



New instruments for FINMA - 11 FINMA power to impose fines?

FINMA wishes to have the authority to impose fines. The Federal Council will at least examine the proposal. Parliament is also thinking about letting FINMA fine individual managers. At least for SIBs. However, the reasons given by the Federal Council for this are not convincing. Furthermore, the deterrent effect of such fines on companies is uncertain. Moreover, FINMA is already authorized to impose financial sanctions in the form of profit confiscation. It does so regularly and consistently. FINMA's power to impose fines is therefore unnecessary and would have more negative than positive effects. This is particularly true with regard to FINMA's procedures. Nevertheless, Parliament is likely to approve them, but hopefully only for systemically important banks.

Cheer up Nessie

- (1) There are themes of Loch Ness Monster behavior patterns: they pop up and down and up and down and up and down....
- (2) One such issue is the question of whether the Financial Market Authority should be authorized to impose *fines* on supervised institutions. Or even against managers who violate supervisory law. Here's a brief summary of the main emergences of fine nessie:



(3) In 2003, the then Swiss Federal Banking Commission (SFBC) rushed ahead in a remarkable legislative stunt: without prior consultation with the Federal Finance Department, it published a "Sanctions Report". In it, it called for the future FINMA to have the authority to impose administrative fines on institutions (maximum fine of 50 million) and the individuals responsible for the violation (max. 5 million). In order to ensure that the procedure for such fines is compatible with the ECHR, the SFBC proposed an adversarial and, at the request of the parties, even public procedure in an independent sanctions committee.

(4) The majority reaction to the proposal was horror: "un-Swiss". In 2004, the expert commission chaired by Ulrich Zimmerli, which hatched the FINMA instruments, also rejected it in its report. The main reason: it considered the special procedure to be "*inappropriate and impractical*". However, it recommended the confiscation of profits from serious violations of supervisory law. The legislator followed this recommendation (Art. 35 FINMASA).

(5) FINMA's authority to impose fines reappeared briefly in 2010: in a report on the revision of stock market offenses, the Federal Council examined the issue again with the same result. No authority to impose fines due to procedural challenges.

(6) Next sighting of the fine Nessie: After parliamentarians pushed forward, the Federal Council remained firm in 2014 in the "Graber Report": the threat of potentially high fines would necessitate a costly reorganization of FINMA with two different, separate processes and procedures (under administrative procedural law and administrative criminal law).

(7) Bussen-Nessie refused to give in and reappeared at ever shorter intervals. Encouraged by repeated criticism from international peer reviewers from the FATF (2016) and the IMF (2019) and parliamentary initiatives (2018 and 2021). And now the Federal Council's resistance has crumbled. Why was this? There were probably two reasons:

(8) Unlike the SFBC at the time of the sanctions report, FINMA's management was long skeptical about fines against institutions: "*One could get the impression that the attitude towards fines in companies is sometimes: pronounced today, paid tomorrow, forgotten the day after tomorrow*" (FINMA spokesperson 2018). This has changed since then: in April 2023,

* Translation of a German text published on 16 May 2025 on urszulauf.ch

immediately after the collapse of CS, the Chairwoman of FINMA publicly called for FINMA to have the authority to impose fines. FINMA repeated this request in its report of December 2023.

(9) More importantly, in a 2022 report on "pecuniary administrative sanctions" in various administrative areas, the Federal Council came to three main conclusions with regard to due process:

- In the case of pre-existing supervisory relationships, duties to cooperate may take precedence over the freedom from self-incrimination.
- The instructing authority can also be the sanctioning authority.
- No independent procedure similar to criminal proceedings would have to be introduced for supervised institutions.

(10) This means that Fine-Nessie remains permanently emerged and visible to all. Resistance seems to have been broken and the opening of the regulatory floodgates by the CS downfall under the 7th eternal regulatory rule is driving the regulatory wheel:

FINMA fines institutions (Federal Council) ...

