

New powers for FINMA

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For most of its existence FINMA has been an unusual supervisor by international standards. It can withdraw licences, order the restoration of compliance, prohibit individuals from acting in a management position, confiscate profits made through serious violations, and publish its final rulings in cases of serious violations. What it cannot do is impose fines.¹ The expert group, FINMA itself and the Parliamentary Investigation Committee all described this gap as a weakness. The Federal Council had placed the question among the measures for further examination in April 2024. By June 2025 it had decided to act.²

The consultation draft of 12 August 2026 contains four sets of new powers. The first is early intervention: FINMA is to be able to impose measures when risks emerge and a bank's financial situation deteriorates significantly, without waiting until the conditions for insolvency measures are fulfilled or a violation of supervisory law has occurred. Remedial measures may include additional capital or liquidity requirements.³ The second is the power to impose a monetary administrative sanction on institutions for serious violations. According to the draft as summarised by practitioners, the sanction may reach up to ten per cent of the average annual operating income of the preceding three years.⁴ The sanction applies to institutions. Individuals remain subject to the existing instruments.⁵

The third power concerns periodic penalty payments for the late implementation of FINMA orders. The Federal Department of Finance describes them as capped at five per cent of daily operating revenue for a maximum of six months.⁶ The fourth set concerns transparency. The publication of concluded enforcement proceedings is to become the standard practice, and FINMA receives the power to communicate more actively with the public. FINMA welcomed the drafts and stressed that the measures should be implemented as a comprehensive package, with

particular emphasis on instruments having a preventive effect. It also welcomed additional resolution options in the event of a crisis.⁷

Two features of the Swiss design deserve comment. The cap of ten per cent of operating income is high by the standards of Swiss administrative law and comparable to the maximum fines in competition law. It gives FINMA a deterrent that did not exist when Credit Suisse accumulated its compliance failures. The choice to sanction institutions and to leave individuals to other instruments reflects a Swiss reluctance to create administrative penalties of a quasi-criminal character against natural persons, which would raise questions under the procedural guarantees of the European Convention on Human Rights. In combination with the senior managers regime, however, the new powers will change the incentives inside banks. A bank facing a fine of several hundred million francs has every reason to pursue the individual responsible under its own disciplinary and remuneration rules.

The early intervention power addresses a lesson of the Credit Suisse years that the Parliamentary Investigation Committee had documented in detail. FINMA had repeatedly identified weaknesses at Credit Suisse, but its instruments were designed to respond to violations and to insolvency, which left it with little leverage over a bank that was deteriorating while still formally compliant. The draft closes this gap. It also removes the suspensive effect of appeals against certain early intervention measures, as FINMA had requested in June 2025, so that a bank cannot delay supervisory action by litigating.⁸ For lawyers advising banks in Zurich, the result will be a supervisor that can act earlier and more visibly than before, and whose decisions carry a financial sting.

The timetable for these powers is long. The second statutory package is to be submitted to Parliament in 2027, which means that its provisions could enter into force at the beginning of 2029 at the earliest. Some of the liquidity requirements may not apply until 2033.⁹ Six years will thus separate the collapse of Credit Suisse from the first fine that FINMA can impose. That delay reflects the Swiss legislative process, with its consultation procedures, two chambers and the possibility of a referendum. It also explains in part why the Federal Council separated the capital question from the rest of the package in order to advance it faster.

1 Notes

1. Federal Act of 22 June 2007 on the Swiss Financial Market Supervisory Authority (FINMASA), SR 956.1, bilingual edition, Articles 31 (restoration of compliance), <https://www.droit->

bilingue.ch/de-fr/9/95/956.1-31-37.html, 33 (prohibition from practising), <https://www.droit-bilingue.ch/de-fr/9/95/956.1-33-39.html>, 34 (publication of a supervisory ruling), <https://www.droit-bilingue.ch/de-fr/9/95/956.1-34-41.html>, and 35 (confiscation), <https://www.droit-bilingue.ch/de-fr/9/95/956.1-35-42.html>. On the absence of a power to impose fines, FINMA, Lessons Learned from the CS Crisis (as above), p. 8. ↩

2. Federal Department of Finance, press release of 6 June 2025, <https://www.efd.admin.ch/en/newnsb/ty6FlsBuspE-AXC9CILJt>. ↩
3. CMS Switzerland, “Switzerland’s too-big-to-fail regulatory package: general outlook and implications”, 18 August 2026, <https://cms.law/en/che/legal-updates/switzerland-s-too-big-to-fail-regulatory-package-general-outlook-and-implications>. ↩
4. Mondaq, “Federal Council Launches Consultation On Amendments To Banking Act And Liquidity Ordinance On Too Big To Fail Regulation”, August 2026, <https://www.mondaq.com/financial-services/1830164/federal-council-launches-consultation-on-amendments-to-banking-act-and-liquidity-ordinance-on-too-big-to-fail-regulation>. ↩
5. finews.com, “Decision: Federal Council Wants to Strengthen Finma”, 12 August 2026, <https://www.finews.com/news/english-news/73220-tbtf-vorlage-vernehmlassung-karin-keller-sutter-bundesrat-ubs-eigenkapital-finma-bussen-2>. ↩
6. Federal Department of Finance, “Too Big To Fail”, overview page, <https://www.efd.admin.ch/en/tbtf-en>. ↩
7. FINMA, “FINMA welcomes the Federal Council’s consultation drafts on the legislative package to strengthen the ‘too big to fail’ framework”, 12 August 2026, <https://www.finma.ch/en/news/2026/08/20260812-mm-tbtf/>. ↩
8. FINMA, “FINMA welcomes the Federal Council’s proposed measures on banking stability”, 6 June 2025, <https://www.finma.ch/en/news/2025/06/20250606-mm-finma-tbtf/>. ↩

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9. CMS Switzerland, “Switzerland’s too-big-to-fail regulatory package: general outlook and implications”, 18 August 2026, <https://cms.law/en/che/legal-updates/switzerland-s-too-big-to-fail-regulatory-package-general-outlook-and-implications>. ↩

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