeds is often the most important question in the negotiation of a summary penalty order or in the defence at trial.

The question of the use of the confiscated amounts has also arisen. The victims of the bribery are, in a broad sense, the states whose officials were bribed and whose resources were sold on unfavourable terms. Swiss law allows the courts to allocate confiscated assets to the injured parties. Switzerland also has a long practice of returning assets of illicit origin to the states from which they were taken.² Non-governmental organisations have called for the compensation claims in the commodity cases to be used for the benefit of the populations of the countries concerned.

1 Notes

1. Art. 70 para. 1 StGB (SR 311.0), [droit-bilingue.ch](#): the court orders the confiscation of assets acquired through an offence; Art. 71 para. 1 StGB: where the assets are no longer available, the court orders a compensation claim of the state in the same amount. ↩
2. Art. 73 para. 1 StGB (SR 311.0), [droit-bilingue.ch](#): the court may award the injured party confiscated assets or the proceeds of their sale up to the amount of the damage, against assignment of the claim to the state. Federal Act of 18 December 2015 on the Freezing and Restitution of Illicit Assets held by Foreign Politically Exposed Persons (SRVG/FIAA, SR 196.1), Art. 1, [droit-bilingue.ch](#): freezing, confiscation and restitution of assets of foreign PEPs presumably acquired through corruption, criminal mismanagement or other felonies. FDFA, "Restitution of illicitly acquired assets", [eda.admin.ch](#) (accessed September 2026): Switzerland has returned over USD 2 billion to foreign states so far, deciding case by case; refers to the FDFA publication "No Dirty Money: The Swiss Experience in Returning Illicit Assets" (2016). ↩

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