(11) In its April 2024 report, the Federal Council announces that it is preparing a "*competence for pecuniary administrative sanctions against legal entities*" and is still examining various issues (section 16.3.5). *This applies to all legal entities supervised by FINMA.* Not just SIBs or banks. However, the Federal Council rejects FINMA's authority to impose fines on individuals.

... and against individuals (parliament)?

(12) Parliament, on the other hand, was different and stricter. Both chambers passed a "*Motion No. 3*" from the CS-PUK, which calls on the Federal Council to "*examine*" "*the introduction of FINMA's authority to impose fines on both SIBs and private individuals*". My prediction: the Federal Council will examine but will stick to its conclusion that this is not a good idea.

What is a fine?

(13) Silly question. Everyone who has already paid fines for parking incorrectly or speeding will think so. And hand on heart: which driver is not occasionally one of these offenders on the road? The comparison

makes sense in the context of the financial market because, given the current density of regulation in financial market law, is it even possible for players to do business without committing a regulatory sin? And would fines change anything? More on this later.

(14) But first: what is a "fine"? It is a financial sanction. Financial sanctions have various components. Let's take inspiration from US law. For example, UBS's recent "Plea Agreement" for CS's renewed US tax misconduct in May 2025. The approximately USD 371 million to be paid by UBS under the Guilty Plea is made up of 3 components:

- A *fine* in the narrower sense ("*fine*") to compensate for the injustice committed in the amount of 217 million.
- A *refund* ("*restitution*") of the lost taxes to the victim, i.e. the US tax authority IRS, of 46 million.
- A *confiscation* ("*forfeiture*") of the profits of 109 million generated by the transactions.

The remaining amount up to the total amount of 510 million dollars to be paid by UBS is owed to a fine for the violation of the 2014 CS Guilty Plea.

What can and does FINMA do today?

(15) So financial sanctions consist of three components: *a fine in the narrower sense, confiscation of unlawful profits and restitution to injured parties*. Which of these instruments are available to FINMA today?

(16) As described in an earlier commentary, FINMA can *confiscate profits* that *supervised institutions and individuals* have made from serious violations of supervisory law (Art. 35 FINMASA). As described there, it has done so in isolated cases but more frequently against individuals in recent years. However, FINMA has been quite aggressive against institutions since 2012:

Gewinneinzüge der FINMA gegen Banken (2014 - 2024)				
Quellen	FINMA Enforcementkassuistik		GEFI Global Enforcement in the Financial Industry	
FINMA ID (link) ▾	Datum ▾ ↑	Name der Bank ▾	Zahl ▾	Höhe (Mio CHF) ▾
2014-04	16.04.14	Banque X	1	keine Angabe
2014-29	07.11.14	UBS	1	134.0
2016-05	23.05.16	BSI	1	95.0
2016-13	07.10.16	Falcon Private Bank	1	2.5
2017-01	13.01.17	Finanzgruppe X und Bank X	1	5.0
2017-02	27.01.17	Coutts & Co	1	6.5
2018-01	17.01.18	PKB Privatbank	1	1.3
2019-08	27.09.19	Bank X	1	1.6
2020-11	16.10.20	BSI	1	70.0
2021-05	23.07.21	Firm 01	1	0.2
2022-11	28.10.22	Bank X	1	0.1
2022-18	16.12.22	Bank X	1	27.0
2023-01	20.01.23	Bank X	1	0.2
2024-03	08.03.24	Bank Audi (Suisse)	1	3.9
2024-09	21.06.24	Bank X	1	0.4
2024-14	25.10.24	Banca X	1	0.1
2024-16	22.11.24	Bank X	1	3.0
Total			17	350.9
Durchschnitt				21.9
Median				2.8

Sources: [FINMA Enforcement Casuistry](#), [GEFI Global Enforcement against the Financial Industry](#)

(17) FINMA's profit forfeitures average CHF 22 million and the median is almost CHF 3 million: these are very high amounts, even compared with the fines imposed by other supervisory authorities in Europe, with the exception of the UK.

