

Neutrality and the decision of 28 February 2022

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The decisive change came with the Russian invasion of Ukraine. After the annexation of Crimea in 2014, Switzerland had not adopted the sanctions of the European Union. The Federal Council instead enacted, on 27 August 2014, an ordinance on measures in connection with the situation in Ukraine, whose purpose was to prevent the circumvention of the European sanctions and to ensure that Switzerland did not become a platform for transactions prohibited in the European Union.¹ The much larger Ukraine Ordinance of 2022 repealed that ordinance and took over its subject matter. On 28 February 2022, four days after the invasion, the Federal Council decided to adopt the packages of sanctions that the European Union had enacted on 23 and 25 February 2022. The financial measures against President Vladimir Putin, Prime Minister Mikhail Mishustin and Foreign Minister Sergei Lavrov took effect immediately, so that the assets of the listed persons and companies were frozen from that day.² The decision was presented as compatible with Swiss neutrality, and that classification matters for its legal reading. The law of neutrality, codified in the Hague Conventions of 1907, concerns military matters: a neutral state may not take part in an armed conflict or favour one belligerent with military means. Economic sanctions are not covered by it. The Federal Council therefore treated the adoption of the European measures as a question of neutrality policy, which it may shape according to the circumstances.³ For the War Material Act, which governs the export of arms, the position is different, and the debate on the re-export of Swiss arms to Ukraine discussed later in this chapter is a debate about the law of neutrality in the strict sense. The distinction explains why Switzerland adopted almost the entire European sanctions programme against Russia while maintaining for several years an export practice for war material that refused to supply either belligerent.

1 The failed revision of 2022 and the present state of the law

In 2022 Parliament had the opportunity to widen the Embargo Act. The Federal Council had proposed limited amendments, to which the National Council added a provision under which the Federal Council could adopt sanctions on its own initiative against persons and entities responsible for serious violations of international law or human rights. The Foreign Affairs Committee of the National Council had supported such a provision by 18 votes to 6 in May 2022, and the National Council adopted it in June 2022 by 104 votes to 74, against the votes of the Swiss People's Party and the Liberals.⁴ The Council of States removed the provision in September 2022, keeping only a rule that would have allowed the Federal Council to extend existing sanctions to further states.⁵ In the final vote of 30 September 2022 the National Council rejected the remaining amendments, with the Social Democrats and the Greens voting against a text that no longer contained independent sanctions and the Swiss People's Party voting against any change. The Council of States had approved the bill without opposition, but the revision failed.⁶

As a result, the Embargo Act of 2002 remains the legal basis for the Russia sanctions in the version that Parliament had enacted before the war. Switzerland can still adopt sanctions only when the United Nations, the OSCE or its main trading partners have ordered them. It cannot list a person of its own motion. The Federal Council's announcements since 2022 consistently describe its decisions as implementation of the European packages "according to previous practice" ("gemäß bisheriger Praxis"), a formula that signals both alignment and a reservation of autonomy.⁷ For the practitioner the formula has a concrete meaning. A Swiss lawyer or compliance officer cannot assume that a European measure applies in Switzerland until the Swiss ordinance has been amended. Equally, a Swiss measure applies even when it deviates from its European model.

Essentials. The Embargo Act (SR 946.231) authorizes the Federal Council to implement sanctions of the United Nations, the OSCE and Switzerland's most significant trading partners by ordinance (Art. 1 and 2 EmbA). It does not allow Switzerland to list persons of its own motion: the National Council rejected a revision on 30 September 2022. European measures apply in Switzerland only after the Swiss ordinance has been amended. Since 28 February 2022 Switzerland has adopted the European measures against Russia, treating economic sanctions as a matter of neutrality policy outside the law of neutrality.

2 Notes

1. Ordinance of 27 August 2014 on Measures in connection with the Situation in Ukraine, AS 2014 2803, repealed by Art. 34 of the Ukraine Ordinance of 4 March 2022, <https://www.droit-bilingue.ch/de-fr/9/94/946.231.176.72-34-57.html>; on its purpose of preventing circumvention of the EU sanctions see *Année politique suisse / politichronik.swiss*, process 64361, <https://politichronik.swiss/de/prozesse/64361-die-schweiz-ubernimmt-die-eu-sanktionen-gegen-russland.pdf>. ↩
2. Federal Council, "Schweiz übernimmt EU-Sanktionen gegen Russland", press release of 28 February 2022, <https://www.admin.ch/de/nsb?id=87386>. ↩
3. SECO, "FAQ – Sanktionen der Schweiz", question "Sind Sanktionen mit der Neutralität vereinbar?", <https://www.seco.admin.ch/de/faq-sanktionen-schweiz> (participation in economic sanctions is compatible with neutrality, and the Federal Council takes neutrality into account in each sanctions decision); Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land of 18 October 1907, SR 0.515.21. ↩
4. SRF, "Paradigmenwechsel: Bundesrat soll künftig eigenständig Sanktionen ergreifen können", 3 May 2022, <https://www.srf.ch/news/schweiz/paradigmenwechsel-bundesrat-soll-kuenftig-eigenstaendig-sanktionen-ergreifen-koennen> (committee vote of 18 to 6); plattformJ, "Nationalrat in Kürze", 2 June 2022, <https://www.plattformj.ch/artikel/200206/> (104 to 74, opposition from SVP and FDP). ↩
5. SRF, "National- und Ständerat uneins: Gespaltene Mitte verhindert Sanktionen made in Switzerland", 19 September 2022, <https://www.srf.ch/news/schweiz/national-und-staenderat-uneins-gespaltene-mitte-verhindert-sanktionen-made-in-switzerland>. ↩
6. SRF, "Das war die Herbstsession: Schlussabstimmungen in beiden Räten", 30 September 2022, <https://www.srf.ch/news/schweiz/das-war-die-herbstsession-letzter-sessionstag-in-bern-schlussabstimmungen-in-beiden-raeten> ("Der Nationalrat hat die geplanten geringfügigen Änderungen im Embargogesetz abgelehnt"). ↩

7. Federal Council, "Ukraine: Der Bundesrat setzt das 20. Sanktionspaket gemäss bisheriger Praxis um", press release of 19 August 2026, <https://admin.ch/de/newnsb/XuqpJCrrV3oZ6ho1bqUuo>. ↩

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