

Foreign pressure then and now

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The parallels between the crisis of 1853 and the pressure on the Swiss financial centre in the early twenty-first century are close enough to deserve a brief comparison. In both cases a large neighbour regarded a Swiss canton or Swiss institutions as a base for activities directed against it: conspiracy and propaganda in the 1850s, tax evasion in the 2000s. In both cases the neighbour used economic means. Austria closed the frontier and expelled the Ticinese from Lombardy. Italy, from 1999 onwards, placed Switzerland on its lists of states with privileged tax regimes, attached presumptions of taxable income to assets held there and organized successive amnesties to bring capital home, as Chapter E.II describes.¹ In both cases the Ticinese economy bore the immediate cost, through the loss of emigrant earnings in 1853 and through the outflow of Italian client assets from Lugano banks after the amnesties. The Swiss answer followed the same structure in both periods. The Confederation took the matter out of the canton's hands, conducted the negotiations itself and offered cooperation in a defined form while defending a principle. In 1854 the Federal Council offered Austria information on refugees and action against concrete dangers, while it refused to surrender persons or to accept a general obligation. In 2015 the Federal Council agreed with Italy on a roadmap and a protocol that introduced the exchange of information on request according to the international standard, while it negotiated the conditions of the transition, including the regularization of past assets and the taxation of the Italian cross-border commuters employed in Ticino.² In both cases the settlement came only after the economic pressure on the canton had become severe, and in both cases it ended with the restoration of normal relations and a new legal framework. The comparison does not equate political refugees with tax evaders. It shows that the Confederation's methods of handling the pressure of a powerful neighbour on its southern canton have remained remarkably stable over a century and a half.

1 Where the refuge ends

The modern legal frame draws three further limits to the idea of Switzerland as a refuge for assets. The first concerns the assets of foreign rulers. The Federal Act of 18 December 2015 on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA, SR 196.1), in force since 1 July 2016, allows the Federal Council to freeze the assets of foreign politically exposed persons when the government of their country has lost power, the level of corruption there is notoriously high, the assets were probably acquired through corruption, criminal mismanagement or other felonies, and the safeguarding of Swiss interests requires the freeze (Art. 3(2) FIAA).³ The nineteenth-century refuge protected the exile against the government he opposed. The modern law protects a population against the assets taken by the government that ruled it.

The second limit is the law against money laundering. Since 1990 money laundering has been a criminal offence under Art. 305bis of the Swiss Criminal Code, and since 1 January 2016 aggravated tax misdemeanours, with evaded tax above CHF 300,000 in a tax period, count among its predicate offences, as Chapters D.IV and G.III explain.⁴ Assets derived from crime are not protected by banking secrecy, and financial intermediaries must report well-founded suspicions to the Money Laundering Reporting Office. The third limit is sanctions law. Under the Embargo Act the Federal Council can, by ordinance, restrict payment and capital transfers and thereby freeze the assets of persons and entities designated in sanctions adopted by the United Nations, the OSCE or Switzerland's most significant trading partners, regardless of their political status at home, as Chapter G.II describes.⁵

The result is a legal order in which refuge for persons and transparency for assets coexist. A dissident who flees an authoritarian state can still obtain asylum in Switzerland. The state that persecutes him cannot obtain his extradition or mutual assistance for a predominantly political offence. His assets in a Swiss bank are protected against private disclosure. They are not protected against an Italian or other foreign tax authority that obtains information through the automatic exchange, nor against a criminal investigation for fraud, corruption or money laundering. The distinction that the Federal Council drew in 1854, between the person of the refugee and the dangers that he might pose, has become the distinction between the protection of the person and the transparency of the assets.

For the practitioner. - Distinguish the client's personal situation from the situation of the assets. A client who fears political persecution in his

country of origin may have a claim to protection under the AsyIA and under Art. 3(1) IMAC. His assets do not share that protection. - Check whether foreign proceedings against the client are of a predominantly political nature within the meaning of Art. 3(1) IMAC. The Federal Office of Justice and the courts decide this in each case. The plea is excluded for the offences listed in Art. 3(2) IMAC. - Treat fiscal matters as transparent. For clients resident in Italy, account information is exchanged automatically, and mutual assistance is available for tax fraud under Art. 3(3) IMAC. - Remember that Art. 47 BankA protects information against unauthorized disclosure. It does not override the duties to testify and to provide information reserved in Art. 47(5) BankA, nor the reporting duties under the anti-money laundering legislation. - For politically exposed clients from countries in transition, consider the risk of an administrative freeze under Art. 3 FIAA and of sanctions measures under the Embargo Act before accepting or retaining assets.

2 Notes

1. Decree of the Italian Minister of Finance of 4 May 1999 listing states with privileged tax regimes for individuals (the so-called black list), and Art. 12 of Decree-Law no. 78 of 1 July 2009; see Chapter E.II. ↩
2. Federal Council, media release of 23 February 2015 (above), on the aim to "simplify the regularisation of untaxed assets before the automatic exchange of information is introduced"; State Secretariat for International Finance (SIF), "Italy", <https://www.sif.admin.ch/en/italy> (consulted 5 October 2026), on the relations in financial and tax matters "deepened since the joint roadmap of 2015", on the "special importance" traditionally given to the rules on cross-border commuters and on the entry into force, on 1 January 2024, of "the new agreement on cross-border commuters" and of the amending protocol to the double taxation agreement. See Chapter H.I. ↩
3. Federal Act of 18 December 2015 on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA), SR 196.1, Art. 3(2), English text reproduced at <https://www.droit-bilingue.ch/en-de/1/19/196.1-3-6.html> (consulted 4 October 2026); entry into force on 1 July 2016 according to <https://www.droit-bilingue.ch/en-de/1/19/196.1-preface-1.html> (consulted 4 October 2026). ↩
4. Swiss Criminal Code (SCC), SR 311.0, Art. 305bis, English text and amendment notes reproduced at <https://www.droit-bilingue.ch/en-de/3/31/311.0-305bis-372.html> (consulted 5 October 2026): "Inserted

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by No I of the FA of 23 March 1990, in force since 1 Aug. 1990"; para. 1bis, which defines the aggravated tax misdemeanour by reference to Art. 186 of the Federal Act on Direct Federal Taxation and Art. 59(1) of the Tax Harmonization Act where the tax evaded in any tax period exceeds CHF 300,000, inserted by the Federal Act of 12 December 2014 implementing the 2012 revision of the FATF Recommendations, "in force since 1 Jan. 2016". Reporting duty: Federal Act of 10 October 1997 on Combating Money Laundering and Terrorist Financing (Anti-Money Laundering Act, AMLA), SR 955.0, Art. 9(1), English text at <https://www.droit-bilingue.ch/en-de/9/95/955.0-9-15.html> (consulted 5 October 2026). See Chapters D.IV, G.III and G.IV. ↩

5. Federal Act of 22 March 2002 on the Implementation of International Sanctions (Embargo Act, EmbA), SR 946.231, Arts. 1 and 2, English text at <https://www.droit-bilingue.ch/en-de/9/94/946.231-1-4.html> and <https://www.droit-bilingue.ch/en-de/9/94/946.231-2-5.html> (consulted 5 October 2026). Under Art. 1(1) the Confederation may implement sanctions ordered by the United Nations, the OSCE or Switzerland's most significant trading partners; under Art. 1(3)(a) the compulsory measures may restrict "payment and capital transfers"; under Art. 2 the Federal Council enacts them by ordinance. ↩

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