

The early practice of FINMA (2014–2017)

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FINMA's approach to crypto-assets developed in stages before the ICO guidelines of 2018. In June 2014, it published a fact sheet on Bitcoin together with the Federal Council's report on virtual currencies. The fact sheet explained that the professional purchase and sale of Bitcoin and the operation of trading platforms fell under the Anti-Money Laundering Act, and that a provider that held Bitcoin for clients in a way that created claims against it could require a banking licence.¹ Without creating new rules, the fact sheet applied existing law to a new phenomenon and set the pattern that FINMA followed afterwards.

In 2017, FINMA took action against the operators of an unauthorised virtual currency called "E-Coin", who had accepted funds from the public and held them in accounts for the purchase of the coin. FINMA found that they had carried on deposit-taking without a licence. It ordered the liquidation of the companies involved and placed three other providers of fake cryptocurrencies on its warning list.² In the same month, FINMA published a supervisory notice on initial coin offerings, which announced that it was examining a number of ICOs and set out the laws that could apply to them.³ The notice paved the way for the guidelines of February 2018, which gave the market the classification it needed. This sequence shows the method of the Swiss regulator. FINMA first observed the market, then took action against obvious abuses, then issued guidance and finally contributed to legislation. The method allowed the market to develop while the law caught up. It also meant that for several years the regulatory position of many projects depended on FINMA's practice and on the opinions of their lawyers more than on the text of the law.

1 Notes

1. Riccardo Sansonetti, "Bitcoin: Virtuelle Währung mit Chancen und Risiken", *Die Volkswirtschaft*, 1 September 2014,

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dievolkswirtschaft.ch: FINMA published a fact sheet at the same time as the Federal Council report of 25 June 2014; the professional purchase and sale of Bitcoin and the operation of Bitcoin trading platforms that forward funds or Bitcoin between users fall under the Anti-Money Laundering Act. Bitcoin News Switzerland, "Die FINMA über Bitcoin und das Schweizer Banken- sowie Geldwäschereigesetz", 17 June 2014, bitcoinnews.ch: according to FINMA, the professional operation of Bitcoin exchange machines that keep balances in money or Bitcoin for clients in principle requires a banking licence, whereas a direct exchange without client balances involves no deposits from the public.

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2. FINMA, press release "FINMA closes down coin providers and issues warning about fake cryptocurrencies", 19 September 2017, finma.ch: the QUID PRO QUO Association, DIGITAL TRADING AG and Marcelco Group AG accepted at least CHF 4 million from several hundred users and kept virtual accounts in legal tender and E-Coins, an activity similar to a bank's deposit-taking; all three liquidated and bankruptcy proceedings opened; three further companies placed on the warning list. ↩
3. FINMA, press release "FINMA is investigating ICO procedures" and FINMA Guidance 04/2017, 29 September 2017, finma.ch: FINMA is investigating a number of ICO cases; depending on their structure, ICOs may be subject to anti-money-laundering, banking, securities trading and collective investment scheme provisions. ↩

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