(18) What about *restitution* to injured parties? Could FINMA order such restitution? I think it could do so up to the amount of the profits to be confiscated. According to the law, claims by injured parties have priority over the confiscation of profits to the Confederation: "*The confiscated assets shall go to the Confederation unless they are paid out to injured parties.*" (Art. 35 para. 6 FINMASA). FINMA could refrain from confiscating profits if the infringing institution proactively compensates injured parties. To date, however, FINMA has never done so. Perhaps there were no good cases involving private claimants. Or perhaps FINMA lacked the courage. Or both.

(19) However, FINMA is clearly not authorized to impose *fines in the narrower sense*. But that now seems to be the political will. Does this make sense, and should it now change? Let's first ask the question for the *supervised institutions*.

Reasons for FINMA's administrative fines against institutions

(20) According to the Federal Council's [report of April 2024](#), there are four reasons why FINMA should have the power to impose fines (section 16.3.4.1)):

(21) *Fines as a lever for shareholder action*: Shareholders could use the fine as an opportunity not to discharge the boards, i.e. to refuse to grant discharge. There are indeed examples of this. For example, at UBS in [2019](#) due to the "tax fine" in France. It remains to be seen whether such actions by shareholders will deter management. Especially if shareholders accept the remuneration report at the same time, as was the case at UBS. Moreover, these fines often come at the end of legal disputes that have been known for years and which the shareholders price in. If they end with a financial sanction, the share price often rises. At least if the fine is not higher than expected, as in the case of UBS.

(22) *Strengthening FINMA's reputation at national level* and its trust and standing in the market. Really? It is unclear how fines are supposed to strengthen confidence in the market. The impact on FINMA's reputation is also highly uncertain. Too much depends on the circumstances. Every fine will be criticized from many sides with many arguments: too high, too low, too late, against the wrong people. Supervisors can hardly win any laurels. Not even with fines.

(23) *Strengthening FINMA's international reputation*. What the Federal Council is probably trying to say is that it is fed up with being repeatedly criticized by peer-reviewers of international standard setters for FINMA's lack of authority to impose fines. The financial supervisors of most countries can indeed impose fines. But do they actually achieve anything? For the standard setters, such questions are irrelevant. They click the boxes.

(24) *FINMA's special expertise*. By this, the Federal Council probably means that FINMA's special expertise makes it better suited than criminal authorities to impose *sanctions* and fines on supervised institutions in a "*uniform sanction practice*". This will not go down well with the criminal authorities and courts, which in recent years have increasingly prosecuted and convicted banks for organizational deficiencies in the fight against money laundering. Above all, is the

professional competence of a supervisory authority a reason to give it the power to impose fines?

(25) (25) The Federal Council's arguments are therefore not particularly convincing. However, this does not necessarily speak against FINMA's authority to impose fines. There may be better reasons. What is the purpose of the authority to impose fines? It should be to encourage legally compliant behaviour. At least, this is what FINMA hopes, according to its report of December 2023 (p. 46). Is there any empirical evidence for this?

Do high fines lead to good compliance?

(26) Fines against companies have been booming for years. Let's take the banks and look at their fines from a high altitude. The result is impressive. If the figures are correct and complete, it would also be an untrue myth that Credit Suisse is the most fined bank in the world:

Bussenrangliste globaler Banken (2010 - 2025)		
Top 10 aktuelle Obergesellschaften	Total Bussen (Mrd USD)	Zahl der Einträge
Bank of America	64.1	191
JPMorgan Chase	33.2	184
Wells Fargo	23.4	123
UBS total	21.7	191
- davon UBS vor Fusion	14.5	106
- davon Credit Suisse	7.2	85
Citigroup	18.4	212
Goldman Sachs	17.7	95
Deutsche Bank	16.7	113
NatWest Group PLC	15.3	62
BNP Paribas	10.2	60
Barclays	7.8	79
Total	228.4	980

Source: [Good Job First, Global Violation Tracker](#)

(27) Fines from all countries are collected for these figures. For Switzerland (incorrectly) the profits confiscated by FINMA are (wrongly) not included. In the other countries, these confiscated profits would be part of the financial penalties. Not yet included for Credit Suisse is the fine to be paid by UBS due to the renewed US tax misconduct by CS in May 2025. According to the FINMA report of December 2024, Credit Suisse is said to have *paid "fines and settlement*

payments of around CHF 15 billion". FINMA does not provide any sources for this figure, which is more than double the above information.

