

Press release

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Comment on the Federal Administrative Court ruling on the furnishing of bank client data to the US authorities

On 5 January 2010 the Federal Administrative Court ruled that the order issued by FINMA on 18 February 2009 to surrender client data to the US authorities was unlawful. At the same time the court expressly acknowledged the difficult situation which FINMA had been called on to resolve. Nevertheless, it maintained that FINMA should not have issued this order under its own authority. Instead, it should have referred the matter to the Federal Council for approval.

FINMA based its decision on Articles 25 and 26 of the Swiss Banking Act, which give it the authority and obligation to impose unspecified preventive measures if it has reasonable grounds to suspect serious liquidity problems. These measures may affect individual creditors' rights same as payment moratoriums or payment bans which, unlike the "preventive measures", have been specified in law. Following consultation with the Federal Council, the FINMA Board of Directors ordered the disclosure of the client data as it considered this as the only way to avoid the real threat of the US authorities starting proceedings against the bank, which would have threatened its existence and seriously worsened its liquidity situation which, in turn, would have impacted the Swiss economy.

FINMA noted that the court neither considered nor disputed this position in its ruling. It simply stated that the action taken by FINMA in this instance was unlawful. FINMA will analyse the ruling closely before deciding whether to launch an appeal at the Federal Supreme Court.

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