



Media relations
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Press Release

regarding judgment B-3930/2016 of 25 November 2019

BSI case: FINMA's approach is incomprehensible

In 2016, the Swiss Financial Market Supervisory Authority detected serious violations of supervisory provisions on the part of Banca della Svizzera Italiana and ordered the confiscation of CHF 95 million. The Swiss Federal Administrative Court considers the calculation of the amount to be seized incomprehensible and refers the case back to FINMA.

Between 2011 and 2015, Banca della Svizzera Italiana (BSI) repeatedly breached the Anti-Money Laundering Act and the Banking Act as well as corresponding ordinances. It committed serious violations of supervisory provisions indirectly linked to the corruption scandal surrounding the Malaysian sovereign wealth fund 1MDB. These violations occurred both in the context of the BSI's oversight responsibilities vis-à-vis its branch in Singapore and through its own transactions.

FINMA detected four serious violations

As a consequence of enforcement actions, the Swiss Financial Market Supervisory Authority (FINMA) accused BSI of four serious breaches of supervisory law. For example, the bank, now integrated into EFG International AG and no longer acting as such, is said to have violated (1) its due diligence obligations to prevent money laundering, (2) its obligation to retain documents, (3) the principle of appropriate risk management and (4) its obligation to guarantee proper business conduct. FINMA deems it impossible for these infringements to have gone unnoticed by BSI. The amount of the individual transactions in the multi-million range as well as the politically exposed people (PEPs) involved in these activities that were linked to the Malaysian Prime Minister should have led to an increased risk assessment and thus to additional investigations.

In its decision of 23 May 2016, FINMA estimated that the generated illegal profits ranged at CHF 95 million and ordered its confiscation, to ensure the restoration of compliance with the law.

Estimation only permitted under certain circumstances

Although acknowledging the occurrence of severe violations of supervisory provisions the Swiss Federal Administrative Court (FAC) considers the estimate of CHF 95 million to be incomprehensible. Article 35 of the Financial Market

Supervision Act (FINMASA) authorises FINMA to estimate the extent of the assets to be confiscated if the amount cannot be ascertained or requires a disproportionate effort to be ascertained. According to the practice, the impossibility or unreasonableness of determining an exact figure can only refer to individual elements regarding profit or expense. Accordingly, the estimate must be limited to individual calculation factors.

Furthermore, the confiscation has to correspond to the actual profit generated by the infringement. However, FINMA also justifies the amount of CHF 95 million with its renouncement to implement a seizure in another corruption case involving BSI's Brazilian customers. According to the FAC it is not clear why, instead of performing exact calculations, FINMA is making a kind of compensatory arrangement between two cases. The FAC thus partially upholds the appeal lodged by BSI and refers the decision back to FINMA.

This judgement may be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 355 employees (305.5 FTE) and its 76 judges (68.4 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.