(28) A review of these entries for the individual bank groups reveals that Virtually all of them paid fines every year from 2010 to 2024. On different but recurring topics. They therefore always violated rules somehow, somewhere and were never fully compliant with the law. Credit Suisse and UBS were no exception:

Zahl und Summe der Bussen Credit Suisse		
Jahr	Bussenzahl	Bussenbetrag (Mio USD)
2010	1	2.7
2011	6	316.1
2012	1	120.0
2013	2	0.2
2014	9	3'716.9
2015	1	4.3
2015	12	369.9
2017	7	670.8
2018	5	96.8
2019	6	7.1
2020	4	0.9
2021	11	789.4
2022	17	960.7
2023	3	124.7
2024	2	19.6
2010-2024	86	7'195.7

Source: [Good Job First, Global Violation Tracker](#)

Zahl und Summe der Bussen UBS (ohne CS)		
Jahr	Bussenzahl	Bussenbetrag (Mio USD)
2010	8	125.5
2011	9	287.1
2012	9	1'537.4
2013	12	978.9
2014	7	1'215.4
2015	10	632.2
2016	5	17.2
2017	3	448.7
2018	10	329.3
2019	6	145.9
2020	4	11.8
2021	7	221.8
2022	9	228.6
2023	5	3'649.1
2024	1	0.3
2010 - 2024	105	9'829

Source: [Good Job First, Global Violation Tracker](#)

(29) Once again: UBS and CS are not outliers. The same picture of continued fines and thus apparently continued violation of rules can be seen at the other banks on the top ten fines list.

(30) This means that just as in road traffic, the threat of fines (even very high ones) against banks does not prevent them from violating the law. Legal violations and fines as part of normal business? Bad and regrettable, but unavoidable? Larry D. Thompson, U.S. Deputy Attorney General from 2001 to 2003 and later Monitor at Volkswagen, said in 2011: "*[N]o matter how gold-plated your corporate compliance efforts, no matter how upstanding your workforce, no matter how hard one tries, large corporations today are walking targets for criminal liability.*"

(31) So, are high threats of fines against companies ineffective? This is also unlikely to be the case. Consistent enforcement certainly promotes compliance with the law. The only question is which measures are most effective: in road traffic, many drivers fear the withdrawal of their driving license more than a fine. This is precisely the argument used to justify FINMA's authority to impose fines on

supervised institutions: it is needed because the withdrawal of a license is often disproportionate, and other measures would not be credible on their own.

(32) I am not convinced by this argument. The effect of FINMA's current mix of measures against FINMA institutions should not be underestimated: it can and does confiscate profits made from serious breaches of supervisory law. It can and does order programs to improve compliance. It can and does temporarily restrict new business, takeovers and the admission of new clients. It can and does demand the removal or strengthening of executive bodies. It can and does take measures against the individuals responsible.

(33) Do FINMA still need to impose fines on the supervised institutions? Or at least against SIBs? I am not convinced. You could say that while the benefits and added value of administrative fines may not be obvious, if they don't help, they don't hurt. Too bad that no value is added, at least there is no harm? This brings us to the question of any undesirable side effects of FINMA's authority to impose fines. They do exist:

Indulgence effect

(34) Fines always have an indulgence effect: sin, pay, sin again, pay more. In the case of fines against institutions, this indulgence effect is even greater because no individuals really seem to feel the pain in their wallet. In the case of SIBs with a dispersed shareholder base, this effect is even greater. A few more small shareholders are expected to give emotional speeches at the Annual General Meeting. But these speeches are delivered anyway. For the shareholders as a whole, fines are simply a cost of doing business. Unpleasant, but somehow accepted. And for new shareholders, they are already priced into the purchase price if the proceedings are public knowledge. This is often the case because companies are obliged under stock exchange law to disclose the proceedings. Or because they were triggered by high losses or scandals covered in the media. Which is often the case.

Distraction of FINMA

(35) Another danger associated with the indulgence effect is the authority to impose fines on

companies. FINMA could be tempted to merely impose fines instead of ordering the personnel and organizational measures that are important and appropriate under supervisory law in order to restore compliance with the law. This is because FINMA's primary statutory duty is to *supervise*, not sanction, financial market players: "*Authority for the Supervision of the Financial Market*" (Art. 1 FINMASA). FINMA's sanction instruments are also contained in a section of the Act entitled "*Supervisory instruments*".

(36) FINMA's enforcement is important. Without a doubt. Why else would I have published and co-authored three editions of an increasingly thick book entitled "*Financial Market Enforcement*" over the last 20 years? However, enforcement should always remain an instrument of supervision and not be detached from it. This is also FINMA's current understanding: *enforcing supervisory law to restore orderly conditions using coercive administrative means*. The sweet poison of administrative fines could divert FINMA's focus away from this.

Procedural problems

(37) Under the European Convention on Human Rights (ECHR), stricter requirements apply to criminal proceedings. Freedom from self-incrimination applies, including the presumption of innocence. There is no obligation for the accused to cooperate. If they do not cooperate, this can only be used against them to a limited extent in the assessment. There is also another important right of the accused: a competent, independent and impartial court established by a formal law must deal with, judge and announce their case in public. These requirements also apply to a limited extent when *companies* rather than individuals are accused.

(38) These requirements also apply in administrative proceedings that result in a sanction, which have the character of a "*charge with a criminal offense*". Lawyers repeatedly assert this before the courts in relation to FINMA sanctions. However, the courts have so far consistently confirmed this in case law: *Professional bans*, the *confiscation* or *publication of rulings* do not have the character of *criminal charges*. The situation is different for administrative fines. Fines against companies are also considered criminal charges. Would FINMA's procedure therefore have to be adapted if it were able to impose fines?

(39) In competition law, the Federal Supreme Court confirmed for the first time in 2012 and repeatedly since then: even for very high fines, the procedure of the Competition Commission together with the procedure before the Federal Administrative Court meets the requirements of the ECHR. The Federal Council endorsed this in the aforementioned 2022 report on "pecuniary administrative sanctions". So no problem?

(40) I am not convinced. The procedural guarantees are highly controversial. Especially in financial market law in view of FINMA's aggressive enforcement, contrary to the false public perception. Professors and lawyers will not stop demanding higher guarantees. They will not rest until the courts give in. And the courts will give in. Sooner or later. To the delight of the lawyers. As for the judges, the efficiency, impact and credibility of FINMA's enforcement need not be their concern.

(41) Now that wouldn't be a drama. The procedures could be adapted. As mentioned above, the Swiss Federal Banking Commission suggested this over 20 years ago in its "*Sanctions Report*". No indeed, it would not be a drama. But it would come at a price: FINMA's enforcement would become even more complex than it already is today. Even more resources would be needed. Efficiency would suffer and the length of proceedings would increase. Justice has its price. But is it really worth it given the weaknesses of fines? At best, this could be answered in the affirmative if the fines really work.

Do fines work against companies?

(42) There are studies that supposedly prove this. I am not convinced. Here's a thought experiment. Let's assume that FINMA was given the power to impose fines in 2009 and made use of it. At least against SIBs. Would this really have changed anything? Let's take the UBS LIBOR case from 2012 as an example. FINMA conducted proceedings due to the manipulation of LIBOR. And collected a profit of CHF 59 million from UBS. At the same time, UBS was fined a total of almost 1.5 billion dollars by one British and two US authorities. What would have been the effect of an additional CHF 100 million fine from FINMA, for example? A reduction in the foreign fines? Uncertain. An even higher fine overall? Possible. More impact? Hardly.

(43) Neither FINMA nor the Federal Council argue that the downfall of Credit Suisse would have been avoided if FINMA had imposed a fine in some of its eleven enforcement proceedings against the bank. The US tax proceedings speak against this: in May 2014, CS paid a total of 2.8 billion dollars as a financial sanction under all titles. In May 2025, it and UBS paid another more than half a billion dollars for the same offense in the subsequent period. Apparently, even such high fines were not a deterrent. However, I would like to examine the background to this "repeat offense" in more detail.

Effect of fines doubtful, side effects undesirable

(44) My conclusion: it is not worth giving FINMA the power to impose fines. It should be careful with its wishes. They could come true. And as a result, it would not enjoy the gift. The financial market and the banks would not be better monitored or safer. Only the lawyers and jurists would be happy about it. After all.

(45) Will legislators be convinced by the wisdom of these arguments? I am skeptical. Fines against greedy banks are something that politicians are unlikely to oppose. That won't help them get re-elected. So, two more thoughts along the way:

Fines against individuals?

(46) As mentioned, Parliament instructed the Federal Council to at least consider administrative fines against individuals. The Federal Council rejected this in its report of April 2024. FINMA, in turn, sidestepped the issue in its report of December 2023 and only spoke in general terms about the authority to impose fines. If I'm reading between the lines correctly, it actually wants this to apply to individuals too. Would that be a good idea? Yes and no.

(47) On one hand, the reasons already outlined speak against FINMA's authority to impose fines. The procedural issue in particular would quickly become a major issue in the case of FINMA fines against individuals. The courts rightly apply stricter standards to the fairness of proceedings against individuals. In any case, the legislator would be well advised to provide for a special procedure in the regulation, possibly even in the first instance with adversarial proceedings before an independent body. As proposed in the

SFBC's sanctions report, albeit at a time when there was no Federal Administrative Court.

(48) The indulgence component of the fine would also become important. FINMA would almost certainly impose more fines on individuals, including top managers, instead of banning them from practicing their profession. Contrary to the intention in Parliament, the sanctions would not be increased as a result, but reduced.

(49) However, there would also be a good reason for having the power to impose fines: individuals react more sensitively to all types of sanctions than institutions. Fines therefore also have a greater effect. However, with the existing professional ban and (as suggested in an earlier commentary) FINMA's power to confiscate bonuses in the event of serious breaches of supervisory law, FINMA would, in my opinion, have sufficient deterrent instruments at its disposal.

Fines against SIBs or all supervised parties?

(50) As I said, the Federal Council and Parliament are unlikely to be impressed by my arguments. The wave of regulation is probably going to render FINMA's authority to impose fines ineffective. Should the legislation cover the entire financial centre, as proposed by the Federal Council and FINMA, or just the SIBs?

(51) In itself, it would be strange to apply such an instrument to only four companies. However, in view of the weaknesses of corporate fines, I think it would be easy to justify applying them as a test, at least for the time being, only to those institutions that are closest to the problem supposedly to be solved. And what did the Chair of the CS PUK emphasize in the Council of States in March 2025: "*The recommendations and proposals of the PUK concern the regulation of systemically important banks (SIBs) ... Banks that are not classified as systemically important by the authorities are not covered by the recommendations and initiatives.*"

(52) The authority to impose fines would therefore have to be regulated in Section 5 of the Banking Act. Admittedly, this is an unattractive piece of legislation. But if you want beauty, you shouldn't read the Banking Act.

Conclusion

(53) FINMA's authority to impose fines would have little desirable effect but would have some undesirable side effects. It is not needed. But it will come. For companies, at least for SIBs.

From Saul to Paul

I must confess: I have changed my mind about FINMA's authority to impose fines. In 2003, I was still a driving force behind FINMA's sanctions report. Which demanded exactly that. That's life. After all, there is still some residual belief with regard to administrative sanctions in market supervision. But that's not the issue here.



The Conversion of St. Paul, Lucas Cranach the Younger, around 1540 - 1550

Outlook

(54) Read the next commentary: **Tighter FINMA procedures?**